



2023 ASAP FOIA/PRIVACY ACT TRAINING WORKSHOP

September 6-8, 2023

The Royal Sonesta – Minneapolis, Minnesota

(Instructors may appear in their individual capacities, and instructor assignments may be revised.)

Tuesday, September 5

7:30 pm–9:30 pm Registration – Avoid the morning rush: check-in with ASAP registrars and pick up your meeting materials

Wednesday, September 6

7:30-8:00 am Registration & Morning Refreshments – Bergen Foyer

8:00–8:10 am **Welcoming Remarks, Announcements, and Introductions – Bergen 1-2**
– Ryan Mulvey, ASAP President

8:15-9:30 am **Session 1.01 - Plenary Session – Bergen 1-2**
Providing Excellent Customer Service

Providing good customer service begins on day one with the key element being effective communication. Instructors will provide tips for steps along the way in processing requests as well as demonstrating through role play. As some agencies move away from and others hold onto them steadfastly, the relevance of fees and their effectiveness as a tool to help narrow scope will be examined. Attendee participation expected!

-Kellie Robinson, Department of State

-Toni Fuentes, Department of Defense, PCLT

9:30-9:45 am Refreshment Break – Bergen Foyer

9:45-11:00 am **BREAK OUT SESSIONS (Choose One)**

Session 1.02 – Bergen 3

Strategies for Backlog Reduction Plans

Backlog reduction starts on day one with the efficient processing of the request. But there are many more considerations that factor into backlog reduction. Managing personnel resources and the use of artificial intelligence or other machine technology also play key roles. And there's compliance with Section 508 of the Rehabilitation Act, too. Instructors will discuss strategic considerations while attendees participate in the dialogue by offering brief success stories and pitfalls.

-Charles Melton, Department of Defense

-Toni Fuentes, Department of Defense, PCLT

Session 1.03 – Bergen 1-2

Privacy Act Overview

The Privacy Act balances 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.

-William Holzerland, Department of Health and Human Services

11:00-11:15 am Stretch Break – Bergen Foyer

11:15 –12:30 pm **BREAK OUT SESSIONS (Choose One)**

Session 1.04 – Bergen 3

Uncommon Exemptions: 2, 3, 8 and 9

Even if your agency does not often use these less frequently invoked exemptions, you should be aware of what they protect and how they work, especially in light of recent statutory amendments and caselaw developments. Instructors will walk you through the exemptions and provide an overview of how they should be invoked.

-Nick Wittenberg, Deloitte (formerly White House OST and EPA)

Session 1.05 – Bergen 1-2

Privacy Act: Conditions of Disclosure –

Now that you have a Privacy Act request, what can you release? This session will help you understand the “Systems of Records Notice” and exemption rules, as well as the twelve reasons a record may be released without an individual's authorization.

-Ramona Branch Oliver, Dept. of Labor

12:30-1:30 pm Lunch – New Sweden 1-2 - Enjoy Lunch with Colleagues

1:30-2:45 pm BREAK OUT SESSIONS (Choose One)

Session 1.06 – Bergen 1-2

The Personal Privacy Exemptions: 6 & 7(C)

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

-Kellie Robinson, Department of State

-Toni Fuentes, Department of Defense, PCLT

Session 1.07 – Bergen 3

Historical, Precedent-Setting Litigation and the Impact of FOIA Amendments

There are more than 4500 court decisions on issues concerning agency FOIA implementation, but only a few have truly defined how we administer the statute. This session looks at some of those critical decisions and provides another foundation for truly understanding the FOIA.

-Dick Huff, Consultant (Ret., Department of Justice)

-Ryan Mulvey, Americans for Prosperity Foundation

2:45-3:00 pm Refreshment Break – Bergen Foyer

3:00-4:15 pm BREAK OUT SESSIONS (Choose One)

Session 1.08 – Bergen 3

Exemption 7

Exemption 7 is the FOIA's mechanism for protecting records or information compiled for law enforcement purposes. In some cases, the material protected by this exemption literally involves a matter of life or death! Instructors will delve into the "how-to" of processing for these exemptions and provide hands-on redaction exercises.

-Dick Huff, Consultant (Ret., Department of Justice)

Session 1.09 – Bergen 1-2

Drafting Key FOIA Documents

Drafting requester correspondence, determination letters, or internal processing notes and lawsuit declarations is extremely important not only for clarity, but for legal reasons as well. Keeping a complete and thorough administrative record is a vital task for any FOIA processor! Using examples and interactive exercises, instructors will walk attendees through key strategies for drafting FOIA documents and offer suggestions on creating excellent external work-products.

-Camille Aponte-Rossini, Office of Personnel Management

4:15 pm Program Recesses – Please Complete Daily Program Evaluation

Thursday, September 7

7:30-7:55 am Morning Coffee – Bergen Foyer

7:55-8:00 am Announcements –Ryan Mulvey, ASAP President

8:00-9:15 am Session 2.01 – Plenary Session – Bergen 1-2

Updates from the Court: Developments in FOIA Case Law

This session will provide an "up to the minute" review of recent rulings in FOIA cases. Cases will be correlated to specific FOIA requirements with an emphasis on practical lessons on how these decisions impact FOIA processing.

