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FREEDOM OF INFORMATION ACT (FOIA) EXEMPTIONS

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The FOIA authorizes agencies to withhold information when they reasonably foresee that disclosure would harm an interest protected by one of these nine exemptions. Congress established nine exemptions from disclosure for certain categories of information to protect against certain harms, such as an invasion of personal privacy or harm to law enforcement investigations. The nine exemptions are described below. For more information, please refer to the [FOIA website](#).



EXEMPTION 1: Protects information that is classified to protect national security.



EXEMPTION 2: Protects information related solely to the internal personnel rules and practices of an agency.



EXEMPTION 3: Protects information that is prohibited from disclosure by another federal law.



EXEMPTION 4: Protects trade secrets or commercial or financial information that is confidential or privileged.



EXEMPTION 5: Protects privileged communications within or between agencies, including those protected by the:

- Deliberative Process Privilege (provided the records were created less than 25 years before the date on which they were requested)
- Attorney-Work Product Privilege
- Attorney-Client Privilege



EXEMPTION 6: Protects information that, if disclosed, would invade another individual's personal privacy.



EXEMPTION 7: Protects information compiled for law enforcement purposes that:

- 7(A). Could reasonably be expected to interfere with enforcement proceedings.
- 7(B). Would deprive a person of a right to a fair trial or an impartial adjudication.
- 7(C). Could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- 7(D). Could reasonably be expected to disclose the identity of a confidential source.
- 7(E). Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.
- 7(F). Could reasonably be expected to endanger the life or physical safety of any individual.



EXEMPTION 8: Protects information that concerns the supervision of financial institutions.



EXEMPTION 9: Protects geological and geophysical information and data, including maps, concerning wells.

In amending the Freedom of Information Act in 1986, Congress created a novel mechanism for protecting certain especially sensitive law enforcement matters under subsection (c) of the act. These three special protection provisions, referred to as record “exclusions,” are reserved for certain specified circumstances. The record exclusions expressly authorize federal law enforcement agencies, under these exceptional circumstances, to “treat the records as not subject to the requirements of the FOIA.” For more information regarding FOIA Statutory Exclusions, see the [Implementing FOIA's Statutory Exclusion Provisions](#) section of the US Department of Justice's website.

(C)(1) EXCLUSION

The first of these novel provisions, known as the (c)(1) exclusion provides as follows:

Whenever a request is made which involves access to records described in subsection (b)(7) (A) and (A) the investigation or proceeding involves a possible violation of criminal law; and (B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(C)(2) EXCLUSION

The second exclusion applies to a narrower situation, involving the threatened identification of confidential informants in criminal proceedings. The (c)(2) exclusion provides as follows:

Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of [the FOIA] unless the informant's status as an informant has been officially confirmed.

(C)(3) EXCLUSION

The third of these special record exclusions pertains only to certain law enforcement records that are maintained by the FBI. The (c)(3) exclusion provides as follows:

Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in [Exemption 1], the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of the FOIA.

Protection of privacy is often described as the law that keeps citizens in the know about their government. Federal agencies are required to disclose any information requested under the FOIA unless it falls under one of nine exemptions which protect interests such as personal privacy, national security, and law enforcement.

