Freedom of Information Case List

September 1988 Edition

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FREEDOM OF INFORMATION CASE LIST

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The principal component of the Freedom of Information Case List is an alphabetical compilation of judicial decisions, both published and unpublished, addressing access issues under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, as amended, and the Privacy Act of 1974 ("PA"), 5 U.S.C. §552a, as amended. Each case in the main case list is categorized according to certain subject matter topics and is assigned a number, from 1 to 2878, by which it is indexed under each such topic in the Topical Index at the end of this volume. Cases can therefore be located both by case name and by particular topic of interest.

This edition supersedes that of September 1987. It includes decisions reported through the "advance sheets" of the week of August 22, 1988, and all slip opinions received by the Office of Information and Privacy by August 16, 1988. In this edition, efforts have been made to provide the complete history of each case, including all official and unofficial citations. Often, where no official citation exists, a decision is reported in Prentice-Hall's Government Disclosure Service ("GDS"); such citations are given in this edition even though that unofficial reporter has been discontinued. (It should be noted that, as this publication is designed to be a reference guide only, the citations given are not necessarily in official "Blue Book" form.) Only decisions of precedential significance are included, and it must be remembered that all decisions are listed under the plaintiff's name as originally filed.

In this edition, the main case list has been restricted to FOIA cases and to those Privacy Act cases addressing comparable access issues. Separate lists of cases arising under the Government in the Sunshine Act, 5 U.S.C. §552b, and the Federal Advisory Committee Act, 5 U.S.C. app., appear after the main case list. There is also a separate list of all Privacy Act cases (involving access and non-access issues alike), which contains Privacy Act subject matter topics. Additionally, a separate list of all "reverse" FOIA cases and an "overview" list of selected FOIA decisions are provided.

Also contained in this edition are the full texts of each of these federal access statutes, an updated list of related law review articles, and an expanded and updated "Justice Department Guide to the Freedom of Information Act" prepared by several members of the attorney and paralegal staff of the Office of Information and Privacy: John P. Adams, John C. Binkley, Marina Utgoff Braswell, Richard A. Cohn, Pamela K. Davis, Phyllis L. Hubbell, Margaret A. Irving, Philip A. Kesaris, Carol A. Koehler, Philip J. Lindenmuth, Thomas J. McIntyre, Kathleen M. Pennington, Melanie Ann Pustay, and Wendy L. Weiss.

This edition of the Freedom of Information Case List was prepared by Pamela Maida with the able assistance of several other members of the Office of Information and Privacy staff, most notably secretary Rosa J. Adams and law clerks Serafina M. Esposito, Michael Giardiello, and Pamela S. Stever. Additional copies are available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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(104)	(b)(7)(A)	Anderson Greenwood & Co. v. NLRB, 604 F.2d 322 (5th Cir. 1979).
(105)	(b)(7)(C), (b)(7)(D)	Andrejko v. Civiletti, Civil No. 78-0207 (D.D.C. Jan. 12, 1979).
(106)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403(d)(3), §403g, adequacy of agency affidavit, in camera inspection, "mosaic"	Andres v. CIA, 2 GDS ¶82,089 (D.D.C. 1981), rev'd & remanded, No. 81-1780 (D.C. Cir. Feb. 17, 1982).

(107)	(b)(6), discretionary release, FOIA/PA interface	Andrews v. VA, 613 F. Supp. 1404 (D. Wyo. 1985), rev'd, 838 F.2d 418 (10th Cir. 1988), petition for cert. filed, 56 U.S.L.W. 3769 (U.S. Apr. 26, 1988) (No. 87-1769).
(108)	(b)(3), 26 U.S.C. §6103, displacement of FOIA, Vaughn index	Anheuser-Busch, Inc. v. IRS, Civil No. 78-1326 (D.D.C. Nov. 27, 1978), rev'd & remanded, No. 80-1883 (D.C. Cir. July 27, 1979), on remand, 493 F. Supp. 549 (D.D.C. 1980).
(109)	Summary judgment	Anselmo v. DOJ, Civil No. 87-0886-LFO (D.D.C. Feb. 29, 1988).
(110)	Privacy Act access, (b)(1), (b)(3), 50 U.S.C. §403, (b)(6), duty to search	Anthony v. CIA, 1 GDS ¶79,196 (E.D. Va. 1979).
(111)	Dismissal for failure to prosecute	Antonelli v. Bureau of Prisons, Civil No. 85-3786 (D.D.C. Apr. 18, 1986).
(112)	(b)(2), (b)(7)(A), (b)(7)(C), (b)(7)(E), (b)(7)(F), in camera inspection, Vaughn index	Antonelli v. DEA, 739 F.2d 302 (7th Cir. 1984).
(113)	Mootness	Antonelli v. DEA, Civil No. 83-C-5807 (N.D. Ill. Apr. 3, 1984), subsequent decision (N.D. Ill. June 8, 1984), appeal dismissed, No. 84-1955 (7th Cir. Aug. 6, 1984).
(114)	Pro se litigant	Antonelli v. DEA, Civil No. 84-2483 (D.D.C. Sept. 16, 1985) (consolidated), reinstatement denied (D.D.C. Feb. 6, 1986) (consolidated), on appeal, No. 85-6118 (D.C. Cir. Feb. 20, 1986) (consolidated).
(115)	(b)(6), (b)(7)(C), (b)(7)(D), duty to search, fee waiver, FOIA/PA interface, "Glomar" denial, stay pending appeal, Vaughn index	Antonelli v. FBI, 536 F. Supp. 568 (N.D. Ill. 1982), stay granted, 553 F. Supp. 19 (N.D. Ill. 1982), subsequent decision, Civil No. 79-C-1432 (N.D. Ill. Sept. 14, 1982), rev'd, 721 F.2d 615 (7th Cir. 1983), cert. denied, 467 U.S. 1210 (1984).
(116)	Exceptional circumstances/due diligence, exhaustion of administrative remedies	Antonelli v. FBI, Civil No. 84-1047 (D.D.C. June 27, 1984), subsequent decision (D.D.C. Sept. 12, 1984), reinstatement denied (D.D.C. Nov. 13, 1984).
(117)	Exhaustion of administrative remedies	Antonelli v. IRS, Civil No. 85-0048-W-8-P (W.D. Mo. Sept. 24, 1985).

(118)	Privacy Act access, (b)(3), 5 U.S.C. §552a(j)(2), (b)(7)(A), (b)(7)(D), FOIA/PA interface, "Glomar" denial, proper party defendant	Antonelli v. Mullen, Civil No. 83-C-1001-S (W.D. Wis. June 27, 1984).
(119)	(b)(5), (b)(7)(C), Vaughn index	Antonelli v. Sullivan, 732 F.2d 560 (7th Cir. 1984).
(120)	(b)(7), discovery in FOIA litigation	Antonio v. Kelley, Civil No. 75-1071 (D.D.C. Feb. 3, 1978).
(121)	(b)(7)(A), attorney's fees	Antonsen v. DOJ, Civil No. K-82-008 (D. Alaska Mar. 20, 1984).
(122)	(b)(5), deliberative process, discovery in FOIA litigation, duty to search	Applegate v. NRC, 3 GDS ¶83,081 (D.D.C. 1983), motion for reconsideration denied, Civil No. 82-1829 (D.D.C. Feb. 14, 1983), summary judgment granted, 3 GDS ¶83,201 (D.D.C. 1983).
(123)	No record within scope of request	Applewhite v. United States Postal Serv., Civil No. 87-0012 (D.D.C. May 12, 1987).
(124)	(b)(2), (b)(7), (b)(7)(D), (b)(7)(F), assurance of confidentiality, law enforcement amendments (1986), law enforcement purpose, summary judgment	Arenberg v. DEA, Civil No. 86-1326 (S.D. Fla. Sept. 30, 1987), aff'd, 849 F.2d 579 (11th Cir. 1988).
(125)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), dismissal for failure to prosecute, proper party defendant	Arey v. Knight, Civil No. N-76-39 (D. Md. Oct. 5, 1977).
(126)	(b)(6), in camera affidavit, in camera inspection, "mosaic," reasonably segregable	Arieff v. Department of the Navy, 3 GDS ¶82,291 (D.D.C. 1982), rev'd & remanded, 712 F.2d 1462 (D.C. Cir. 1983).
(127)	Agency	Arkansas v. Schulze, Criminal No. PB-CR-78-11 (E.D. Ark. Apr. 26, 1979).
(128)	(a)(1)(D)	Arlington Oil Mills, Inc. v. Knebel, 543 F.2d 1092 (5th Cir. 1976), reh'g en banc denied, 545 F.2d 168 (5th Cir. 1976).
(129)	(b)(5), (b)(7)(C), deliberative process	Armstrong v. Civil Div., DOJ, Civil No. 78-1381 (D.D.C. Jan. 30, 1979).
(130)	Mootness	Armstrong v. Department of State, Civil No. 78-1691 (D.D.C. Mar. 27, 1979).
(131)	Fees, fee waiver	Armstrong v. FBI, Civil No. 78-1774 (D.D.C. Apr. 27, 1979).

(132)	(b)(2), summary judgment	Army Times Publishing Co. v. Department of the Army, 684 F. Supp. 720 (D.D.C. 1988).
(133)	(b)(6), attorney's fees	Aronson v. HUD, Civil No. 86-0333-S (D. Mass. Oct. 3, 1986), aff'd in part, rev'd in part, 822 F.2d 182 (1st Cir. 1987), attorney's fees granted (D. Mass. Mar. 3, 1988).
(134)	Reverse FOIA, (b)(4), agency records, attorney-client privilege, burden of proof, waiver of exemption	Artesian Indus. v. HHS, 646 F. Supp. 1004 (D.D.C. 1986).
(135)	(a)(2), (b)(3), 26 U.S.C. §6103, (b)(5), attorney's fees, deliberative process	Arthur Andersen & Co. v. IRS, 514 F. Supp. 1173 (D.D.C. 1981), reconsideration denied, 2 GDS ¶81,237 (D.D.C. 1981), on motion for attorney's fees, 2 GDS ¶82,178 (D.D.C. 1982), rev'd & remanded, 679 F.2d 254 (D.C. Cir. 1982).
(136)	(b)(5), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, Vaughn index	Art Metal-USA, Inc. v. GSA, 1 GDS ¶80,068 (D.D.C. 1980).
(137)	(b)(7)(C)	Art Metal-USA, Inc. v. IRS, Civil No. 80-1776 (D.D.C. Sept. 11, 1981).
(138)	(b)(5), attorney-client privilege, deliberative process, discretionary release, waiver of exemption	Art Metal-USA, Inc. v. OMB, 2 GDS ¶81,173 (D.D.C. 1981).
(139)	Publication	Aschenbach v. United States, 599 F. Supp. 588 (D. Conn. 1984).
(140)	(b)(5), (b)(7), in camera inspection, Vaughn index	Ash Grove Cement Co. v. FTC, 371 F. Supp. 370 (D.D.C. 1973), remanded, 511 F.2d 815 (D.C. Cir. 1975).
(141)	Congressional subpoena, disclosure to Congress, discretionary release	Ashland Oil, Inc. v. FTC, 409 F. Supp. 297 (D.D.C. 1976), aff'd, 548 F.2d 977 (D.C. Cir. 1976).
(142)	(b)(5), adequacy of agency affidavit, deliberative process, reasonably segregable	Ashley v. Department of Labor, 589 F. Supp. 901 (D.D.C. 1983).
(143)	Adequacy of agency affidavit, Vaughn index	Ashton v. Kurtz, 1 GDS ¶80,146 (D.D.C. 1980).
(144)	(b)(5), (b)(7), law enforcement purpose	Aspin v. DOD, 348 F. Supp. 1081 (D.D.C. 1972), aff'd, 491 F.2d 24 (D.C. Cir. 1973).

(145)	(b)(1), E.O. 11652	Aspin v. DOD, 453 F. Supp. 520 (E.D. Wis. 1978).
(146)	(b)(5), (b)(7)(A), attorney work-product privilege, deliberative process	Associated Credit Bureaus v. FTC, 2 GDS ¶82,044 (S.D. Tex. 1981).
(147)	Reverse FOIA, agency subpoena, discretionary release, proper party defendant	Associated Dry Goods Corp. v. EEOC, 419 F. Supp. 814 (E.D. Va. 1976), additional issues decided, 454 F. Supp. 387 (E.D. Va. 1978), aff'd, 607 F.2d 1075 (4th Cir. 1979), rev'd & remanded on other grounds, 449 U.S. 590 (1981).
(148)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, deliberative process	Associated Dry Goods Corp. v. NLRB, 455 F. Supp. 802 (S.D.N.Y. 1978).
(149)	(b)(6), attorney's fees	Associated Gen. Contractors v. EPA, 488 F. Supp. 861 (D. Nev. 1980).
(150)	(b)(7)(A), (b)(7)(B), (b)(7)(C)	Associated Gen. Contractors v. SBA, 1 GDS ¶79,119 (D.D.C. 1979).
(151)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(5), (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney-client privilege, attorney work-product privilege, deliberative process, FOIA/PA interface, in camera inspection, law enforcement purpose, waiver of exemption	Associated Press v. DOJ, Civil No. 82-803 (D.N.J. Dec. 6, 1982).
(152)	(b)(4), (b)(6), discovery/FOIA interface	Association for Women in Science v. Califano, 566 F.2d 339 (D.C. Cir. 1977).
(153)	(b)(3), 26 U.S.C. §6103, §7213	Association of Am. R.Rs. v. United States, 371 F. Supp. 114 (D.D.C. 1974).
(154)	(b)(5), (b)(6), deliberative process, proper party defendant	Association of Nat'l Advertisers v. FTC, 1976-1 Trade Cas. (CCH) ¶60,835 (D.D.C. 1976), on motion for stay of discovery, 1976-2 Trade Cas. (CCH) ¶61,021 (D.D.C. 1976).
(155)	(a)(2), (b)(5), (b)(6), (b)(7)(A), deliberative process, in camera inspection, Vaughn index	Association of Nat'l Advertisers v. FTC, 1976-2 Trade Cas. (CCH) ¶61,112 (D.D.C. 1976).

(156)	(b)(3), 45 U.S.C. §362(d), de novo review	Association of Retired R.R. Workers v. United States R.R. Retirement Bd., 618 F. Supp. 1130 (D.D.C. 1985), aff'd, 830 F.2d 331 (D.C. Cir. 1987), reh'g en banc denied, No. 85-5995 (D.C. Cir. Dec. 10, 1987).
(157)	(b)(6)	Association of Village Council Presidents v. Pierce, Civil No. A82-111 (D. Alaska Oct. 12, 1982).
(158)	(a)(2), (b)(5)	Astro Communications Laboratory v. Renegotiation Bd., Civil No. 70-2403 (D.D.C. May 16, 1974).
(159)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	AT&T Information Sys. v. GSA, 627 F. Supp. 1396 (D.D.C. 1986), rev'd & remanded on procedural grounds, 810 F.2d 1233 (D.C. Cir. 1987).
(160)	Fee waiver	Atkinson v. DOJ, 2 GDS ¶81,274 (D.D.C. 1981).
(161)	(b)(6), (b)(7)(C), (b)(8)	Atkinson v. FDIC, 1 GDS ¶80,034 (D.D.C. 1980).
(162)	(b)(4), (b)(5), deliberative process, reasonably segregable	Atkinson v. SEC, Civil No. 83-2030 (D.D.C. Oct. 20, 1983).
(163)	(b)(3), Fed.R.Crim. P. 6(e), (b)(7)(C), (b)(7)(D), waiver of exemption	Atlanta Nat'l Real Estate Trust v. DOJ, Civil No. C79-1461A (N.D. Ga. Dec. 8, 1980), subsequent decision (N.D. Ga. Mar. 24, 1981).
(164)	(b)(5), (b)(7)(A), deliberative process, FOIA as a discovery tool, injunction of agency proceeding pending resolution of FOIA claim	Atlas Indus. v. NLRB, 91 L.R.R.M. 2676 (N.D. Ohio 1976).
(165)	(b)(7)(A), (b)(7)(C), (b)(7)(D), FOIA as a discovery tool, preliminary injunction	Au & Son v. NLRB, 405 F. Supp. 1200 (W.D. Pa. 1975), aff'd, 538 F.2d 80 (3d Cir. 1976).
(166)	Agency records, attorney's fees, duty to search, failure to meet time limits, no record within scope of request, summary judgment	Auchterlonie v. Hodel, Civil No. 83-C-6724 (N.D. Ill. May 7, 1984).
(167)	(b)(4), (b)(5), waiver of exemption	Audio Technical Servs., Ltd. v. Department of the Army, 487 F. Supp. 779 (D.D.C. 1979), appeal dismissed by stipulation, No. 79-2505 (D.C. Cir. Apr. 10, 1980).

(168)	(a)(2)(B), (b)(2), (b)(3), 45 U.S.C. §601, (b)(4), (b)(5), (b)(6), (b)(7), agency, attorney's fees	Aug v. National R.R. Passenger Corp., 425 F. Supp. 946 (D.D.C. 1976), order for attorney's fees clarified, Civil No. 74-1054 (D.D.C. Feb. 10, 1978).
(169)	Injunction of agency proceeding pending resolution of FOIA claim	Automobile Club v. NLRB, 71 Lab. Cas. (CCH) ¶13,672 (D.D.C. 1973).
(170)	(b)(5), (b)(7), (b)(7)(A), attorney work-product privilege, waiver of exemption	Automobile Importers, Inc. v. FTC, 3 GDS ¶82,488 (D.D.C. 1982).
(171)	(b)(7)(C), (b)(7)(D), (b)(7)(F)	Avery v. United States Secret Serv., Civil No. N-76-39 (D. Md. Oct. 5, 1977).
(172)	(a)(2), (a)(6)(A), (b)(1), (b)(3), 49 U.S.C. §1461, (b)(5), prompt disclosure	Aviation Consumer Action Project v. CAB, 412 F. Supp. 1028 (D.D.C. 1976), on motion to compel, 418 F. Supp. 634 (D.D.C. 1976).
(173)	(b)(5), inter- or intra-agency memoranda, waiver of exemption	Aviation Consumer Action Project v. Washburn, 535 F.2d 101 (D.C. Cir. 1976).
(174)	Privacy Act access, (b)(6), attorney's fees, disciplinary proceedings, duty to disclose, FOIA/PA interface, mootness, proper party defendant, summary judgment	Aviation Data Serv. v. FAA, Civil No. 79-1079 (D. Kan. June 14, 1979), dismissed as moot, 2 GDS ¶81,113 (D. Kan. 1979), on motion for attorney's fees, 2 GDS ¶81,282 (D. Kan. 1981), rev'd & remanded, 687 F.2d 1319 (10th Cir. 1982).
(175)	Mootness	Aviation Data Serv. v. FAA, Civil No. 79-554-E (W.D. Okla. July 9, 1979).
(176)	Privacy Act access, (b)(3), summary judgment	Ayers v. IRS, Civil No. 84-472-TUC-ACM (D. Ariz. June 30, 1985).
(177)	(b)(3), 8 U.S.C. §1202(f), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, deliberative process	Ayoub v. Department of State, Civil No. 76-2309 (D.D.C. June 30, 1978).
(178)	(b)(3), 26 U.S.C. §6103, §7213, discovery/FOIA interface	B&C Tire Co. v. IRS, 376 F. Supp. 708 (N.D. Ala. 1974).
(179)	Reverse FOIA, (b)(4), (b)(6)	Babcock v. Butz, Civil No. 75-0205 (D. Vt. Feb. 22, 1977).
(180)	(b)(3), 42 U.S.C. §2000e-5(b), §2000e-8(e)	Babcock & Wilcox Co. v. EEOC, Civil No. 82-C-316 (E.D. Wis. Mar. 11, 1983).

(181)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, jurisdiction, summary judgment	Babcock & Wilcox Co. v. Rumsfeld, 70 F.R.D. 595 (N.D. Ohio 1976).
(182)	(b)(3), 50 U.S.C. §403(d)(3), "Glomar" denial, proper party defendant	Bachrack v. CIA, Civil No. 75-3727-WPG (C.D. Cal. May 13, 1976).
(183)	Agency, proper party defendant	Bacin v. Smith, Civil No. 78-4828-AAH-Kx (C.D. Cal. May 11, 1979).
(184)	(b)(2), (b)(4), (b)(5), attorney's fees, deliberative process, destruction of records, discovery/FOIA interface, fee waiver, mootness, reasonably segregable, waiver of exemption	Badhwar v. Department of the Air Force, 615 F. Supp. 698 (D.D.C. 1985), subsequent decision, 622 F. Supp. 1364 (D.D.C. 1985), stay granted, Civil No. 84-0154 (D.D.C. Dec. 13, 1985), summary judgment granted in part, 629 F. Supp. 478 (D.D.C. 1986), interim attorney's fees awarded (D.D.C. Dec. 11, 1986), aff'd in part, vacated & remanded in part, 829 F.2d 182 (D.C. Cir. 1987).
(185)	(b)(5), (b)(7)(A), attorney-client privilege, deliberative process	Badran v. DOJ, 652 F. Supp. 1437 (N.D. Ill. 1987).
(186)	(b)(1), (b)(3), 50 U.S.C. §403, (b)(6), (b)(7)(C), attorney's fees	Baez v. CIA, Civil No. 76-1920 (D.D.C. Nov. 3, 1977), on motion for attorney's fees (D.D.C. July 31, 1979), aff'd, No. 79-2046 (D.C. Cir. Oct. 23, 1980).
(187)	(b)(1), E.O. 11652, E.O. 12065, (b)(3), 50 U.S.C. §403g, (b)(7)(C), (b)(7)(D), attorney's fees, belated classification, Fed.R.App.P. 39(a)	Baez v. DOJ, Civil No. 76-1922 (D.D.C. July 5, 1979), aff'd, 647 F.2d 1328 (D.C. Cir. 1980), on motion for costs, No. 79-1881 (D.C. Cir. May 7, 1981), vacated on panel reh'g, 2 GDS ¶81,223 (D.C. Cir. 1981), panel opinion vacated pending reh'g en banc (D.C. Cir. Aug. 18, 1981), costs granted, 684 F.2d 999 (D.C. Cir. 1982) (en banc).
(188)	(b)(1), E.O. 11652, (b)(3), 50 U.S.C. §403, "mosaic," Vaughn index	Baez v. National Sec. Agency, Civil No. 76-1921 (D.D.C. Nov. 2, 1978), modified, 1 GDS ¶80,172 (D.D.C. 1980).
(189)	Attorney's fees	Bahta v. Nelson, Civil No. H-85-325 (S.D. Tex. Nov. 27, 1985).
(190)	(b)(3), 50 U.S.C. §403, in camera inspection, reasonably segregable	Baker v. CIA, 425 F. Supp. 633 (D.D.C. 1977), aff'd, 580 F.2d 664 (D.C. Cir. 1978).
(191)	Exceptional circumstances/due diligence, Vaughn index	Baker v. DOJ, 2 GDS ¶81,019 (D.D.C. 1980), dismissed, 3 GDS ¶83,276 (D.D.C. 1983).

(192)	(b)(3), 26 U.S.C. §6103(b)(2), Fed.R. Crim.P. 6(e), (b)(5), (b)(7)(C), adequacy of agency affidavit, deliberative process, reasonably segregable	Baker v. DOJ, Civil No. 80-0654 (D.D.C. July 8, 1981).
(193)	(b)(3), 13 U.S.C. §9, FOIA as a discovery tool	Baldrige v. Shapiro, 455 U.S. 345 (1982).
(194)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F)	Baldwin v. FBI, Civil No. C77-343-CFP (N.D. Cal. Apr. 26, 1979).
(195)	(b)(3), Fed.R.Crim. P. 6(e), (b)(7)(A), (b)(7)(C), (b)(7)(D), attorney's fees	Baldwin v. Finney, Civil No. 75-1221 (D.D.C. Dec. 20, 1976), rev'd & remanded, No. 80-2397 (D.C. Cir. Dec. 8, 1977), on remand sub nom. Baldwin v. Baker (D.D.C. Aug. 25, 1978), on motion for attorney's fees (D.D.C. Feb. 25, 1982).
(196)	(b)(4), (b)(5), (b)(6), (b)(7)(C), adequacy of agency affidavit, attorney work-product privilege, deliberative process, waiver of exemption (failure to assert in litigation)	Ballantyne v. Department of Labor, Civil No. A-84-125 (D. Alaska Apr. 19, 1984).
(197)	(b)(5), discovery/ FOIA interface	Bank of Am. v. United States, 42 A.F.T.R. 2d 78-5223 (N.D. Cal. 1978).
(198)	FOIA as a discovery tool, injunction of agency proceeding pending resolution of FOIA claim, jurisdiction	Bannercraft Clothing Co. v. Renegotiation Bd., 466 F.2d 345 (D.C. Cir. 1972), rev'd, 415 U.S. 1 (1974).
(199)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, injunction of agency proceeding pending resolution of FOIA claim	Baptist Memorial Hosp. v. NLRB, 92 L.R.R.M. 2645 (W.D. Tenn. 1976), aff'd, No. 76-1953 (6th Cir. Dec. 21, 1977).
(200)	(b)(3), 26 U.S.C. §6103, Vaughn index	Barber v. IRS, 47 A.F.T.R. 2d 81-1126 (N.D. Ala. 1981).
(201)	(b)(7)(D)	Barham v. DOJ, Civil No. 84-1573 (W.D. La. Nov. 7, 1984), aff'd, No. 84-4822 (5th Cir. June 14, 1985) (unpublished memorandum), mem., 765 F.2d 1118 (5th Cir. 1985).
(202)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F)	Barham v. United States Secret Serv., Civil No. 82-2130-M (W.D. Tenn. Sept. 13, 1982).

(203)	(b)(5), inter- or intra-agency memoranda	Barkett v. DOJ, Civil No. 86-1716 (D.D.C. Mar. 12, 1987).
(204)	(b)(3), 26 U.S.C. §6103, (b)(7), (b)(7)(D), in camera inspection	Barnard v. IRS, 2 GDS ¶81,214 (S.D. Fla. 1981).
(205)	(b)(7)	Barnes & Noble Bookstores v. NLRB, 92 L.R.R.M. 2169 (S.D.N.Y. 1976).
(206)	(b)(7)(A), adequacy of agency affidavit, FOIA as a discovery tool, in camera inspection	Barney v. IRS, Civil No. 78-5100 (D.S.D. 1979), aff'd, 618 F.2d 1268 (8th Cir. 1980).
(207)	(b)(3), 26 U.S.C. §6103, (b)(7)	Barney v. Kurtz, Civil No. 77-5031 (D.S.D. Jan. 12, 1978).
(208)	(b)(7)(C), (b)(7)(D), in camera inspection, "mosaic"	Barrett v. FBI, 3 GDS ¶82,534 (W.D. Okla. 1982).
(209)	Attorney's fees, disciplinary proceedings, fees	Barrett v. United States Customs Serv., Civil No. 77-3033 (E.D. La. Feb. 22, 1979) (consolidated).
(210)	Transfer of FOIA case	Barrier v. Carlson, 2 GDS ¶81,058 (D.D.C. 1980).
(211)	Exhaustion of administrative remedies, Vaughn index	Barrier v. DOJ, 2 GDS ¶82,062 (D.D.C. 1981), subsequent order, Civil No. 81-1947 (D.D.C. Feb. 26, 1982), dismissed, 3 GDS ¶82,259 (D.D.C. 1982).
(212)	(b)(2), (b)(3), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F), summary judgment	Bascaro v. DOJ, Civil No. 87-0264 (D.D.C. Oct. 26, 1987).
(213)	Privacy Act access, (b)(5), (b)(6), deliberative process, FOIA/PA interface	Basdekas v. NRC, Civil No. 78-465 (D.D.C. Dec. 20, 1978).
(214)	Fees	Bast v. Defense Communications Agency, Civil No. 76-1177 (D.D.C. Feb. 26, 1979).
(215)	Fees	Bast v. Defense Communications Agency, Civil No. 76-1178 (D.D.C. Feb. 26, 1979).
(216)	Fees, proper party defendant	Bast v. DOJ, Civil No. 76-0797 (D.D.C. May 31, 1978).
(217)	(b)(6), (b)(7)(C)	Bast v. DOJ, Civil No. 77-1107 (D.D.C. June 27, 1978).

