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FOIA Exemptions & Exclusions

Review the 9 disclosure exemptions and 3 Special Protection Provision/Exclusion categories of records not subject to FOIA requirements.

Exemptions

Exemption 1 – Protects from disclosure information that has been deemed classified "under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and is "in fact properly classified pursuant to such Executive order."

Exemption 2 – Protects records related solely to the internal personnel rules and practices of an agency.

Exemption 3 – Protects information exempted from release by statute.

- Example of information HHS may withhold using 3: Contractor proposals that are in the possession or control of the agency and that have not been set forth or incorporated by reference into contracts.

Exemption 4 – Protects trade secrets and commercial or financial information which could harm the competitive posture or business interests of a company.

- Example of information HHS may withhold using 4: Commercially valuable formulas or other proprietary information not customarily released to the public entity from whom the information is obtained.

Exemption 5 – Protects the integrity of the deliberative or policy-making processes within the agency by exempting from mandatory disclosure opinion, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters.

- Example of information HHS may withhold using 5: Draft documents and recommendations or other documents that reflect the personal opinion of the author rather than official agency position.

Exemption 6 – Protects information that would constitute a clearly unwarranted invasion of personal privacy of the individuals involved.

- Example of information HHS may withhold using 6: Social Security Numbers, home addresses and telephone numbers, certain identifying information regarding Department employees and/or beneficiaries.

Exemption 7 – Protects records or information compiled for law enforcement purposes the release of which could reasonably be expected:

7(A) – to interfere with enforcement proceedings.

- Example of information HHS may withhold using 7(A): Records pertaining to an open law enforcement investigation.

7(B) – would deprive a person of a right to a fair trial or an impartial adjudication.

- Example of information HHS may withhold using 7(B): Information that could potentially contaminate a jury pool.

7(C) – to constitute an unwarranted invasion of the personal privacy of a third party/parties (in some instances by revealing an investigative interest in them).

- Example of information HHS may withhold using 7(C): Identifying information of individuals associated with a law enforcement proceeding; i.e. law enforcement officers' names, witness/interviewee identifying information.

7(D) – to disclose the identity/identities of confidential sources.

- Example of information HHS may withhold using 7(D): Identifying information of confidential informants.

7(E) – would disclose techniques and procedures for law enforcement investigations or prosecutions.

- Example of information HHS may withhold using 7(E): Law enforcement manuals, records pertaining to Watch Lists.

7(F) – to endanger the life or physical safety of an individual.

- Example of information HHS may withhold using 7(F): Identifying information of law enforcement officers.

Exemption 8 – Protects information that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

- Example of information HHS may withhold using 8: Exemption rarely, if ever, invoked by HHS.

Exemption 9 – Protects geological and geophysical information and data, including maps, concerning wells.

Exclusions

By amending the Freedom of Information Act in 1986, Congress created a mechanism to protect sensitive law enforcement matters under subsection (c) of the Act. These three provisions, referred to as record "exclusions," are reserved for certain specified circumstances. The record exclusions expressly authorize federal law enforcement agencies under these circumstances to "treat the records as not subject to the requirements of the FOIA." Read more about FOIA Statutory Exclusions

<<http://www.justice.gov/oip/foiapost/2012foiapost9.html>>.

The (c)(1) Exclusion

Whenever a request involves access to records described in subsection (b)(7)(A) and

1. the investigation or proceeding involves a possible violation of criminal law; and
2. there is reason to believe that
 1. the subject of the investigation or proceeding is not aware of its pendency, and
 2. 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.

The (c)(2) Exclusion

The second exclusion applies to a narrower situation, involving the threatened identification of confidential informants in criminal proceedings.

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.

The (c)(3) Exclusion

The third of these special record exclusions pertains only to certain law enforcement records that are maintained by the FBI.

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.

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