COMMENTS OF THE SILHA CENTER FOR THE STUDY OF MEDIA ETHICS AND LAW


Submitted to:
The DEPARTMENT OF HOMELAND SECURITY
Office of the Secretary

In response to:
6 CFR Chapter I and Part 5
Freedom of Information Act and Privacy Act Procedures
January 27, 2003
Interim final rule

The Silha Center for the Study of Media Ethics and Law submits the following comments on the interim final rule establishing procedures for the public to obtain information from the Office of the Secretary, Department of Homeland Security, under the Freedom of Information Act and Privacy Act.

The Silha Center is a research center located within the School of Journalism and Mass Communication at the University of Minnesota. Its primary mission is to conduct research on, and promote the understanding of, legal and ethical issues affecting the mass media. The Center also sponsors an annual lecture series, hosts forums, produces a newsletter and other publications, and provides public information about media law and ethics issues.

The Expedited Processing Provisions Should Be Extended

After reviewing the proposed Freedom of Information Act and Privacy Act interim final rule, we urge the Department of Homeland Security to broaden the circumstances in which expedited review may be granted.
The proposed rules incorporate the minimum requirements of the Freedom ofInformation Act. The Act requires that expedited review be granted in cases where a compelling need is demonstrated. “Compelling need” means “that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552 (a)(E)(v)(I), (II).

The Act also provides that expedited review may be granted “in other cases determined by the agency.” 5 U.S.C. § 552 (a)(E)(i)(II). Thus, agencies have discretion to extend the circumstances in which expedited review is available.

The Department of Justice elected to use its discretion to provide expedited review in two additional situations: (1) where requests or appeals involve the loss of substantial due process rights; and (2) when a matter of “widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. 16.5 (d)(1)(iii), (iv). The State Department and the Department of Defense also allow expedited review in these two circumstances. In addition, both the State Department and the DOD allow expedited review in cases that involve substantial humanitarian concerns. See 22 C.F.R. 171.12 (c)(4); DOD Freedom of Information Act Handbook at http://www.defenselink.mil/pubs/foi/foiapam3.pdf.

The Department of Homeland Security should follow the examples set by these agencies and use its discretion to extend the circumstances under which expedited review may be available. Because the DHS is a new government agency, involved in issues in
which the public has a keen and growing interest, expedited processing under these additional circumstances would serve the DHS well. Allowing journalists to have speedier access to information regarding the DHS will ensure that the public is better and more accurately informed about DHS activities, and may help alleviate any misunderstandings that may arise concerning the DHS.

Conclusion

For all the foregoing reasons, we encourage the Department of Homeland Security to extend the final rule to provide expedited processing to circumstances in which (1) substantial due process rights are involved, or in matters generating (2) widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.

We appreciate the opportunity to share these views with the Department of Homeland Security.

Respectfully submitted,

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