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ABA Section of Environment, Energy and Resources

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MESSAGE FROM THE CHAIR

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I am delighted and honored to be writing my first message to you in my new role as In-House Counsel Committee chair. The vice chairs and I have been busy over the past few months planning an exciting year of events, communications and public outreach activities for your benefit. Before describing what's planned, I want to thank outgoing Chair Jim Moore of Huntsman for his outstanding efforts during his tenure. I also want to recognize and thank the outstanding group of vice chairs who now make up the leadership of the committee. They are:

- Gerry Caron—Cabot Corporation
- Alexandra Dunn—National Association of Clean Water Agencies
- Lydia Duff—W.R. Grace & Co.
- Peter Etienne—Baxter International Inc.
- Gary Gengel—Morgan Lewis & Bockius
- Raissa Kirk—Johns Hopkins Univ. Applied Physics Lab
- Peter Wright—The Dow Chemical Co.
- David Zoll—David F. Zoll & Associates, Inc–Mediation Services

All of the vice chairs are talented in-house or former in-house lawyers who are committed to keeping the In-House Counsel Committee at the forefront of the Section as a service-oriented, member-focused organization. You should feel free to contact any of them with questions or comments about the committee. You can learn more about each of the vice chairs and their areas of responsibility at www.abanet.org/environ/committees/counsel/.

Recent and Upcoming Events

The In-House Counsel Committee has been busy organizing events and activities designed to keep you informed of current developments. At last October's ***14th Section Fall Meeting,*** our committee co-sponsored a session called: Help! Counsel in Crisis!! This was a panel discussion that addressed the conflicting roles of in-house and outside counsel when responding to a disaster—in this case a serious mining accident. The other co-sponsors were the Mining Committee and the Ethics Committee. We hope you were there with your other Section colleagues to enjoy this educational event!

Believe it or not, we are already in planning mode for the ***15th Section Fall Meeting,*** which will be held in Pittsburgh, Sept. 26-30, 2007. ***We are considering presentation topics of interest to In-House Counsel Committee members, and would welcome any ideas or suggestions you may have. Please send any ideas for Fall Meeting topics to: mtanzer@tyco.com or any of the vice chairs.***

In-House Counsel
Committee Newsletter
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David F. Zoll, Editor

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This newsletter is a publication of the ABA Section of Environment, Energy, and Resources, and reports on the activities of the committee. All persons interested in joining the Section or one of its committees should contact the Section of Environment, Energy, and Resources, American Bar Association,
321 N. Clark St., Chicago, IL 60610.

We have also been planning for the ***36th Annual Conference on Environmental Law*** (***Keystone Conference***), March 8-11, 2007, in Keystone, Colorado. As the premier environmental law conference in the country, this event is invaluable to practitioners in all areas. The In-House Counsel Committee will be co-sponsoring a session with Special Committee on Environmental Disclosure, the Environmental Transactions and Brownfields Committee and the Site Remediation Committee, called "Environmental Issues in the Acquisition of an Energy Company." This session will focus on issues faced by in-house practitioners in an acquisition of an environmentally sensitive operation. We hope you will be there.

Later this winter, we are planning a ***Quick Teleconference*** on FASB's Financial Interpretation Number 47 (FIN 47), which imposes new requirements on companies to estimate and reserve for Asset Retirement Obligations (AROs). This new accounting requirement has raised many questions for in-house practitioners, especially in this age of extreme scrutiny of financial reports. We hope a discussion of these issues by experts will be of value to you.

In addition, we will solicit member interest in a ***Quick Teleconference*** as a follow-up to the article below on the Information Quality Act. The purpose would be to let participants share their experiences in how different agencies respond to that act.

Request for Your Input

We always welcome your input on issues you would like to see addressed in these programs. If there are specific topics you would like to see covered in future programs, please don't hesitate to contact any of the committee leaders with your suggestions.

We also welcome your suggestions and/or articles for the newsletter. Please forward any ideas or articles to: DavidZoll@Verizon.net.

Finally, we would very much like to publish any news relating to committee members' careers and professional development. Please drop us a line with any changes or developments you would like to share.

LYING TO THE COMPANY'S COUNSEL: INTERNAL INVESTIGATIONS AND OBSTRUCTION OF JUSTICE

Timothy P. Harkness

You can't lie to a prosecutor, FBI agent or regulator. Everyone knows that that is a crime. What many don't know is that now, under the Department of Justice's expanding view of obstruction of justice statutes, lying to *private* attorneys can also lead to criminal prosecution. Recent developments confirm that the Department of Justice views the obstruction of justice laws as reaching conduct that many had considered to be without criminal consequence.

