

# Brief Overview of the Freedom of Information Act

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# FOIA

## The Freedom of Information Act

- Is a mechanism for disseminating information to the public
- The tool people use to find out what their government is doing



# FOIA Requirements

## **The FOIA Requires Agencies to Make Records Available to the Public:**

- Affirmatively
  - In a Reading Room
  - On the Web
- Upon receipt of a written request reasonably describing the records sought



# FOIA Requirements

## ➤ **Who is Subject to the FOIA**

- All Federal Agencies - YES
- Personal staff of the President; Congress; Federal Courts - NO



# FOIA Requirements

## ➤ **Who May File a FOIA Request**

- Any Person
  - Does not have to be a US Citizen
- State Agencies



# Responsive Records

- **All Records in the Possession or Control of NIH**
  - Created or obtained by NIH
  - Under NIH control – contractor records
- **Includes ALL Records Responsive to the Request – NOT just those that can be Released**
- **Never Create A Record to Respond to a FOIA Request**



# Definition of Record

- **Any handwritten, typed or printed documents and documentary material in other forms**
- **Information in Electronic Format**
- **Includes Email**
  - Keep only those emails you need
  - Keep email content professional



# Response Options

- **No Records Responsive to the Request**
- **Responsive Records Exist and may be Released in Full**
- **Responsive Records Exist but We Don't Want to Release**





# Response Options

## ➤ **GLOMAR**

- We neither admit nor deny the existence of the requested records
  - Used only if the records are exempt from release
- **Used when merely admitting the existence of a record will cause the type of harm the exemption is intended to prevent**



# Response Options

## **The FOIA is a Disclosure Statute**

**Presumption that all responsive records/information will be released unless 1 of 9 exemptions applies**



# Exemption 1

- **Protects National Security Information**
- **The information must be properly classified**



# Exemption 2

- **Protects matters internal to an agency if disclosure will risk the circumvention of a statute or agency regulation**
  
- **Examples**
  - Computer Vulnerability Assessments
  - Employee Security Clearance Status
  - Campus Security Plans
  - Location of NIH Research Animals



# Exemption 3

- **Another federal statute prohibits disclosure**
  
- **Examples**
  - Information from a CRADA or pending patent application
  - Technical Proposals
  - SF 450s – Confidential Financial Disclosure Reports



# Exemption 4

- **Protects trade secrets and commercial or financial information obtained from others**
- **Used to protect proprietary and patentable information in grant applications and certain information in government contracts**
- **The submitter of the information has the burden**



# Exemption 5

- **Protects inter-agency or intra-agency memoranda or letters unavailable to another party in litigation**
  
- **Examples**
  - Pre-decisional documents if they express an opinion or make a recommendation on a policy or legal issue
    - Summary Statements
    - Must be able to articulate the harm to the decision-making process if released



# Exemption 5 – con't

## ➤ **Examples con't**

- Attorney-Client Communications
- Information of commercial value to NIH

➤ **Can't be used to protect raw data or unpublished material**





# Exemption 6

- **Protects records that if released would result in a clearly unwarranted invasion of privacy**
  - Balance the privacy interest with the public interest
- **Examples of information protected**
  - Home address, phone number, birthdate
  - Social Security Number
  - Patient Identifying Information



# Exemption 6 – con't

## ➤ **Examples of Information Not Protected**

- Government salary
- Amount of cash award
- Date of last promotion
- Amount of royalties received



# Exemption 6 - con't

**Does not automatically  
protect information in a  
Privacy Act file**



# Exemptions 7, 8 and 9

## Exemption 7

Protects certain information in law enforcement files

## Exemption 8

Protects information of financial regulators (FDIC)

## Exemption 9

Protects geological and geophysical information and data concerning wells



# Exemptions - con't

**NOTE: No Exemption for Embarrassing or Stupid**



# Non-Compliance

- **Administrative Appeal**
- **Federal Lawsuit**
  - Time consuming
  - Results are out of our control
  - Results may be binding on future cases
  - May be required to pay the requester's legal fees