A wooden gavel with a dark, polished finish is positioned diagonally across the upper right portion of the image. The gavel's head is rounded and features several horizontal grooves. The handle is smooth and tapers towards the bottom. It rests on a document with a light beige background. The document has a double-line border and contains the text 'FREEDOM OF INFORMATION ACT' in large, bold, black, sans-serif capital letters. The text is arranged in three lines: 'FREEDOM' on the top line, 'OF INFORMATION' on the middle line, and 'ACT' on the bottom line. The document is tilted slightly to the left.

FREEDOM OF INFORMATION ACT

Debra DeLeon
Management Analyst
Washington, D. C.

25 C. F.R § 522

“A democracy requires
accountability
and
accountability
requires transparency.”

President Obama’s FOIA Memorandum
January 21, 2009

Overview

- July 4, 1966- President Lyndon Johnson signed into law the Freedom of Information Act (FOIA)
- FOIA provides any person with the right of access to federal agency records, unless those records are protected from disclosure under law



Overview

- Congress sought to create a workable balance between the “right of the public to know and the need of the government to protect certain information.”
- Congress included 9 exemptions in FOIA to protect certain information from disclosure
- Exemptions protect interests such as national security, personal privacy, privileged information, and law enforcement



Overview

- Agencies must determine whether they reasonably foresee that disclosure would harm an interest protected by one of the exemptions
- Two-part test for Agency Records
 - Created or obtained by an agency
 - Under agency control when request received



9 FOIA Exemptions



Exemption # 1

- Protects information that is properly classified in the interests of national security pursuant to executive Order 12958



Exemption #2

- Protects records related solely to the internal personnel rules and practices of an agency



Exemption #3

- Protects information exempted from release by statute

9 FOIA Exemptions



Exemption # 4

- Protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential



Exemption #5

- Protects inter-agency or intra-agency memorandums or letters which would not be available to a party other than an agency in litigation with the agency (normally privileged in the civil discovery context.



Exemption #6

- Protects information that would constitute a clearly unwarranted invasion of personal privacy of the individuals involved

9 FOIA Exemptions



Exemption # 7 (7(A) through 7(F))

- Protects records or information compiled for law enforcement purposes when the release could reasonably be expected to interfere with enforcement proceedings



Exemption #8

- Protects matters that are “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions



Exemption #9

- Protects geological and geophysical information and data, including maps, concerning wells

Possible Gaming Information Exemptions



Exemption #4 –Protects trade secrets or commercial or financial information obtained from a person that is privileged or confidential

Exemption #5- Protects “inter-agency or intra-agency documents which would not be available by law to a party other than an agency in litigation with the agency”



Possible Gaming Information Exemptions

Exemption #6- Protects information in personnel, medical, and similar files when disclosure would constitute an unwarranted invasion of personal privacy



Exemption #3- Protects information “explicitly” exempted from disclosure by statute”

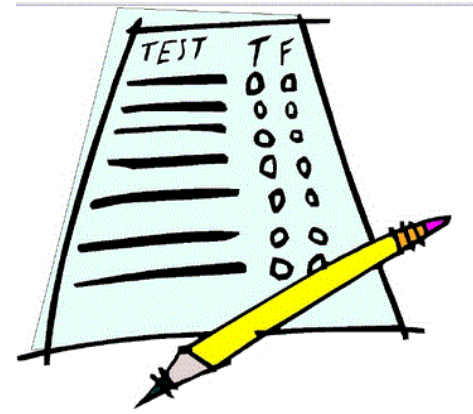


Exemption #4-Criteria

- Test to determine if information is “privileged” or “confidential”

Must meet 3 requirements:

1. Must contain commercial or financial information.
2. Must be obtained from a person.
3. Must be privileged or confidential.



Exemption #4-Criteria

- Test to determine if information is “privileged” or “confidential” under exemption #4 depends on:
 1. Information was voluntarily submitted and it is information that is not customarily released to the public.
 2. Information required to be submitted.
 - (a) impairs the government’s ability to receive information
 - (b) cause substantial competitive harm to the competitive position



Processing FOIA request

43 C.F.R Part 2

- Consultation with the submitter of the record is required. (§2.27)
- Records contain both exempt and nonexempt information, must consult with Solicitors (§ 2.25)
- Document contains both exempt and nonexempt material, must separate and release the nonexempt information. (§ 2.25)



Processing FOIA request

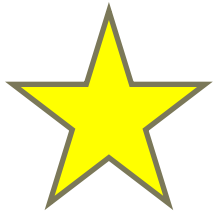
43 C.F.R Part 2

- Agency is responsible for deciding whether information will be released. (§ 2.32)
- Objections must be detailed written objections to release. (§2.31)
- Must notify original submitter of release against objections-allow 10 workdays to judicially intervene (§2.33)



Consultation

- Tribal Consultation is important and required by law
- Important that Tribe's respond to a consultation request with objections in writing
- Objections must be detailed and specific



According to DOI's FOIA Department, if Tribe's do not submit written objections to the release of their information, the Department of Interior can not withhold the information.

