

## MEMORANDUM

TO: Delaney DiStefano

FROM: Laura Denk

DATE: June 14, 1995

RE: Project on FOIA - Exemption 5

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As you now know, the Freedom of Information Act at 5 U.S.C. § 552, requires Government agencies to provide for public inspection many of the documents that they create in the course of business.

However, the FOIA has a long list of exemptions at 5 U.S.C. § 552(b). To the extent that the Review Board receives FOIA requests that we will want to deny, I anticipate that we will primarily be using 5 U.S.C. § 552(b)(5) (Exemption 5) as our grounds for denial.

As you will learn when you start researching, Exemption 5 incorporates at least three civil discovery privileges: the deliberative process (or executive) privilege, the attorney work-product privilege, and the attorney-client privilege. (Other civil discovery privileges are also probably included.)

Please thoroughly research (and draft a memo on) the Exemption 5 deliberative process privilege. Don't worry about the attorney work-product or the attorney-client privilege.

I expect that this will take you a week or so -- there is no rush on the memo. I would rather have thorough research for use in responding to future FOIA requests than a quick answer. Please copy important cases as well as cases that do a particularly good job of summarizing the issues. Also check law review articles and the legislative history to see if they offer any good insights. As you know, the DOJ manual is a good place to start.

Thanks.