

I. INTRO<sup>1</sup>

- A. FOIA contains 6 subsections, the first of which establishes two categories of information which must automatically be disclosed.
1. Subsection (a)(1) at 5 U.S.C. § 552(a)(1).
    - a. Requires publication in the Federal Register of information such as descriptions of agency organization, functions, procedures, substantive rules and statements of general policy.<sup>2</sup>
    - b. This requirement provides automatic public access to important basic information regarding the transaction of agency business.
      - i. See FOIA Update, Summer 1992, at 3-4 (“OIP Guidance: The ‘Automatic’ Disclosure Provisions of FOIA”: Subsections (a)(1) & (a)(2)”) (advising agencies to meet their subsection (a)(1) responsibilities on no less than a quarterly basis).
  2. Subsection (a)(2) of the FOIA at 5 U.S.C. § 552(a)(2).
    - a. Requires that materials such as final opinions rendered in the adjudication of cases, specific policy statements, and certain administrative staff manuals routinely be made available for public inspection and copying.<sup>3</sup>
    - b. These materials must be indexed to facilitate that public inspection.
    - c. These records commonly are referred to as “reading room” materials.
      - i. See FOIA Update, Summer 1992, at 4 (advising that all agencies should at a minimum have published procedures by which “reading room” access is allowed).

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<sup>1</sup>from DOJ FOIA manual

<sup>2</sup> See, e.g., Hughes v. United States, 953 F.2d 531, 539 (9th Cir. 1992); NI Indus. Inc. v. United States, 841 F.2d 1104, 1107 (Fed. Cir. 1988); Bright v. INS, 837 F.2d 1330, 1331 (5th Cir. 1988); see also, DiCarlo v. Commissioner, T.C. Memo 1992-280, slip op. at 9-10 (May 14, 1992) (publication in United States Government Manual, special edition of Federal Register, satisfies publication requirement of subsection (a)(1)(A)) (citing 1 C.F.R. § 9 (1992)).

<sup>3</sup>See, cases listed in DOJ FOIA book at page 5, fn. 16.

- d. Public access to such information serves to guard against the development of agency “secret law” known to agency personnel but not to members of the public who deal with agencies.<sup>4</sup>

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<sup>4</sup> See fn. 19 on page 5 of DOJ FOIA Manual.