

INFORMATION MANAGEMENT AND CONTROL

Freedom of Information Act. The Freedom of Information Act (“FOIA”) provides outside parties potential access to any information (regardless of format) created or obtained by the Department and under the Department’s control at the time of a FOIA request. Department personnel should keep in mind that documents generated during partnership activities will generally be agency records that are subject to release under the FOIA. However, the Department may withhold (i.e., not release to the public) documents that fall within one of nine specified FOIA exemptions. Exemption 5 of the FOIA (covering, among other things, internal documents that are both predecisional and deliberative) is the exemption most likely to apply to partnership-related documents requested under the FOIA. For this exemption to apply, however, the documents have to be “inter-or intra-agency.” This means that documents, in most circumstances, may only be withheld under this Exemption when they are generated within the Department (or come from another Federal agency) and are not be shared with outside parties.

A related issue is “waiver” of the applicability of exemptions otherwise available to withhold a particular document under the FOIA. Waiver generally occurs when there has been a prior disclosure of a document to an outside party, such as a non-Federal partner organization. Such disclosures may prevent the Department from asserting a FOIA exemption, should the documents be requested by another person. As a result, employees should carefully consider whether they may wish to withhold a particular document in the future, and avoid providing partners any such documents.

Privacy Act. The Privacy Act imposes certain requirements on how Federal agencies handle information under the control of the agency that is identifiable to a specific individual and that is retrieved from files using a personal identifier. It requires maintaining a system of records in accordance with a published Federal Register notice and generally allowing the subject individuals to access and amend their records. It also requires a notice specifying when information the Department collects will be placed in Privacy Act system of records. Department employees should consider whether information is being collected and/or used in a partnership activity (for example, lists of volunteers from a particular organization) in a manner that brings it within the Privacy Act.

Federal Records Act. The Federal Records Act requires Federal agencies to preserve as Federal records any recorded information, regardless of media, made or received by a Federal agency in accordance with law or in the conduct of business, that is valuable as evidence of the organization, functions, policies, decisions or other activities of the Federal government, or the value of information it contains. Once a document is determined to be a Federal record, it must be maintained according to established records disposition schedules. Partnership-related Federal records must be managed in accordance with the Federal Records Act. Additionally, employees should be aware that documents created by partners may fall within the definition of a Federal Record, such as a document

prepared by a National Park's Friends group describing its activities under a cooperative relationship with the Park to conduct research into the Park's archaeological resources.

Paperwork Reduction Act. The Paperwork Reduction Act ("PRA") applies to collections of information conducted or sponsored by Federal agencies that involve identical questions posed to 10 or more individuals. The PRA requires Office of Management and Budget approval of such collections of information. The PRA may apply, for example, to a partnership in which the partner develops and implements a customer satisfaction survey of visitors to a National Monument—the survey may trigger the PRA if it is determined to be a Department "sponsored" collection of information.