



American Society of Access Professionals, Inc.

**13<sup>th</sup> Annual National Training Conference**  
**May 18-20, 2020**  
**Renaissance Capital View Hotel - Arlington, Virginia**

This program will be submitted to Virginia for CLE credit hours and to ICRM for CMPs. ASAP is on the IAPP list of preferred providers.

**OVERVIEW FOR CORE SESSIONS**

SPECIAL NOTE: The Planning Committee is developing the program. There are certain “core” sessions that are included in the training program each year. The descriptions for those core sessions are below. There will be additional sessions added. Programming is subject to change. The complete program will be posted on the website as soon as it is available.

**The Privacy Act of 1974 Overview**

The Privacy Act’s purpose is to balance the Government’s need to maintain information about individuals with protecting the rights of those individuals from unwarranted invasion of privacy. This session will cover the basic policy objectives of the Act and compliance; an overview of disclosure of records with and without consent; and agency requirements including civil remedies and criminal penalties. This session is a great basic foundation course and can also be used as the perfect refresher.

**Privacy Act: Processing and Conditions of Disclosure**

Now that you have a request, what can you release? This session will help you understand systems of records notice and exemption rules; and the 12 reasons a record may be released without an individual’s authorization.

**Privacy Roots: SORNs and PIAs**

This session will provide an understanding of where privacy is rooted by describing the fundamentals of the Privacy Act and E-Government compliance through SORNs (Systems of Records Notices) and PIAs (Privacy Impact Assessments). The instructors will detail what a SORN is and how to merge or rescind SORNs. PIA requirements as

defined in the E-Government Act of 2002 will be discussed as well as the PIA process, legal and policy distinctions, and SORNs v. PIAs.

**Privacy Scenarios: Real-Life Situations – You make the Call**

Put your privacy knowledge to use in this interactive session where instructors walk you through various scenarios and help you determine what the correct course of action should be. This session is very popular!

**Breaches/Remediation** Unfortunately, it is all too common to hear about another massive breach suffered at a major retailer, health care organization or government agency. Clearly, major security threats and vulnerabilities abound. Are your agency systems, programs, policies AND personnel capable of protecting PII? In this session, you will learn strategies for effectively responding to breaches as well as how to effectively mitigate risks associated with large data breaches.

**PRIVACY – Where the Rubber Hits the Road**

This session explains how you can help your privacy program work including considerations in balancing competing needs, dealing with scarce resources, and

educating others about the importance of Privacy.

**Records Management**

Exactly, what is a federal record and what is “Records Management?” Explore the life cycle of a record and gain an understanding of how to treat drafts, emails, and other matters including disposition schedules. This session also delves into the Managing Government Records Directive, Presidential memorandum and Capstone.

**Records Management – Complex Issues**

The rapid acquisition and implementation of office related technology may make it difficult for agencies to maintain “adequate and proper” documentation of their organizations’ activities. This session will examine current policies and technologies that challenge our basic recordkeeping understandings. A few recommended solutions to battle the future’s “information gap” will also be offered.

**FOIA Procedural Overview**

This is the perfect starting point for newcomers and those seeking to refresh their grasp of the Act’s requirements. Included is discussion of the key procedural elements of the statute,

including those required under the FOIA Improvement Act of 2016, and a summary of its exemptions. This session ensures that you have a basic working knowledge of the FOIA and will provide a strong foundation for growth.

### **FOIA: The Nine Exemptions Overview**

This session discusses in general the nine exemptions, their applications, and sets the stage for additional deep-dive sessions on individual exemptions.

### **Defense, Foreign Relations & Classified Information: Exemption 1**

Protecting classified national security information is always a newsmaker. Public interest continues to increase, and that translates into complex FOIA requests. In this session you will gain an understanding of how a disclosure statute—FOIA—also protects classified national security information. An overview of the Mandatory Declassification Review process, which differs from the FOIA de-class process, also will be covered.

### **Business Information: Exemption 4**

Exemption 4 is one of the most burdensome and complicated of all of the FOIA Exemptions. There are many moving parts to processing these requests with a lot at stake for the businesses involved. Agency considerations and obligations in handling data submitted by business and government contractors will be covered in great detail. Learn how to recognize trade secret and confidential, commercial information. This session will also focus on submitter notice under Executive Order 12600 and contracts. New thinking based on the recent Supreme Court ruling will also be discussed.

### **Exemption 5: Privileged Information**

New requirements in the FOIA Improvement Act of 2016 directly affect Exemption 5. In addition to the new requirement, instructors will help you understand the Exemption's complexities, particularly when you need to articulate the potential harm of release. They also will discuss the elements and privileges incorporated in Exemption 5, including threshold requirements, and deliberative process, the attorney-client, and the attorney work product privileges.

### **Privacy and the FOIA: Exemptions 6 and 7 (C)**

Exemptions 6 and 7 (C) are the FOIA's key privacy exemptions, and the most used exemptions government-wide. In this session, you will learn about the protections provided for personal information in general government and investigative files. It will help you understand what is considered private information in your agency's records, and the factors for balancing it with the public interest. You will also learn about categorical withholding and segregation.

### **Exemption 7 (A), (B), (D), (E), (F)**

Exemption 7 is FOIA's law enforcement tool dealing with records or information compiled for law enforcement purposes – literally a matter of life or death in some cases. Instructors will delve into the “how-to” of processing for these exemptions.

### **What's New in FOIA Case Law?**

Learn more about recent developments in FOIA case law and how it could affect your policies.

### **Call the Lawyers: We're being Sued!"**

What happens once a FOIA lawsuit is filed? How do you even learn that your agency has been sued and what your duties and obligations are? The instructors will detail what needs to be done, how to do it and when to do it. You will come away with an understanding of administrative remedies, discovery, Vaughn indices, declarations, duty to segregate, waiver of exemptions in litigation, attorney fees, and much, much more.