-Ryan Mulvey, Americans for Prosperity Foundation

-Dick Huff, Consultant (Ret., Department of Justice)

9:15-9:30 am Stretch Break – Bergen Foyer

9:30 – 10:45 am BREAK OUT SESSIONS (Choose One)

Session 2.02 – Bergen 1-2

Appeals and Litigation: How to Avoid and Tackle Lawsuits and Other Challenges –

How you handle processing requests can result in success or leave your agency vulnerable to appeals and costly lawsuits. What you do and when you do it matters. Instructors will provide scenarios to help attendees determine preventative actions and respond properly to challenges.

-Kellie Robinson, Department of State

-Toni Fuentes, Department of Defense, PCLT

Session 2.03 – Bergen 3

Creating Privacy Act Statements and SORNs –

Using the “Privacy Act Overview” and “Privacy Act: Conditions of Disclosure” sessions as a foundation, instructors will provide scenarios as attendees work through the four elements of a Privacy Act Statement and will create a System of Records Notice for publishing in the Federal Register.

-William Holzerland, Department of Health and Human Services

10:45-11:00 am Refreshment Break – Bergen Foyer

11:00-12:15 pm BREAK OUT SESSIONS (Choose One)

Session 2.04 – Bergen 1-2

Exemption 5

Several requirements in the FOIA Improvement Act of 2016 directly affect Exemption 5, as well as a relatively recent decision from the Supreme Court of the United States. Instructors will help attendees to understand the complexities of this exemption and, in particular, the relevance of the foreseeable harm standard. They also will discuss the privileges incorporated by Exemption 5, including threshold requirements and technical requirements for the deliberative-process, attorney-client, and attorney work product privileges.

-Camille Aponte-Rossini, Office of Personnel Management

-Ryan Mulvey, Americans for Prosperity Foundation

Session 2.05 – Bergen 3

Career Management

ASAP was formed in 1980 with the aim, in part, of professionalizing the access community and creating a distinct job series. It was a long time in coming, but the Government Information Series 0306 finally became a reality! But what does it take to climb that professional ladder? Instructors will elicit your thoughts when it comes to the skill sets needed for managing budgets, resources and people and what takes you to the next level.

-Charles Melton, Department of Defense

-Toni Fuentes, Department of Defense, PCLT

12:15-1:15 pm Lunch – New Sweden 1-2 - Enjoy Lunch with Colleagues

1:15-2:30 pm BREAK OUT SESSIONS (Choose One)

Session 2.06 – Bergen 3

Exemption 4

One of the most burdensome and complicated of all 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 secrets and confidential, commercial information. This session will also focus on submitter notice under Executive Order 12600 and contracts, as well as the interaction of Exemption 4 with the foreseeable harm standard.

-Nick Wittenberg, Deloitte (formerly White House OST and EPA)

Session 2.07 – Bergen 1-2

FOIA-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.

-Ramona Branch Oliver, Department of Labor

2:30-2:45 pm Refreshment Break – Bergen Foyer

2:45-4:00 pm Session 2.08 Plenary Session – Bergen 1-2 Foreseeable Harm

The foreseeable harm standard is a key element in administering FOIA with a presumption of openness. On a case-by-case basis, agencies must articulate how disclosure of otherwise exempt information could cause harm to an interest protected by a statutory exemption – easier said than done! Instructors will explore legislative history, recent caselaw, and the ways in which the standard is being used with different exemptions and privileges; attendees will identify any foreseeable harm and link it to the specified material.

-Ryan Mulvey, Americans for Prosperity Foundation

-William Holzerland, Department of Health and Human Services

4:00 pm Daily Evaluations and Program Recesses

Friday, September 8

7:30-7:55 am Morning Coffee – Bergen Foyer

7:55-8:00 am Announcements and Closing Remarks – Ryan Mulvey, ASAP President

8:00-9:15 am Session 3.01 Plenary Session – Records, Agency Records, and Agency Control –

What is a “record”? What is an “agency record”? When is something subject to the legal control of an agency and disclosure under the FOIA? This session will explore these foundational concepts, including relevant statutory definitions under FOIA, the Privacy Act, Federal Records Act, and Presidential Records Act. Instructors will discuss the various “control” tests that courts have developed for distinguishing agency records from “personal,” “congressional,” or other non-agency materials. Attendees will work through group exercises to define various kinds of records.

-Camille Aponte-Rossini, Office of Personnel Management

-Nick Wittenberg, Deloitte (formerly White House OST and EPA)

9:15-9:30 am Stretch Break – Bergen Foyer

9:30-12:00 pm BREAK OUT SESSIONS (Choose One)

Session 3.02 – Bergen 1-2

FOIA Exemptions 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.

-Kellie Robinson, Department of State

-Charles Melton, Department of Defense

-Dick Huff, Consultant (Ret., Department of Justice)

Session 3.03 – Bergen 1

Privacy Scenarios

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.

-Ramona Branch Oliver, Department of Labor

-William Holzerland, Department of Health and Human Services

10:30-10:45 am Refreshment Break – Bergen Foyer

10:45-12:00 pm Sessions 3.02 and 3.03 Continue in Respective Meeting Rooms

12:00 pm Program Ends, Certificates of Attendance are Available

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