(218)	(b)(5), (b)(6), (b)(7), (b)(7)(C), law enforcement purpose, reasonably segregable, Vaughn index, waiver of exemption	Bast v. DOJ, Civil Nos. 78-1058, 78-1059 (D.D.C. Mar. 27, 1979), motion for reconsideration denied, 1 GDS ¶79,233 (D.D.C. 1979), aff'd in part, rev'd in part, 665 F.2d 1251 (D.C. Cir. 1981), reh'g denied, Nos. 79-2039, 80-1050 (D.C. Cir. Dec. 11, 1981).
(219)	Adequacy of agency affidavit, discovery/FOIA interface	Bast v. DOJ, 2 GDS ¶81,265 (D.D.C. 1981).
(220)	(b)(5), (b)(7)(C), attorney work-product privilege, deliberative process	Bast v. DOJ, 2 GDS ¶82,101 (D.D.C. 1981), subsequent decision, 3 GDS ¶82,250 (D.D.C. 1982).
(221)	(b)(6), (b)(7)(C), dismissal for failure to prosecute	Bast v. Department of State, Civil No. 76-1894 (D.D.C. July 29, 1978).
(222)	(b)(1), (b)(7), (b)(7)(C), (b)(7)(D), law enforcement purpose	Bast v. FBI, 2 GDS ¶81,270 (D.D.C. 1981).
(223)	Dismissal for failure to prosecute	Bast v. FBI, 2 GDS ¶82,180 (D.D.C. 1981).
(224)	(b)(5), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney-client privilege, deliberative process	Bast v. IRS, 42 A.F.T.R. 2d 78-5078 (D.D.C. 1978).
(225)	(b)(5), judicial records	Bast v. Office of the United States Attorney, Civil No. 75-902-A (E.D. Va. Aug. 10, 1977).
(226)	Attorney's fees	Bay Area Lawyers Alliance for Nuclear Arms Control v. FEMA, Civil No. C83-3164-RPA (N.D. Cal. July 1, 1988).
(227)	Injunction of agency proceeding pending resolution of FOIA claim	Bayview Assocs. v. NLRB, 75 Lab. Cas. (CCH) ¶10,524 (D.D.C. 1974).
(228)	Mootness, no record within scope of request	Bazelow v. Civil Serv. Dep't, 1 GDS ¶79,134 (S.D.N.Y. 1979).
(229)	(b)(4), (b)(5), (b)(6), deliberative process, in camera inspection, incorporation by reference	BDM Corp. v. SBA, 2 GDS ¶81,044 (D.D.C. 1980), reconsideration denied, Civil No. 80-1180 (D.D.C. Dec. 23, 1980), on motion for summary judgment, 2 GDS ¶81,189 (D.D.C. 1981), attorney's fees denied (D.D.C. June 22, 1981).
(230)	(b)(5), deliberative process	BDM Corp. v. SBA, 2 GDS ¶81,217 (D.D.C. 1981).

(231)	Adequacy of request, duty to search	Beacon Journal Publishing Co. v. Attorney Gen. of the United States, Civil No. C77-235A (N.D. Ohio Feb. 10, 1978).
(232)	Exhaustion of administrative remedies	Beckwith v. DOJ, Civil No. GC-77-27-K (N.D. Miss. June 15, 1978).
(233)	Reverse FOIA, preliminary injunction	Beech Aircraft Corp. v. Harris, Civil No. 86-0349-W-6 (W.D. Mo. Apr. 4, 1986), motion to amend denied (W.D. Mo. Apr. 8, 1986).
(234)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), assurance of confidentiality	Belenky v. DEA, Civil No. 81-1390 (D.D.C. Nov. 19, 1981).
(235)	Duty to search	Belfiore v. United States, Civil No. 77-1176-MA (D. Mass. Sept. 18, 1978).
(236)	(b)(3), 26 U.S.C. §6103	Belisle v. Commissioner, 462 F. Supp. 460 (W.D. Okla. 1978).
(237)	(b)(1), discovery/ FOIA interface, equitable discretion, in camera inspection, inter- or intra-agency memoranda	Bell v. United States, 71 F.R.D. 349 (D.N.H. 1976), aff'd, 563 F.2d 484 (1st Cir. 1977).
(238)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), injunction of agency proceeding pending resolution of FOIA claim	Bellingham Frozen Foods v. Henderson, 91 L.R.R.M. 2761 (W.D. Wash. 1976).
(239)	(b)(5), deliberative process, in camera inspection, reasonably segregable, summary judgment	Beltone Elecs. Corp. v. FTC, Civil No. 81-1360 (D.D.C. June 14, 1983), summary judgment granted (D.D.C. Dec. 6, 1983).
(240)	Exhaustion of administrative remedies, proper party defendant, Vaughn index	Benjamin v. DOJ, Civil No. 85-6579 (S.D. Fla. Oct. 31, 1986).
(241)	(b)(1), (b)(3), 50 U.S.C. §403	Bennett v. DOD, 419 F. Supp. 663 (S.D.N.Y. 1976).
(242)	(b)(2), (b)(6)	Bennett v. DOJ, Civil No. 86-0891 (D.D.C. Oct. 28, 1986).
(243)	Exceptional circumstances/ due diligence, FOIA as a discovery tool	Benny v. DOJ, Civil No. 86-1172 (D.D.C. Oct. 21, 1986).
(244)	(b)(5), (b)(7)(D), summary judgment	Benny v. Federal Bureau of Prisons, Civil No. 86-0112 (D.D.C. Nov. 24, 1986).

(245)	Privacy Act access, attorney's fees, mootness	Benoist v. United States, No. 87-1028 (8th Cir. Nov. 4, 1987).
(246)	(b)(2), (b)(4), (b)(5), deliberative process, improper withholding	Benson v. GSA, 289 F. Supp. 590 (W.D. Wash. 1968), aff'd, 415 F.2d 878 (9th Cir. 1969).
(247)	(b)(7), FOIA as a discovery tool	Benson v. United States, 309 F. Supp. 1144 (D. Neb. 1970).
(248)	Privacy Act access, (b)(6), (b)(7), law enforcement purpose	Benson v. United States, Civil No. 80-15-MC (D. Mass. June 12, 1980).
(249)	Attorney's fees, duty to search, summary judgment	Bentson v. Commissioner, Civil No. 83-048-TUC-MAR (D. Ariz. Feb. 9, 1984), subsequent decision (D. Ariz. Apr. 3, 1984), attorney's fees denied (D. Ariz. Sept. 14, 1984).
(250)	(b)(5), (b)(7)(C), (b)(7)(D), assurance of confidentiality, deliberative process, waiver of exemption	Benveniste v. DOJ, Civil No. 84-3475 (D.D.C. May 19, 1987).
(251)	Adequacy of search	Benvenuti v. DOJ, 2 GDS ¶81,300 (D.D.C. 1981).
(252)	(b)(2), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), deliberative process, summary judgment, Vaughn index	Berkosky v. Department of Labor, Civil No. 82-6464-Kn (C.D. Cal. May 2, 1984).
(253)	(b)(3), 26 U.S.C. §6103(e)(6), (b)(5), (b)(7)(A), (b)(7)(C), displacement of FOIA	Bernal v. IRS, 1 GDS ¶80,140 (N.D. Cal. 1980).
(254)	(b)(2)	Bernknopf v. Califano, 466 F. Supp. 319 (W.D. Pa. 1979).
(255)	(b)(5), (b)(7)(A), adequacy of agency affidavit, attorney work-product privilege, deliberative process, res judicata	Bernson v. ICC, 625 F. Supp. 13 (D. Mass. 1985), motion for reconsideration denied, 635 F. Supp. 369 (D. Mass. 1986).
(256)	(b)(3), 18 U.S.C. §4208(b)(2), Fed.R. Crim.P. 32, (b)(6), attorney's fees, judicial records, waiver of exemption (failure to assert in litigation)	Berry v. DOJ, Civil No. 82-2041-PHX-CAM (D. Ariz. Mar. 14, 1983), rev'd & remanded, 733 F.2d 1343 (9th Cir. 1984), on remand, 612 F. Supp. 45 (D. Ariz. 1985), attorney's fees awarded (D. Ariz. Feb. 20, 1986).
(257)	Reverse FOIA, case or controversy, equitable discretion	Bethlehem Steel Corp. v. Kreps, Civil No. Y-78-837 (D. Md. Feb. 4, 1980).

(258)	Case or controversy, fee waiver, mootness	Better Gov't Ass'n v. Department of State, Civil No. 83-2998 (D.D.C. Aug. 13, 1984), remanded, 780 F.2d 86 (D.C. Cir. 1986) (consolidated), motion to consolidate on remand denied (D.D.C. Apr. 8, 1986), on remand (D.D.C. July 31, 1986), motion to amend denied (D.D.C. Mar. 9, 1987).
(259)	Exhaustion of administrative remedies, fees	Beuth v. Commissioner, Civil No. 85-C-247 (E.D. Wis. June 24, 1985).
(260)	(b)(1), E.O. 12356, (b)(7), (b)(7)(A), adequacy of agency affidavit, law enforcement purpose	Bevis v. Department of State, 575 F. Supp. 1253 (D.D.C. 1983), remanded on procedural grounds, No. 84-5069 (D.C. Cir. July 23, 1984), summary judgment granted, Civil No. 83-0993 (D.D.C. June 27, 1985), remanded, 801 F.2d 1386 (D.C. Cir. 1986).
(261)	Agency, agency records, stay pending appeal	Bevis v. NSC, Civil No. 85-2933 (D.D.C. May 30, 1986), remanded for clarification, No. 86-5359 (D.C. Cir. July 14, 1986).
(262)	(b)(1), (b)(7)(C), (b)(7)(D), attorney's fees, duty to search	Biberman v. FBI, 496 F. Supp. 263 (S.D.N.Y. 1980), subsequent decision, 528 F. Supp. 1140 (S.D.N.Y. 1982).
(263)	(b)(3), 26 U.S.C. §6103(a), displacement of FOIA	Big Elk Prods. v. IRS, Civil No. 2:86-1083 (S.D. W. Va. Dec. 5, 1986).
(264)	Privacy Act access, (b)(7), adequacy of agency affidavit, law enforcement purpose	Binion v. DOJ, 2 GDS ¶82,148 (D. Nev. 1981), rev'd, 695 F.2d 1189 (9th Cir. 1983).
(265)	(b)(7), (b)(7)(D), assurance of confidentiality, law enforcement purpose	Birch v. United States Postal Serv., Civil No. 83-3071 (D.D.C. Oct. 17, 1984), aff'd, 803 F.2d 1206 (D.C. Cir. 1986).
(266)	Attorney's fees	Bird v. Department of the Treasury, 2 GDS ¶81,215 (D.D.C. 1981).
(267)	(a)(1), attorney's fees	Birkland v. Rotary Plaza, Inc., 643 F. Supp. 223 (N.D. Cal. 1986).
(268)	(b)(6), (b)(7)(D), duty to create a record	Bishop v. Civiletti, 2 GDS ¶81,343 (D.D.C. 1981), summary judgment granted sub nom. Bishop v. Bell, 2 GDS ¶81,344 (D.D.C. 1981).
(269)	(b)(3), 38 U.S.C. §3305	Bitzer v. Klag, 3 GDS ¶83,172 (C.D. Cal. 1981).
(270)	No record within scope of request	Black v. CIA, Civil No. C83-3914 (N.D. Ohio Oct. 11, 1983), dismissed mem., 732 F.2d 153 (6th Cir. 1984).

(271)	Fee waiver, no record within scope of request	Black v. CIA, Civil No. 83-3246 (D.D.C. Dec. 30, 1983), motion for for reconsideration granted (D.D.C. Jan. 16, 1984), dismissed (D.D.C. Mar. 30, 1984).
(272)	(b)(7), (b)(7)(C), law enforcement purpose	Black v. FBI, Civil No. C82-370 (N.D. Ohio May 30, 1986), aff'd, Nos. 86-3586, 86-3587 (6th Cir. Feb. 4, 1987).
(273)	Fee waiver, judicial records, no record within scope of request, proper party defendant, summary judgment	Black v. GSA, Civil No. C82-1569 (N.D. Ohio Sept. 26, 1983), aff'd mem., 734 F.2d 13 (6th Cir. 1984).
(274)	Agency, no record within scope of request, proper party defendant, summary judgment	Black v. IRS, Civil No. C82-370 (N.D. Ohio Jan. 23, 1984), dismissed mem., 732 F.2d 153 (6th Cir. 1984).
(275)	(b)(7), law enforcement purpose	Black v. Sheraton Corp., 371 F. Supp. 97 (D.D.C. 1974), rev'd, 564 F.2d 531 (D.C. Cir. 1977).
(276)	(b)(4), (b)(9)	Black Hills Alliance v. United States Forest Serv., 603 F. Supp. 117 (D.S.D. 1984).
(277)	(b)(1), E.O. 11652	Blaisdell v. DOD, Civil No. 77-83-DWW (C.D. Cal. May 5, 1977).
(278)	(b)(7)(C), duty to disclose, duty to search, fee waiver, "Glomar" denial	Blakey v. DOJ, 549 F. Supp. 362 (D.D.C. 1982), aff'd in part & vacated in part, No. 82-2499 (D.C. Cir. Oct. 3, 1983) (unpublished memorandum), mem., 720 F.2d 215 (D.C. Cir. 1983).
(279)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), duty to create a record, duty to search	Blanchard v. United States Secret Serv., 2 GDS ¶82,093 (D.D.C. 1981).
(280)	Discovery in FOIA litigation	Blankstein v. Bennett, Civil No. 87-2107 (D.D.C. Oct. 22, 1987).
(281)	(b)(1), E.O. 12356, (b)(2), (b)(6), (b)(7)(C), (b)(7)(D), FOIA/PA interface	Block v. FBI, Civil No. 83-0813 (D.D.C. Nov. 19, 1984).
(282)	(b)(5), agency, agency records, attorney's fees	Blue v. Bureau of Prisons, Civil No. C75-2092A (N.D. Ga. Aug. 12, 1976), rev'd, 570 F.2d 529 (5th Cir. 1978).
(283)	Exhaustion of administrative remedies, pro se litigant	Blue v. Federal Bureau of Prisons, Civil No. 85-3667 (D.D.C. June 30, 1986).

(284)	Exhaustion of administrative remedies, pro se litigant	Blue v. United States Parole Comm'n, Civil No. 85-3709 (D.D.C. Mar. 13, 1986), dismissed (D.D.C. June 30, 1986).
(285)	(b)(3), 39 U.S.C. §410(c)(6), (b)(7)(E), proper party defendant	Blum v. United States, Civil No. 78-1226-LEW-Kx (C.D. Cal. Sept. 12, 1978).
(286)	(b)(3), 15 U.S.C. §57b-2(f), Vaughn index	Board of Educ. v. FTC, 2 GDS ¶81,170 (D.D.C. 1980).
(287)	(b)(4), (b)(6), waiver of exemption	Board of Trade v. Commodity Futures Trading Comm'n, Civil No. 77-0560 (D.D.C. Oct. 28, 1977), aff'd in part, rev'd in part, 627 F.2d 392 (D.C. Cir. 1980).
(288)	(b)(7)(C)	Board of Trustees v. Department of Educ., Civil No. WC-82-63-LS-P (N.D. Miss. Dec. 3, 1983).
(289)	(b)(7)(A)	Board of Trustees v. Norton, Civil No. 80-4041 (S.D. Ill. Mar. 16, 1981).
(290)	(b)(5)	Bodell v. DOJ, Civil No. 85-3166 (D.D.C. Oct. 6, 1986).
(291)	(b)(5), discovery in FOIA litigation, duty to search	Bodner v. FTC, 1974-2 Trade Cas. (CCH) ¶75,329 (D.D.C. 1974), Vaughn index required, 1975-2 Trade Cas. (CCH) ¶60,118 (D.D.C. 1975), subsequent decision, Civil No. 74-1189 (D.D.C. Feb. 24, 1975).
(292)	(b)(7)(C), (b)(7)(D), assurance of confidentiality	Bollen v. Civiletti, 2 GDS ¶82,121 (W.D. Pa. 1981).
(293)	Attorney's fees, mootness	Bollen v. Smith, Civil No. 82-2424 (W.D. Pa. May 27, 1983).
(294)	No record within scope of request	Boniface v. DOJ, Civil No. 86-0141 (D.D.C. June 13, 1986).
(295)	Privacy Act access, fee waiver	Boniface v. Meese, Civil No. 85-1971 (D.D.C. Dec. 13, 1985), summary affirmance granted, No. 86-5125 (D.C. Cir. June 12, 1986).
(296)	Exhaustion of administrative remedies	Boniface v. Meese, Civil No. 85-2050 (D.D.C. Dec. 13, 1985), summary affirmance granted, No. 86-5126 (D.C. Cir. June 12, 1986).
(297)	Mootness	Boniface v. Meese, Civil No. 85-2055 (D.D.C. Dec. 13, 1985), summary affirmance granted, No. 86-5127 (D.C. Cir. June 12, 1986).
(298)	Exceptional circumstances/due diligence	Boniface v. Meese, Civil No. 85-2267 (D.D.C. Dec. 13, 1985).

(299)	(b)(7)(C)	Boniface v. Rose, Civil No. 85-1801 (D.D.C. Dec. 18, 1985), summary affirmance granted, No. 86-5124 (D.C. Cir. June 12, 1986).
(300)	(b)(1), E.O. 12356, reasonably segregable, summary judgment, Vaughn index	Bonner v. FBI, Civil No. 86-2249 (D.D.C. Feb. 9, 1987).
(301)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, waiver of exemption	Bonnett v. DOJ, Civil No. F-81-267 (N.D. Ind. July 11, 1983).
(302)	Duty to create a record	Borom v. Crawford, Civil No. 77-C-4500 (N.D. Ill. 1978), aff'd, 651 F.2d 500 (7th Cir. 1981).
(303)	Privacy Act access, (b)(3), 18 U.S.C. §4208(c), (b)(5), (b)(7)(D), adequacy of request, exhaustion of administrative remedies, reasonably segregable, Vaughn index	Borom v. United States Parole Comm'n, Civil No. 5-86-183 (D. Minn. Dec. 2, 1986).
(304)	Attorney's fees, disciplinary proceedings, substantial compliance	Borrell v. International Communications Agency, 3 GDS ¶83,021 (D.D.C. 1981), aff'd, 682 F.2d 981 (D.C. Cir. 1982), cert. denied, 466 U.S. 974 (1984).
(305)	(a)(2)	Borsody & Green v. Rougeau, Civil No. 79-3234 (D.D.C. 1981).
(306)	(b)(7)(D), assurance of confidentiality	Borton, Inc. v. OSHA, 566 F. Supp. 1420 (E.D. La. 1982) (magistrate's report adopted).
(307)	(b)(5), (b)(7)(A), adequacy of agency affidavit, attorney work-product privilege	Boston Carrier, Inc. v. ICC, Civil No. 83-3741-MA (D. Mass. Mar. 27, 1984), summary judgment granted, 625 F. Supp. 8 (D. Mass. 1984), dismissed on other grounds sub nom. Bernson v. ICC, 625 F. Supp. 10 (D. Mass. 1984).
(308)	(b)(7)	Boston Univ. v. NLRB, 95 L.R.R.M. 2447 (D. Mass. 1977).
(309)	(b)(1), (b)(7)(C), (b)(7)(D), (b)(7)(F), exceptional circumstances/due diligence, Vaughn index	Boult v. DOJ, Civil No. C76-1217A (N.D. Ga. Oct. 22, 1976), summary judgment granted (N.D. Ga. Oct. 31, 1978).
(310)	Agency	Bowens v. Flowers Funeral Serv., Civil No. 87-C-6481 (N.D. Ill. July 29, 1987).

(311)	(b)(1), in camera inspection	Bowers v. DOJ, Civil No. C-C-86-336M (W.D.N.C. Jan. 14, 1988), writ of mandamus granted sub nom. In re United States DOJ, No. 87-1205 (4th Cir. Apr. 7, 1988), on remand sub nom. Bowers v. DOJ (W.D.N.C. Apr. 20, 1988).
(312)	(a)(2)(A), (a)(2)(C), (b)(7)(A), fees	Bowker v. IRS, Civil No. 80-150-RE (D. Or. May 11, 1982).
(313)	(b)(3), Fed.R.Crim.P. 6(e)	Bowman v. DOJ, Civil No. 85-2491 (D.D.C. June 11, 1986).
(314)	(b)(2)	Boyce v. Department of the Navy, Civil No. 86-2211-AHS (C.D. Cal. Feb. 17, 1987).
(315)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), deliberative process	Boyce v. Deputy Director, Civil No. 78-084 (D.D.C. Oct. 25, 1978).
(316)	Attorney's fees, duty to search, Vaughn index	Boyd v. Bureau of Prisons, Civil No. 84-2418-GA (W.D. Tenn. May 23, 1985) (magistrate's report), summary judgment granted (W.D. Tenn. May 29, 1986).
(317)	Mootness	Boyd v. United States Dist. Attorney's Office, No. 84-5704 (D.C. Cir. May 24, 1985) (unpublished memorandum), mem., 764 F.2d 926 (D.C. Cir. 1985).
(318)	Attorney's fees	Brainerd v. Department of the Navy, Civil No. 87-C-4057 (N.D. Ill. Apr. 21, 1988).
(319)	(b)(4), attorney's fees, burden of proof	Braintree Elec. Light Dep't v. DOE, 494 F. Supp. 287 (D.D.C. 1980).
(320)	(b)(1), E.O. 12356, (b)(2), (b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, discovery in FOIA litigation, in camera inspection, law enforcement amendments (1986), law enforcement purpose, reasonably segregable, summary judgment, Vaughn index	Branch v. FBI, Civil No. 86-1643 (D.D.C. Aug. 12, 1986), partial summary judgment granted, 658 F. Supp. 204 (D.D.C. 1987), motion for protective order granted (D.D.C. Aug. 10, 1987), partial summary judgment granted (D.D.C. Mar. 9, 1988), in camera inspection ordered (D.D.C. May 16, 1988), partial summary judgment granted (D.D.C. Aug. 30, 1988).
(321)	(b)(3), 44 U.S.C. §2101, §2107, §2108	Brandon v. Sampson, Civil No. 73-2232 (D.D.C. Apr. 3, 1974), rev'd & remanded sub nom. Brandon v. Eckerd, 569 F.2d 683 (D.C. Cir. 1977).

(322)	(b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney's fees, de novo review, law enforcement purpose, mootness, waiver of exemption	Brant Constr. Co. v. EPA, Civil No. H-82-596 (N.D. Ind. June 12, 1984), rev'd, 778 F.2d 1258 (7th Cir. 1985).
(323)	(b)(3), 15 U.S.C. §57b-2(f), (b)(7)(A)	Braswell, Inc. v. FTC, 2 GDS ¶81,092 (N.D. Ga. 1980).
(324)	Exhaustion of administrative remedies, failure to meet time limits	Brawer v. FBI, Civil No. 75-1700 (D.D.C. Feb. 28, 1977).
(325)	Publication	Brecker v. Queens B'nai B'rith Hous. Dev. Fund Co., 798 F.2d 52 (2d Cir. 1986).
(326)	(b)(1), E.O. 12065	Brein v. DOJ, 3 GDS ¶82,380 (D. Haw. 1982).
(327)	In camera inspection	Brennan v. Tennessee Technological Univ., 76 Lab. Cas. (CCH) ¶33,237 (M.D. Tenn. 1975).
(328)	(b)(3), 35 U.S.C. §122, waiver of exemption	Bretschneider v. Commissioner of Patents & Trademarks, Civil No. 85-151-A (E.D. Va. Apr. 26, 1985).
(329)	(b)(7)(A), (b)(7)(C), in camera inspection	Bretti v. DOJ, Civil No. 84-3537 (D.D.C. Mar. 31, 1986).
(330)	(b)(3), 26 U.S.C. §6103, §6104	Breuhaus v. IRS, Civil No. 78-240 (W.D.N.Y. Mar. 13, 1979), aff'd, 609 F.2d 80 (2d Cir. 1979).
(331)	(a)(1), (a)(1)(C), (a)(1)(D)	Bright v. INS, 837 F.2d 1330 (5th Cir. 1988).
(332)	(b)(5), (b)(7)(A), attorney-client privilege, deliberative process, summary judgment, waiver of exemption	Brinderson Constructors v. Army Corps of Eng'rs, Civil No. 85-0905 (D.D.C. June 11, 1986).
(333)	(b)(3), 26 U.S.C. §6103, displacement of FOIA, Vaughn index	Brink v. IRS, 1 GDS ¶80,195 (E.D. Mo. 1980).
(334)	(b)(7), (b)(7)(A), law enforcement purpose	Brinkerhoff v. Montoya, 49 A.F. T.R. 2d 82-839, 3 GDS ¶82,421 (N.D. Tex. 1981).
(335)	Duty to search, proper party defendant, summary judgment	Brinton v. Department of Labor, Civil No. 87-7010 (E.D. Pa. Mar. 7, 1988), summary judgment granted (E.D. Pa. July 21, 1988).

(336)	(a)(6)(A), (b)(1), (b)(5), attorney-client privilege, deliberative process, exhaustion of administrative remedies, reasonably segregable, waiver of exemption (administrative release)	Brinton v. Department of State, Civil No. 78-0112 (D.D.C. Nov. 30, 1978), summary judgment granted, 476 F. Supp. 535 (D.D.C. 1979), aff'd, 636 F.2d 600 (D.C. Cir. 1980), cert. denied, 452 U.S. 905 (1981).
(337)	(b)(4), (b)(5), (b)(7)	Bristol-Meyers Co. v. FTC, 284 F. Supp. 745 (D.D.C. 1968), aff'd in part, rev'd in part & remanded, 424 F.2d 935 (D.C. Cir. 1970), cert. denied, 400 U.S. 824 (1970).
(338)	(a)(2)(A), (a)(2)(B), (a)(2)(C), (b)(5), (b)(7)(A), attorney work-product privilege	Bristol-Meyers Co. v. FTC, 598 F.2d 18 (D.C. Cir. 1978).
(339)	(b)(3), 49 U.S.C. §1504, (b)(5), deliberative process, personal records, referral of request to another agency, Vaughn index	British Airports Auth. v. CAB, Civil No. 81-1072 (D.D.C. June 25, 1981), subsequent decision, 531 F. Supp. 408 (D.D.C. 1982).
(340)	(b)(1), E.O. 12065, (b)(3), 49 U.S.C. §1504, (b)(4), (b)(5), belated classification, deliberative process, Vaughn index, waiver of exemption	British Airports Auth. v. Department of State, 530 F. Supp. 46 (D.D.C. 1981), on motion to alter or amend, Civil No. 81-1519 (D.D.C. Dec. 22, 1981).
(341)	Vaughn index	British Airports Auth. v. Department of Transp., 2 GDS ¶82,099 (D.D.C. 1981).
(342)	(b)(3), 26 U.S.C. §6103(a), §6103(e)(1), (b)(7)(A), displacement of FOIA, fees, Vaughn index	Britt v. IRS, 42 A.F.T.R. 2d 78-6198 (D.D.C. 1978), supplemental decision, Civil No. 77-1325 (D.D.C. June 13, 1979), additional issue decided (D.D.C. Apr. 23, 1981), partial summary judgment granted, 547 F. Supp. 808 (D.D.C. 1982), partial summary judgment granted (D.D.C. June 9, 1983).
(343)	Attorney's fees	Britton v. AID, 3 GDS ¶82,548 (D.D.C. 1982).
(344)	Reverse FOIA, (b)(3), 12 U.S.C. §1437, 18 U.S.C. §1905, nexus test	Broadview Sav. & Loan Co. v. Federal Home Loan Bank Bd., Civil No. C77-1195 (N.D. Ohio June 13, 1979), remanded (N.D. Ohio July 16, 1979).
(345)	(b)(5), deliberative process	Brock v. Campbell, Civil No. H-79-237 (S.D. Tex. July 24, 1979).

