

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 92-20

March 26, 1992

TO : All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM : William G. Stack, Deputy Associate General Counsel

SUBJECT: Freedom of Information Act (FOIA) Policy Regarding
Disclosure of Advice Memoranda

Recently, it came to our attention that an Employer and a Union in a representation case had copies of an Advice Memorandum in an open case in which complaint had been authorized. The release of such a memorandum is contrary to the General Counsel's FOIA policy.

To avoid this problem in the future, you should remind your staffs of the General Counsel's policy on the release of Advice Memoranda, which is as follows:

In so-called "no-go" cases, that is, cases in which the Advice Memorandum authorizes dismissal of a charge, absent withdrawal, the memorandum is a final decision that must be released to the public upon request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975). This policy holds true even if the case is subsequently appealed to the Office of Appeals. *Id.* at n. 25. If the memorandum is recalled by Advice for reconsideration before it is acted upon by the Region, it will be withheld pending Advice's final decision, but this occurs infrequently. It is appropriate to release a "no-go" memorandum 1 week after it issues unless the Region is notified within that period that the memorandum is being recalled for reconsideration.

So-called "go" memoranda, cases in which Advice authorizes issuance of a complaint, are not required to be released pursuant to FOIA. Sears, Roebuck & Co., *supra*. "Go" memoranda should never be released while the underlying case, or any related case, is pending at any stage. If you get requests for "go" memoranda in cases that have finally closed, you should consult with the General Counsel's FOIA officer in Washington, DC.

Some memoranda are part "go" and part "no-go." These are required to be disclosed only to the extent that they direct dismissal of a charge. If you receive a request for such a memorandum, and you have any doubts about how much of it is required to be disclosed, you should check with the General Counsel's FOIA officer in Washington.

Finally, Advice Memoranda that discuss casehandling matters ordinarily are never released, either before or after the case is finally closed. These include such memoranda as instructions to Regions with respect to the conduct of further investigations, or memoranda dealing with Section 10(j) issues.


W. G. S.