In September 2004, a grand jury in the Eastern District of New York indicted Sanjay Kumar and Stephen Richards, the former CEO and head of Worldwide Sales at Computer Associates International, Inc. *See United States v. Sanjay Kumar and Stephen Richards*, No. 04-cr-846 (ILG) (E.D.N.Y.). Five months earlier, prosecutors had persuaded three other Computer Associates executives to plead guilty to a novel obstruction of justice charge, predicated on statements the executives had made to company counsel in the course of an internal investigation. *See United States v. David Kaplan*, No. 04-cr-330 (ILG) (E.D.N.Y.); *United States v. David Rivard*, No. 04-cr-329 (ILG) (E.D.N.Y.); *United States v. Ira Zar*, No. 04-cr-331 (ILG) (E.D.N.Y.). Now the government had advanced that same theory to indict Kumar and Richards, both of whom seemed prepared to challenge it.

The indictments alleged that Kumar and Richards had violated 18 U.S.C. § 1512(c)(2)—an obstruction statute enacted in the wake of the Enron scandal—by lying to lawyers hired by Computer Associates after the U.S. Attorney's Office, the SEC, and the FBI had launched investigations into whether the company had deceived investors by improperly accounting for sales contracts. According to the indictment, when the defendants were interviewed by the lawyers, they "knew, and in fact intended, that the Company's Law Firm would present [Kumar's and Richards'] false justifications to the United States Attorney's Office, the SEC, and the FBI so as to obstruct and impede[ ]" the government's ongoing and publicly disclosed investigation of Computer Associates. Second Superseding Indictment, filed June 28, 2005, ¶ 56 (allegation as to Kumar); *see also id*. ¶ 63 (Richards).

Given that internal investigations—and the practice of sharing information gathered during those investigations with federal regulators and prosecutors—have become a standard practice, the implications of the Computer Associates indictments were significant. The possibility that lying to an attorney, hired by a defendant's employer and acting in a purely private capacity, could lead to criminal charges, contributed to growing concern within the criminal defense bar that the government was effectively transforming company lawyers into an arm of the state.

Two important developments from earlier this year—a ruling on Kumar's and Richards' challenge to the obstruction of justice counts and an indictment and ruling in another case, containing a similar obstruction count, in the Southern District of Texas—attest to the fact that this issue remains very much alive.

The defendants in the Computer Associates case challenged the legal sufficiency of the § 1512(c) indictment against them. In doing so, they set forth two arguments. First, they argued that the text and the legislative history of § 1512 should be read together to limit the application of the statute to alleged tampering of physical evidence (*e.g.,* the alteration of documents). Second, they argued that the alleged misconduct had to have a sufficient nexus to an ongoing governmental investigation which, they contended, was lacking in their case. The *Kumar* court derisively rejected the statutory construction argument, holding that § 1512 could be used to prosecute those who lied to internal investigators. While not analyzing in detail the nexus argument, the *Kumar* court held that there was in that case a sufficient nexus between the alleged misconduct and ongoing governmental investigations to allow the § 1512 charges to be presented to a jury.

A court in the Southern District of Texas analyzing much the same arguments came to different

conclusions. *United States v. Singleton*, 2006 WL 1984467 (S.D. Tex. July 14, 2006). In *Singleton*, the defendant was alleged to have engaged in fraudulent activity and to have lied to internal investigators about that activity. The allegedly mendacious actions took two forms. The defendant was alleged to have provided company counsel with an allegedly false written summary of facts in response to a governmental which was then folded into a presentation made to the government. The defendant was also alleged to have lied to the company counsel in a witness interview knowing that company counsel would pass on his statement to investigators.

Like the defendants in the Computer Associates case, the defendant in *Singleton* case argued that the statute only applied to the alteration of physical evidence and that there lacked a sufficient nexus between the alleged malfeasance and a government investigation. As in *Kumar*, the *Singleton* court held that a sufficient nexus existed between the alleged lies and a government investigation. Unlike the court in *Kumar*, however, the court in *Singleton* held that "to violate § 1512(c)(2), the charged conduct must have some reasonable nexus to a record, document or tangible object." In other words, according to the *Singleton* court, merely lying to an internal investigator was not enough to sustain the sort of obstruction of justice charge that was sustained by the *Kumar* court, unless that lie was in writing. Oral misrepresentations were not enough. Because one of the alleged lies was tied to a document, the *Singleton* court denied the motion to dismiss the indictment.