(346)	(b)(4), (b)(5), deliberative process	Brockway v. Department of the Air Force, 370 F. Supp. 738 (N.D. Iowa 1974), rev'd, 518 F.2d 1184 (8th Cir. 1975).
(347)	Exhaustion of administrative remedies	Brooks v. Department of the Treasury, Civil No. 78-825-C(4) (E.D. Mo. Nov. 21, 1978).
(348)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, nexus test	Brookwood Medical Center, Inc. v. Califano, 470 F. Supp. 1247 (N.D. Ga. 1979), aff'd, 614 F.2d 1295 (5th Cir. 1980).
(349)	(b)(1), E.O. 12065, in camera affidavit	Browde v. Department of the Navy, 3 GDS ¶82,463 (D.D.C. 1982), aff'd, No. 82-2278 (D.C. Cir. June 10, 1983) (unpublished memorandum), mem., 3 GDS ¶83,215 (D.C. Cir. 1983).
(350)	(b)(4), (b)(5)	Brown v. DOE, 1 GDS ¶80,035 (E.D. Wash. 1980).
(351)	(b)(6), (b)(7)(C), adequacy of agency affidavit, discovery/ FOIA interface, in camera inspection, Vaughn index, waiver of exemption	Brown v. FBI, 658 F.2d 71 (2d Cir. 1981).
(352)	(b)(5), publication	Brown v. FTC, 2 GDS ¶82,026 (D.D.C. 1981).
(353)	Judicial records	Brown & Williamson Tobacco Corp. v. FTC, 710 F.2d 1165 (6th Cir. 1983), cert. denied on other grounds, 465 U.S. 1100 (1984).
(354)	(a)(6)(A), exhaustion of administrative remedies	Brumley v. Department of Labor, Civil No. LR-C84-593 (E.D. Ark. Jan. 9, 1985), aff'd, 767 F.2d 444 (8th Cir. 1985).
(355)	(b)(5), (b)(7)(C), deliberative process, summary judgment	Brumley v. Department of Labor, Civil No. LR-C-87-398 (E.D. Ark. Jan. 28, 1988).
(356)	Adequacy of request	Brunwasser v. Jacob, 453 F. Supp. 567 (W.D. Pa. 1978).
(357)	(b)(5), deliberative process, in camera inspection, inter- or intra-agency memoranda, waiver of exemption (administrative release)	Brush Wellman, Inc. v. Department of Labor, 500 F. Supp. 519 (N.D. Ohio 1980).
(358)	(b)(7)(C), (b)(7)(D), (b)(7)(E)	Bryan v. DOJ, Civil No. 77-1814 (D.D.C. Aug. 16, 1978).
(359)	(b)(7)(A)	Bryant v. IRS, Civil No. 76-31-SD (D. Me. July 21, 1976).

(360)	Transfer of FOIA case	Bubar v. DOJ, Civil No. 79-0141 (D.D.C. May 31, 1979).
(361)	Exceptional circumstances/due diligence, res judicata, Vaughn index	Bubar v. DOJ, 2 GDS ¶81,104 (D.D.C. 1981), dismissed, 3 GDS ¶83,227 (D.D.C. 1981).
(362)	(b)(1), E.O. 12065, (b)(2), (b)(3), 28 U.S.C. §534, Fed.R.Crim.P. 6(e), (b)(5), (b)(7)(C), (b)(7)(D), Vaughn index	Bubar v. FBI, 2 GDS ¶82,069 (D.D.C. 1981), partial summary judgment granted, 3 GDS ¶82,450 (D.D.C. 1982), summary judgment granted, 3 GDS ¶82,477 (D.D.C. 1982), dismissed, 3 GDS ¶82,478 (D.D.C. 1982), attorney's fees denied, 3 GDS ¶83,218 (D.D.C. 1983).
(363)	(b)(4), (b)(6), attorney's fees	Buffalo Evening News, Inc. v. SBA, 666 F. Supp. 467 (W.D.N.Y. 1987).
(364)	(b)(5), (b)(7)(A), attorney work-product privilege	Buffalo Newspaper Guild v. NLRB, 2 GDS ¶81,131 (W.D.N.Y. 1980).
(365)	(b)(1), (b)(3), 50 U.S.C. §403, Fed.R. Crim.P. 6(e), duty to search	Buffone v. CIA, Civil No. 80-2382 (D.D.C. Sept. 30, 1981).
(366)	Pro se litigant	Buhovecky v. DOJ, Civil No. 85-3159 (D.D.C. Feb. 5, 1987).
(367)	Attorney's fees	Bullard v. Webster, 623 F.2d 1042 (5th Cir. 1980), cert. denied, 451 U.S. 907 (1981).
(368)	Fee waiver	Bumgarner v. Webster, Civil No. 84-1460 (D.D.C. Aug. 31, 1984).
(369)	(a)(1)(D), publication	Bunge Corp. v. United States, 5 Cl. Ct. 511 (1984).
(370)	(b)(7)(A), (b)(7)(C), (b)(7)(D), proper party defendant	Burch v. Federal Labor Relations Auth., Civil No. C80-1740A (N.D. Ohio Apr. 10, 1981), modified (N.D. Ohio May 6, 1981).
(371)	Personal records	Bureau of Nat'l Affairs, Inc. v. DOJ, 3 GDS ¶83,064 (D.D.C. 1982), aff'd in part & rev'd in part, 742 F.2d 1484 (D.C. Cir. 1984).
(372)	Proper party defendant	Burgos v. DOJ, Civil No. 87-1222 (D.D.C. Aug. 19, 1987).
(373)	(b)(7)(D), assurance of confidentiality, in camera inspection, pro se litigant, Vaughn index, waiver of exemption	Burkall v. Bureau of Prisons, Civil No. 86-2491 (D.D.C. Oct. 27, 1986), summary judgment granted (D.D.C. June 30, 1987).

(374)	Duty to search	Burkall v. United States Marshals Serv., Civil No. 86-1703 (D.D.C. Sept. 26, 1986).
(375)	Attorney's fees, fees, fee waiver, proper party defendant	Burke v. Kelley, Civil No. 75-336-C3 (D. Kan. Feb. 13, 1976), attorney's fees awarded sub nom. Burke v. DOJ, 432 F. Supp. 251 (D. Kan. 1976), aff'd, 559 F.2d 1182 (10th Cir. 1977).
(376)	(b)(4), (b)(5), deliberative process, in camera inspection, reasonably segregable, summary judgment	Burke Energy Corp. v. DOE, 583 F. Supp. 507 (D. Kan. 1984).
(377)	Exhaustion of administrative remedies	Burkhart v. FBI, Civil No. 77-1675 (D.D.C. Jan. 10, 1979).
(378)	Venue, 28 U.S.C. §1404(a)	Burkhart v. FBI, Civil No. 77-3246 (D. Kan. July 10, 1978).
(379)	Privacy Act access, (b)(3), Fed.R.Crim.P. 6(e), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, in camera inspection	Burks v. DOJ, Civil No. 83-189 (N.D.N.Y. Aug. 9, 1985).
(380)	Adequacy of affidavit	Burns v. Commissioner, Civil Nos. 84-170, 84-171 (D. Ariz. Dec. 13, 1984).
(381)	(b)(2), (b)(3), 26 U.S.C. §6103(b)(2), (b)(7)(E), attorney's fees, "mosaic"	Burns v. IRS, Civil No. 85-1027-PHx (D. Ariz. Oct. 16, 1985), appeal dismissed on procedural grounds, No. 85-2833 (9th Cir. Sept. 15, 1986).
(382)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), de novo review, discretionary release, promise of confidentiality	Burnside-Ott Aviation Training Center v. United States, 617 F. Supp. 279 (S.D. Fla. 1985).
(383)	Jurisdiction	Burrell v. Rodgers, 438 F. Supp. 25 (W.D. Okla. 1977).
(384)	Fee waiver	Burriss v. CIA, 524 F. Supp. 448 (M.D. Tenn. 1981).
(385)	Privacy Act access, (b)(3), 5 U.S.C. §552a(j)(2), (b)(7)(A), failure to meet time limits, FOIA/PA interface, summary judgment, waiver of exemption	Burroughs v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 83-C-1095 (N.D. Ill. Jan. 18, 1984) (consolidated).

(386)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Burroughs Corp. v. Brown, 501 F. Supp. 375 (E.D. Va. 1980), rev'd & remanded sub nom. General Motors Corp. v. Marshall, 654 F.2d 294 (4th Cir. 1981).
(387)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Burroughs Corp. v. Schlesinger, 403 F. Supp. 633 (E.D. Va. 1975).
(388)	Exhaustion of administrative remedies, pro se litigant	Bush v. FBI, Civil No. 85-1055-W-6 (W.D. Mo. Oct. 24, 1985).
(389)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), exhaustion of administrative remedies, failure to meet time limits, proper party defendant, pro se litigant	Bush v. Webster, Civil No. S83-0374-N (S.D. Miss. Mar. 18, 1985), aff'd, No. 85-4262 (5th Cir. Feb. 10, 1986).
(390)	Fees, fee waiver	Bussey v. Bresson, 2 GDS ¶81,228 (D.D.C. 1981).
(391)	Exhaustion of administrative remedies, fee waiver	Butler v. IRS, Civil No. C78-1582A (N.D. Ga. Jan. 25, 1979).
(392)	Dismissal for failure to prosecute	Caginalp v. IRS, Civil No. 80-1749 (D.D.C. June 15, 1982).
(393)	(b)(5), exhaustion of administrative remedies, mootness, stay pending appeal	Caifano v. United States Parole Comm'n, Civil No. 85-3513 (D.D.C. Feb. 26, 1986), dismissed (D.D.C. Sept. 18, 1986).
(394)	(a)(6)(A), exceptional circumstances/ due diligence, failure to meet time limits, Vaughn index	Caifano v. Wampler, 588 F. Supp. 1392 (N.D. Ill. 1984).
(395)	(b)(7)(A)	Cain v. FBI, 2 GDS ¶81,220 (D.D.C. 1981).
(396)	(b)(5)	Cairo Chamber of Commerce v. ICC, 2 GDS ¶81,405 (S.D. Ill. 1981).
(397)	(b)(3), 26 U.S.C. §6103, (b)(7)(A), displacement of FOIA	Cal-Am Corp. v. IRS, 1 GDS ¶80,189 (C.D. Cal. 1980).
(398)	(b)(2), (b)(5), deliberative process, incorporation by reference, reasonably segregable, summary judgment	California Save our Streams Council v. FERC, Civil No. F-87-166-REC (E.D. Cal. Nov. 13, 1987).
(399)	(b)(1), (b)(2), (b)(3), (b)(6), attorney's fees	Cameron v. CIA, Civil No. C76-1741A (N.D. Ga. Sept. 30, 1977), attorney's fees denied (N.D. Ga. Nov. 17, 1977).

(400)	Mootness	Cameron v. Egger, Civil No. 84-1122-GLG (S.D.N.Y. May 7, 1984).
(401)	Fee waiver	Campanille v. DOJ, Civil No. 79-142 (D.D.C. Mar. 15, 1979).
(402)	(b)(2), (b)(5), (b)(6), attorney's fees	Campbell v. Civil Serv. Comm'n, Civil No. 75-M-494 (D. Colo. 1975), aff'd, 539 F.2d 58 (10th Cir. 1976).
(403)	(b)(2), (b)(6), (b)(7)	Campbell v. Guy, Civil No. 5-71646 (E.D. Mich. Oct. 2, 1975), aff'd, No. 75-2486 (6th Cir. Aug. 4, 1976).
(404)	(b)(7)(A), (b)(7)(B), in camera affidavit, in camera inspection	Campbell v. HHS, 518 F. Supp. 1114 (D.D.C. 1981), rev'd & remanded, 682 F.2d 256 (D.C. Cir. 1982).
(405)	(b)(5), (b)(7)(C), (b)(7)(D), attorney-client privilege, attorney work-product privilege, deliberative process, inter- or intra-agency memoranda, proper party defendant	Canadian Javelin v. SEC, 501 F. Supp. 898 (D.D.C. 1980).
(406)	Discovery/FOIA interface	Canal Auth. v. Froehlke, 81 F.R.D. 609 (M.D. Fla. 1979).
(407)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), de novo review	Canal Ref. Co. v. Corrallo, 616 F. Supp. 1035 (D.D.C. 1985).
(408)	Attorney's fees	Cantino v. NLRB, Civil No. 81-1554-MA (D. Mass. Mar. 18, 1982).
(409)	(b)(7)(A), FOIA as a discovery tool, injunction of agency proceeding pending resolution of FOIA claim	Capital Cities Communication, Inc. v. NLRB, 409 F. Supp. 971 (N.D. Cal. 1976).
(410)	(b)(7)(A), (b)(7)(C)	Capital Times Co. v. NLRB, 483 F. Supp. 247 (E.D. Wis. 1980).
(411)	(a)(2)(C), (b)(2), (b)(7), equitable discretion	Caplan v. Bureau of Alcohol, Tobacco & Firearms, 445 F. Supp. 699 (S.D.N.Y. 1978), aff'd on other grounds, 587 F.2d 544 (2d Cir. 1978).
(412)	(a)(1), (a)(2)(C), publication	Capuano v. National Transp. Safety Bd., 843 F.2d 56 (1st Cir. 1988).
(413)	Waiver of exemption (failure to assert in litigation)	Carabetta Enters., Inc. v. Harris, 86 Lab. Cas. (CCH) ¶33,786 (D.D.C. 1979).

(414)	Exceptional circumstances/due diligence	Cardillo v. Smith, Civil No. 84-3906 (D.D.C. Apr. 16, 1985), subsequent decision (D.D.C. Aug. 2, 1985).
(415)	(b)(1), E.O. 12065, (b)(4), (b)(5), deliberative process, mootness, promise of confidentiality, waiver of exemption (unauthorized release)	Carlisle Tire & Rubber Co. v. United States Customs Serv., 1 GDS ¶79,162 (D.D.C. 1979), aff'd in part, rev'd in part, 663 F.2d 210 (D.C. Cir. 1980).
(416)	(b)(1), (b)(2), (b)(3), 18 U.S.C. §2518(8), Fed.R.Crim. P. 6(e), (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), attorney's fees, exhaustion of administrative remedies, failure to meet time limits, fees	Carroll v. DOJ, Civil No. 76-2038 (D.D.C. July 29, 1977), summary judgment granted (D.D.C. May 26, 1978).
(417)	(b)(5), adequacy of agency affidavit, deliberative process, reasonably segregable, Vaughn index, waiver of exemption	Carroll v. IRS, Civil No. 82-3524 (D.D.C. Oct. 3, 1983), partial summary judgment granted (D.D.C. Jan. 31, 1986).
(418)	Attorney's fees	Carson v. Criminal Div. of DOJ, Civil No. B-79-93 (D. Conn. Nov. 2, 1979).
(419)	Dismissal for failure to prosecute	Carson v. DOJ, Civil No. 78-2431 (D.D.C. Feb. 16, 1979), dismissed, 1 GDS ¶80,276 (D.D.C. 1980).
(420)	(b)(2), (b)(5), (b)(7)(A), (b)(7)(C), judicial records, improper withholding, mootness, waiver of exemption (administrative release), waiver of exemption (failure to assert in litigation)	Carson v. DOJ, Civil No. 79-0140 (D.D.C. July 25, 1979), aff'd in part, rev'd in part & remanded, 631 F.2d 1008 (D.C. Cir. 1980), on remand, 2 GDS ¶82,011 (D.D.C. 1981).
(421)	Dismissal for failure to prosecute	Carson v. DOJ, Civil No. 79-0233 (D.D.C. Feb. 16, 1979), summary judgment granted, 1 GDS ¶80,275 (D.D.C. 1980).
(422)	In camera inspection	Carson v. United States Marshals Serv., 1 GDS ¶80,275 (D.D.C. 1980).
(423)	(a)(1)(D)	Carter v. Blum, 493 F. Supp. 368 (S.D.N.Y. 1980).

(424)	(b)(5), (b)(6), adequacy of agency affidavit, attorney work-product privilege, in camera inspection, reasonably segregable	Carter v. Department of Commerce, Civil No. 85-0975 (D.D.C. July 23, 1986), summary affirmance granted in part, No. 86-5556 (D.C. Cir. Dec. 17, 1986), aff'd in part & remanded in part, 830 F.2d 388 (D.C. Cir. 1987).
(425)	Exceptional circumstances/due diligence	Carter v. DEA, Civil No. 82-2465 (D.D.C. Dec. 22, 1982).
(426)	Privacy Act access	Carter v. Orr, Civil No. 81-155-E (W.D. Okla. Apr. 29, 1981).
(427)	Attorney's fees, mootness	Carter v. VA, 780 F.2d 1479 (9th Cir. 1986).
(428)	Attorney's fees	Carver v. IRS, Civil No. 83-3716 (E.D. Mich. Apr. 10, 1984), attorney's fees denied (E.D. Mich. Mar. 25, 1985), reconsideration denied (E.D. Mich. Apr. 25, 1985).
(429)	(b)(5), inter- or intra-agency memoranda	Casanova-Cruz v. United States Parole Comm'n, Civil No. 86-2936 (D.D.C. Nov. 13, 1986), motion to reopen denied (D.D.C. May 20, 1987).
(430)	(b)(5), deliberative process, discovery/ FOIA interface	Caspe v. United States, 1 GDS ¶80,048 (S.D. Iowa 1980).
(431)	(b)(7)(C), (b)(7)(D), proper party defendant	Castaneda v. United States, Civil No. 83-0969-JLI-I (S.D. Cal. Nov. 16, 1983), rev'd, 757 F.2d 1010 (9th Cir. 1985), amended, No. 83-6466 (9th Cir. Oct. 3, 1985).
(432)	Privacy Act access	Castle v. Civil Serv. Comm'n, Civil No. 77-1544 (D.D.C. Jan. 23, 1979).
(433)	Privacy Act access, personal records	Castrey v. McMurray, 3 GDS ¶83,283 (D.D.C. 1983).
(434)	Attorney's fees, exhaustion of administrative remedies	Cazalas v. DOJ, Civil No. 79-2088 (E.D. La. Jan. 9, 1980), rev'd in part & remanded, 660 F.2d 612 (5th Cir. 1981), on remand, 2 GDS ¶82,092 (E.D. La. 1981), rev'd & remanded, 709 F.2d 1051 (5th Cir. 1983).
(435)	Reverse FOIA, (b)(3), 18 U.S.C. §1905	Cedars Nursing & Convalescent Center, Inc. v. Aetna Life Ins. & Casualty Co., 472 F. Supp. 296 (E.D. Pa. 1979).
(436)	Privacy Act access, reverse FOIA	Cell Assocs., Inc. v. National Insts. of Health, 579 F.2d 1155 (9th Cir. 1978).
(437)	(b)(1), E.O. 11652, E.O. 12065, (b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), assurance of confidentiality	Cellini v. FBI, Civil No. 77-1933 (D.D.C. June 6, 1979).

(438)	(b)(6)	Celmins v. Department of the Treasury, 457 F. Supp. 13 (D.D.C. 1977).
(439)	(b)(5), deliberative process	Center for Auto Safety v. Bowers, 1 GDS ¶80,217 (D.D.C. 1980).
(440)	(b)(5), (b)(7), (b)(7)(A), attorney work-product privilege, deliberative process, inter- or intra-agency memoranda, law enforcement purpose, settlement documents	Center for Auto Safety v. DOJ, 576 F. Supp. 739 (D.D.C. 1983), amended, 3 GDS ¶83,240 (D.D.C. 1983), stay granted, 3 GDS ¶83,241 (D.D.C. 1983).
(441)	(b)(5), in camera inspection, mootness	Center for Auto Safety v. EPA, 3 GDS ¶83,066 (D.D.C. 1983), aff'd, 731 F.2d 16 (D.C. Cir. 1984).
(442)	(b)(4), proper party defendant	Center for Dev. Policy v. Export-Import Bank of the United States, 2 GDS ¶82,201 (D.D.C. 1982).
(443)	(b)(7), case or controversy	Center for Nat'l Policy Review on Race & Urban Issues v. Richardson, Civil No. 71-2177 (D.D.C. Dec. 8, 1972), rev'd sub nom. Center for Nat'l Policy Review on Race & Urban Issues v. Weinberger, 502 F.2d 370 (D.C. Cir. 1974), dismissed on remand (D.D.C. Sept. 9, 1974), aff'd, 534 F.2d 351 (D.C. Cir. 1976).
(444)	(b)(1), E.O. 12065, (b)(5), Congressional records, deliberative process, discovery in FOIA litigation, exceptional circumstances/due diligence, failure to meet time limits, fee waiver, jurisdiction, "mosaic," prompt disclosure	Center for Nat'l Sec. Studies v. CIA, Civil No. 80-1235 (D.D.C. Jan. 8, 1981), on motion for summary judgment, 2 GDS ¶81,285 (D.D.C. 1981), subsequent decision, 3 GDS ¶82,256 (D.D.C. 1982), partial summary judgment granted (D.D.C. May 17, 1983), remanded, 711 F.2d 409 (D.C. Cir. 1983), partial summary judgment granted, 577 F. Supp. 584 (D.D.C. 1983).
(445)	(b)(1), E.O. 12356	Center for Nat'l Sec. Studies v. Department of State, Civil No. 86-0295 (D.D.C. Jan. 29, 1987).
(446)	Exhaustion of administrative remedies	Center for the Defense of Free Enter. v. President's Comm'n on Ams. Outdoors, Civil No. C87-32C (W.D. Wash. Mar. 31, 1987).
(447)	(b)(5), (b)(6)	Central Pa. Legal Servs. v. HHS, Civil No. 86-2621 (D.D.C. Feb. 27, 1987).

(448)	(b)(3), Fed.R.Crim.P. 6(e), (b)(5), (b)(7), (b)(7)(C), deliberative process, in camera inspection, judicial records	Cerella v. Bell, Civil No. 79-6426-JE (S.D. Fla. Aug. 2, 1984), dismissed (S.D. Fla. Aug. 23, 1984) (magistrate's report adopted).
(449)	(b)(1), belated classification, in camera inspection	Cervase v. Department of State, Civil No. 76-2338 (D.N.J. Apr. 1, 1977), aff'd, No. 77-1627 (3d Cir. 1978).
(450)	(b)(1), (b)(2), (b)(3), 50 U.S.C. §403, (b)(6), duty to search, in camera inspection	Cerveny v. CIA, 445 F. Supp. 772 (D. Colo. 1978).
(451)	Dismissal for failure to prosecute	Cessna Aircraft Co. v. Hall, Civil No. 84-C-10850 (N.D. Ill. Mar. 19, 1985).
(452)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), burden of proof, injunction of agency proceeding pending resolution of FOIA claim, jurisdiction	Cessna Aircraft Co. v. NLRB, 405 F. Supp. 1042 (D. Kan. 1975), rev'd, 542 F.2d 834 (10th Cir. 1976).
(453)	FOIA as a discovery tool	Chamber of Commerce of the United States v. Legal Aid Soc'y, 423 U.S. 1309 (1975).
(454)	Vaughn index	Chamber of Commerce of the United States v. OMB, 1 GDS ¶80,240 (D.D.C. 1980), dismissed, Civil No. 80-1384 (D.D.C. Mar. 31, 1981).
(455)	(a)(2)(C), (b)(3), 26 U.S.C. §6103, §7213, (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), attorney's fees, deliberative process	Chamberlain v. Alexander, 419 F. Supp. 235 (S.D. Ala. 1976), modified sub nom. Chamberlain v. Kurtz, 589 F.2d 827 (5th Cir. 1979), cert. denied, 444 U.S. 842 (1979).
(456)	Case or controversy	Chambers v. Carlson, Civil No. 87-0393 (D.D.C. June 16, 1987).
(457)	(b)(5)	Chambers v. United States Parole Comm'n, Civil No. 86-1704 (D.D.C. Sept. 24, 1986), stay pending appeal (D.D.C. Nov. 12, 1986).
(458)	Exhaustion of administrative remedies	Chang v. INS, Civil No. H-88-450 (S.D. Tex. May 13, 1988).
(459)	(b)(6), exhaustion of administrative remedies	Chappell v. Hodgson, Civil No. 15-480 (D. Conn. July 19, 1973).

(460)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), discretionary release, promise of confidentiality	Charles River Park "A," Inc. v. HUD, 360 F. Supp. 212 (D.D.C. 1973), rev'd & remanded, 519 F.2d 935 (D.C. Cir. 1975).
(461)	(b)(3), 42 U.S.C. §2000e, (b)(7)(A), (b)(7)(D)	Charlotte-Mecklenburg Hosp. Auth. v. Perry, 571 F.2d 195 (4th Cir. 1978).
(462)	(b)(7)(A), injunction of agency proceeding pending resolution of FOIA claim	Chassen Bakers, Inc. v. NLRB, 91 L.R.R.M. 2345 (M.D. Pa. 1975).
(463)	Fee waiver, pro se litigant	Chauvin v. HHS, Civil No. 83-9073-WK (S.D.N.Y. May 22, 1984).
(464)	(b)(5)	Chavez v. DOJ, Civil No. 85-2988 (D.D.C. Sept. 19, 1986).
(465)	(b)(7)	Chavkin v. Alexander, 401 F. Supp. 817 (S.D.N.Y. 1975).
(466)	(b)(3), 26 U.S.C. §6103(a)(1), §6103(e)(7), displacement of FOIA, FOIA/PA interface	Cheek v. IRS, 703 F.2d 271 (7th Cir. 1983).
(467)	(b)(3), 26 U.S.C. §6103(e)(7), displacement of FOIA, fee waiver	Cheek v. IRS, Civil No. 83-C-6851 (N.D. Ill. June 11, 1984).
(468)	(b)(5), deliberative process	Chemical Mfrs. Ass'n v. Consumer Prod. Safety Comm'n, 600 F. Supp. 114 (D.D.C. 1984), motion to amend denied, Civil No. 84-1852 (D.D.C. Feb. 14, 1985), renewed motion to amend denied (D.D.C. Mar. 12, 1985).
(469)	(b)(5), inter- or intra-agency memoranda, reasonably segregable, waiver of exemption (administrative release)	Chemical Mfrs. Ass'n v. OSHA, Civil No. 80-0605 (D.D.C. Dec. 12, 1980).
(470)	(b)(7)(C), (b)(7)(E)	Cheney v. FBI, Civil No. 86-C-126C (W.D. Wis. Apr. 6, 1987).
(471)	Privacy Act access, exhaustion of administrative remedies, FOIA/PA interface	Cheney v. Graham, Civil No. 86-C-197C (W.D. Wis. Apr. 21, 1986), dismissed sub nom. Cheney v. DOJ (W.D. Wis. Apr. 6, 1987).
(472)	(b)(3), 26 U.S.C. §6103, displacement of FOIA	Chermack v. IRS, 2 GDS ¶81,171 (N.D. Tex. 1981).
(473)	(a)(1)(D), (a)(2)(A)	Cheshire Hosp. v. New Hampshire-Vermont Hospitalization Serv., Inc., 689 F.2d 1112 (1st Cir. 1982).

