

Memorandum from ATF Deputy Director implementing the Bureau's new, mandatory procedures for handling Freedom of Information Act (FOIA) requests to conform to the 2007 "OPEN Government Act. All FOIA requests must be fulfilled within 20 days, and lawsuits can be immediately filed in District Court and attorney fees paid to the requesting party whenever ATF fails to strictly comply with the Act's provisions. Moreover, all fees must come from the Bureau's operating budget.



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*Office of the Director*

Washington, DC 20226

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MEMORANDUM TO: All Assistant Directors  
All Special Agents in Charge

FROM: Deputy Director

SUBJECT: New Freedom of Information Act Requirements

On December 31, 2007, the President signed into law the OPEN Government Act of 2007. This law contains several new mandates on Federal agencies relative to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. This memorandum is to provide guidance about and ensure conformity with these new requirements.

The FOIA requires that Federal agencies respond to requests for information within 20 business days of receipt of a request. Prior to December 31, 2007, the FOIA time limit was relatively flexible, as the 20-day deadline could be easily extended and the requestor's "remedy" for an agency's failure to meet the deadline was limited. However, under the OPEN Government Act of 2007, agencies must provide any responsive documents to the requestor within the 20-day timeframe. Failure to meet this deadline now: prohibits ATF from charging search or duplication fees; permits the requestor to immediately file action in Federal District Court; and could result in the award of attorney fees if the requestor obtains a judicial order in his or her favor or "a voluntary or unilateral change in position by the agency" is made in litigation, which might include a release of documents after litigation has commenced because the initial 20-day deadline was not met. Moreover, attorney fees paid may no longer be drawn from the Claims and Judgment Fund, but rather must solely be derived from ATF's appropriated funds.

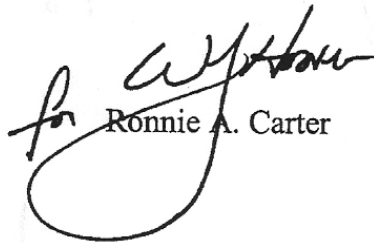
As a result of these new FOIA requirements, each Assistant Director will be held responsible for timely compliance with all requests made to their Directorate by the Disclosure Division. Due to the stringent statutory 20-day deadline to process all responsive records, it is imperative that each Directorate promptly carry out searches and respond immediately to the Disclosure Division. Failure to adhere to this policy could result in severe consequences for ATF. Therefore, each Directorate and Field Division will provide the Disclosure Division with a primary point of contact who will be responsible for ensuring compliance with these mandates within 5 business days of receipt of this memorandum.

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All Assistant Directors  
All Special Agents in Charge

As all employees should be aware, the Disclosure Division is the only office within ATF that is authorized to disseminate information under the FOIA and ATF employees should not release information independent of that office. Additionally, while in many instances information sought by an FOIA requestor may be exempt from release, all responsive material must still be promptly provided to the Disclosure Division in the event of an appeal and/or litigation. The sole exception is information related to an ongoing matter, in which case, the Disclosure Division must be provided with an explanation of the articulable harm in a potential release.

Please ensure that your employees are familiar with and fully understand these new requirements. My office will be getting monthly reports from the Disclosure Division to ensure that all Headquarter Directorates and Field Divisions are complying with their responsibilities under the statute. Any questions regarding the new legislation may be directed to the Chief of the Disclosure Division, Averill Graham at (202) 648-7386 or Associate Chief Counsel (Disclosure and Forfeiture) Barry Orlow at (202) 648-7043.

  
for Ronnie A. Carter