*****Extremely important to respond with objections in writing to protect your Tribe's information**

Issues

– Receipt of large number of FOIA requests



– Backlog of FOIA requests

– Limited staff resources/ Large workload

– No FT staff requests

cess FOIA



Issues

- Tribal Revenue Allocation Plans
- Fee-to-Trust applications
- Business Models
- Marketing Studies
- Budgets
- Indian Land Opinions



Suggestions

- Submit both a redacted and un-redacted version of document
- Submit with reasoning for exemption to be applied to withheld information
- Post a redacted copy on Tribe's website



Suggestions

- When requesting information- be as specific and detailed as possible
- Avoid broad and vague requests

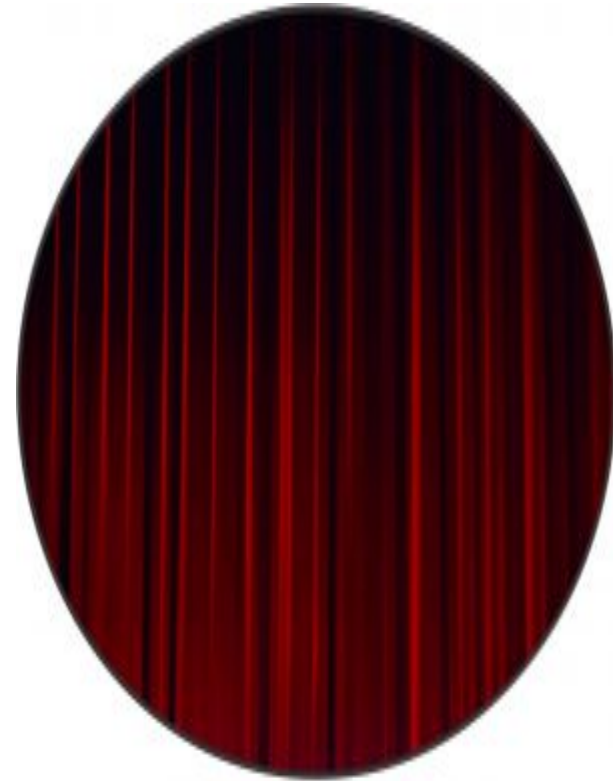




Impacts

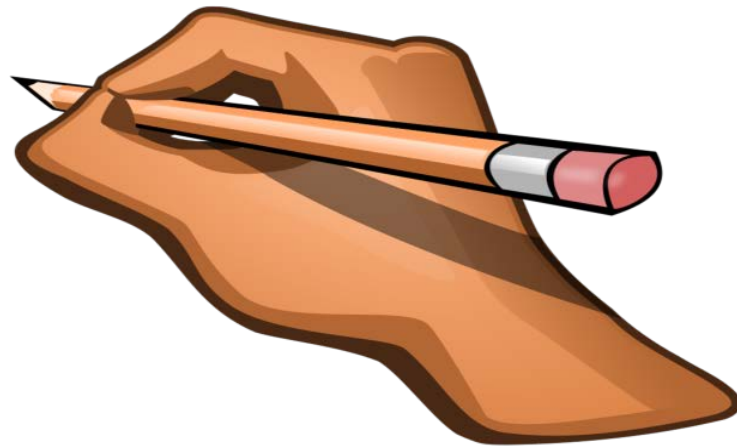
- **Powerful tool**

- for American citizens
- for representatives of the media
- for gaming proponents
- for gaming opponents



Impacts

- Misused during civil litigation as an attempt to circumvent civil discovery processes.
- Gaming opponents have filed brief's to contest differences between redactions on documents from FOIA results to redacted copies of the administrative records received through litigation.



Sometimes Can

- Result in a FOIA appeal - through Interior's FOIA Appeals Officer
- Result in FOIA litigation - through federal courts



Questions ?