(474)	Attorney's fees	Chestnut v. Farmers Home Admin., Civil No. 83-6399-ME (D. Or. Sept. 14, 1984), magistrate's report adopted (D. Or. Oct. 9, 1984).
(475)	Reverse FOIA, (b)(3), 18 U.S.C. §1905	Chevron Chem. Co. v. Costle, 443 F. Supp. 1024 (N.D. Cal. 1978).
(476)	(b)(5), (b)(7)(A), attorney work-product privilege, mootness, proper party defendant, waiver of exemption	Chilivis v. SEC, 1 GDS ¶79,208 (N.D. Ga. 1979), aff'd, 673 F.2d 1205 (11th Cir. 1982).
(477)	(b)(5), deliberative process	Chocolate Mfrs. Ass'n v. FTC, Civil Nos. 78-1240, 78-1879 (D.D.C. Dec. 22, 1978).
(478)	No record within scope of request	Chodos v. FBI, Civil No. 78-2020-HFW (S.D.N.Y. Mar. 30, 1979).
(479)	(b)(2), (b)(3), 18 U.S.C. §2510, (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), agency records, assurance of confidentiality, deliberative process, duty to search, reasonably segregable, summary judgment, Vaughn index	Chong v. DEA, Civil No. 85-3726 (D.D.C. Jan. 6, 1986), summary judgment granted (D.D.C. Mar. 14, 1988).
(480)	(b)(5), attorney work-product privilege, discovery/FOIA interface, duty to search	Christmann & Welborn v. DOE, 589 F. Supp. 584 (N.D. Tex. 1984).
(481)	(b)(6)	Christy v. United States, 68 F.R.D. 375 (N.D. Tex. 1975).
(482)	Attorney's fees	Chrysler Corp. v. Department of the Treasury, 1 GDS ¶80,110 (D.D.C. 1980).
(483)	Reverse FOIA	Chrysler Corp. v. Marshall, Civil No. 74-850C(B) (E.D. Mo. Nov. 29, 1978).
(484)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D)	Chrysler Corp. v. NLRB, 92 L.R.R.M. 3191 (E.D. Mich. 1976).
(485)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §2000e-8(e), 44 U.S.C. §3504, (b)(4), de novo review, discretionary release, nexus test	Chrysler Corp. v. Schlesinger, 412 F. Supp. 171 (D. Del. 1976), vacated, 565 F.2d 1172 (3d Cir. 1977), rev'd sub nom. Chrysler Corp. v. Brown, 441 U.S. 281 (1979), on remand, 611 F.2d 439 (3d Cir. 1979).

(486)	(b)(2), (b)(3), 26 U.S.C. §6103, (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), Vaughn index	Church of Scientology v. Bell, Civil No. 76-1006 (D.D.C. June 8, 1977), summary judgment granted, 1 GDS ¶80,082 (D.D.C. 1980), remanded mem. sub nom. Church of Scientology v. Smith, 644 F.2d 39 (D.C. Cir. 1981), on remand, 2 GDS ¶82,152 (D.D.C. 1982).
(487)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), (b)(7), (b)(7)(E), adequacy of agency affidavit, duty to search	Church of Scientology v. Bush, Civil No. 75-1048 (D.D.C. June 8, 1977), remanded, No. 78-1832 (D.C. Cir. Nov. 15, 1978), on remand sub nom. Church of Scientology v. Turner, 1 GDS ¶79, 170 (D.D.C. 1979), aff'd, 662 F.2d 784 (D.C. Cir. 1980).
(488)	(b)(5), (b)(6), (b)(7)(C), attorney-client privilege, attorney's fees, attorney work-product privilege, duty to search, res judicata	Church of Scientology v. Califano, 1 GDS ¶79,172 (D.D.C. 1979).
(489)	(a)(6)(B), (b)(1), E.O. 11652, (b)(7), (b)(7)(C), agency records, law enforcement purpose, referral of request to another agency	Church of Scientology v. Department of the Air Force, Civil No. 76-1008 (D.D.C. Apr. 12, 1978).
(490)	(b)(1), E.O. 11652, (b)(6), (b)(7)(C), adequacy of agency affidavit, burden of proof, in camera inspection, reasonably segregable	Church of Scientology v. Department of the Army, Civil No. 75-3056-F (C.D. Cal. June 2, 1977), aff'd in part, rev'd in part, 607 F.2d 1282 (9th Cir. 1979), reh'g denied, 611 F.2d 738 (9th Cir. 1980) (consolidated).
(491)	(b)(1), E.O. 11652, (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), in camera inspection, law enforcement purpose	Church of Scientology v. DOD, Civil No. 75-4072-F (C.D. Cal. June 2, 1977), aff'd in part, rev'd in part, 611 F.2d 738 (9th Cir. 1980) (consolidated).
(492)	(b)(1), (b)(2), (b)(5), (b)(7)(A), (b)(7)(D), (b)(7)(F)	Church of Scientology v. DOJ, 410 F. Supp. 1297 (C.D. Cal. 1976), aff'd, 612 F.2d 417 (9th Cir. 1979).
(493)	Summary judgment, Vaughn index	Church of Scientology v. DOJ, Civil No. 78-679-T-K (M.D. Fla. Dec. 20, 1979).

(494)	(b)(1), (b)(3), 8 U.S.C. §1202(b), (b)(6), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, discovery in FOIA litigation, duty to search, reasonably segregable, Vaughn index	Church of Scientology v. Department of State, 493 F. Supp. 418 (D.D.C. 1980), supplemental decision, 1 GDS ¶80,262 (D.D.C. 1980).
(495)	(b)(2), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), law enforcement purpose	Church of Scientology v. DEA, 2 GDS ¶82,045 (W.D. Tex. 1981).
(496)	Agency records	Church of Scientology v. ERDA, Civil No. 76-0011 (C.D. Cal. Sept. 23, 1976).
(497)	(b)(1), E.O. 12065, (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, burden of proof, discovery in FOIA litigation, dismissal for failure to prosecute, in camera inspection	Church of Scientology v. FBI, 2 GDS ¶81,154 (D. Nev. 1979), reconsideration granted in part, 2 GDS ¶81,155 (D. Nev. 1980), aff'd in part, vacated & remanded in part, 3 GDS ¶83,047 (9th Cir. 1982).
(498)	(b)(1), (b)(2), (b)(7)(A), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, de novo review, in camera inspection	Church of Scientology v. FBI, 2 GDS ¶81,124 (D.D.C. 1980).
(499)	Transfer of FOIA case	Church of Scientology v. FBI, Civil No. 79-3620-CSH (S.D.N.Y. Jan. 31, 1980).
(500)	Vaughn index	Church of Scientology v. FDA, 2 GDS ¶82,005 (D.D.C. 1981), on motion for summary judgment, 3 GDS ¶82,403 (D.D.C. 1982).
(501)	(b)(5), (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), attorney work-product privilege, law enforcement purpose, Vaughn index	Church of Scientology v. Gray, Civil No. 76-1165 (D.D.C. June 15, 1979), summary judgment granted in part, 2 GDS ¶82,110 (D.D.C. 1980), aff'd, No. 80-1616 (D.C. Cir. Jan. 23, 1981).
(502)	Attorney's fees	Church of Scientology v. Harris, Civil No. 76-1005 (D.D.C. Dec. 18, 1979), rev'd & remanded, 653 F.2d 584 (D.C. Cir. 1981), dismissed on remand sub nom. Church of Scientology v. Schweiker (D.D.C. Sept. 9, 1981).

(503)	(b)(3), 18 U.S.C. §1905, 26 U.S.C. §6103, §7213, (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(F), attorney-client privilege, attorney work-product privilege, deliberative process, fees	Church of Scientology v. IRS, Civil No. 74-3465-RJK (C.D. Cal. Oct. 29, 1976).
(504)	(b)(3), 26 U.S.C. §6103, (b)(6), adequacy of request, displacement of FOIA, duty to search, in camera inspection, res judicata, Vaughn index	Church of Scientology v. IRS, 569 F. Supp. 1165 (D.D.C. 1983), vacated & remanded, 792 F.2d 146 (D.C. Cir. 1986), further decision on en banc issue, 792 F.2d 153 (D.C. Cir. 1986), aff'd on en banc issue, 108 S. Ct. 271 (1987).
(505)	(b)(5), agency records	Church of Scientology v. Simon, 433 F. Supp. 1107 (D.D.C. 1977).
(506)	Attorney's fees, transfer of FOIA case	Church of Scientology v. United States, Civil No. 77-0966 (D.D.C. Feb. 5, 1982), magistrate's report adopted (D.D.C. Feb. 13, 1984), aff'd, No. 84-5310 (D.C. Cir. Apr. 5, 1985).
(507)	Attorney's fees, in camera inspection	Church of Scientology v. United States Customs Serv., Civil No. 75-1364 (D.D.C. Mar. 3, 1977), attorney's fees denied (D.D.C. May 4, 1977).
(508)	(b)(3), 39 U.S.C. §410, attorney's fees, FOIA as a discovery tool	Church of Scientology v. United States Postal Serv., Civil No. 75-2004-R (C.D. Cal. Dec. 19, 1975), rev'd & remanded, 593 F.2d 902 (9th Cir. 1979), on remand (C.D. Cal. 1980), rev'd, 633 F.2d 1327 (9th Cir. 1980), attorney's fees denied (C.D. Cal. 1981), rev'd & remanded, 700 F.2d 486 (9th Cir. 1983), attorney's fees denied (C.D. Cal. 1983), aff'd, No. 83-6146 (9th Cir. May 14, 1984) (unpublished memorandum), mem., 735 F.2d 1368 (9th Cir. 1984).
(509)	Agency, agency records	Ciba-Geigy Corp. v. Mathews, 428 F. Supp. 523 (S.D.N.Y. 1977).
(510)	Agency	Ciccone v. Waterfront Comm'n, 438 F. Supp. 55 (S.D.N.Y. 1977).
(511)	(b)(3), (b)(5), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), in camera inspection, waiver of exemption	Cirami v. Levi, Civil No. 76-C-621 (E.D.N.Y. Mar. 21, 1979), modified (E.D.N.Y. Nov. 17, 1980).
(512)	Exhaustion of administrative remedies	Cities of Anaheim v. FERC, Civil No. 83-1151-AAH-JRx (C.D. Cal. May 13, 1983).

(513)	(b)(5), attorney work-product privilege, deliberative process, in camera inspection, reasonably segregable, summary judgment	Cities Serv. Co. v. FTC, 627 F. Supp. 827 (D.D.C. 1984), aff'd mem., 778 F.2d 889 (D.C. Cir. 1985).
(514)	Adequacy of agency affidavit, duty to search	Citizens Against UFO Secrecy v. Defense Intelligence Agency, Civil No. 80-1563 (D.D.C. Mar. 31, 1981).
(515)	(b)(3), 50 U.S.C. §402, adequacy of agency affidavit, in camera affidavit, in camera inspection	Citizens Against UFO Secrecy v. National Sec. Agency, 2 GDS ¶82,243 (D.D.C. 1980), aff'd, 2 GDS ¶82,244 (D.C. Cir. 1981), cert. denied, 455 U.S. 1002 (1982).
(516)	In camera inspection, Vaughn index	Citizens Bureau of Investigation v. FBI, Civil No. C78-80 (N.D. Ohio Dec. 12, 1979).
(517)	(b)(3), 15 U.S.C. §176, (b)(4)	Citizens for a Better Env't v. Department of Commerce, 410 F. Supp. 1248 (N.D. Ill. 1976).
(518)	(b)(6), adequacy of agency affidavit, discovery in FOIA litigation, in camera affidavit	Citizens for Envtl. Quality v. USDA, Civil No. 83-3763 (D.D.C. May 24, 1984), summary judgment granted, 602 F. Supp. 534 (D.D.C. 1984).
(519)	(a)(2)(C), (b)(2), (b)(5), interaction of (a)(2) & (a)(3)	City of Concord v. Ambrose, 333 F. Supp. 958 (N.D. Cal. 1971).
(520)	Summary judgment	City of Gadsden v. DOJ, Civil No. 80-HM-0782-M (N.D. Ala. Dec. 1, 1981).
(521)	(a)(1)(D), (a)(2)(A), publication	City of Gillette v. FERC, 737 F.2d 883 (10th Cir. 1984).
(522)	(a)(1)	City of Santa Clara v. Kleppe, 418 F. Supp. 1243 (N.D. Cal. 1976), on motion to reconsider, 428 F. Supp. 315 (N.D. Cal. 1976), aff'd in part, rev'd in part & remanded sub nom. City of Santa Clara v. Andrus, 572 F.2d 660 (9th Cir. 1978), cert. denied, 439 U.S. 859 (1978).
(523)	(b)(5), deliberative process, duty to disclose, in camera inspection	City of W. Chicago v. NRC, 547 F. Supp. 740 (N.D. Ill. 1982).
(524)	Summary judgment	Clark v. Bureau of Indian Affairs, Civil No. 82-584-TUC-ACM (D. Ariz. May 16, 1983).

(525)	(b)(2), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(E), in camera affidavit, in camera inspection, law enforcement purpose	Clark v. Department of Labor, Civil No. 84-0965 (D.D.C. Nov. 15, 1985) (magistrate's report), summary judgment granted (D.D.C. Jan. 6, 1986).
(526)	Attorney's fees	Clark v. Director, Office of Admin. Law Judges, Civil No. C-2-83-1048 (S.D. Ohio Apr. 18, 1985).
(527)	(b)(4), no record within scope of request, promise of confidentiality	Clarke v. Department of the Treasury, Civil No. 84-1873 (E.D. Pa. Jan. 24, 1986).
(528)	Attorney's fees, FOIA/PA interface, pro se litigant	Clarkson v. IRS, 678 F.2d 1368 (11th Cir. 1982), costs awarded, Civil No. C79-642A (N.D. Ga. June 29, 1984), aff'd on other grounds, 811 F.2d 1396 (11th Cir. 1987).
(529)	(b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(A), (b)(7)(C), proper party defendant, Vaughn index	Clarkson v. IRS, 82-2 U.S. Tax Cas. (CCH) ¶9656 (D.S.C. 1982).
(530)	Attorney's fees	Clarkson v. IRS, No. 83-1193 (4th Cir. May 1, 1984) (unpublished memorandum), mem., 735 F.2d 1354 (4th Cir. 1984).
(531)	Res judicata	Clayton v. DOJ, Civil No. 82-3482 (M.D. Tenn. Aug. 24, 1982).
(532)	FOIA as a discovery tool, jurisdiction	Clayton v. DOJ, Civil No. 86-1485 (D.D.C. July 21, 1986).
(533)	(b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality	Cleary v. FBI, Civil No. 85-324-A (S.D. Iowa Mar. 28, 1986), aff'd, 811 F.2d 421 (8th Cir. 1987).
(534)	Exceptional circumstances/due diligence, failure to meet time limits, preliminary injunction	Cleaver v. Kelley, 415 F. Supp. 174 (D.D.C. 1976), rev'd & remanded, No. 76-1831 (D.C. Cir. Nov. 23, 1976), on remand, 427 F. Supp. 80 (D.D.C. 1976).
(535)	(b)(7)	Clement Bros. Co. v. NLRB, 282 F. Supp. 540 (N.D. Ga. 1968), aff'd, 407 F.2d 1027 (5th Cir. 1969).
(536)	Reverse FOIA, (b)(7)(A), preliminary injunction	Clements Wire & Mfg. Co. v. NLRB, 589 F.2d 894 (5th Cir. 1979).
(537)	Attorney's fees	Click v. Department of the Air Force, Civil No. 1-81-73 (N.D. Tex. Apr. 19, 1982).

(538)	(b)(3), 26 U.S.C. §6103, (b)(5), adequacy of agency affidavit, attorney's fees, discovery in FOIA litigation, duty to search, incorporation by reference	Cliff v. IRS, 496 F. Supp. 568 (S.D.N.Y. 1980), supplemental decision, 529 F. Supp. 11 (S.D. N.Y. 1981).
(539)	(b)(7)(A), (b)(7)(C), (b)(7)(D), FOIA as a discovery tool	Climax Molybdenum Co. v. NLRB, 407 F. Supp. 208 (D. Colo. 1975), aff'd, 539 F.2d 63 (10th Cir. 1976).
(540)	(b)(5), adequacy of request, attorney-client privilege, deliberative process, discovery in FOIA litigation, duty to search	Clinchfield Coal Corp. v. Marshall, 2 GDS ¶81,018 (D.D.C. 1980), on motion for summary judgment sub nom. Clinchfield Coal Corp. v. Donovan, 3 GDS ¶82,251 (D.D.C. 1982).
(541)	(b)(3), Fed.R.Crim. P. 6(e), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), adequacy of agency affidavit, attorney's fees, FOIA as a discovery tool, waiver of exemption	Clyde v. Department of Labor, Civil No. 85-139-PHX-RGS (D. Ariz. July 3, 1986), attorney's fees awarded (D. Ariz. Apr. 18, 1988).
(542)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), de novo review, waiver of exemption	CNA Fin. Corp. v. Donovan, 2 GDS ¶82,107 (D.D.C. 1981), aff'd, 830 F.2d 1132 (D.C. Cir. 1987), cert. denied sub nom. CNA Fin. Corp. v. McLaughlin, 108 S. Ct. 1270 (1988).
(543)	Reverse FOIA, (b)(5), deliberative process, in camera inspection	CNA Fin. Corp. v. Marshall, 2 GDS ¶81,149 (D.D.C. 1981).
(544)	Declaratory relief, fee waiver (Reform Act), summary judgment	Coalition for Safe Power v. DOE, Civil No. 87-1380 PA (D. Or. July 22, 1988).
(545)	(a)(2)(A), (b)(5), (b)(7)(A), adequacy of agency affidavit, attorney-client privilege, attorney work-product privilege, burden of proof, deliberative process, Vaughn index, waiver of exemption	Coastal States Gas Corp. v. DOE, Civil No. 76-1173 (D.D.C. Aug. 22, 1979), aff'd, 617 F.2d 854 (D.C. Cir. 1980).

(546)	(b)(5), (b)(7)(A), attorney-client privilege, attorney work-product privilege, burden of proof, deliberative process, duty to search, FOIA as a discovery tool, improper withholding, in camera inspection, injunction of agency proceeding pending resolution of FOIA claim, stay pending appeal, summary judgment, Vaughn index	Coastal States Gas Corp. v. DOE, 495 F. Supp. 1172 (D. Del. 1980), subsequent decision, 495 F. Supp. 1180 (D. Del. 1980), rev'd & remanded, 644 F.2d 969 (3d Cir. 1981).
(547)	(b)(6), adequacy of request, FOIA/PA interface	Cochran v. United States, Civil No. 483-216 (S.D. Ga. July 2, 1984), aff'd, 770 F.2d 949 (11th Cir. 1985).
(548)	(b)(4), (b)(5), (b)(7)	Cogswell v. FDA, Civil No. 70-519-ACW (N.D. Cal. June 5, 1970).
(549)	(b)(1), E.O. 12065, (b)(2), (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(5), (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, duty to search, exhaustion of administrative remedies, FOIA/PA interface, waiver of exemption (failure to assert in litigation)	Cohen v. Bell, Civil No. 77-3449-MML (C.D. Cal. June 4, 1980), aff'd sub nom. Cohen v. Smith, No. 81-5365 (9th Cir. Mar. 25, 1983) (unpublished memorandum), mem., 705 F.2d 467 (9th Cir. 1983), cert. denied, 464 U.S. 939 (1983).
(550)	(b)(2), (b)(3), summary judgment	Cohen v. CIA, Civil No. 87-1707 (D.D.C. Jan. 25, 1988).
(551)	(b)(5), (b)(7), (b)(7)(A), (b)(7)(C)	Cohen v. EPA, 575 F. Supp. 425 (D.D.C. 1983).
(552)	(b)(1)	Colby v. Halperin, 656 F.2d 70 (4th Cir. 1981).
(553)	(b)(5), (b)(7)(C), adequacy of agency affidavit, attorney work-product privilege, deliberative process, reasonably segregable	Colley v. Federal Labor Relations Auth., Civil No. 87-1064-LFO (D.D.C. Apr. 15, 1988).
(554)	(b)(7)	Collins v. Federal Highway Admin., Civil No. 6486 (E.D. Va. July 29, 1968).
(555)	(b)(5), (b)(7)(D)	Colpoys v. OSHA, 3 GDS ¶82,422 (W.D.N.Y. 1980).

(556)	(b)(6), FOIA as a discovery tool, injunction of agency proceeding pending resolution of FOIA claim	Columbia Packing Co. v. USDA, 417 F. Supp. 651 (D. Mass. 1976), aff'd, 563 F.2d 495 (1st Cir. 1977).
(557)	Privacy Act access, exhaustion of administrative remedies, proper party defendant	Comer v. IRS, Civil No. 85-10503-BC (E.D. Mich. June 19, 1986), aff'd, No. 86-1627 (6th Cir. Oct. 19, 1987) (unpublished memorandum), mem., 831 F.2d 294 (6th Cir. 1987).
(558)	(b)(5), adequacy of agency affidavit, deliberative process, in camera inspection, mootness	Comey v. AEC, Civil No. 72-C-1744 (N.D. Ill. July 10, 1973), aff'd in part, rev'd in part, Nos. 73-1258, 73-1358 (7th Cir. July 27, 1973).
(559)	Attorney's fees	Comint Corp. v. DOJ, Civil No. 77-1725 (D.D.C. Oct. 24, 1978), motion to amend denied, 1 GDS ¶79,179 (D.D.C. 1979).
(560)	Jurisdiction	Commercial Envelope Mfg. Co. v. SEC, 450 F.2d 342 (2d Cir. 1971).
(561)	(b)(1), (b)(7)(C), (b)(7)(D)	Committee on Chicano Rights, Inc. v. DOJ, 3 GDS ¶82,520 (S.D. Cal. 1982).
(562)	(a)(4)(D), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), burden of proof, venue	Committee on Masonic Homes v. NLRB, 414 F. Supp. 426 (E.D. Pa. 1976), vacated & remanded for clarification, 556 F.2d 214 (3d Cir. 1977), on remand, Civil No. 76-851 (E.D. Pa. Jan. 13, 1978).
(563)	(b)(7)	Committee to Investigate Assassinations, Inc. v. DOJ, Civil No. 70-3651 (D.D.C. July 29, 1971), aff'd, No. 71-1829 (D.C. Cir. Oct. 24, 1973).
(564)	(b)(3), 18 U.S.C. §1905, (b)(4), (b)(5), deliberative process	Common Cause v. Department of the Air Force, 1 GDS ¶80,162 (D.D.C. 1980), vacated & dismissed in part, Nos. 80-2046, 80-2056 (D.C. Cir. Jan. 27, 1981).
(565)	(b)(5), attorney-client privilege, deliberative process, fee waiver, incorporation by reference	Common Cause v. IRS, 1 GDS ¶79,188 (D.D.C. 1979), aff'd, 646 F.2d 656 (D.C. Cir. 1981).
(566)	(b)(7)(C)	Common Cause v. Ruff, 467 F. Supp. 941 (D.D.C. 1979), rev'd, 628 F.2d 179 (D.C. Cir. 1980), dismissed by stipulation on remand, Civil No. 77-0297 (D.D.C. Jan. 22, 1981).

(567)	(b)(5), (b)(7)(D)	Communications Workers of Am. v. Marshall, Civil No. C77-953 (N.D. Ohio June 1, 1983).
(568)	Attorney's fees, exceptional circumstances/due diligence, mootness	Communist Party of the United States v. DOJ, Civil No. 75-1770 (D.D.C. Mar. 23, 1976), remanded, No. 76-1746 (D.C. Cir. Oct. 27, 1977).
(569)	Preliminary injunction	Community Legal Servs. v. Legal Servs. Corp., Civil No. 86-3617 (E.D. Pa. June 20, 1986).
(570)	(b)(4), burden of proof, promise of confidentiality	Comstock Int'l v. Export-Import Bank of the United States, 464 F. Supp. 804 (D.D.C. 1979).
(571)	Agency, agency records	Congressional Information Serv., Inc. v. GPO, Civil No. 86-3408 (D.D.C. Apr. 7, 1987).
(572)	(b)(7), (b)(7)(C), law enforcement purpose	Congressional News Syndicate v. DOJ, 438 F. Supp. 538 (D.D.C. 1977).
(573)	Attorney's fees	Conklin v. IRS, Civil No. 81-Z-382 (D. Colo. May 13, 1982).
(574)	Fee waiver	Conklin v. United States, 654 F. Supp. 1104 (D. Colo. 1987).
(575)	(b)(3), 26 U.S.C. §6103(b)(2), (b)(7)(D)	Conklin v. United States, Civil No. 84-K-424 (D. Colo. Sept. 14, 1984).
(576)	Privacy Act access, dismissal for failure to prosecute, fee waiver, summary judgment	Conner v. CIA, Civil No. 84-3625 (D.D.C. Jan. 31, 1986), appeal dismissed, No. 86-5221 (D.C. Cir. Jan. 23, 1987).
(577)	(b)(5), (b)(7)(D), attorney work-product privilege, deliberative process, waiver of exemption (failure to assert in litigation)	Conoco Inc. v. DOJ, 521 F. Supp. 1301 (D. Del. 1981), aff'd in part, rev'd in part & remanded, 687 F.2d 724 (3d Cir. 1982).
(578)	(b)(3), 15 U.S.C. §57b-2(f), (b)(5), deliberative process	Conoco Inc. v. FTC, 3 GDS ¶82,499 (S.D. Tex. 1982).
(579)	(b)(5), deliberative process, exhaustion of administrative remedies	Conservation Found. v. Department of the Interior, Civil No. 72-0718 (D.D.C. June 21, 1972).
(580)	(a)(1)(D), publication	Conservation Law Found. v. Clark, 590 F. Supp. 1467 (D. Mass. 1984).

(581)	Agency records, attorney's fees, duty to create a record, duty to search, prompt disclosure, proper party defendant	Conservation Law Found. v. Department of the Air Force, Civil No. 85-4377-MA (D. Mass. Apr. 2, 1986), renewed motion for summary judgment granted (D. Mass. June 6, 1986), attorney's fees awarded (D. Mass. Oct. 6, 1986).
(582)	(b)(1), E.O. 12356, (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(5), adequacy of agency affidavit, belated classification, deliberative process, duty to search	Conservative Caucus v. Department of State, Civil No. 83-3107 (D.D.C. June 28, 1985).
(583)	Attorney's fees, mootness	Constangy, Brooks & Smith v. NLRB, 851 F.2d 839 (6th Cir. 1988).
(584)	(b)(8), discovery in FOIA litigation	Consumers Union of the United States v. Bloom, Civil No. 76-1529 (D.D.C. Feb. 23, 1977), summary judgment granted sub nom. Consumers Union of the United States v. Heimann (D.D.C. Nov. 1, 1977), aff'd, 589 F.2d 531 (D.C. Cir. 1978).
(585)	(b)(4)	Consumers Union of the United States v. Board of Governors of the Fed. Reserve Sys., Civil No. 73-1766 (D.D.C. May 31, 1974).
(586)	Attorney's fees	Consumers Union of the United States v. Board of Governors of the Fed. Reserve Sys., 410 F. Supp. 63 (D.D.C. 1976).
(587)	Reverse FOIA, case or controversy, no improper withholding, preliminary injunction, venue	Consumers Union of the United States v. Consumer Prod. Safety Comm'n, 400 F. Supp. 848 (D.D.C. 1975), rev'd & remanded, 561 F.2d 349 (D.C. Cir. 1977), vacated & remanded sub nom. GTE Sylvania, Inc. v. Consumers Union of the United States, 434 U.S. 1030 (1978), on remand, 590 F.2d 1209 (D.C. Cir. 1978), rev'd, 445 U.S. 375 (1980).
(588)	Declaratory relief	Consumers Union of the United States v. ICC, 1975 Fed. Carr. Cas. (CCH) ¶82,528 (D.D.C. 1974).
(589)	(b)(8), summary judgment	Consumers Union of the United States v. Office of the Comptroller of the Currency, Civil No. 86-1841-SSH (D.D.C. Mar. 11, 1988).
(590)	(b)(4), (b)(7), declaratory relief	Consumers Union of the United States v. Saxbe, 1974 Trade Cas. (CCH) ¶75,057 (D.D.C. 1974).

