

FOIA Redaction Workshop

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1

Knowledge, Skills, and Abilities to Redact

- Time**
 - Needed to consult with subject matter experts
 - Search, prepare, review, copy, redact electronically, double-check work, release, & post to "net"
- Understanding/Comprehension**
 - Knowledge level of FOI, case law, internal regs & policy, subject matter expertise, training or mentoring
- Work Habits**
 - Ability to focus, understand, research, consult, work autonomously & make supportable decisions (with appropriate documentation)
- Position**
 - Supervisor, mentor, trainee, search only, quality control

2

"Proper" FOIA Requests

3

Statutory Redaction Requirements

- ▶ Make a reasonable effort to estimate the volume of redactions, and
- ▶ Clearly identify the location & extent of all redactions, and
- ▶ Release segregable portions of records, and
- ▶ Insert the exemption which supports the redaction at the site of each redaction.

4

Posting Redacted Records

The "Rule of 3" is Codified for Frequently Requested Records:

- Agencies required to "make available for public inspection in an electronic format," records "that have been requested 3 or more times."

5

Best Practices

Negotiate with Requesters

- Clarify or modify a request
- Narrow scope of request, if possible
- Document all revisions in cover letter/email

Making Redactions

- Don't begin making redactions if request is unclear
- Take reasonable steps to release non-exempt information

Discretionary Release

- Speculative or abstract fears are insufficient grounds to withhold a record
- Foreseeable Harm Test

6

Not All Exemptions are Eligible for Discretionary Release

No discretion for exemptions 1, 3, 4, 6, 7C, 7D

If you reasonably foresee that disclosure would harm a protected interest, an agency may use discretion to withhold records under Ex. 2, 5, parts of 7, 8, & 9

Maintain an administrative record

7

Redaction Issues: Checking Your Work Before Release

- ✓ >Equities in other agencies, requiring coordination prior to redaction/release?
 - ▶ Mosaic effect?
- ▶ >Understand mandatory withholding vs discretionary withholding, & redact using foreseeable harm test
- ▶ >Meet physical requirements for redaction
- ▶ >Use technology - email, CDs, DVDs, etc.
- ▶ >Posting to Internet, in compliance with section 508 of Americans with Disabilities Act

8

Non-Standard Redactions (*Note Possible Privacy Act Implications*)

- Video & audio tapes*
- Microfiche
- WAVE files (voice mail messages) NARA: <http://www.archives.gov/records/mgmt/emailmgmt.html>
- Biometric indicators*
- Photographs*
- PDFs

9