The holdings in *Kumar* and *Singleton* leave those who conduct investigations and the witnesses they interview without clear guidance as to the potential for criminal prosecution for lying to investigators. Do lies have to be in writing to be actionable or are misstatements to investigators in the course of an interview enough? It is not entirely clear. What is clear is that aggressive prosecutors have been sustained in two cases for having brought obstruction charges when lies were made, in the first instance, to company counsel. So, as prosecutors increasingly rely on internal investigations to gather evidence, counsel conducting investigations should be aware that statements made to company counsel could, under certain circumstances, expose them to criminal prosecution. Company counsel should similarly be aware of this possibility and consider carefully how they record what they are told and what warnings they choose to give to those they interview but do not represent.

Timothy P. Harkness *is a partner in the litigation department of Kramer Levin Naftalis & Frankel LLP.*

THE INFORMATION QUALITY ACT— IS IT THE NEW FRONTIER FOR PUBLIC PARTICIPATION IN FEDERAL AGENCY ACTIVITY?

Mark E. Solomons

Historical Background

It may come as a surprise to some, but there is no principle of general law requiring federal agencies to make science or technology-based decisions on the best or even valid information. The Information Quality Act (IQA) was intended by Congress as a step in the direction, of making good science a standard principle of federal governmental activity.

It has been only 13 years since the Supreme Court first attempted to impose a good science regime on the federal courts in *Daubert v. Merrill Dow Pharmaceuticals*[1] and that effort remains a work in progress. Not all state court systems have followed suit, preferring instead to allow state courts and juries to resolve the good science/bad science issues as they see fit.

The *Daubert* principle, that valid science should guide the deliberations of courts and juries on questions requiring scientific or technical knowledge, has been embraced by agencies only to the extent the agency chooses to be bound by the principle. In a rulemaking subject to the Administrative Procedure Act (APA)[2] a regulation may be vulnerable on judicial review on the grounds that it is arbitrary, capricious, or an abuse of

discretion if it departs from accepted scientific norms, but that outcome is neither mandated by the APA, nor very likely in most cases. Under the APA, agencies have broad discretion to do whatever they want in the pursuit of overriding policy objectives or simply an impulse to overregulate in the name of safety, health and the environment, where even questionable science suggests but cannot substantiate a hazard that is otherwise properly addressed.

By the same token, APA rulemaking has become increasingly contentious, and layered with mandatory procedural requirements, in recent years, and it is today difficult for agencies to regulate as easily by published rule as they have in the past.[3]

The IQA is the most recent comprehensive congressional initiative seeking to impose legislative standards on federal agency activity and to exercise some degree of control over the flow of data, scientific research, and information into and out of the executive branch. Some background helps to understand why this will have increasing importance for the business of government and the relationship between the government and the people.

Evolution of Information Quality Act

The enactment of the APA followed many years of congressional concern that the business of government was compromised by a lack of uniform procedures, the exclusion of meaningful public rights to participate in agency rulemaking and a lack of uniform public remedies to address agency indifference to public rights and interests. These deficits in the behavior of agencies not only harmed the public, they undermined the Constitutional authority of Congress as well the Constitutional mandate of legislative supremacy.[4] The public dissemination of information by agencies outside of rulemaking and administrative adjudication was not, however, addressed in these early days of the APA. The public dissemination of information intended to influence the public on matters of interest to it also was not nearly as pervasive as it is today.[5]

By the 1990s, Congress and others had become concerned by the bureaucracy's growing practice of using science generated by third-party researchers to make policy,[6] and its reliance on the Internet, and non-regulatory methods of communication rather than on formal APA rulemaking or adjudication, to announce policy and influence private behavior.[7] This "regulation by information" allowed agencies, for the most part, to evade judicial review of even influential agency action and effectively sidestep the APA.

In 1995, Congress enacted the Paperwork Reduction Act (PRA).[8] The PRA directed the Office of Management and Budget (OMB) to implement "policies, principles, standards, and guidelines" to ensure the quality of the information used and disseminated by federal agencies, and to promote public access to that information.[9]

OMB did not comply with this information quality mandate.