(591)	(b)(2), (b)(3), 18 U.S.C. §1905, 38 U.S.C. §216, (b)(4), (b)(5), deliberative process, equitable discretion, mootness	Consumers Union of the United States v. VA, 301 F. Supp. 796 (S.D.N.Y. 1969), appeal dismissed as moot, 436 F.2d 1363 (2d Cir. 1971).
(592)	Attorney's fees	Continental Casualty Co. v. Marshall, 520 F. Supp. 56 (N.D. Ill. 1981).
(593)	Reverse FOIA, (b)(4)	Continental Oil Co. v. FPC, 519 F.2d 31 (5th Cir. 1975), cert. denied sub nom. Superior Oil Co. v. FPC, 425 U.S. 971 (1976).
(594)	Reverse FOIA, (b)(4), discretionary release	Continental Stock Transfer & Trust Co. v. SEC, 566 F.2d 373 (2d Cir. 1977).
(595)	(b)(2), (b)(5), (b)(7)	Control Data Corp. v. FTC, Civil No. 4-74-25 (D. Minn. May 3, 1974).
(596)	(b)(5), (b)(7)(A), (b)(7)(D), deliberative process, in camera inspection, law enforcement purpose, reasonably segregable	Control Data Corp. v. FTC, Civil No. 4-74-412 (D. Minn. Sept. 3, 1975), partial summary judgment granted (D. Minn. Oct. 16, 1975).
(597)	(b)(3), 26 U.S.C. §6103, §6110, (b)(5), reasonably segregable	Conway v. IRS, 447 F. Supp. 1128 (D.D.C. 1978).
(598)	(b)(5), attorney work-product privilege, deliberative process	Cook v. SEC, 2 GDS ¶81,347 (D. Ariz. 1981).
(599)	(a)(1)(D), (b)(5), attorney's fees, attorney work-product privilege, deliberative process, waiver of exemption (failure to assert in litigation)	Cook v. Watt, 597 F. Supp. 545 (D. Alaska 1983), attorney's fees granted, 597 F. Supp. 552 (D. Alaska 1984).
(600)	Judicial records	Cook v. Willingham, 400 F.2d 885 (10th Cir. 1968).
(601)	(b)(5)	Cook County Legal Assistance Found. v. OMB, Civil No. 79-C-3292 (N.D. Ill. 1980).
(602)	In camera inspection, reasonably segregable	Cooley v. Department of the Navy, Civil No. 85-1045 (D.D.C. Dec. 30, 1985).
(603)	(b)(7), law enforcement purpose	Cooney v. Sun Shipbuilding & Drydock Co., 288 F. Supp. 708 (E.D. Pa. 1968).

(604)	Res judicata, venue	Cooper v. Department of the Air Force, 528 F. Supp. 472 (M.D. La. 1981).
(605)	Privacy Act access, (b)(3), Fed.R.Crim. P. 6(e), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), FOIA/PA interface, Vaughn index	Cooper v. DOJ, 578 F. Supp. 546 (D.D.C. 1983).
(606)	(b)(3), (b)(5), (b)(7)(C), (b)(7)(D)	Cooper v. DOJ (Tax Div.), Civil No. 82-2448 (D.D.C. Jan. 12, 1983).
(607)	(b)(5), waiver of exemption (administrative release)	Cooper v. Department of the Navy, 396 F. Supp. 1040 (M.D. La. 1975), aff'd in part, rev'd in part, 558 F.2d 274 (5th Cir. 1977), decision on remand, Civil No. 75-69 (M.D. La. Feb. 13, 1979), modified in part, 594 F.2d 484 (5th Cir. 1979), cert. denied, 444 U.S. 926 (1979).
(608)	(b)(3), 26 U.S.C. §6103, waiver of exemption	Cooper v. IRS, 450 F. Supp. 752 (D.D.C. 1977), attorney's fees awarded, 42 A.F.T.R. 2d 78-5712 (D.D.C. 1978).
(609)	(a)(1)(D), publication	Coos-Curry Elec. Cooperative v. Jura, 821 F.2d 1341 (9th Cir. 1987).
(610)	Attorney's fees [not a FOIA case]	Copeland v. Marshall, Civil No. 74-1822 (D.D.C. Jan. 6, 1977), rev'd, 594 F.2d 244 (D.C. Cir. 1978), vacated pending reh'g en banc, No. 77-1351 (D.C. Cir. June 29, 1979), aff'd, 641 F.2d 880 (D.C. Cir. 1980) (en banc).
(611)	(b)(5), (b)(7), (b)(7)(A)	Copus v. Rougeau, 504 F. Supp. 534 (D.D.C. 1980).
(612)	(b)(6), attorney's fees, reasonably segregable	Core v. United States Postal Serv., Civil No. 82-820A (E.D. Va. Jan. 20, 1983), aff'd in part, rev'd in part & remanded, 730 F.2d 946 (4th Cir. 1984), attorney's fees awarded (E.D. Va. May 2, 1984).
(613)	Referral of request to another agency	Corley v. DOJ, 1 GDS ¶80,047 (D.D.C. 1980).
(614)	Exhaustion of administrative remedies, injunction of agency proceeding pending resolution of FOIA claim	Corning Sav. & Loan Ass'n v. Federal Home Loan Bank Bd., 571 F. Supp. 396 (E.D. Ark. 1983).
(615)	Exhaustion of administrative remedies, fee waiver	Correia v. DOJ, Civil No. 84-1971 (D.D.C. Sept. 12, 1984), fee waiver denied (D.D.C. Mar. 13, 1985).

(616)	(a)(1)(D), publication	Cosby v. Ward, 843 F.2d 967 (7th Cir. 1988).
(617)	Judicial records	Cotner v. United States Parole Comm'n, Civil No. 3-81-1718-G (N.D. Tex. Sept. 14, 1983), vacated & remanded, 747 F.2d 1016 (5th Cir. 1984).
(618)	(b)(7), (b)(7)(A), discovery/FOIA interface, duty to search, law enforcement purpose	Cotten, Day & Doyle v. DOE, 2 GDS ¶81,250 (D.D.C. 1981).
(619)	(b)(4), (b)(5), attorney-client privilege, equitable discretion, inter- or intra-agency memoranda, reasonably segregable, settlement documents	County of Madison, N.Y. v. DOJ, Civil No. 78-3033-S (D. Mass. June 26, 1980), aff'd in part, rev'd in part, 641 F.2d 1036 (1st Cir. 1981).
(620)	Discovery in FOIA litigation	Covington & Burling v. Farm Credit Admin., Civil No. 87-2017 (D.D.C. Oct. 23, 1987).
(621)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(F), assurance of confidentiality, attorney's fees, burden of proof, FOIA as a discovery tool	Cowans v. FBI, Civil No. 77-84-WMB (C.D. Cal. June 13, 1979).
(622)	(b)(7), law enforcement purpose	Cowles Communications, Inc. v. DOJ, 325 F. Supp. 726 (N.D. Cal. 1971).
(623)	(b)(2)	Cox v. Bureau of Prisons, Civil No. 83-1032 (D.D.C. July 19, 1983), appeal dismissed, No. 83-1859 (D.C. Cir. Oct. 20, 1983).
(624)	(b)(7)(C), (b)(7)(D)	Cox v. Bureau of Prisons, Civil No. 83-2644 (D.D.C. Feb. 6, 1984).
(625)	Duty to search	Cox v. Criminal Div., DOJ, Civil No. 83-3811 (D.D.C. Oct. 29, 1984).
(626)	(a)(2)(C), (b)(2), (b)(7), in camera inspection, reasonably segregable	Cox v. DOJ, Civil No. 76-470-W-3 (W.D. Mo. Apr. 27, 1977), aff'd in part, rev'd in part & remanded, 576 F.2d 1302 (8th Cir. 1978).
(627)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), assurance of confidentiality	Cox v. DOJ, Civil No. 76-777-W-4 (W.D. Mo. June 27, 1977).
(628)	28 U.S.C. §1404(a)	Cox v. DOJ, Civil No. 77-0104-W-1 (W.D. Mo. July 25, 1978).

(629)	No record within scope of request	Cox v. DOJ, Civil No. 77-0299-W-3 (W.D. Mo. June 15, 1977).
(630)	(b)(2), attorney's fees, pro se litigant	Cox v. DOJ, Civil No. 77-2220 (D.D.C. Sept. 22, 1978), aff'd in part, rev'd in part & remanded, 601 F.2d 1 (D.C. Cir. 1979).
(631)	(b)(2), (b)(7)(A), (b)(7)(E)	Cox v. DOJ, Civil No. 78-1944 (D.D.C. May 8, 1979).
(632)	Attorney's fees, exceptional circumstances/due diligence, pro se litigant, referral of request to another agency	Cox v. DOJ, 3 GDS ¶82,408 (D. Kan. 1982).
(633)	Substantial compliance	Cox v. DOJ, Civil No. 84-1705 (D.D.C. Sept. 14, 1984).
(634)	(b)(3), 18 U.S.C. §4208(b), Fed.R. Crim.P. 32, (b)(5), deliberative process, displacement of FOIA, inter- or intra-agency memoranda, waiver of exemption	Cox v. DOJ, Civil No. 85-0892 (D.D.C. July 31, 1985), rev'd, 804 F.2d 701 (D.C. Cir. 1986) (consolidated), reh'g denied, 806 F.2d 1122 (D.C. Cir. 1986) (consolidated), cert. granted, judgment vacated & remanded, 108 S. Ct. 2010 (1988) (consolidated).
(635)	(b)(2), (b)(3), Fed. R.Crim.P. 6(e), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, law enforcement amendments (1986), law enforcement purpose, summary judgment, Vaughn index	Cox v. DOJ, Civil No. 87-0158-LFO (D.D.C. Nov. 17, 1987).
(636)	(b)(1), E.O. 12356, (b)(5), duty to search, exhaustion of administrative remedies, fee waiver, summary judgment, waiver of exemption	Cox v. Department of State, Civil No. 85-3628 (D.D.C. July 10, 1986), summary judgment granted (D.D.C. June 16, 1987).
(637)	(b)(5), (b)(7)(C)	Cox v. Executive Office for U.S. Attorney's, Civil No. 83-1964 (D.D.C. Feb. 15, 1984).
(638)	(b)(2), dismissal for failure to prosecute	Cox v. FBI, Civil No. 83-3552 (D.D.C. May 31, 1984), appeal dismissed, No. 84-5364 (D.C. Cir. Feb. 28, 1985).
(639)	(a)(2)(C), (b)(1), E.O. 11652, (b)(2), (b)(7)	Cox v. Levi, 427 F. Supp. 833 (W.D. Mo. 1977), subsequent decision, Civil No. 76-604-W-4 (W.D. Mo. Aug. 31, 1977), aff'd, 592 F.2d 460 (8th Cir. 1979).

(640)	Fee waiver, mootness	Cox v. O'Brien, Civil No. 86-1639 (D.D.C. Nov. 6, 1986), subsequent order (D.D.C. Dec. 16, 1986).
(641)	(b)(2)	Cox v. United States Marshals Serv., Civil No. 83-3174 (D.D.C. Sept. 28, 1984).
(642)	(b)(7)(C), (b)(7)(D), reasonably segregable, waiver of exemption	Cox Ariz. Publications, Inc. v. DOJ, Civil No. 84-1318 (D.D.C. Nov. 29, 1984).
(643)	(b)(5), deliberative process	Coyote Valley Band of Pomo Indians v. United States, Civil No. 87-2786-WWS (N.D. Cal. Nov. 6, 1987).
(644)	(b)(5), (b)(7)(C), (b)(7)(D), summary judgment	Craveiro v. Director, Executive Office for U.S. Attorneys, Civil No. 87-0486 (D.D.C. Oct. 26, 1987).
(645)	Reverse FOIA, (b)(7)(B)	Crim v. FBI, 2 GDS ¶82,195 (D. Conn. 1982).
(646)	Mootness	Crisafi v. Bell, 1 GDS ¶79,187 (M.D. Pa. 1979).
(647)	(b)(5), agency records, attorney's fees, attorney work-product privilege, in camera inspection	Crisafi v. United States Parole Comm'n, Civil No. 81-0469 (M.D. Pa. Sept. 25, 1981) (magistrate's report adopted).
(648)	(b)(1)	Crisafi v. Webster, 1 GDS ¶80,136 (D.D.C. 1980), aff'd, No. 80-1945 (D.C. Cir. Oct. 7, 1981).
(649)	(b)(4)	Critical Mass Energy Project v. NRC, 644 F. Supp. 344 (D.D.C. 1986), vacated & remanded, 830 F.2d 278 (D.C. Cir. 1987).
(650)	(b)(2)	Crooker v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 79-2560 (D.D.C. Feb. 25, 1980), rev'd, 635 F.2d 887 (D.C. Cir. 1980), vacated pending reh'g en banc, No. 80-1278 (D.C. Cir. Jan. 30, 1981), aff'd, 670 F.2d 1051 (D.C. Cir. 1981) (en banc).
(651)	(b)(7)(C)	Crooker v. Bureau of Alcohol, Tobacco & Firearms, 1 ¶GDS 80,209 (D.D.C. 1980).
(652)	Privacy Act access, fee waiver	Crooker v. Bureau of Alcohol, Tobacco & Firearms, 577 F. Supp. 1213 (D.D.C. 1983), appeal dismissed, No. 83-2203 (D.C. Cir. Feb. 21, 1984) (consolidated).

(653)	(b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, law enforcement purpose, pro se litigant, summary judgment	Crooker v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 83-1646 (D.D.C. Dec. 1, 1983), Vaughn index ordered (D.D.C. Jan. 13, 1984), summary judgment granted (D.D.C. Apr. 30, 1984), subsequent opinion (D.D.C. July 11, 1986).
(654)	(b)(7), (b)(7)(A), agency records, law enforcement purpose, waiver of exemption	Crooker v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 85-0615 (D.D.C. Aug. 2, 1985), vacated & remanded, 789 F.2d 64 (D.C. Cir. 1986), dismissed (D.D.C. Apr. 29, 1987).
(655)	Res judicata	Crooker v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 85-1793 (D.D.C. June 13, 1985).
(656)	Dismissal for failure to prosecute, fee waiver	Crooker v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 85-2600 (D.D.C. Dec. 12, 1985), appeal dismissed, No. 86-5044 (D.C. Cir. July 21, 1986).
(657)	Attorney's fees, improper withholding, judicial records, jurisdiction, waiver of exemption (failure to assert in litigation)	Crooker v. Bureau of Prisons, Civil No. 83-1838 (D.D.C. Dec. 1, 1983), rev'd & remanded, No. 83-2279 (D.C. Cir. Apr. 10, 1984), summary judgment granted (D.D.C. Sept. 28, 1984), attorney's fees denied (D.D.C. Mar. 15, 1985), summary affirmance granted (D.C. Cir. Nov. 14, 1985).
(658)	Stay pending appeal	Crooker v. Bureau of Prisons, Civil No. 85-0607 (D.D.C. Sept. 26, 1985), dismissed (D.D.C. Nov. 6, 1986).
(659)	Exhaustion of administrative remedies	Crooker v. CIA, 577 F. Supp. 1225 (D.D.C. 1984).
(660)	Attorney's fees, jurisdiction	Crooker v. CIA, Civil No. 83-1426 (D.D.C. Sept. 28, 1984).
(661)	(b)(3), 50 U.S.C. §403g, (b)(5), attorney work-product privilege, deliberative process	Crooker v. CIA, Civil No. 85-2437 (D.D.C. Dec. 16, 1985).
(662)	Exhaustion of administrative remedies	Crooker v. CIA, Civil No. 86-3055 (D.D.C. May 10, 1988).
(663)	Mootness	Crooker v. Civil Div. of the DOJ, 577 F. Supp. 1212 (D.D.C. 1983).
(664)	Improper withholding, no record within scope of request	Crooker v. Cusack, 3 GDS ¶82,262 (D.D.C. 1982).
(665)	(b)(7)(D)	Crooker v. Davis, 3 GDS ¶82,280 (D.D.C. 1982).

(666)	Attorney's fees, pro se litigant	Crooker v. DOJ, 632 F.2d 916 (1st Cir. 1980).
(667)	Attorney's fees	Crooker v. DOJ, Civil No. 78-1820 (D.D.C. Oct. 30, 1979).
(668)	Privacy Act access, mootness, res judicata	Crooker v. DOJ, Civil No. 86-2333 (D.D.C. Oct. 2, 1987), summary affirmance granted, No. 87-5372 (D.C. Cir. Apr. 8, 1988).
(669)	Adequacy of request, attorney's fees, fee waiver, improper withholding, res judicata	Crooker v. Department of the Army, Civil No. 83-2348 (D.D.C. Dec. 1, 1983), attorney's fees denied (D.D.C. Mar. 29, 1984), aff'd, No. 84-5214 (D.C. Cir. Sept. 4, 1984).
(670)	Fees, fee waiver	Crooker v. Department of the Army, 577 F. Supp. 1220 (D.D.C. 1984), appeal dismissed, No. 84-5089 (D.C. Cir. June 22, 1984).
(671)	Mootness, referral of request to another agency, res judicata	Crooker v. Department of State, 498 F. Supp. 210 (D.D.C. 1979), aff'd, 628 F.2d 9 (D.C. Cir. 1980).
(672)	Attorney's fees, pro se litigant	Crooker v. Department of the Treasury, Civil No. 80-0081 (D.D.C. Mar. 28, 1980), remanded, 663 F.2d 140 (D.C. Cir. 1980), on remand, 2 GDS ¶82,210 (D.D.C. 1982).
(673)	Attorney's fees, pro se litigant	Crooker v. Department of the Treasury, 634 F.2d 48 (2d Cir. 1980).
(674)	(b)(1), E.O. 12356, (b)(2), (b)(3), 28 U.S.C. §534, Fed.R.Crim.P. 6(e), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), deliberative process, in camera inspection, summary judgment, Vaughn index	Crooker v. Department of the Treasury, Civil No. 83-3657 (D.D.C. Apr. 1, 1985), summary judgment granted (D.D.C. Sept. 18, 1986).
(675)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), summary judgment	Crooker v. DEA, Civil No. 83-1647 (D.D.C. Mar. 18, 1986).
(676)	Duty to search, mootness	Crooker v. DEA, Civil No. 83-1718 (D.D.C. Mar. 30, 1984).
(677)	Attorney's fees	Crooker v. EPA, 763 F.2d 16 (1st Cir. 1985).
(678)	Attorney's fees	Crooker v. EPA, No. 84-1815 (1st Cir. Jar. 11, 1985).

(679)	(b)(2), (b)(7)(C), exhaustion of administrative remedies, summary judgment	Crooker v. FBI, Civil No. 83-1645 (D.D.C. Mar. 18, 1986).
(680)	Privacy Act access, FOIA/PA interface	Crooker v. Federal Bureau of Prisons, 579 F. Supp. 309 (D.D.C. 1984).
(681)	Mootness, res judicata	Crooker v. Federal Bureau of Prisons, Civil No. 83-2845 (D.D.C. Mar. 30, 1984), appeal dismissed as moot, No. 84-5288 (D.C. Cir. Jan. 15, 1986).
(682)	(b)(2), (b)(5), (b)(6), (b)(7)(D), dismissal for failure to prosecute, mootness	Crooker v. Federal Bureau of Prisons, Civil No. 86-0510 (D.D.C. Feb. 27, 1987).
(683)	Mootness, no record within scope of request	Crooker v. Federal Bureau of Prisons, Civil No. 86-0811 (D.D.C. Feb. 25, 1987).
(684)	Attorney's fees	Crooker v. IRS, Civil No. 83-2506 (D.D.C. Nov. 20, 1984).
(685)	Attorney's fees, no record within scope of request	Crooker v. Office of the Deputy Attorney Gen., 2 GDS ¶81,022 (D.D.C. 1980).
(686)	(b)(5), agency	Crooker v. Office of the Pardon Attorney, 614 F.2d 825 (2d Cir. 1980).
(687)	Exceptional circumstances/due diligence	Crooker v. United States Attorney, Civil No. 83-2100 (D.D.C. June 26, 1985).
(688)	Attorney's fees, exceptional circumstances/due diligence	Crooker v. United States Marshals Serv., Civil No. 83-2081 (D.D.C. Nov. 4, 1983), attorney's fees denied (D.D.C. Sept. 28, 1984).
(689)	Privacy Act access, (b)(5), (b)(7)(C), attorney work-product privilege, deliberative process, FOIA/PA interface	Crooker v. United States Marshals Serv., Civil No. 85-2599 (D.D.C. Dec. 16, 1985).
(690)	Privacy Act access, dismissal for failure to prosecute, res judicata	Crooker v. United States Marshals Serv., 641 F. Supp. 1141 (D.D.C. 1986).
(691)	(b)(3), 18 U.S.C. §4208(c)(2), Fed.R. Crim.P. 32, attorney's fees, FOIA/PA interface, judicial records	Crooker v. United States Parole Comm'n, 730 F.2d 1 (1st Cir. 1984), cert. granted, vacated & remanded, 469 U.S. 926 (1984), on remand, 760 F.2d 1 (1st Cir. 1985), attorney's fees awarded, 776 F.2d 366 (1st Cir. 1985).

(692)	Mootness	Crooker v. United States Parole Comm'n, Civil No. 85-2248 (D.D.C. Mar. 27, 1986).
(693)	Fee waiver	Crooker v. United States Postal Serv., Civil No. 85-2427 (D.D.C. Dec. 16, 1985).
(694)	(a)(6)(A), exhaustion of administrative remedies, fees	Crooker v. United States Secret Serv., 577 F. Supp. 1218 (D.D.C. 1983), appeal dismissed, No. 83-2203 (D.C. Cir. Feb. 21, 1984) (consolidated).
(695)	(b)(2), (b)(5), (b)(7)(E), deliberative process	Crooker v. United States Secret Serv., Civil No. 85-1967 (D.D.C. Dec. 9, 1985).
(696)	(b)(7)(C), (b)(7)(D)	Crowell v. DOJ, 3 GDS ¶83,277 (4th Cir. 1982).
(697)	Duty to search, jurisdiction	Crown Cent. Petroleum Corp. v. DOE, Civil No. 84-3827 (D.D.C. Oct. 22, 1985).
(698)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §2000e-8(e), 44 U.S.C. §3508	Crown Cent. Petroleum Corp. v. Kleppe, 424 F. Supp. 744 (D. Md. 1976).
(699)	(b)(7)(A)	CTI v. United States Customs Serv., Civil No. 81-0079 (S.D.N.Y. Feb. 17, 1982).
(700)	(a)(1)(E), publication	Cubanski v. Heckler, 781 F.2d 1421 (9th Cir. 1986).
(701)	Privacy Act access, (b)(5), (b)(7)(C), (b)(7)(D), assurance of confidentiality, deliberative process, FOIA/PA interface	Cuccaro v. Secretary of Labor, 562 F. Supp. 724 (W.D. Pa. 1983), aff'd, 770 F.2d 355 (3d Cir. 1985).
(702)	Mootness	Culham v. Department of Educ., Civil No. 86-0208 (D.D.C. Mar. 26, 1986).
(703)	(b)(1), (b)(2), (b)(5), (b)(7), (b)(7)(A), (b)(7)(D)	Cumberland Inv. Corp. v. SEC, Civil No. 85-0388B (D.R.I. Feb. 19, 1986).
(704)	(b)(2), (b)(5), (b)(7), attorney's fees	Cuneo v. Laird, 338 F. Supp. 504 (D.D.C. 1972), aff'd in part, rev'd & remanded in part sub nom. Cuneo v. Schlesinger, 484 F.2d 1086 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974), on remand, Civil No. 67-1826 (D.D.C. Sept. 15, 1975), rev'd sub nom. Cuneo v. Rumsfeld, 553 F.2d 1360 (D.C. Cir. 1977), on remand (D.D.C. Aug. 7, 1978), aff'd sub nom. Fenster v. Brown, 617 F.2d 740 (D.C. Cir. 1979).

(705)	(b)(7)	Cuneo v. NLRB, Civil No. 1-78-37 (E.D. Tenn. Mar. 22, 1978).
(706)	(b)(1), (b)(7)(C), (b)(7)(D), attorney's fees, pro se litigant	Cunningham v. FBI, Civil No. 78-2818 (D.N.J. Dec. 7, 1979), on motion for attorney's fees (D.N.J. Dec. 8, 1980), rev'd, 664 F.2d 383 (3d Cir. 1981).
(707)	(b)(6), (b)(7), (b)(7)(C), (b)(7)(F), "Glomar" denial, law enforcement purpose	Cunningham v. FBI, 540 F. Supp. 1 (N.D. Ohio 1981), reconsideration denied, Civil No. C78-486 (N.D. Ohio May 8, 1981), partial summary judgment granted (N.D. Ohio Mar. 11, 1983), dismissed as moot (N.D. Ohio Jan. 24, 1984), motion to vacate denied (N.D. Ohio Feb. 2, 1984), rev'd & remanded, 765 F.2d 61 (6th Cir. 1985).
(708)	Exhaustion of administrative remedies	Cupp v. Levi, 75-2 U.S. Tax Cas. (CCH) ¶9670 (W.D. Pa. 1975).
(709)	(b)(7)(A), in camera inspection, law enforcement amendments (1986), res judicata, summary judgment	Curran v. DOJ, 640 F. Supp. 153 (D. Mass. 1986), aff'd, 813 F.2d 473 (1st Cir. 1987).
(710)	(b)(7)(C), (b)(7)(D)	Curran v. DOJ, Civil No. 86-1523 (E.D. Pa. Jan. 8, 1987).
(711)	Fee waiver, proper party defendant	Currey v. Lawn, No. 86-5342 (D.C. Cir. Sept. 16, 1987).
(712)	(b)(3), 26 U.S.C. §6103, (b)(7)(A), displacement of FOIA	Currie v. IRS, 3 GDS ¶83,188 (N.D. Ga. 1981).
(713)	(b)(3), 26 U.S.C. §6103(e)(7), (b)(7)(A), displacement of FOIA, Vaughn index	Currie v. IRS, 82-2 U.S. Tax Cas. (CCH) ¶9479 (N.D. Ga. 1982), aff'd, 704 F.2d 523 (11th Cir. 1983).
(714)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), deliberative process	Curry v. Director, DEA, Civil No. 75-1416 (D.D.C. Nov. 5, 1976).
(715)	(b)(5), (b)(7)(C)	Curtis v. Braxton, Civil No. 87-3247 (D. Kan. Sept. 28, 1987).
(716)	(b)(3), 49 U.S.C. §1504, (b)(4)	Cutler v. CAB, 375 F. Supp. 722 (D.D.C. 1974).
(717)	(a)(1)(D), publication	D&W Food Centers v. Block, 786 F.2d 751 (6th Cir. 1986).
(718)	(b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), attorney's fees	Dadco Fashions, Inc. v. NLRB, Civil No. 78-0109 (W.D. La. Mar. 22, 1978).

(719)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403(d)(3), (b)(6), adequacy of agency affidavit, "Glomar" denial, in camera affidavit	Daily Orange Corp. v. CIA, Civil No. 79-441 (N.D.N.Y. Aug. 25, 1981), on motion for summary judgment, 532 F. Supp. 122 (N.D.N.Y. 1982).
(720)	(b)(3), 15 U.S.C. §57, (b)(5), (b)(7)(A)	Dairymen, Inc. v. FTC, 1 GDS ¶80,159 (D.D.C. 1980).
(721)	(b)(1), E.O. 12065, (b)(5), attorney-client privilege, attorney work-product privilege, deliberative process	Dames & Moore v. Department of the Treasury, 544 F. Supp. 94 (C.D. Cal. 1982), amended, 3 GDS ¶83,267 (C.D. Cal. 1982).
(722)	Dismissal for failure to prosecute	Dan v. FBI, Civil No. 87-3141 (D.D.C. May 26, 1988).
(723)	Privacy Act access, exhaustion of administrative remedies, no record within scope of request	Daniels v. FCC, Civil No. 77-5011 (D.S.D. Mar. 15, 1978).
(724)	Privacy Act access, attorney's fees, mootness	Daniels v. St. Louis VA Regional Office, 561 F. Supp. 250 (E.D. Mo. 1983).
(725)	(b)(4), in camera inspection, promise of confidentiality, reasonably segregable	Daniels Mfg. Corp. v. DOD, Civil No. 85-291-T-10 (M.D. Fla. June 3, 1986).
(726)	Destruction of records	Dankese v. Defense Logistics Agency, 693 F.2d 13 (1st Cir. 1982).
(727)	(b)(8), discretionary release	Dannhausen v. First Nat'l Bank, 538 F. Supp. 551 (E.D. Wis. 1982).
(728)	(a)(2), (b)(5)	David B. Lilly Co. v. Renegotiation Bd., 521 F.2d 315 (D.C. Cir. 1975).
(729)	Agency	Davidson v. Georgia, 622 F.2d 895 (5th Cir. 1980).
(730)	No record within scope of request	Davis v. CIA, 711 F.2d 858 (8th Cir. 1983).
(731)	(b)(2), (b)(7)(A), (b)(7)(C), adequacy of request	Davis v. DOJ, Civil No. 81-2351 (D.D.C. Apr. 28, 1982).
(732)	(b)(2), (b)(7)(C), (b)(7)(D)	Day v. FBI, Civil No. 76-3209 (S.D.N.Y. Mar. 10, 1977).
(733)	(b)(7), (b)(7)(D), law enforcement purpose	Dayo v. INS, Civil No. C-2-83-1422 (S.D. Ohio Dec. 31, 1985).
(734)	(a)(1)(D), publication	Dean v. Butz, 428 F. Supp. 477 (D. Haw. 1977).

