

THE NINE FOIA DISCLOSURE EXEMPTIONS

1. National defense or foreign policy information properly classified pursuant an Executive Order.

This allows the withholding of classified documents. The basis for classification is limited to protecting an interest of national defense or foreign policy. The rules for classification are established and periodically updated by the President. They are not a product of the FOIA or other law. Under exemption one, if a document has been properly classified under a Presidential Executive order, the document can be withheld from disclosure. However, classified documents may still be requested under the FOIA. An agency may then review the document to determine if it still requires protection.

2. Documents "related solely to the internal personnel rules and practices of an agency."

Two separate classes of documents generally fall under this exemption. First, information relating to personnel rules or internal agency practices is exempt if it can reasonably be described as a trivial administrative matter of no genuine public interest, such as a rule establishing when agency workers can take sick leave. Second, an internal administrative manual for instance, might be exempt if its disclosure would risk circumvention of law or agency regulations. In order to fall into this category, the material will normally have to regulate internal agency conduct rather than public behavior.

3. Documents "specifically exempted from disclosure by statute" other than FOIA, but only if the other statute's disclosure prohibition is absolute.

This simply incorporates into FOIA other laws which restrict the availability of information.

4. Documents which would reveal "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

This is intended to protect the interests of both the government and submitters of information. Its existence encourages submitters to voluntarily furnish useful commercial or financial information to the government and it correspondingly provides the government with an assurance that such information will be reliable.

5. Documents which are "inter-agency or intra-agency memorandum or letters" which would be privileged in civil litigation.

This is frequently invoked against public interest requesters trying to get information about the agency's processes and conclusions. It protects recommendations and advice that are part of the "deliberative process" involved in governmental decision-making. The rationale is to protect the integrity of agency decision-making by encouraging both full and frank discussions of policy proposals and to prevent premature disclosure of policies under review.

Courts have distinguished "pre-decisional" documents, which fall within the protections of Exemption 5, and "post-decisional" documents, which must be disclosed.

6. Documents which are "personnel and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

This exemption protects the privacy interests of individuals by allowing an agency to withhold personal data kept in government files. Only individuals can have privacy interests. By definition, corporations can have no privacy rights under Exemption 6.

7. Documents which are "records or information compiled for law enforcement purposes," but only if one or more of six specified types of harm would result.

A) allows law enforcement to withhold records which would reasonably be expected to interfere with enforcement proceedings.

B) allows withholding of information that would deprive a person of a right to a fair trial or an impartial adjudication.

C) recognizes that individuals have a privacy interest in information maintained in law enforcement files. It is the law enforcement counterpart to Exemption 6

D) protects the identity of confidential sources. Information which could reasonably be expected to reveal the identity of a confidential source is exempt from disclosure.

E) protects from disclosure information which would reveal techniques, guidelines and procedures for law enforcement investigations if disclosure of the information could reasonably be expected to risk circumvention of the law.

F) protects law enforcement information which could reasonably be expected to endanger the life or physical safety of any individual.

8. Documents which are related to specified reports prepared by, on behalf of, or for the use of agencies which regulate financial institutions.

This protects information that is contained in or related to examination, operating, or condition reports prepared by or for a bank supervisory agency such as the Federal Deposit Insurance Corporation, the Federal Reserve, or similar agencies.

9. Documents which would reveal oil well data.

This covers geological and geophysical information, data, and maps about wells. It is rarely used.