

Comment from Consultative Group Member Thomas M. Susman on *Disclosure of Agency Legal Materials*  
July 28, 2022

I did look at the questions [see below] and, since I'm not sure what has been discussed, the last one cried out FOIA, 2 U.S.C. sec. 552(a)(2)(A). It's one of those provisions that reads quite clearly and directly, but that often is widely ignored by agencies. So I hope there will be some discussion about whether there could or should be additions or amendments to emphasize "Congress means really."

Thomas M. Susman

### **Discussion Questions for the Consultative Group**

- Does your agency (or agencies with whom you work) post adjudicative decisions?
  - If so, when and how are any such decisions posted?
  - If so, are they limited to precedential decisions or do they include non-precedential decisions?
  - Are there different considerations in deciding to post precedential versus non-precedential decisions?
  - Are there certain indexing or searching mechanisms that make the posting of decisions particularly useful to agency constituencies?
- Does your agency (or agencies with whom you work) post any enforcement records (e.g., warning letters, inspection records, fines, penalties, etc.)?
  - If so, which categories are posted? Are all such records posted or only a subset?
  - What considerations go into the posting (or not) of enforcement records?
  - Are there certain indexing or searching mechanisms that make the posting of enforcement records particularly useful to agency constituencies?
- Does your agency (or agencies with whom you work) post any other category of record that reflects the agency's decision with regard to the rights or obligations of a member of the public, including (but not limited to) grants, contracts, waivers or variances, or other documents constraining or governing the behavior of the agency or of a member of the public?
- For any and all of the above categories of records that are posted, what information does your agency or agencies with whom you work redact or withhold, and on what basis?
- For any and all of the above categories of records, are there some such materials that are not posted, that members of the public would like to have posted? For any such categories of records, what barriers do agencies face in posting them?

- Are there any statutory provisions related to the disclosure of adjudications and adjudicative material that would merit clarification, repeal, or addition?