(735)	(b)(1), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, adequacy of request, law enforcement purpose	De Antonio v. Kelley, Civil No. 75-1071 (D.D.C. Feb. 3, 1978), summary judgment granted sub nom. De Antonio v. Webster, 1 GDS ¶80,156 (D.D.C. 1980).
(736)	(b)(5)	Dean Witter & Co. v. EEOC, Civil No. 77-0399 (D.D.C. June 20, 1977).
(737)	Privacy Act access, attorney's fees, duty to create a record, mootness	DeBold v. Stimson, 735 F.2d 1037 (7th Cir. 1984).
(738)	(b)(5)	DeCarlo v. DOJ, Civil No. 85-3043 (D.D.C. Nov. 14, 1986).
(739)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, reasonably segregable	Deering Milliken, Inc. v. Nash, Civil No. 75-864 (D.S.C. Nov. 12, 1975), aff'd in part, rev'd in part & remanded sub nom. Deering Milliken, Inc. v. Irving, 548 F.2d 1131 (4th Cir. 1977).
(740)	(b)(5), (b)(6), (b)(7)(C), (b)(7)(D), deliberative process, exhaustion of administrative remedies, in camera inspection, jurisdiction	De Fina v. FAA, Civil No. 75-1526 (S.D.N.Y. Feb. 26, 1976) (consolidated).
(741)	(b)(5), attorney work-product privilege, incorporation by reference, Vaughn index	Delaney, Migdail & Young v. IRS, 826 F.2d 124 (D.C. Cir. 1987).
(742)	(b)(3), 8 U.S.C. §1202(f)	De Laurentiis v. Haig, 528 F. Supp. 601 (E.D. Pa. 1981), aff'd, 686 F.2d 192 (3d Cir. 1982).
(743)	(a)(2)(A), (b)(5), deliberative process	Delaware v. NOAA, Civil No. 80-0565 (D.D.C. Apr. 3, 1980).
(744)	(b)(1), E.O. 12356	Della v. FBI, Civil No. C82-1052R (W.D. Wash. June 15, 1983).
(745)	Deliberative process, discovery/FOIA interface, Vaughn index	Dellums v. Powell, 2 GDS ¶81,137 (D.D.C. 1981), aff'd in part, rev'd in part & remanded, 642 F.2d 1351 (D.C. Cir. 1980).
(746)	(b)(5), attorney's fees, deliberative process	Dema v. IRS, 519 F. Supp. 924 (N.D. Ill. 1979), aff'd, Nos. 80-1138, 80-1205, 80-1982 (7th Cir. July 21, 1981) (unpublished memorandum), mem., 661 F.2d 937 (7th Cir. 1981).

(747)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(5), (b)(6), (b)(7)(C), deliberative process	Demetracopoulos v. CIA, 3 GDS ¶82,508 (D.D.C. 1982).
(748)	(b)(1), (b)(3), 50 U.S.C. §403	Demetracopoulos v. Department of State, 1 GDS ¶80,012 (D.D.C. 1980).
(749)	(b)(1), (b)(2), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), law enforcement purpose	Demetracopoulos v. FBI, 510 F. Supp. 529 (D.D.C. 1981), reconsideration denied, Civil No. 78-2209 (D.D.C. Jan. 30, 1981).
(750)	Attorney's fees	Dennis v. FBI, Civil No. 83-1422 (D.D.C. Mar. 16, 1987).
(751)	(b)(5)	Dennison v. United States, Civil No. 86-1479 (D.D.C. Oct. 17, 1986).
(752)	(b)(8), discovery/FOIA interface, in camera inspection	Denny v. Carey, 78 F.R.D. 370 (E.D. Pa. 1978).
(753)	Adequacy of request, exhaustion of administrative remedies, jurisdiction	Denton v. CIA, 2 GDS ¶81,068 (D.D.C. 1981).
(754)	Privacy Act access, (b)(6), FOIA/PA interface	DePlanche v. Califano, 549 F. Supp. 685 (W.D. Mich. 1982).
(755)	(b)(5), (b)(7)(D), deliberative process, FOIA as a discovery tool	Deshayes v. United States Dep't of Labor Mine Safety and Health Admin., 3 GDS ¶83,181 (D.N.H. 1983).
(756)	Attorney's fees	Des Moines Register & Tribune Co. v. DOJ, 563 F. Supp. 82 (D.D.C. 1983), attorney's fees awarded, 563 F. Supp. 83 (D.D.C. 1983).
(757)	(b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), discovery in FOIA litigation, duty to search, exhaustion of administrative remedies, improper withholding, law enforcement purpose, summary judgment	Dettman v. DOJ, Civil No. 82-1108 (D.D.C. Mar. 21, 1985), aff'd, 802 F.2d 1472 (D.C. Cir. 1986).
(758)	(b)(6), duty to search	Devine v. Marsh, 2 GDS ¶82,022 (E.D. Va. 1981).

(759)	Privacy Act access, (b)(1), (b)(6), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney's fees, discovery in FOIA litigation, duty to search, exhaustion of administrative remedies, proper party defendant, Vaughn index	Diamond v. FBI, 487 F. Supp. 774 (S.D.N.Y. 1979), subsequent decision, 532 F. Supp. 216 (S.D. N.Y. 1981), fee waiver ordered, 548 F. Supp. 1158 (S.D.N.Y. 1982), aff'd, 707 F.2d 75 (2d Cir. 1983), cert. denied, 465 U.S. 1004 (1984).
(760)	Exhaustion of administrative remedies, fees, fee waiver	Diapulse Corp. v. FDA, 500 F.2d 75 (2d Cir. 1974).
(761)	(b)(5)	Dick v. IRS, 43 A.F.T.R. 2d 79-0993 (N.D. Ill. 1979).
(762)	(b)(5)	Dick v. IRS, 41 A.F.T.R. 2d 78-0639 (D.D.C. 1978).
(763)	(b)(2), (b)(3), 26 U.S.C. §6103(a), Fed.R.Crim.P. 6(e), (b)(5), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), assurance of confidentiality, deliberative process, displacement of FOIA, law enforcement amendments (1986), law enforcement purpose, summary judgment	Dickie v. Department of the Treasury, Civil No. 86-0649 (D.D.C. Mar. 31, 1987).
(764)	Adequacy of request	Dickstein v. IRS, 635 F. Supp. 1004 (D. Alaska 1986).
(765)	(a)(1)(D), publication	Diller Active, Inc. v. Schweicker, 556 F. Supp. 478 (D.D.C. 1983).
(766)	Duty to search, no record within scope of request	DiModica v. DOJ, Civil No. C75-2480A (N.D. Ga. Apr. 19, 1977).
(767)	(b)(6), (b)(7)(C)	Dinitz v. FBI, 2 GDS ¶82,188 (M.D. Fla. 1980).
(768)	Adequacy of agency affidavit, duty to search, FOIA/PA interface, in camera inspection	Dinsio v. DOJ, Civil No. 80-0173 (D.D.C. Jan. 23, 1985).
(769)	(b)(5)	DiPasquale v. Bureau of Prisons, Civil No. 85-3680 (D.D.C. Oct. 21, 1986).
(770)	(b)(3), 45 U.S.C. §362(d), (b)(6), discretionary release	DiPersia v. United States R.R. Retirement Bd., 638 F. Supp. 485 (D. Conn. 1986).

(771)	(b)(2), attorney's fees, summary judgment	Dirksen v. HHS, Civil No. C85-1273-CAL (N.D. Cal. Sept. 9, 1985), aff'd, 803 F.2d 1456 (9th Cir. 1986).
(772)	FOIA as a discovery tool	Disability Rights Center, Inc. v. DOJ, Civil No. 78-1194 (D.D.C. July 12, 1978).
(773)	(b)(6), agency records, attorney's fees, duty to create a record	Disabled Officer's Ass'n v. Rumsfeld, 428 F. Supp. 454 (D.D.C. 1977), aff'd mem. sub nom. Disabled Officer's Ass'n v. Brown, 574 F.2d 636 (D.C. Cir. 1978), attorney's fees awarded, Civil No. 76-0520 (D.D.C. Dec. 19, 1979).
(774)	Duty to create a record	Dismukes v. Department of the Interior, 603 F. Supp. 760 (D.D.C. 1984).
(775)	(b)(5), (b)(7), FOIA as a discovery tool	Distillery, Rectifying, Wine & Allied Workers v. Miller, 68 Lab. Cas. (CCH) ¶12,750 (W.D. Ky. 1972).
(776)	(b)(4), (b)(6), FOIA as a discovery tool	Ditlow v. Shultz, 379 F. Supp. 326 (D.D.C. 1974), decision deferred, 517 F.2d 166 (D.C. Cir. 1975).
(777)	(b)(3), 18 U.S.C. §1905, (b)(4), (b)(5), (b)(7)	Ditlow v. Volpe, 362 F. Supp. 1321 (D.D.C. 1973), rev'd sub nom. Ditlow v. Brinegar, 494 F.2d 1073 (D.C. Cir. 1974), cert. denied, 419 U.S. 974 (1974).
(778)	(b)(1), agency records	DiViaio v. Kelley, 571 F.2d 538 (10th Cir. 1978).
(779)	(b)(3), 26 U.S.C. §6103, (b)(7)(C)	Dixon v. IRS, Civil No. 78-254-N (M.D. Ala. May 22, 1979).
(780)	Exhaustion of administrative remedies	Dizon v. SEC, 1 GDS ¶80,006 (D.D.C. 1980).
(781)	(b)(7)(C), (b)(7)(D)	Doberstyn v. FBI, 3 GDS ¶82,410 (N.D. Ohio 1982).
(782)	(b)(3), (b)(5), (b)(7)(A)	Dobey v. IRS, Civil No. 79-483C (D.N.M. June 17, 1982).
(783)	(b)(2), (b)(3), 18 U.S.C. §§2510-2520, (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), deliberative process	Docal v. Bennsinger, 543 F. Supp. 38 (M.D. Pa. 1981).
(784)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Doctors Hosp. v. Califano, 455 F. Supp. 476 (M.D. Fla. 1978).
(785)	Privacy Act access	Doe v. Civil Serv. Comm'n, 483 F. Supp. 539 (S.D.N.Y. 1980).

(786)	Mootness	Doe v. DOJ, Civil No. C-1-79-693 (S.D. Ohio Feb. 6, 1981).
(787)	Adequacy of request	Doe v. DOJ, 3 GDS ¶83,246 (D. Colo. 1982).
(788)	(b)(7), (b)(7)(A), law enforcement purpose, summary judgment	Doe v. DOJ, Civil No. 86-1050 (D.D.C. Sept. 4, 1987).
(789)	(b)(1), E.O. 12356, (b)(7), (b)(7)(C), adequacy of agency affidavit, in camera inspection, law enforcement purpose, reasonably segregable, status of plaintiff	Doherty v. DOJ, 596 F. Supp. 423 (S.D.N.Y. 1984), aff'd, 775 F.2d 49 (2d Cir. 1985).
(790)	(b)(3), 15 U.S.C. §46(f), (b)(4)	Doherty v. FTC, 2 GDS ¶81,241 (D.D.C. 1981).
(791)	Mootness	Dolan v. United States Customs Serv., Civil No. 80-2650 (D.D.C. Mar. 21, 1983).
(792)	Mootness	Dolzani v. VA, Civil No. C-2-82-46 (S.D. Ohio Apr. 21, 1982).
(793)	In camera inspection	Domingo v. FBI, Civil No. C82-1053C (W.D. Wash. Nov. 15, 1984).
(794)	(b)(7)(A), mootness	Donn Prods., Inc. v. NLRB, 93 L.R.R.M. 2065 (N.D. Ohio 1976), aff'd in part, rev'd in part & remanded, 583 F.2d 289 (6th Cir. 1978).
(795)	(b)(5)	D'Onofrio v. DOJ, Civil No. 85-3042 (D.D.C. Sept. 23, 1986).
(796)	(b)(5), (b)(7), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, discovery in FOIA litigation, duty to search, FOIA/PA interface, improper withholding, law enforcement amendments (1986), law enforcement purpose, no record within scope of request, summary judgment, waiver of exemption (administrative release)	Donohue v. DOJ, Civil No. 84-3451 (D.D.C. May 16, 1986), subsequent decision (D.D.C. June 25, 1987), summary judgment granted (D.D.C. Dec. 23, 1987), decision on costs (D.D.C. Mar. 7, 1988).

(797)	(b)(1), E.O. 12356, (b)(5), (b)(6), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(F), adequacy of agency affidavit, assurance of confidentiality, deliberative process, in camera inspection, law enforcement purpose, reasonably segregable, stay pending appeal, Vaughn index, waiver of exemption	Donovan v. FBI, 579 F. Supp. 1111 (S.D.N.Y. 1983), vacated, 579 F. Supp. 1124 (S.D.N.Y. 1984), stay granted, Civil No. 82-4766-RWS (S.D.N.Y. Apr. 1, 1984), appeal dismissed mem., 751 F.2d 368 (2d Cir. 1984), partial summary judgment granted, 625 F. Supp. 808 (S.D.N.Y. 1986), reh'g denied, 633 F. Supp. 35 (S.D.N.Y. 1986), aff'd in part, rev'd in part, 806 F.2d 55 (2d Cir. 1986), reh'g en banc denied, Nos. 86-6052, 86-6058 (2d Cir. Apr. 27, 1987).
(798)	(a)(2)(C)	Donovan v. Wollaston Alloys, 695 F.2d 1 (1st Cir. 1983).
(799)	Privacy Act access, (b)(5), (b)(6), no record within scope of request, reasonably segregable	Dorl v. Levi, Civil No. 75-2077 (D.N.J. Mar. 8, 1977).
(800)	(b)(7)(C), (b)(7)(D)	Dornau v. FBI, 3 GDS ¶82,314 (D.D.C. 1982).
(801)	Attorney's fees	Dorset v. IRS, Civil No. G-83-449 (W.D. Mich. May 7, 1984).
(802)	Fee waiver	Dorta v. FBI, 3 GDS ¶82,349 (D.D.C. 1982).
(803)	Improper withholding, Vaughn index	Douglas v. FBI, Civil No. C82-1054M (W.D. Wash. July 28, 1983).
(804)	Privacy Act access, summary judgment	Dowd v. IRS, Civil Nos. 82-828, 83-1229 (N.D.N.Y. Apr. 22, 1985), aff'd, 776 F.2d 1083 (2d Cir. 1985).
(805)	(b)(1), E.O. 12356, (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality, "Glomar" denial, in camera affidavit, in camera inspection, law enforcement amendments (1986), "mosaic," waiver of exemption	Dow Jones & Co. v. FBI, Civil No. 85-0097 (D.D.C. Jan. 16, 1987), amended (D.D.C. Feb. 3, 1987), reconsideration granted in part (D.D.C. July 9, 1987), summary judgment granted in part (D.D.C. Jan. 5, 1988), reconsideration granted in part (D.D.C. Mar. 9, 1988), summary judgment granted (D.D.C. Mar. 21, 1988).
(806)	(b)(1), E.O. 12356, (b)(3), 50 U.S.C. §403g, (b)(5), adequacy of agency affidavit, attorney-client privilege, attorney work-product privilege, deliberative process, reasonably segregable, waiver of exemption (unauthorized release)	Dow, Lohnes & Albertson v. Presidential Comm'n on Broadcasting to Cuba, 624 F. Supp. 572 (D.D.C. 1984), on in camera inspection, Civil No. 82-0929 (D.D.C. Sept. 28, 1984).

(807)	(b)(1), E.O. 12356, (b)(2), (b)(5), (b)(6), agency, agency records, deliberative process, duty to search, in camera inspection, reasonably segregable, waiver of exemption	Dow, Lohnes & Albertson v. United States Information Agency, Civil No. 82-2569 (D.D.C. June 5, 1984), summary judgment granted (D.D.C. Sept. 28, 1984), appeal dismissed & remanded in part mem., No. 84-5852 (D.C. Cir. Apr. 17, 1985), on remand (D.D.C. Apr. 26, 1985).
(808)	(b)(7)(A)	Doyle v. Behan, 670 F.2d 535 (5th Cir. 1982).
(809)	Equitable discretion, status of plaintiff	Doyle v. DOJ, 494 F. Supp. 842 (D.D.C. 1980), aff'd, 668 F.2d 1365 (D.C. Cir. 1981), cert. denied, 455 U.S. 1002 (1982).
(810)	(b)(1), E.O. 12065, (b)(7), (b)(7)(C), (b)(7)(D), in camera affidavit, in camera inspection, law enforcement purpose	Doyle v. FBI, 3 GDS ¶82,406 (S.D. Cal. 1981), aff'd, 722 F.2d 554 (9th Cir. 1983).
(811)	(a)(1)(D), publication	Drefchinski v. Regan, 589 F. Supp. 1516 (W.D. La. 1984).
(812)	(b)(5), (b)(7)(A), waiver of exemption	Dresser Indus. Valve Operations v. EEOC, 2 GDS ¶82,197 (W.D. La. 1982).
(813)	Privacy Act access, exhaustion of administrative remedies	Dresser Indus. v. United States, 596 F.2d 1231 (5th Cir. 1979), cert. denied, 444 U.S. 1044 (1980).
(814)	(b)(3), 5 U.S.C. §7114(b)(4), (b)(6), attorney's fees, waiver of exemption	Dubin v. Department of the Treasury, 555 F. Supp. 408 (N.D. Ga. 1981), attorney's fees awarded, 555 F. Supp. 413 (N.D. Ga. 1981), aff'd mem., 697 F.2d 1093 (11th Cir. 1983).
(815)	(b)(5), deliberative process, reasonably segregable	Dudman Communications Corp. v. Department of the Air Force, Civil No. 82-1608 (D.D.C. Jan. 27, 1986), aff'd, 815 F.2d 1565 (D.C. Cir. 1987).
(816)	(b)(7)(D), attorney's fees, FOIA/PA interface	Duffin v. Carlson, Civil No. 78-1775 (D.D.C. Jan. 29, 1979), aff'd, 636 F.2d 709 (D.C. Cir. 1980).
(817)	(b)(2), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F)	Dukagjini v. DEA, 3 GDS ¶82,546 (D.D.C. 1982).
(818)	(a)(4)(D), (b)(1), E.O. 12065, (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, assurance of confidentiality, burden of proof, in camera inspection	Dunaway v. Kelley, Civil No. C77-0907-RFP (N.D. Cal. Aug. 4, 1980), subsequent decision sub nom. Dunaway v. Webster, 519 F. Supp. 1059 (N.D. Cal. 1981).

(819)	(b)(3), 50 U.S.C. §403(d)(3), summary judgment	Dunayevskaya v. National Sec. Agency, Civil No. 7-71947 (E.D. Mich. May 29, 1979).
(820)	(b)(6), FOIA as a discovery tool	Duncan v. Civil Serv. Comm'n, 426 F. Supp. 41 (E.D. La. 1976).
(821)	Fees, fee waiver	Dunigan v. Propes, Civil No. 78-C-698 (N.D. Ill. Apr. 23, 1979).
(822)	(b)(2), (b)(7)(A), reasonably segregable	Durazo Moreno v. United States Customs Serv., Civil No. 85-0279 (D.D.C. Mar. 4, 1985).
(823)	(b)(3), 18 U.S.C. §4208(c), Fed.R.Crim. P. 32, (b)(5), deliberative process, exhaustion of administrative remedies, inter- or intra-agency memoranda, waiver of exemption	Durns v. Bureau of Prisons, 605 F. Supp. 1213 (D.D.C. 1985), rev'd, 804 F.2d 701 (D.C. Cir. 1986) (consolidated), reh'g denied, 806 F.2d 1122 (D.C. Cir. 1986) (consolidated), cert. granted, judgment vacated & remanded, 108 S. Ct. 2010 (1988) (consolidated).
(824)	(b)(7)(A), attorney's fees	Dutch Boy, Inc. v. NLRB, 83 Lab. Cas. (CCH) ¶10,438 (N.D. Tex. 1978).
(825)	(b)(5)	Dworman Bldg. Corp. v. GSA, 468 F. Supp. 389 (S.D.N.Y. 1979).
(826)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), de novo review	Dynalectron Corp. v. Department of the Air Force, Civil No. 83-3399 (D.D.C. Oct. 30, 1984).
(827)	No record within scope of request, proper party defendant	Dyson v. Smith, Civil No. 3-83-1347-R (N.D. Tex. Dec. 13, 1983) (magistrate's report adopted).
(828)	Attorney's fees	Eagle Technology, Inc. v. Defense Contract Audit Agency, Civil No. 81-05-31A (E.D. Va. Sept. 18, 1981).
(829)	Duty to disclose, improper withholding	Eason v. NRC, 1 GDS ¶80,027 (D.D.C. 1980).
(830)	(b)(7)(A), (b)(7)(D), attorney's fees, mootness	East Coast Eng'g, Inc. v. Alexander, 2 GDS ¶81,218 (D.D.C. 1981).
(831)	(b)(7)(C), pro se litigant	Easter v. FBI, 2 GDS ¶81,195 (D.D.C. 1981).
(832)	Proper service of process	East Tenn. Research Corp. v. TVA, 416 F. Supp. 988 (D.D.C. 1976), vacated, 424 F. Supp. 1329 (D.D.C. 1976).
(833)	Jurisdiction	Echols v. NLRB, 525 F.2d 288 (6th Cir. 1975).

(834)	Exhaustion of administrative remedies	Edge v. United States, Civil No. 75-C-254 (N.D. Ill. May 19, 1975).
(835)	(b)(5), (b)(7)(A), (b)(7)(B), attorney's fees, discretionary release, waiver of exemption	Education/Instruccion, Inc. v. HUD, 471 F. Supp. 1074 (D. Mass. 1979), attorney's fees awarded, 1 GDS ¶80,192 (D. Mass. 1980), aff'd, 649 F.2d 4 (1st Cir. 1981).
(836)	(b)(1), (b)(3), 50 U.S.C. §403, adequacy of agency affidavit, "Glomar" denial	Edwards v. CIA, 512 F. Supp. 689 (D.D.C. 1981).
(837)	Adequacy of request, duty to disclose, exhaustion of administrative remedies	Edwards v. McFarlin, 3 GDS ¶82,553 (E.D. Mo. 1982).
(838)	Attorney's fees, mootness	Edwards v. Office of Equal Employment Opportunity, Civil No. 83-1524C(3) (E.D. Mo. Dec. 2, 1983), attorney's fees awarded (E.D. Mo. June 19, 1984).
(839)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	EHE Nat'l Health Servs. v. HHS, Civil No. 81-1087 (D.D.C. Feb. 24, 1984).
(840)	Attorney's fees	Ehlschide v. Department of Labor, 2 GDS ¶82,228 (E.D. Ky. 1980).
(841)	Pro se litigant	Ehm v. Amtrak Bd. of Directors, 780 F.2d 516 (5th Cir. 1986).
(842)	(a)(1), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(2), (a)(6)(A), publication, Vaughn index	Ehm v. EEOC, No. 85-2176 (5th Cir. May 19, 1986) (unpublished memorandum), mem., 790 F.2d 891 (5th Cir. 1986).
(843)	Fees, improper withholding, jurisdiction	Ehm v. National R.R. Passenger Corp., Civil No. SA-81-406 (W.D. Tex. May 4, 1983), aff'd in part & rev'd & remanded in part, 732 F.2d 1250 (5th Cir. 1984), cert. denied, 469 U.S. 982 (1984).
(844)	(b)(7), (b)(7)(A), law enforcement purpose, Vaughn index	Ehringhaus v. FTC, 525 F. Supp. 21 (D.D.C. 1980).
(845)	(b)(6)	E.I. du Pont de Nemours & Co. v. Finklea, 442 F. Supp. 821 (S.D. W. Va. 1977).
(846)	(b)(7)(A), duty to search, Vaughn index	Eisenberg v. DOJ, 2 GDS ¶81,034 (D.D.C. 1980), aff'd, No. 81-1314 (D.C. Cir. Nov. 27, 1981).
(847)	(b)(5), (b)(7)(A), Vaughn index	Eisenberg v. IRS, 43 A.F.T.R. 2d 79-990 (N.D. Ill. 1978), dismissed, Civil Nos. 77-C-339, 77-C-340 (N.D. Ill. Feb. 26, 1979).

(848)	(b)(5), (b)(7)(A), injunction of agency proceeding pending resolution of FOIA claim	Electri-Flex Co. v. NLRB, 412 F. Supp. 698 (N.D. Ill. 1976).
(849)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Electronic Data Sys. Fed. Corp. v. Carmen, Civil No. C82-353-PKS (W.D. Wash. Nov. 16, 1982).
(850)	(a)(2)(B), (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(E)	Electronic Memories & Magnetics Corp. v. United States, 431 F. Supp. 356 (C.D. Cal. 1977).
(851)	Summary judgment	Ellsworth v. Commissioner, Civil No. 84-5094-TEH (N.D. Cal. Feb. 27, 1985).
(852)	Attorney's fees	Elmer v. Kelly, Civil No. 76-0278 (D.R.I. June 30, 1983).
(853)	Privacy Act access, (b)(2), (b)(3), 50 U.S.C. §403(d)(3), §403g, adequacy of agency affidavit, de novo review, in camera inspection, "mosaic," reasonably segregable	Elmquist v. CIA, Civil No. 82-0047 (D.D.C. Oct. 17, 1985), summary judgment granted (D.D.C. Aug. 1, 1986), summary affirmance granted on other grounds, No. 86-5626 (D.C. Cir. July 13, 1987).
(854)	(b)(7)(A), (b)(7)(C), (b)(7)(D), FOIA as a discovery tool	E.L. Rice & Co. v. Nash, 92 L.R.R.M. 3280 (E.D. Mich. 1976).
(855)	(a)(2), exhaustion of administrative remedies, res judicata	Ely v. Bureau of Prisons, Civil No. 84-2482 (D.D.C. Apr. 16, 1985), subsequent opinion (D.D.C. Sept. 26, 1985), reconsideration granted (D.D.C. Oct. 9, 1985), dismissed (D.D.C. Mar. 27, 1986), aff'd, No. 86-5227 (D.C. Cir. June 30, 1987) (unpublished memorandum), mem., 821 F.2d 821 (D.C. Cir. 1987).
(856)	(b)(3), 26 U.S.C. §6103(b)(2), discovery in FOIA litigation, mootness, summary judgment, Vaughn index	Ely v. Criminal Div. of the DOJ, 588 F. Supp. 628 (D.D.C. 1984).
(857)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), duty to search	Ely v. DEA, Civil No. 83-2352 (D.D.C. May 17, 1985), summary judgment granted (D.D.C. Dec. 20, 1985).
(858)	Exceptional circumstances/due diligence, fees, summary judgment	Ely v. Executive Office for U.S. Attorney's, Civil No. 84-2962 (D.D.C. Dec. 21, 1984), dismissed (D.D.C. June 4, 1985), case reopened (D.D.C. Apr. 21, 1986), summary judgment granted (D.D.C. June 22, 1986).