On June 22, 1998, the FY 1999 Treasury and General Government Appropriations Act (H.R. 4104) was reported in the House accompanied by House Report No. 105-592. House Report 105-592, ultimately enacted as a non-binding part of the FY 1999 Omnibus Appropriations Act (Pub. Law 105-277) stated

> **RELIABILITY AND DISSEMINATION OF INFORMATION**
> The Committee urges the Office of Management and Budget (OMB) to develop, with public and Federal agency involvement, rules providing policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies, and information disseminated by non-Federal entities with financial support from the Federal government, in fulfillment of the purposes and provision of the Paperwork Reduction Act of 1995 (P.L. 104-13). The Committee expects issuance of these rules by September 30, 1999. The OMB rules shall also cover the sharing of, and access to, the aforementioned data and information, by members of the public. Such OMB rules shall require Federal agencies to

develop, within one year and with public participation, their own rules consistent with the OMB rules. The OMB and agency rules shall contain administrative mechanisms allowing affected persons to petition for correction of information which does not comply with such rules; and the OMB rules shall contain provisions requiring the agencies to report to OMB periodically regarding the number and nature of petitions or complaints regarding Federal, or Federally supported, information dissemination, and how such petitions and complaints were handled. OMB shall report to the Committee of the status of implementation of these directives no later than September 30, 1999.[10]

Again, OMB failed to address congressional concerns. In response to OMB's continued failure to act, in late 2000, Congress adopted H.R. 5658 which was incorporated into H.R. 4577, the Fiscal Year 2001 Consolidated Appropriations Act. This law became known as the Information Quality Act or Data Quality Act. The IQA was codified as a part of the Paperwork Reduction Act[11] and it provides:

(a) IN GENERAL. The Director of the Office of Management and Budget shall, by not later than September 30, 2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(l) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

(b) CONTENTS OF GUIDELINES. The guidelines under subsection (a) shall

(1) apply to the sharing by Federal agencies of, and access to, information disseminated Federal agencies; and

(2) require that each Federal agency to which the guidelines apply.

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a)

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issues under subsection (a); and

(C) report periodically to the Director

(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and

(ii) how such complaints were handled by the agency.[12]

Following notice and comment, OMB's final Guidelines were published in the Federal Register on Feb. 22, 2002. 67 Fed. Reg. 8452 (Feb. 22, 2002). The OMB Guidelines instruct each covered agency to publish their own "information quality guidelines ensuring and maximizing the quality, objectivity, utility and integrity of information, including statistical information disseminated by the agency…" and to "Establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with these OMB guidelines.[13]

In particular:

As a matter of good and effective agency information resources management, agencies shall develop a process for reviewing the quality (including the objectivity, utility and integrity) of information quality as integral to every step of an agency's development of information, including creation, collection, maintenance, and

> dissemination. This process shall enable the agency to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.
>
> To facilitate public review, agencies shall establish administrative mechanisms allowing affected persons to seek to obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines. These administrative mechanisms shall be flexible, appropriate to the nature and timeliness of the disseminated information, and incorporated into agency information resources management and administrative practices.[14]

Agencies are required to specify deadlines for their own decisions on "whether and how to correct" information that does not meet the applicable criteria, and to establish an "appellate" process with time limits, for the review or reconsideration of the agency's decisions in response to a correction request.[15] With a view toward maximizing the quality of information disseminated to the public, the OMB Guidelines exhaustively define the terms "quality," "utility," "objectively," "integrity," "information," "dissemination" and "reproducibility," among other things.[16] For example, each agency must, when asked,

> identify the sources of disseminated information…and, in a scientific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation and error sources affecting data quality should be identified and disclosed to users.[17]

The OMB Guidelines suggest no exemptions, nor do they authorize any agency to opt out of the program if they want to do so. The burden of proof for establishing a basis for correction is assigned to the requestor. The standard of quality prescribed by OMB that is applied for determining the appropriateness of a correction is the standard prescribed in the Safe Drinking Water Act.[18] The quality standards for the dissemination of information about risks also is adopted from the Safe Drinking Water Act.[19]

How to File a Data Quality Request and What Can Be Accomplished

All federal cabinet agencies, several sub-agencies within cabinet agencies and many independent agencies have established guidelines and procedures to accept, adjudicate or otherwise respond to IQA requests.[20]

The IQA may be employed in conjunction with a rulemaking challenge to require the promulgating agency to disclose data, research or other information that is relied upon for regulatory decision making. Some agency guidelines contemplate a give and take proceeding in which raw data may be supplied and retested by the requestor or the agency for compliance with the quality, utility, objectivity reproducibility and integrity criteria set forth in the guidelines.[21]

For requesting a correction of non-regulatory information or data disseminated to the public, a simple written request by letter or informal petition is sufficient. The same give and take testing and retesting of the reliability of data is possible under most agency guidelines. A letter requesting a correction should follow the procedural steps and contain the information specified in agency guidelines. It is the requester's burden to make a strong case for a correction by explaining in precise detail and with reliance upon scientifically or technically accepted research or sound data that the information does not meet the standards for quality set forth in the applicable guidelines.