### **FOIA and the Privacy Act Interface**

While there are many similarities between the two Acts, the differences are distinct. This session compares the two Acts including processing time limits, appeal rights, fees, exemptions, litigation and more. Instructors will also present various scenarios that will help you think through the processing of each Act.

### **Customer Service: Ways to Deliver**

A respectful relationship and courteous interactions between processor and requester go a very long way toward fulfillment of a request, veteran processors and requesters will attest. (You don't have to become BFFs.) Listen to how

frequent requesters and veteran processors have developed their relationship over the years to include trust and candor, and the positive impact that has had on request timing, scope, and acceptance of the search and available information.

### **Requester Panel – It's Everyone's Responsibility**

Collaborative engagement of all stakeholders drives a successful and results-oriented FOIA program. Requester engagement can help narrow the scope of requests and refine records searches, making your FOIA process more efficient and eliminating barriers to processing requests in a timely manner. Effective communication is critical in avoiding disputes with requesters. In this session, you will hear from an outstanding multi-disciplinary panel of FOIA requesters who will share some of their most rewarding experiences in working with FOIA offices and offer suggestions for how agency FOIA programs can work more collaboratively to effectively administer FOIA.

### **Agency Breakouts**

**Perhaps the most popular feature** of the NTC, breakout sessions by agency will be organized based on the program attendance. All attendees are expected to attend their specific agency session. There will also be a session for “non-specific” so that all can attend a session.

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***DEPENDING UPON THE NEED, THE FOLLOWING ARE SESSIONS THAT COULD BE ADDED, AMONG OTHERS***

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### **Privacy in an Agile Environment**

This session introduces agile development to privacy officials, and methodologies for how to approach privacy in an agile environment.

### **AI, the New Privacy Conundrum**

Artificial Intelligence is the big disrupter. Programs designed for intelligent decision-making can also erode privacy on every front. What are the trade-offs, and where is the pay-off?

### **Keeping Pace with Technology**

A panel discussion about the challenges inherent in keeping privacy programs relevant and compliant in today's ever-

changing technical environment. Technology is advancing faster than it can be assessed for potential privacy implications and privacy documentation can be finalized. The panel will discuss and provide their thoughts on how practitioners might address these challenges.

### **Program Compliance and Monitoring**

You have built a privacy program, but how confident are you that agency employees are complying with privacy requirements? In this session, you will learn more about the importance of a strong and effective oversight program as a component of a top tier privacy program, and see how much more there is to privacy than just PIAs, SORNs, and breach remediation.

### **Fee Categories and Other Administrative Matters**

Fee categories confuse even the most seasoned FOIA requesters and processors. Learn the criteria for determining fee categories, i.e., where do bloggers fit, and factors in deciding fee waiver requests. Also learn administrative tips on how to keep the process moving and what to do as you wait for other agencies to respond.

### **Exemptions 2 and 3**

Some agencies still struggle with exempting information pertaining to internal personnel rules and practices since the Supreme Court threw out “high” 2. Use of Exemption 3 allows certain nondisclosure provisions that are contained in other federal statutes, but only if certain specific qualifications are met. Instructors will provide considerations for handling these situations.

### **FOIA Backlogs – Why Won’t They Go Away?**

The word alone makes both agencies and requesters cringe. The harsh reality is that a majority of federal agencies struggle with FOIA backlogs, often leading to

adverse consequences. In this session, you will learn tested and proven tips to successfully reduce your FOIA backlog. The session will explore how you can take these tips and implement them at your agency successfully.

### **Voluminous or Complex Requests**

Over time both agencies and requesters have become more knowledgeable and sophisticated. New legislation, developing technologies and promotion of best practices have all contributed to more efficient processing. With hopes being that this would help reduce processing time and backlogs, in many cases quite the opposite is true. As more information is posted online including raw data, requesters are using the information to seek more information and file subsequent and multi-faceted requests. So what does an agency do when it knows that release of information is going to generate these large requests requiring coordination among its component offices as well as other agencies?

### **Redaction Workshop**

Best practices in redaction process: the physical process, and the “do’s & don’ts” of the redaction process, including making sure that the redactions cannot be reversed.

### **Capstone and New Developments in Federal Recordkeeping Policies**

In this session we will explore the long-term implications of Capstone’s implementation across the federal government in terms of providing greater FOIA access to electronic records, as well as other recent NARA policy initiatives with an impact on agency FOIA processes.

### **Reasonable Searches: You call that Reasonable?**

We’ve all seen the court cases involving reasonable searches. Going back to the drawing board is not an option that

anyone wants. So how can the requester and agency be confident that a thorough search for the information was performed? Presenters will walk you through the basics of a reasonable search and highlight challenges faced by both the requesting community as well as the Government. Tools and tips will include:

- Building a working relationship with Records Management components
- Getting the most out of eDiscovery Tools
- Searching Tips
- Ideal Request Phrasing
- FOIA Reasonable Search Litigation Case Examination

### **Foreseeable Harm**

In 1993, Attorney General Janet Reno set new FOIA policy saying that “. . .it shall be the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption.” Fast forward to 2016. President Obama signs the FOIA Improvement Act of 2016, codifying the “foreseeable harm” standard and sun setting the deliberative process privilege. In late 2017 we see the first court case coming out of California with the Ecological Rights Foundation v. Federal Emergency Management Agency, finding that the Agency failed to meet its obligation under the new standard. Then in 2018, we have *Carol Rosenberg, et al., v. U.S. Department of Defense, in* which the United States District Court for the District of Columbia gave more teeth to the standard. So what does this mean for agencies and how should they be applying this new standard to the everyday processing of FOIA requests?

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