(859)	(b)(7), (b)(7)(D), duty to search, law enforcement purpose, Vaughn index	Ely v. FBI, Civil No. 84-1615 (D.D.C. Jan. 7, 1985), subsequent decision (D.D.C. Jan. 25, 1985), aff'd, No. 85-5196 (D.C. Cir. June 30, 1987) (unpublished memorandum), mem., 821 F.2d 821 (D.C. Cir. 1987).
(860)	(b)(6), (b)(7)(C), burden of proof, "Glomar" denial, in camera inspection, res judicata, summary judgment, Vaughn index	Ely v. FBI, 781 F.2d 1487 (11th Cir. 1986), summary judgment denied, No. 83-876-T-15 (M.D. Fla. July 13, 1988).
(861)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, mootness, res judicata, summary judgment, Vaughn index	Ely v. FBI, 658 F. Supp. 615 (C.D. Ill. 1987).
(862)	Dismissal for failure to prosecute	Ely v. FBI, Civil No. 86-0812 (D.D.C. Sept. 17, 1987).
(863)	Adequacy of request, fee waiver	Ely v. IRS, Civil No. 83-C-926-S (W.D. Wis. Mar. 22, 1984).
(864)	Failure to meet time limits	Ely v. United States Marshals Serv., Civil No. 83-C-569-S (W.D. Wis. Oct. 31, 1983).
(865)	Mootness	Ely v. United States Parole Comm'n, Civil No. 86-0702 (D.D.C. July 9, 1986).
(866)	(a)(6)(A)	Ely v. United States Postal Serv., Civil No. 83-1882 (D.D.C. June 30, 1983), reconsideration denied as moot (D.D.C. Sept. 7, 1983).
(867)	Fee waiver, summary judgment	Ely v. United States Postal Serv., Civil No. 83-2351 (D.D.C. Mar. 29, 1984), aff'd, 753 F.2d 163 (D.C. Cir. 1985), cert. denied, 471 U.S. 1106 (1985).
(868)	Exhaustion of administrative remedies, fee waiver	Ely v. United States Postal Serv., Civil No. 86-0230 (D.D.C. July 9, 1986).
(869)	Agency records, judicial records	Ely v. United States Postal Serv., No. 86-5242 (D.C. Cir. June 30, 1987) (unpublished memorandum), mem., 821 F.2d 821 (D.C. Cir. 1987).
(870)	(b)(7)(C), "Glomar" denial, summary judgment	Ely v. United States Secret Serv., Civil No. 83-2080 (D.D.C. Dec. 14, 1983).

(871)	(b)(4), (b)(5), (b)(7)(C), attorney work-product privilege, deliberative process, "Glomar" denial, in camera inspection, stay pending appeal	Emerson v. DOJ, 603 F. Supp. 459 (D.D.C. 1985), motion to amend denied, Civil No. 84-1304 (D.D.C. Mar. 28, 1985), stay granted, No. 85-5695 (D.C. Cir. July 5, 1985), remanded (D.C. Cir. June 30, 1986).
(872)	Disciplinary proceedings	Emery v. Laise, 421 F. Supp. 91 (D.D.C. 1976), aff'd sub nom. Emery v. Reinhardt, No. 76-1973 (D.C. Cir. Oct. 26, 1977).
(873)	Injunction of agency proceeding pending resolution of FOIA claim	Encyclopedia Britannica, Inc. v. FTC, 517 F.2d 1013 (7th Cir. 1975).
(874)	(b)(5), (b)(6)	Enfield v. FAA, 2 GDS ¶82,177 (D.D.C. 1980).
(875)	No improper withholding, Vaughn index	Engh v. Commissioner, Civil No. 86-C-20260 (N.D. Ill. Jan. 14, 1988) (magistrate's recommendation), adopted (N.D. Ill. Apr. 4, 1988).
(876)	(a)(1), publication	Environmental Defense Fund v. Alexander, 501 F. Supp. 742 (N.D. Miss. 1980).
(877)	(b)(5), adequacy of agency affidavit, agency records, attorney's fees, deliberative process, in camera inspection	Environmental Defense Fund v. EPA, 3 GDS ¶82,398 (D.D.C. 1982), revised Vaughn index ordered, 3 GDS ¶82,468 (D.D.C. 1982), partial summary judgment granted, 3 GDS ¶83,191 (D.D.C. 1983), rev'd, Nos. 83-1138, 83-1685 (D.C. Cir. Aug. 31, 1984).
(878)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney's fees, "mosaic"	Eoff v. DOJ, 3 GDS ¶82,356 (E.D. Ky. 1981) (magistrate's report adopted), on motion for attorney's fees, 3 GDS ¶82,357 (E.D. Ky. 1981) (magistrate's report adopted).
(879)	(b)(1)	Epstein v. Resor, 296 F. Supp. 214 (N.D. Cal. 1969), aff'd, 421 F.2d 930 (9th Cir. 1970), cert. denied, 398 U.S. 965 (1970).
(880)	(a)(2), (b)(7), (b)(7)(A), (b)(7)(E), law enforcement purpose	Epstein, Becker, Borsody & Green v. Rougeau, 2 GDS ¶81,232 (D.D.C. 1981), dismissed, 2 GDS ¶81,233 (D.D.C. 1981).
(881)	(a)(1)	EEOC v. Bay Shipbuilding Corp., 668 F.2d 304 (7th Cir. 1981).
(882)	(b)(5), deliberative process	EEOC v. Los Alamos Constructors, Inc., 382 F. Supp. 1373 (D.N.M. 1974).

(883)	(b)(5), (b)(7)(A), deliberative process	EEOC v. Roadway Express, Inc., 18 Empl. Prac. Dec. (CCH) ¶8804 (S.D. Tex. 1978).
(884)	Injunction of agency proceeding pending resolution of FOIA claim	EEOC v. Truck Drivers, Local 705, 23 Fair Empl. Prac. Cas. (BNA) 822 (N.D. Ill. 1978).
(885)	(b)(7)(A), waiver of exemption	Erb v. DOJ, 572 F. Supp. 954 (W.D. Mich. 1983).
(886)	No record within scope of request	Eschelman v. Rumsfeld, Civil No. 76-2793-ALS (C.D. Cal. Aug. 1, 1977).
(887)	No record within scope of request, proper party defendant	Espenshade v. Carbone, Civil No. 86-2610 (D.D.C. May 15, 1987).
(888)	(b)(7), exhaustion of administrative remedies	Etheridge v. IRS, 74-1 U.S. Tax Cas. (CCH) ¶9354 (N.D. Ga. 1974).
(889)	(b)(5), deliberative process	Ethyl Corp. v. EPA, 478 F.2d 47 (4th Cir. 1973).
(890)	Attorney's fees, exceptional circumstances/due diligence, fee waiver	Ettlinger v. FBI, 596 F. Supp. 867 (D. Mass. 1984).
(891)	Fee waiver	Eudey v. CIA, 478 F. Supp. 1175 (D.D.C. 1979).
(892)	Attorney's fees	Evans v. Commissioner, Civil No. G83-31-5 (W.D. Mich. Mar. 28, 1986).
(893)	(b)(3), 49 U.S.C. §1504, (b)(7)	Evans v. Department of Transp., 446 F.2d 821 (5th Cir. 1971), cert. denied, 405 U.S. 918 (1972).
(894)	(b)(3), 50 U.S.C. app. §2411(c)	Evans v. Kreps, 1 GDS ¶80,073 (D.D.C. 1980), aff'd sub nom. Evans v. Baldrige, No. 80-1438 (D.C. Cir. Apr. 27, 1981), reh'g denied (D.C. Cir. May 28, 1981).
(895)	Privacy Act access, (b)(7), attorney's fees, exceptional circumstances/due diligence, FOIA/PA interface	Exner v. FBI, Civil No. 76-89-S (S.D. Cal. Apr. 20, 1976), remanded, 542 F.2d 1121 (9th Cir. 1976), on remand (S.D. Cal. 1977), on motion for attorney's fees, 443 F. Supp. 1349 (S.D. Cal. 1978), aff'd, 612 F.2d 1202 (9th Cir. 1980).

(896)	(b)(5), adequacy of request, attorney-client privilege, attorney work-product privilege, deliberative process, duty to search, proper party defendant, reasonably segregable, Vaughn index	Exxon Corp. v. DOE, 2 GDS ¶81,253 (D.D.C. 1981), summary judgment granted in part, 585 F. Supp. 690 (D.D.C. 1983).
(897)	Reverse FOIA, (b)(3), 18 U.S.C. §1905	Exxon Corp. v. Donovan, 2 GDS ¶81,383 (D.D.C. 1981).
(898)	(b)(5), (b)(7), adequacy of request, disclosure to Congress, mootness, summary judgment, Vaughn index, waiver of exemption	Exxon Corp. v. FTC, 384 F. Supp. 755 (D.D.C. 1974), remanded mem., 527 F.2d 1386 (D.C. Cir. 1976), dismissed, Civil No. 73-1928 (D.D.C. Feb. 28, 1977).
(899)	(b)(5), (b)(7)(A), (b)(7)(D), adequacy of agency affidavit, attorney work-product privilege, duty to search, FOIA as a discovery tool, reasonably segregable, summary judgment	Exxon Corp. v. FTC, 466 F. Supp. 1088 (D.D.C. 1978), subsequent decision, 476 F. Supp. 713 (D.D.C. 1979), aff'd, 663 F.2d 120 (D.C. Cir. 1980).
(900)	Fees, Vaughn index	Fackleman v. Levi, Civil No. C75-2157A (N.D. Ga. Aug. 30, 1976).
(901)	(b)(5), (b)(8), deliberative process, FOIA/PA interface, waiver of exemption	Fagot v. FDIC, 584 F. Supp. 1168 (D.P.R. 1984), aff'd in part & rev'd in part, No. 84-1523 (1st Cir. Mar. 27, 1985) (unpublished memorandum), mem., 760 F.2d 252 (1st Cir. 1985).
(902)	(b)(5), attorney's fees, attorney work-product privilege	Falcone v. IRS, 479 F. Supp. 985 (E.D. Mich. 1979), on motion for attorney's fees, 535 F. Supp. 1313 (E.D. Mich. 1982), aff'd, 714 F.2d 646 (6th Cir. 1983), cert. denied, 466 U.S. 908 (1984).
(903)	(b)(6)	Falzone v. Department of the Navy, Civil No. 85-3862 (D.D.C. Oct. 16, 1986), reconsideration denied (D.D.C. Nov. 21, 1986).
(904)	(b)(3), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F), discovery in FOIA litigation, FOIA/PA interface, transfer of FOIA case, Vaughn index, venue	Farese v. DOJ, Civil No. 3-83-1278-H (N.D. Tex. July 2, 1984) (case transferred to S.D. Fla.), partial summary judgment granted, Civil No. 84-6179-JAG (S.D. Fla. July 12, 1984).

(905)	Privacy Act access, (b)(2), (b)(3), 18 U.S.C. §2517, Fed.R. Crim.P. 6(e), (b)(5), (b)(6), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(F), adequacy of agency affidavit, deliberative process, discovery in FOIA litigation, in camera inspection, law enforcement amendments (1986), law enforcement purpose, summary judgment, Vaughn index	Farese v. DOJ, Civil No. 83-0938 (D.D.C. July 2, 1986), aff'd in part, rev'd in part, No. 86-5528 (D.C. Cir. Aug. 12, 1987) (unpublished memorandum), mem., 826 F.2d 129 (D.C. Cir. 1987), dismissed in part, 683 F. Supp. 273 (D.D.C. 1987).
(906)	No record within scope of request	Farmer v. IRS, Civil No. 82-3944 (M.D. Tenn. Mar. 21, 1983).
(907)	Privacy Act access, (b)(6), FOIA/PA interface	Farmers Home Admin. Fin. Office v. American Fed'n of Gov't Employees, 23 FLRA No. 101 (1986).
(908)	(b)(3), N.C. Gen. Stat. §96-4(t), (b)(4), (b)(5), (b)(7)(A), (b)(7)(E), deliberative process, waiver of exemption	Farmworkers Legal Servs. v. Department of Labor, 639 F. Supp. 1368 (E.D.N.C. 1986).
(909)	(b)(6)	Farnum v. HUD, Civil No. 87-74107-DT (E.D. Mich. June 27, 1988).
(910)	(b)(1), E.O. 12065, adequacy of agency affidavit	Farquharson v. Ford, 3 GDS ¶82,253 (D.D.C. 1982).
(911)	Privacy Act access, (b)(7)(C), (b)(7)(D)	Fausto v. Watt, 3 GDS ¶83,217 (4th Cir. 1983).
(912)	(b)(7), (b)(7)(A), FOIA as a discovery tool	Fedders v. FTC, 494 F. Supp. 325 (S.D.N.Y. 1980), aff'd mem., 646 F.2d 560 (2d Cir. 1980).
(913)	(b)(3), 49 U.S.C. §1421	FAA v. Robertson, 498 F.2d 1031 (D.C. Cir. 1974), rev'd, 422 U.S. 255 (1975).
(914)	Dismissal for failure to prosecute	Federal Aviation Science & Technological Ass'n v. Federal Labor Relations Auth., Civil No. 81-2429 (D.D.C. Apr. 6, 1982).
(915)	(b)(7)(A), attorney's fees, Vaughn index	Federal Builders, Inc. v. Marshall, 1 GDS ¶79,124 (D.D.C. 1979), on motion for attorney's fees, 2 GDS ¶82,020 (D.D.C. 1981).
(916)	(b)(2)	FBI Agents Ass'n v. FBI, 3 GDS ¶83,058 (D.D.C. 1983).
(917)	(a)(2)(C), (b)(2)	Federal Defenders Office v. DEA, Civil No. 80-73792 (E.D. Mich. Jan. 21, 1985).

(918)	Improper withholding	FDIC v. Ernst & Ernst, 3 GDS ¶82,519 (E.D.N.Y. 1981), aff'd, 677 F.2d 230 (2d Cir. 1982).
(919)	Discretionary release	Federal Election Comm'n v. Illinois Medical Political Action Comm., 503 F. Supp. 45 (N.D. Ill. 1980).
(920)	Reverse FOIA, (b)(4), mootness	Federal Elec. Corp. v. Weinberger, Civil No. 87-1747 (D.D.C. Feb. 29, 1988), summary judgment denied sub nom. Federal Elec. Corp. v. Carlucci, 687 F. Supp. 1 (D.D.C. 1988), stay denied (D.D.C. Apr. 29, 1988).
(921)	Agency records, agency subpoena, disclosure to Congress, discretionary release	FTC v. Anderson, 442 F. Supp. 1118 (D.D.C. 1977), aff'd in part, rev'd in part, 631 F.2d 741 (D.C. Cir. 1979), on remand, 1 GDS ¶80,269 (D.D.C. 1980), subsequent decision, 1 GDS ¶80,270 (D.D.C. 1980).
(922)	Duty to disclose	FTC v. Johns-Manville Corp., 1980-81 Trade Cas. (CCH) ¶63,102 (D. Colo. 1979).
(923)	Agency subpoena, Congressional subpoena, disclosure to Congress, discretionary release	FTC v. Owens-Corning Fiberglas Corp., Misc. No. 78-313 (D.D.C. Jan. 31, 1979), aff'd in part, rev'd in part, 626 F.2d 966 (D.C. Cir. 1980).
(924)	Agency subpoena	FTC v. Texaco, Inc., Civil Nos. 73-1089, 73-1093 (D.D.C. Mar. 22, 1974), aff'd in part, rev'd in part, 517 F.2d 137 (D.C. Cir. 1975), vacated pending reh'g en banc, No. 74-1547 (D.C. Cir. Feb. 6, 1976), aff'd, 555 F.2d 862 (D.C. Cir. 1977) (en banc), cert. denied, 431 U.S. 974 (1977).
(925)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, Vaughn index	Feilke v. FBI, 3 GDS ¶83,061 (D.D.C. 1983), supplemental affidavit ordered, 3 GDS ¶83,135 (D.D.C. 1983), summary judgment granted, 3 GDS ¶83,161 (D.D.C. 1983).
(926)	Summary judgment	Feinman v. DOJ, Civil No. 79-1537-ERN (E.D.N.Y. Apr. 12, 1983).
(927)	(b)(7)(A), Vaughn index	Feldmeyer v. DOJ, Civil No. 82-C-1601 (E.D. Wis. Aug. 16, 1983).
(928)	Fee waiver	Fellner v. DOJ, Civil No. 75-C-430 (W.D. Wis. Apr. 28, 1976).
(929)	(b)(6), agency records, discovery/FOIA interface, no record within scope of request	Fendler v. Hawkins, Civil No. 78-623-PHX-WPC (D. Ariz. May 14, 1979), aff'd, No. 79-3015 (9th Cir. June 2, 1980).

(930)	Privacy Act access, (b)(3), waiver of exemption (failure to assert in litigation)	Fendler v. United States Parole Comm'n, Civil No. C-83-3805-TEH (N.D. Cal. Sept. 23, 1983), modified (N.D. Cal. Nov. 10, 1983), subsequent order (N.D. Cal. Jan. 30, 1984), summary judgment granted (N.D. Cal. July 6, 1984), aff'd in part, rev'd in part & remanded, 774 F.2d 975 (9th Cir. 1985).
(931)	Attorney's fees	Fenster v. Brown, 617 F.2d 740 (D.C. Cir. 1979).
(932)	(b)(4), (b)(5)	Fenster v. Fletcher, Civil No. 71-0822 (D.D.C. Aug. 16, 1971).
(933)	(b)(6), attorney's fees	Fensterwald v. CIA, Civil No. 75-282A (E.D. Va. Oct. 23, 1975).
(934)	(b)(1), E.O. 11652, (b)(2), (b)(3), 50 U.S.C. §403, (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F), reasonably segregable, waiver of exemption (unauthorized release)	Fensterwald v. CIA, 443 F. Supp. 667 (D.D.C. 1977), subsequent decision, Civil No. 75-0897 (D.D.C. July 12, 1978), dismissed (D.D.C. Sept. 20, 1978).
(935)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of request, in camera inspection, reasonably segregable	Ferguson v. Kelley, 448 F. Supp. 919 (N.D. Ill. 1977), reconsideration granted, 455 F. Supp. 324 (N.D. Ill. 1978).
(936)	(b)(7)(A), FOIA as a discovery tool	Fernandez v. United States, Civil No. 82-1285-JWK (S.D. Fla. Feb. , 1983).
(937)	(b)(2), (b)(3), (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(F)	Ferrentino v. DOJ, Civil No. 86-0784 (D.D.C. Aug. 18, 1987).
(938)	(b)(2), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E)	Ferrentino v. United States Customs Serv., Civil No. 86-1268 (D.D.C. Feb. 13, 1987).
(939)	(b)(2), (b)(3), 28 U.S.C. §534, (b)(6), (b)(7), (b)(7)(C), (b)(7)(E), adequacy of agency affidavit, adequacy of request, judicial records, law enforcement purpose, venue	Ferri v. Bell, 1 GDS ¶79,206 (M.D. Pa. 1979), rev'd, 645 F.2d 1213 (3d Cir. 1981), vacated, No. 79-2414 (3d Cir. Oct. 23, 1981), reinstated in part on reh'g, 671 F.2d 769 (3d Cir. 1982), summary judgment granted, Civil No. 78-841 (M.D. Pa. Dec. 15, 1983).
(940)	Transfer of FOIA case	Ferri v. DOJ, 441 F. Supp. 404 (M.D. Pa. 1977).
(941)	Dismissal for failure to prosecute	Ferri v. DOJ, Civil No. 76-2174 (D.D.C. July 15, 1983).

(942)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F), adequacy of request, attorney work-product privilege, duty to search, in camera affidavit, summary judgment, Vaughn index	Ferri v. DOJ, 573 F. Supp. 852 (W.D. Pa. 1983).
(943)	(b)(5), dismissal for failure to prosecute	Ferri v. DOJ, Civil No. 84-0913 (D.D.C. Oct. 25, 1984).
(944)	(b)(2), (b)(3), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, discovery in FOIA litigation, exhaustion of administrative remedies, in camera inspection	Ferri v. DOJ, Civil No. 36-1279 (D.D.C. Oct. 3, 1986), summary judgment granted (D.D.C. Mar. 19, 1987).
(945)	(b)(2), (b)(6), attorney's fees	Ferris v. IRS, 2 GDS ¶82,084 (D.D.C. 1981), attorney's fees granted, 3 GDS ¶82,462 (D.D.C. 1982), dismissed, Civil No. 81-0383 (D.D.C. Oct. 19, 1982).
(946)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(6), attorney's fees	Ferry v. CIA, 458 F. Supp. 664 (S.D.N.Y. 1978), on motion for attorney's fees, Civil No. 75-6445 (S.D.N.Y. May 21, 1979).
(947)	(b)(4)	Fidell v. United States Coast Guard, 2 GDS ¶81,144 (D.D.C. 1981).
(948)	No record within scope of request	Fine v. FBI, No. 82-2494 (7th Cir. Dec. 12, 1983).
(949)	(a)(1)(D), publication	Fink v. United States, 54 A.F.T.R. 2d 84-5981 (D.N.H. 1984).
(950)	Privacy Act access, (b)(1), (b)(3), Vaughn index	Finnegan v. CIA, Civil No. 83-0814 (D.D.C. Sept. 27, 1983).
(951)	(a)(2), (a)(2)(C), (b)(4), (b)(5), (b)(7)(A), (b)(7)(E), Fed.R.Civ.P. 34, discovery/FOIA interface	Firestone Tire & Rubber Co. v. Coleman, 432 F. Supp. 1359 (N.D. Ohio 1976).
(952)	(b)(5), attorney work-product privilege, deliberative process, discovery in FOIA litigation	Firestone Tire & Rubber Co. v. DOJ, 2 GDS ¶82,009 (D.D.C. 1981), aff'd mem., No. 81-1979 (D.C. Cir. Mar. 2, 1982).

(953)	(b)(4), (b)(5), (b)(8)	First Fed. Sav. & Loan Ass'n v. Federal Home Loan Bank Bd., 426 F. Supp. 454 (W.D. Ark. 1977), aff'd, 570 F.2d 693 (8th Cir. 1978).
(954)	Exhaustion of administrative remedies	First Fin. Group v. SEC, 2 GDS ¶82,227 (S.D. Tex. 1980).
(955)	(b)(4), (b)(7), equitable discretion	First Girl, Inc. v. Regional Manpower Adm'r, Dep't of Labor, Civil No. 75-C-3133 (N.D. Ill. July 7, 1976).
(956)	(a)(4)(C), (b)(5), (b)(7), (b)(7)(C), deliberative process	Fischer v. IRS, 621 F. Supp. 835 (N.D.N.Y. 1985).
(957)	(a)(6)(A), (a)(6)(B), attorney's fees, failure to meet time limits	Fischer v. IRS, Civil No. 85-144 (N.D.N.Y. Nov. 13, 1986).
(958)	(b)(3), 26 U.S.C. §6103	Fisher v. IRS, Civil No. 84-8363 (S.D.N.Y. June 19, 1985).
(959)	(b)(4), (b)(5)	Fisher v. Renegotiation Bd., 473 F.2d 109 (D.C. Cir. 1972), on remand, 355 F. Supp. 1171 (D.D.C. 1973).
(960)	Exhaustion of administrative remedies, proper service of process	Fisher v. United States, Civil No. 84-3045 (D.N.J. July 24, 1984), subsequent opinion (D.N.J. Sept. 9, 1985).
(961)	(b)(6)	Fitzgerald v. OPM, Civil No. 83-1834 (D.D.C. Jan. 23, 1984).
(962)	Exhaustion of administrative remedies, fees, fee waiver	Fitzgibbon v. CIA, Civil No. 76-0700 (D.D.C. Oct. 29, 1976), fee waiver granted (D.D.C. Jan. 10, 1977).
(963)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403, (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality, burden of proof, Congressional records, deliberative process, de novo review, duty to search, in camera affidavit, in camera inspection, waiver of exemption	Fitzgibbon v. CIA, Civil No. 79-0956 (D.D.C. Nov. 16, 1981), summary judgment granted in part, 578 F. Supp. 704 (D.D.C. 1983), reconsideration granted in part (D.D.C. July 5, 1984).
(964)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, reasonably segregable, waiver of exemption (failure to assert in litigation)	Fitzpatrick v. DOJ, 3 GDS ¶83,075 (E.D. Pa. 1983).

(965)	Adequacy of request	Fiumara v. DOJ, Civil No. 84-2512 (D.D.C. Nov. 29, 1984).
(966)	(b)(2), (b)(3), Fed.R. Crim.P. 6(e), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), assurance of confidentiality, attorney's fees, waiver of exemption	Fiumara v. Higgins, 572 F. Supp. 1093 (D.N.H. 1983).
(967)	(b)(3), 18 U.S.C. §4208(b), Fed.R. Crim.P. 32, (b)(5), (b)(6), (b)(7), displacement of FOIA	Flemino v. United States Parole Comm'n, Civil No. 85-0618 (D.D.C. Aug. 20, 1985).
(968)	(b)(6), (b)(7), (b)(7)(C), agency records, improper withholding	Floramo v. United States Parole Comm'n, 2 GDS ¶82,205 (D.D.C. 1982).
(969)	FOIA/PA interface	Florance v. Orr, Civil No. 80-3269 (D.D.C. June 9, 1981).
(970)	(b)(1), attorney's fees	Florence v. DOD, 415 F. Supp. 156 (D.D.C. 1976).
(971)	Reverse FOIA, (b)(3), 12 U.S.C. §1306, 18 U.S.C. §1905, (b)(4), (b)(6), FOIA/PA interface	Florida Medical Ass'n v. HEW, 454 F. Supp. 326 (M.D. Fla. 1978), vacated & remanded, 601 F.2d 199 (5th Cir. 1979), subsequent decision, 479 F. Supp. 1291 (M.D. Fla. 1979).
(972)	(b)(6), adequacy of request, exceptional circumstances/due diligence, interaction of (a)(2) & (a)(3)	Florida Rural Legal Serv. v. DOJ, Civil No. 87-1264 (S.D. Fla. Feb. 10, 1988).
(973)	(b)(1), (b)(2), (b)(7)(C), (b)(7)(D), attorney's fees	Flower v. FBI, 448 F. Supp. 567 (W.D. Tex. 1978).
(974)	Adequacy of request, proper party defendant	Flowers v. IRS, Civil No. 84-1218-LE (D. Or. Feb. 7, 1985).
(975)	(b)(6), (b)(7)(C), "Glomar" denial	Flynn v. DOJ, Civil No. 83-2282 (D.D.C. Dec. 16, 1983), reconsideration (in effect) granted (D.D.C. Jan. 10, 1984), subsequent decision (D.D.C. Feb. 17, 1984), summary judgment granted (D.D.C. Apr. 6, 1984).
(976)	Exhaustion of administrative remedies	Flynn v. National Sec. Agency, Civil No. 83-2283 (D.D.C. Feb. 28, 1984).
(977)	(b)(7)(C), (b)(8), summary judgment	Folger v. Conover, Civil No. 82-4 (E.D. Ky. Oct. 25, 1983).

(978)	(b)(1), (b)(2), (b)(3), 50 U.S.C. §403, (b)(5), (b)(6), (b)(7)(F), adequacy of request, attorney work-product privilege, deliberative process, in camera inspection	Fonda v. CIA, 434 F. Supp. 498 (D.D.C. 1977), subsequent decision, Civil No. 76-0285 (D.D.C. Aug. 19, 1977).
(979)	Attorney's fees, burden of proof	Fonda v. DOJ, 2 GDS ¶81,206 (D.D.C. 1981).
(980)	Publication	Ford v. IRS, Civil No. 84-3290 (E.D. Pa. Oct. 9, 1984).
(981)	Attorney's fees	Ford v. Selective Serv. Sys., 439 F. Supp. 1262 (M.D. Pa. 1977).
(982)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, waiver of exemption	Foresta v. DOJ, Civil No. 80-C-191 (N.D. Ill. Feb. 25, 1982).
(983)	(b)(6), (b)(7), (b)(7)(C)	Forrester v. Department of Labor, 433 F. Supp. 987 (S.D.N.Y. 1977), aff'd, 591 F.2d 1330 (2d Cir. 1978).
(984)	(b)(2), (b)(3), 26 U.S.C. §6103, duty to create a record, failure to meet time limits	Forrester v. IRS, 48 A.F.T.R. 2d 81-5419 (S.D.N.Y. 1981).
(985)	Fee waiver, proper party defendant	Forsberg v. McCreight, Civil No. 78-0797 (D. Or. Jan. 2, 1979), summary judgment granted sub nom. Forsberg v. DOJ (D. Or. Apr. 25, 1979).
(986)	Agency, agency records	Forsham v. Mathews, Civil No. 75-1608 (D.D.C. Feb. 5, 1976), aff'd sub nom. Forsham v. Califano, 587 F.2d 1128 (D.C. Cir. 1978), aff'd sub nom. Forsham v. Harris, 445 U.S. 169 (1980).
(987)	(b)(5), attorney's fees, deliberative process	Foster v. United States Customs Serv., 2 GDS ¶81,240 (D. Haw. 1980).
(988)	(b)(7)(A)	Fotomat Corp. v. NLRB, 573 F.2d 959 (6th Cir. 1978), order enforced, 634 F.2d 320 (6th Cir. 1980).