Most agencies take requests seriously and review them in accordance with the guidelines. There is no adversary or trial-like proceeding available and the spirit of the review of a request should have the characteristics of a good faith debate over science and policy. Agencies are required to provide for appellate review but this also is an informal proceeding in which the arguments and issues are aired in a larger forum. While the science agencies like the Environmental Protection Agency and Health and Human Services

are conscientious, several agencies have simply ignored IQA requests, where data is sought, or treated them as FOIA requests.

Judicial Review

The IQA neither provides for nor prohibits judicial review of an agency's refusal to make a correction. In its Guidelines, OMB offered its opinion that agencies might not be able to preclude judicial review. Three courts have offered their views as well, and while none found a private right to judicial review, none agreed to the rationale for their respective conclusions. The District Court in Minnesota rejected an IQA appeal in a multi-issue cause of action, noting cryptically in a sentence or two that Congress did not intend to allow APA review of a denial of an IQA request.[22] In an action based solely upon an agency's refusal to exchange data or grant a correction, the District Court for the Eastern District of Virginia found an absence of Article III standing and agency action reviewable under the APA.[23] On appeal the Fourth Circuit affirmed on alternative grounds not pressed by the parties. The Court of Appeals held that the language of the IQA conferred no rights "to access to information or correctness."[24] This would seem to be a stretch in the face of statutory language not mentioned by the Court "allowing affected persons to seek and obtain correction …"[25] Many other cases remain pending in agencies and it is surely possible that other courts will disagree with the Fourth Circuit or that the Congress will fix the problem at some point. Many key agencies respond in good faith to IQA requests without judicial enforcement and administrative corrections have been issued.

Conclusion

The IQA has had a rocky start. Agencies are not ready to give up their prerogatives to elevate policy over the best science and some scientists within agencies and third party researchers are not ready to expose their research and opinions to vigorous public debate. Some academics believe that the IQA is available only to well funded and institutionally biased special interests which do not necessarily have the best interests of the public as their objective and that the correction process does not accommodate public participation.[26] And it is apparent that the courts have not been willing to apply the generous presumption favoring judicial review of agency action even where the plain words of the statute fairly obviously confer public rights.

In this hostile environment it also is true that federal agency action and information are predicated upon science and technology information more than ever before. Where policy and science intersect there will be an increasing and compelling need for a viable conflict resolving system. Whether or not the IQA will fill the need remains to be seen, but for now it provides a less than perfect means for encouraging agencies to question the data and science on which they rely.

Mark Solomons *is a shareholder in the Washington, D.C. office of Greenberg Traurig, LLP. He was one of the attorneys for the plaintiffs in Salt Institute and Chamber of Commerce of the* U.S. v. Thompson.

Notes:

[1] 509 U.S. 579 (1993).

[2] *See* 5 U.S.C. §§ 551-559, 701-706.

[3] Stephen M. Johnson, *Junking The "Junk Science" Law: Reforming the Information Quality Act*, 58 AD. LAW REV. 37, 61 ("Johnson") (2006).

[4] *See* Richard B. Stewart & Cass R. Sunstein, *Public Programs and Private Rights*, 95 HARV. L. REV. 1193, 1200 (1982); *see also generally Administrative Procedure Act, Legislative History*, 79th Cong. 144-46 (1946).

[5] *See* Ernest Gelhorn, *Adverse Publicity by Administrative Agencies*, 86 HARV. L. REV. 1380, 1426-27 (1973)

[6] *See* Sen. Richard Shelby, *Accountability and Transparency: Public Access To Federally Funded Research Data*, 37 HARV. J. ON LEGIS., 369, 373-75 (2000) (citations omitted); *see also* General

Accounting Office, Pub. No. GAO/RCED-98-245, Environmental Information: Agencywide Policies and Procedures Are Needed for EPA's Information Dissemination, at 19 (Sept. 1998); *ABA House of Delegates 2001 Annual Meeting*, DAILY J. OF THE A.B.A., Report No. 107c, 1t 17, 20, (Aug. 6-7, 2001) ("Recommendation concerning significantly agency information dissemination activities intended to promote policy goals,"); *see generally* James W. Conrad, *The Information Quality Act-Antiregulation Costs of Mythic Proportions?*, 12 KAN. J.L. & PUB. POL'Y, 521, 526 (2003) (citations omitted).

[7] *See*, *e.g*., Environmental Law Institute, ENVTL. L. F. 36 (July/August 1998) (former EPA general counsel noted information dissemination can be a supplement or alternative to formal regulation); 67 Fed. Reg. 8452 (the Internet "increases the potential harm that can result from information that does not meet basic quality principles").

[8] 44 U.S.C. § 3501 *et seq*.

[9] 44 U.S.C. § 3504(d).

[10] H.R. Rep. No. 105-592, at 49-50 (1998).

[11] Pub. L. No. 106-554 § 1(a)(3), 114 Stat. 2763 (2000).

[12] Codified at 44 U.S.C. § 3516 note.

[13] 67 Fed. Reg. 8458, §§ II (1), (2).

[14] *Id*. at 8459.

[15] *Id*.

[16] *Id*. at 8459-60.

[17] *Id*. at 8459 § (3)(a).

[18] *See* 67 Fed. Reg. 8457 adopting 42 U.S.C. § 300g-l(b)(13)(A)) which prescribes 'to the extent that an agency action is based on science [the agency is to rely upon] (i) the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and (ii) data collected by accepted methods or best available methods …').

[19] *Id*. relying on 42 U.S.C. § 300 g-l (b)(3(B).

[20] Agency Web sites typically have links to IQA guidelines and useful links relating to IQA activity. Citations for agency guidelines are collected at "www.thecre.com/links.html."

[21] *See*, *e.g*., "www.hhs.gov/infoquality/NIH.info2.html." Guidelines for seeking a data quality correction from the National Institutes of Health.

[22] *In re Missouri River Litigation*, 363 F. Supp. 2d 1145, 1174-75 (D. Minn. 2004).

[23] *Salt Institute and Chamber of Commerce of the United States v. Thompson*, 345 F. Supp. 2d 589 (E.D. Va. 2004), *aff'd* on other grounds, 440 F3d 156 (4th Cir. 2006).

[24] *Id*. 440 F3d at 159. The Fourth Circuit accepted none of the District Court's specific holdings.

[25] *Id*.

[26] *See e.g. Johnson*, *supra*, n. 3; Wendy E. Wagner, *Science for Judges II: The Practice of Epidemiology and Administrative Agency Created Science: Importing Daubert to Administrative Agencies Through The Information Quality Act*, 112 J.L. & POL'Y 589, 608 (2004).

In-House Counsel Committee Newsletter

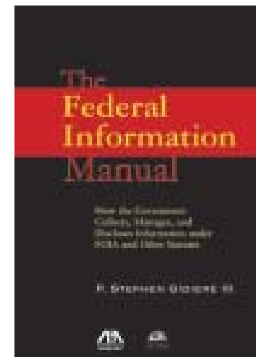
We hope you enjoy this issue of the In-House Counsel Committee Newsletter. If you would like to lend a hand by writing, editing, identifying authors, or identifying issues for the newsletter, please contact the editor David Zoll at (410) 337-2873 or davidzoll@verizon.net.

FROM ABA PUBLISHING AND THE SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES

A current and practical guide to FOIA and other laws governing federal information

The Federal Information Manual
How the Government Collects, Manages, and Discloses Information under FOIA and Other Statutes
By P. Stephen Gidiere III

The Federal Information Manual is a complete, all-in-one guide to understanding the complex legal framework that controls the government's collection, management and disclosure of its records. Practical in scope and accessible in its approach, this is an essential resource for anyone who handles requests and disputes concerning access to this vast amount of information. It includes an easy-to-navigate explanation of the Freedom of Information Act (FOIA), the statute most often encountered in this area, and includes practical tools for preparing FOIA requests and responding to information requests from federal agencies.



Going beyond FOIA, the book explains the complicated web of statutes, cases, regulations and policies that govern federal information. For the environmental law practitioner, the book's coverage of statutes such as the Clean Air Act, the Clean Water Act and the Federal Power Act that permit or require disclosure is especially valuable. *The Federal Information Manual* also addresses current, hot-button topics such as the trend toward increased government secrecy, the unauthorized release of classified information and homeland security. Includes glossaries of abbreviations and federal statutes, table of cases and appendices.

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