(989)	(b)(2), (b)(7), (b)(7)(C), (b)(7)(D), agency, agency records, law enforcement purpose	Founding Church of Scientology v. Blumenthal, Civil No. 75-1471 (D.D.C. Mar. 30, 1977), subsequent decision (D.D.C. Aug. 11, 1977), summary judgment granted in part sub nom. Founding Church of Scientology v. Miller, 490 F. Supp. 144 (D.D.C. 1980), rev'd & remanded sub nom. Founding Church of Scientology v. Regan, 670 F.2d 1158 (D.C. Cir. 1981), cert. denied, 456 U.S. 976 (1982).
(990)	Discovery in FOIA litigation	Founding Church of Scientology v. FBI, Civil No. 78-0107 (D.D.C. May 19, 1983).
(991)	(b)(1), E.O. 11652, (b)(2), (b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(A), (b)(7)(B), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, attorney work-product privilege, deliberative process, referral of request to another agency, Vaughn index	Founding Church of Scientology v. Levi, Civil No. 75-1577 (D.D.C. Jan. 24, 1978), rev'd sub nom. Founding Church of Scientology v. Bell, 603 F.2d 945 (D.C. Cir. 1979), decision on remand, 1 GDS ¶80,155 (D.D.C. 1980), rev'd & remanded sub nom. Founding Church of Scientology v. Smith, No. 80-2049 (D.C. Cir. Sept. 1, 1981) (unpublished memorandum), mem., 2 GDS ¶82,058 (D.C. Cir. 1981), on remand, 579 F. Supp. 1060 (D.D.C. 1982), aff'd, 721 F.2d 828 (D.C. Cir. 1983).
(992)	Attorney's fees	Founding Church of Scientology v. Marshall, 439 F. Supp. 1267 (D.D.C. 1977).
(993)	(b)(1), (b)(3), 50 U.S.C. §403, burden of proof, de novo review, duty to search, in camera affidavit, summary judgment, Vaughn index	Founding Church of Scientology v. National Sec. Agency, 434 F. Supp. 632 (D.D.C. 1977), rev'd, 610 F.2d 824 (D.C. Cir. 1979), on remand, Civil No. 76-1494 (D.D.C. May 19, 1980), aff'd, 2 GDS ¶81,109 (D.C. Cir. 1981).
(994)	Discovery in FOIA litigation	Founding Church of Scientology v. Paschall, Civil No. 75-1397 (D.D.C. Sept. 17, 1976).
(995)	(b)(7)(C), (b)(7)(D), adequacy of agency affidavit, discovery in FOIA litigation, duty to search, Vaughn index	Founding Church of Scientology v. United States Marshals Serv., 516 F. Supp. 151 (D.D.C. 1981), on motion for summary judgment, 2 GDS ¶81,314 (D.D.C. 1981).
(996)	Reverse FOIA, (b)(4)	Fountainhead Group, Inc. v. Consumer Prod. Safety Comm'n, 527 F. Supp. 294 (N.D.N.Y. 1981).

(997)	(b)(5), (b)(6), attorney-client privilege, attorney work-product privilege, deliberative process, inter- or intra-agency memoranda, proper party defendant	Fox v. Harris, 1 GDS ¶80,199 (D.D.C. 1980).
(998)	Exceptional circumstances/due diligence	Fox v. HHS, Civil No. 86-0879 (D.D.C. Apr. 25, 1986).
(999)	Publication	Fraga v. Smith, 607 F. Supp. 517 (D. Or. 1985).
(1000)	(b)(1), (b)(3), 50 U.S.C. §403, in camera inspection	Frank v. CIA, Civil No. 77-14-D (S.D. Iowa Sept. 2, 1977), remanded, No. 77-1844 (8th Cir. Apr. 4, 1978).
(1001)	Privacy Act access, (b)(2), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), FOIA/PA interface	Frank v. DOJ, 480 F. Supp. 596 (D.D.C. 1979).
(1002)	(b)(3), 18 U.S.C. §1905, (b)(7)	Frankel v. SEC, 336 F. Supp. 675 (S.D.N.Y. 1971), rev'd, 460 F.2d 813 (2d Cir. 1972), cert. denied, 409 U.S. 889 (1972).
(1003)	Vaughn index	Frankenberry v. DOJ, Civil No. 87-3284 (D.D.C. Feb. 23, 1988).
(1004)	(a)(1)(D), publication	Franklet v. United States, 578 F. Supp. 1552 (N.D. Cal. 1984).
(1005)	Fed.R.Civ.P. 34, discovery/FOIA interface	In re Franklin Nat'l Bank Sec., Ltd., 478 F. Supp. 577 (E.D.N.Y. 1979).
(1006)	(b)(7)(A), waiver of exemption	Freedburg v. Department of the Navy, 581 F. Supp. 3 (D.D.C. 1982).
(1007)	(a)(6)(A), (b)(6), (b)(7)(C), duty to search, "Glomar" denial, waiver of exemption	Freeman v. DOJ, Civil No. 85-0958A (E.D. Va. Mar. 12, 1986), aff'd, No. 86-1073 (4th Cir. Dec. 29, 1986).
(1008)	Discretionary release	Freeman v. Seligson, 405 F.2d 1326 (D.C. Cir. 1968).
(1009)	Discovery/FOIA interface	Friedman v. Bache Halsey Stuart Shields, Inc., 738 F.2d 1336 (D.C. Cir. 1984).
(1010)	Exhaustion of administrative remedies	Friedman v. Commodity Futures Trading Comm'n, Civil No. 80-C-6389 (N.D. Ill. June 14, 1981).

(1011)	(a)(2)(C), (b)(2), (b)(7)(A), (b)(7)(E), attorney's fees	Friedman v. Department of Transp., Civil No. C78-957A (N.D. Ga. Dec. 18, 1978), on motion for attorney's fees (N.D. Ga. Jan. 15, 1979).
(1012)	(b)(1), E.O. 12065, (b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, belated classification, discovery in FOIA litigation, duty to search, exhaustion of administrative remedies, in camera inspection, law enforcement purpose, proper party defendant, Vaughn index	Friedman v. FBI, Civil No. C78-309A (N.D. Ga. Sept. 6, 1978), on motion for summary judgment, 605 F. Supp. 306 (N.D. Ga. 1981), summary judgment granted, 605 F. Supp. 314 (N.D. Ga. 1984), decision on costs (N.D. Ga. Jan. 8, 1986).
(1013)	Attorney's fees, exceptional circumstances/due diligence	Friedman v. Kelley, Civil No. 75-965 (D. Or. Apr. 15, 1976).
(1014)	(a)(2)(C), (b)(3), 26 U.S.C. §6103, §7213, displacement of FOIA, equitable discretion	Fruehauf Corp. v. IRS, 369 F. Supp. 108 (E.D. Mich. 1974), aff'd in part, rev'd in part, 522 F.2d 284 (6th Cir. 1975), rev'd & remanded, 429 U.S. 1085 (1977), on remand, 566 F.2d 574 (6th Cir. 1977).
(1015)	(b)(1), discovery in FOIA litigation, exhaustion of administrative remedies, in camera inspection	Frydman v. DOJ, 3 GDS ¶82,345 (D. Kan. 1981), in camera inspection ordered, 3 GDS ¶82,346 (D. Kan. 1981), supplemental decision, 3 GDS ¶82,347 (D. Kan. 1982).
(1016)	(b)(1), E.O. 11652, (b)(5), deliberative process	Fulbright & Jaworski v. Department of the Treasury, 545 F. Supp. 61[illegible] (D.D.C. 1982).
(1017)	(b)(5), inter- or intra-agency memoranda	Fulford v. Moschell, Civil No. 87-0011 (D.D.C. Feb. 18, 1987).
(1018)	(b)(5), deliberative process	Fulham & Sons v. Pension Benefit Guar. Corp., Civil No. 82-0180-Z (D. Mass. Nov. 12, 1982).
(1019)	(b)(5), (b)(7)(D), inter- or intra-agency memoranda	Fullerton Transfer & Storage, Ltd. v. NLRB, 2 GDS ¶82,202 (N.D. Ohio 1980).
(1020)	(b)(2), (b)(7), (b)(7)(E), law enforcement purpose	Fund for a Conservative Majority v. Federal Election Comm'n, Civil No. 84-1342 (D.D.C. Feb. 26, 1985).
(1021)	(b)(3), 15 U.S.C. §41, (b)(4), (b)(5), (b)(7)(A), (b)(7)(C)	Fund for Constitutional Gov't v. FTC, 2 GDS ¶81,246 (D.D.C. 1981).

(1022)	(b)(3), 26 U.S.C. §6103, Fed.R.Crim. P. 6(e), (b)(5), (b)(7)(C), attorney's fees, exceptional circumstances/due diligence, Vaughn index	Fund for Constitutional Gov't v. Watergate Special Prosecution Force, Civil No. 76-1820 (D.D.C. Jan. 10, 1977), summary judgment granted sub nom. Fund for Constitutional Gov't v. NARS, 485 F. Supp. 1 (D.D.C. 1978), attorney's fees denied, 485 F. Supp. 14 (D.D.C. 1979), motion for reconsideration denied, 485 F. Supp. 15 (D.D.C. 1979), aff'd in part, rev'd in part & remanded, 656 F.2d 856 (D.C. Cir. 1981), on remand, 2 GDS ¶82,216 (D.D.C. 1982).
(1023)	FOIA as a discovery tool, improper withholding, jurisdiction	Fungone v. Regional Director, Bureau of Prisons, Civil No. C75-2498 (N.D. Ga. Feb. 27, 1976).
(1024)	(b)(5), (b)(7)(D)	Furr's Cafeterias, Inc. v. NLRB, 416 F. Supp. 629 (N.D. Tex. 1976), rev'd & remanded, 566 F.2d 505 (5th Cir. 1978).
(1025)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, proper party defendant, waiver of exemption	Gabrielli v. DOJ, 594 F. Supp. 309 (N.D.N.Y. 1984).
(1026)	Adequacy of request, improper withholding, summary judgment	Gadley v. Bureau of Prisons, Civil No. 83-8732 (S.D.N.Y. Apr. 25, 1984).
(1027)	Privacy Act access, (b)(7), (b)(7)(A), FOIA/PA interface, law enforcement purpose, proper party defendant	Gaffney v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 84-1403 (D.D.C. May 13, 1985), subsequent order (D.D.C. June 28, 1985), appeal dismissed, No. 85-5770 (D.C. Cir. May 6, 1986).
(1028)	Summary judgment	Gala v. Federal Bureau of Prisons, Civil No. 85-1044-T (W.D.N.Y. Dec. 9, 1985).
(1029)	Agency	Gale v. Andrus, Civil No. 77-1349 (D.D.C. Dec. 7, 1978), aff'd, 643 F.2d 826 (D.C. Cir. 1980).
(1030)	Adequacy of request	Gale v. DOJ, Civil No. 79-2571 (D.D.C. Sept. 26, 1979), rev'd & remanded, 628 F.2d 224 (D.C. Cir. 1980).
(1031)	Jurisdiction	Gallichio v. Justice Dep't, Civil No. 85-3939 (D.D.C. Dec. 18, 1985).
(1032)	(b)(7)(C), (b)(7)(D), in camera inspection, "mosaic"	Gamez v. DOJ, No. 84-6263 (9th Cir. May 17, 1985) (unpublished memorandum), mem., 762 F.2d 1017 (9th Cir. 1985).

(1033)	(b)(5)	Ganem v. DOJ, Civil No. 85-3796 (D.D.C. Dec. 23, 1986).
(1034)	(b)(7), law enforcement purpose	Gang v. Civil Serv. Comm'n, Civil No. 76-1263 (D.D.C. May 16, 1977).
(1035)	Duty to search, jurisdiction, proper service of process	Gantt v. Hall, Civil No. 84-2626 (D.D.C. Oct. 18, 1984), dismissed (D.D.C. Dec. 21, 1984), summary affirmance granted, No. 84-5937 (D.C. Cir. Apr. 23, 1985).
(1036)	Pro se litigant	Garcia v. DOJ, Civil No. 87-0909 (D.D.C. Feb. 17, 1988).
(1037)	(b)(3), 50 U.S.C. §403(d)(3), §403g, adequacy of agency affidavit, discovery in FOIA litigation, "Glomar" denial, "mosaic," summary judgment	Gardels v. CIA, 484 F. Supp. 368 (D.D.C. 1980), rev'd on procedural grounds, 637 F.2d 770 (D.C. Cir. 1980), on remand, 510 F. Supp. 977 (D.D.C. 1981), aff'd, 689 F.2d 1100 (D.C. Cir. 1982).
(1038)	Exhaustion of administrative remedies	Garner v. Executive Office for U.S. Attorneys, Civil No. 79-2400 (W.D. Tenn. Jan. 2, 1980).
(1039)	Destruction of records, mootness, proper party defendant, summary judgment, Vaughn index	Garside v. Webster, Civil No. C-1-84-1178 (S.D. Ohio Oct. 2, 1985), subsequent decision (S.D. Ohio Oct. 4, 1985), Vaughn index ordered (S.D. Ohio Oct. 14, 1986).
(1040)	Proper party defendant	Gary Energy Corp. v. DOE, 89 F.R.D. 675 (D. Colo. 1981).
(1041)	Exhaustion of administrative remedies	Gasco, Inc. v. DOE, Civil No. 78-0393 (D.D.C. Apr. 21, 1978).
(1042)	(b)(5), agency	Gates v. Schlesinger, 366 F. Supp. 797 (D.D.C. 1973).
(1043)	(a)(2), adequacy of request, fees, improper withholding, interaction of (a)(2) & (a)(3)	Gaunce v. Burnett, Civil No. 84-2390-RMT (C.D. Cal. May 10, 1985), aff'd, No. 85-5995 (9th Cir. June 13, 1988) (unpublished memorandum), mem., 849 F.2d 1475 (9th Cir. 1988).
(1044)	FOIA as a discovery tool, improper withholding	Gaunce v. Helms, Civil No. 82-4054-MML (C.D. Cal. Jan. 26, 1983).
(1045)	Exhaustion of administrative remedies	Gaunce v. United States, 1 GDS ¶80,149 (D.D.C. 1980).
(1046)	(b)(7)(C), (b)(7)(D)	Gay v. DOJ, Civil No. 81-550-Phx-WPC (D. Ariz. Oct. 20, 1981), amended (D. Ariz. Oct. 21, 1981).
(1047)	Fees, fee waiver	Gaylor v. FBI, 2 GDS ¶82,241 (D.D.C. 1982).

(1048)	Adequacy of request, attorney's fees, exhaustion of administrative remedies, FOIA/PA interface	Gedden v. United States Postal Serv., 2 GDS ¶81,369 (S.D. Iowa 1980).
(1049)	Injunction of agency proceeding pending resolution of FOIA claim	General Cigar Co. v. Nash, 89 L.R.R.M. 2863 (D.D.C. 1975).
(1050)	FOIA as a discovery tool, transfer of FOIA case	General Dynamics Corp. v. Department of the Army, Civil Nos. 85-3901, 86-0057 (D.D.C. Jan. 10, 1986).
(1051)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), duty to disclose	General Dynamics Corp. v. Dunlop, 427 F. Supp. 578 (E.D. Mo. 1976), vacated & remanded sub nom. General Dynamics Corp. v. Marshall, 572 F.2d 1211 (8th Cir. 1978), cert. granted, vacated & remanded, 441 U.S. 919 (1979), on remand, 607 F.2d 234 (8th Cir. 1979).
(1052)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §2133, (b)(4), agency records, discretionary release, mootness	General Elec. Co. v. NRC, Civil No. 80-2244 (C.D. Ill. Nov. 30, 1983), motion to vacate denied (C.D. Ill. June 26, 1984), aff'd in part, rev'd in part & remanded, 750 F.2d 1394 (7th Cir. 1984).
(1053)	(b)(3), 26 U.S.C. §6103	General Foods Corp. v. FTC, 1 GDS ¶80,236 (D.D.C. 1980).
(1054)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	General Motors Corp. v. Marshall, 1 GDS ¶80,019 (E.D. Va. 1980), rev'd & remanded, 654 F.2d 294 (4th Cir. 1981).
(1055)	(b)(7)(C), adequacy of agency affidavit, in camera inspection	Gerash v. Smith, 580 F. Supp. 808 (D. Colo. 1984).
(1056)	(b)(5), (b)(7)(A), (b)(7)(D)	Gerico, Inc. v. NLRB, 92 L.R.R.M. 2713 (D. Colo. 1976).
(1057)	No record within scope of request	Geske v. DOJ, Civil No. 85-0617 (D.D.C. May 30, 1985).
(1058)	(b)(4), (b)(7)	Getman v. NLRB, 77 L.R.R.M. 3063 (D.D.C. 1971), aff'd, 450 F.2d 670 (D.C. Cir. 1971), stay denied, 404 U.S. 1204 (1971).
(1059)	FOIA as a discovery tool	Ghandi v. Police Dep't, 74 F.R.D. 115 (E.D. Mich. 1977).
(1060)	(b)(3), 39 U.S.C. §410(c)(6), attorney's fees, discretionary release	Gibson v. Davis, Civil No. C-3-75-316 (S.D. Ohio Nov. 5, 1976), rev'd & remanded, 587 F.2d 280 (6th Cir. 1978), cert. denied, 441 U.S. 905 (1979).

(1061)	Agency records	Gideon v. Benson, Civil No. TH-75-78C (S.D. Ind. July 24, 1975).
(1062)	(b)(4), (b)(5), (b)(7)(A), (b)(7)(D), deliberative process, FOIA as a discovery tool	Gifford-Hill, Inc. v. FTC, 1975-2 Trade Cas. (CCH) ¶60,674 (D.D.C. 1976).
(1063)	(b)(1), (b)(3), (b)(7)(F), summary judgment	Gilday v. DOJ, Civil No. 83-0586 (D.D.C. Nov. 21, 1983).
(1064)	(b)(6), (b)(7)(C), duty to search, fee waiver, "Glomar" denial	Gilday v. DOJ, Civil No. 85-0292 (D.D.C. July 23, 1985).
(1065)	(a)(1)(D), (a)(2)(C)	Giles Lowery Stockyards v. USDA, 565 F.2d 321 (5th Cir. 1977), cert. denied, 436 U.S. 957 (1978).
(1066)	Agency, no record within scope of request	Gillard v. United States Marshals, Civil No. 87-0689 (D.D.C. May 11, 1987).
(1067)	(b)(7)(A), injunction of agency proceeding pending resolution of FOIA claim	Gimbel Bros. v. NLRB, 92 L.R.R.M. 2733 (E.D. Pa. 1976).
(1068)	(b)(1), (b)(3), 50 U.S.C. §403, (b)(6)	Ginsberg v. CIA, 1 GDS ¶80,015 (D.D.C. 1980).
(1069)	(b)(1), E.O. 11652, (b)(2), (b)(7)(C), (b)(7)(D), assurance of confidentiality, exhaustion of administrative remedies, Vaughn index	Ginsberg v. DOJ, Civil No. 77-0532 (D.D.C. Aug. 14, 1978), subsequent decision, 2 GDS ¶81,106 (D.D.C. 1979), on motion for reconsideration, 2 GDS ¶81,222 (D.D.C. 1980).
(1070)	(b)(5)	Ginsberg v. Richardson, 436 F.2d 1146 (3d Cir. 1971), cert. denied, 402 U.S. 976 (1971), reh'g denied, 403 U.S. 912 (1971).
(1071)	(b)(2), (b)(7)	Ginsburg, Feldman & Bress v. Federal Energy Admin., 39 Ad. L. 2d (P & F) 332 (D.D.C. 1976), aff'd, 591 F.2d 717 (D.C. Cir. 1978), vacated pending reh'g en banc, No. 76-1759 (D.C. Cir. 1978), aff'd, 591 F.2d 752 (D.C. Cir. 1978) (en banc), cert. denied, 441 U.S. 906 (1979).
(1072)	Attorney's fees, displacement of FOIA, improper withholding	Ginter v. IRS, 2 GDS ¶81,030 (E.D. Ark. 1980), aff'd, 648 F.2d 469 (8th Cir. 1981).
(1073)	Attorney's fees	Giordano v. Roudebush, 448 F. Supp. 899 (S.D. Iowa 1977).

(1074)	(a)(1)(D), (a)(1)(E)	Girard Trust Bank v. United States, 602 F.2d 938 (Ct. Cl. 1979).
(1075)	FOIA as a discovery tool, jurisdiction	Giza v. HEW, 628 F.2d 748 (1st Cir. 1980).
(1076)	(b)(4)	Glacier Park Found. v. Andrus, 506 F. Supp. 637 (D. Mont. 1981).
(1077)	(b)(7)(C), (b)(7)(D), referral of request to another agency	Glass v. FBI, Civil No. 78-4256-WMB (C.D. Cal. Nov. 16, 1979).
(1078)	(b)(3), 26 U.S.C. §6103(a), §7213, discovery/FOIA interface	Glickman, Luri, Eiger & Co. v. IRS, Civil No. 4-75-303 (D. Minn. Oct. 14, 1975).
(1079)	(b)(2), (b)(3), 28 U.S.C. §534, (b)(5), (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), agency, attorney's fees, discovery in FOIA litigation, exceptional circumstances/due diligence, referral of request to another agency	Globe Newspaper Co. v. DOJ, 2 GDS ¶82,002 (D. Mass. 1980), attorney's fees awarded, Civil No. 77-3301-K (D. Mass. Mar. 29, 1985).
(1080)	FOIA/PA interface, jurisdiction	Gogert v. IRS, No. 86-1674 (9th Cir. Apr. 7, 1987).
(1081)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), §403g, attorney's fees, Congressional records, duty to search	Goland v. CIA, Civil No. 76-0166 (D.D.C. May 26, 1976), aff'd, 607 F.2d 339 (D.C. Cir. 1978), vacated & reh'g denied, 607 F.2d 367 (D.C. Cir. 1979), cert. denied, 445 U.S. 927 (1980).
(1082)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(5), (b)(7)(A), (b)(7)(C), (b)(8)	Goldberg v. DOJ, Civil No. 75-1934-RJK (C.D. Cal. June 26, 1978).
(1083)	Fee waiver	Goldberg v. Department of State, Civil No. 85-1496 (D.D.C. Apr. 29, 1986), amended (D.D.C. July 25, 1986).
(1084)	(b)(1), E.O. 12356, (b)(2), (b)(5), belated classification, deliberative process, summary judgment	Goldberg v. Department of State, Civil No. 85-1497 (D.D.C. May 30, 1986), aff'd, 818 F.2d 71 (D.C. Cir. 1987), cert. denied, 108 S. Ct. 1075 (1988).

(1085)	(b)(5), (b)(6), (b)(7)(A), (b)(7)(C), attorney-client privilege, attorney work-product privilege, deliberative process	Goldberg v. United States, Civil No. 75-1933-RJK (C.D. Cal. May 30, 1978).
(1086)	(b)(4), (b)(6), (b)(8)	Goldberg v. United States, Civil No. 75-2347-LTL (C.D. Cal. June 10, 1976).
(1087)	Burden of proof	Goldblum v. DOJ, 3 GDS ¶82,415 (W.D. Pa. 1982).
(1088)	Exhaustion of administrative remedies, res judicata	Goldsborough v. IRS, 2 GDS ¶82,222 (D. Md. 1980), subsequent decision, 2 GDS ¶82,223 (D. Md. 1982).
(1089)	(b)(2), (b)(3), 26 U.S.C. §6103(e)(7), (b)(7), (b)(7)(A), displacement of FOIA, law enforcement purpose, reasonably segregable	Goldsborough v. IRS, Civil No. Y-81-1939 (D. Md. May 10, 1984).
(1090)	(b)(7), (b)(7)(A), law enforcement purpose	Goldschmidt v. USDA, 557 F. Supp. 274 (D.D.C. 1983).
(1091)	(b)(4), adequacy of agency affidavit, Vaughn index, waiver of exemption	Goldstein v. ICC, 3 GDS ¶83,226 (D.D.C. 1983), partial summary judgment granted, Civil No. 82-1511 (D.D.C. July 20, 1984), partial summary judgment granted (D.D.C. July 31, 1985).
(1092)	Attorney's fees	Goldstein v. Levi, 415 F. Supp. 303 (D.D.C. 1976).
(1093)	Summary judgment	Gomez v. DOJ, Civil No. 87-0910 (D.D.C. Oct. 26, 1987).
(1094)	Exceptional circumstances/due diligence	Gonzalez v. DEA, 2 GDS ¶81,016 (D.D.C. 1980), subsequent decision, Civil No. 80-2360 (D.D.C. Mar. 12, 1982).
(1095)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, injunction of agency proceeding pending resolution of FOIA claim	Goodfriend W. Corp. v. Fuchs, 411 F. Supp. 454 (D. Mass. 1976), rev'd, 535 F.2d 145 (1st Cir. 1976), cert. denied, 429 U.S. 895 (1976).
(1096)	Privacy Act access, attorney's fees	Gordon v. NASA, 582 F. Supp. 274 (D.D.C. 1984), aff'd mem., 750 F.2d 1093 (D.C. Cir. 1984), cert. denied, 472 U.S. 1010 (1985).

(1097)	Privacy Act access	Gorod v. IRS, 43 A.F.T.R. 2d 79-678 (D. Mass. 1979).
(1098)	Vaughn index, waiver of exemption	Gough v. FBI, Civil No. F83-008 (D. Alaska Dec. 27, 1983).
(1099)	(b)(7), (b)(7)(A), FOIA as a discovery tool, law enforcement amendments (1986), law enforcement purpose, summary judgment	Gould, Inc. v. GSA, 688 F. Supp. 689 (D.D.C. 1988).
(1100)	Vaughn index	Government Accountability Project v. DOJ, Civil No. 87-1723 (D.D.C. Aug. 20, 1987).
(1101)	Discovery in FOIA litigation, Vaughn index	Government Accountability Project v. NRC, Civil No. 84-2554 (D.D.C. Jan. 9, 1985) (consolidated).
(1102)	Vaughn index	Government Accountability Project v. NRC, Civil No. 87-2053 (D.D.C. Aug. 13, 1987).
(1103)	Privacy Act access, (b)(5), attorney work-product privilege, deliberative process, reasonably segregable	Government Accountability Project v. Office of the Special Counsel, Civil No. 87-0235-JHP (D.D.C. Feb. 22, 1988).
(1104)	Exhaustion of administrative remedies	Government Employees' Advisors & Representatives, Inc. v. Department of Labor, Civil No. 4-85-498-K (N.D. Tex. Nov. 6, 1986).
(1105)	(b)(5), commercial privilege, deliberative process, discovery/FOIA interface	Government Land Bank v. GSA, Civil No. 80-1203T (D. Mass. June 26, 1981), vacated & remanded, 671 F.2d 663 (1st Cir. 1982).
(1106)	(b)(3), 18 U.S.C. §1905, (b)(4), agency records, attorney's fees	Government Sales Consultants, Inc. v. GSA, Civil No. 77-1294 (D.D.C. Jan. 31, 1979), attorney's fees denied, 1 GDS ¶80,093 (D.D.C. 1980).
(1107)	(b)(7)(A), FOIA as a discovery tool	Grabinski v. IRS, 478 F. Supp. 486 (E.D. Mo. 1979).
(1108)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), exceptional circumstances/due diligence, FOIA as a discovery tool, proper party defendant	Grandison v. DEA, Civil No. 81-1001 (D.D.C. July 9, 1981), summary judgment granted (D.D.C. Jan. 15, 1982).
(1109)	Dismissal for failure to prosecute	Grandison v. Information Div., DOJ, Civil No. HM-81-1306 (D. Md. May 19, 1983).

(1110)	(b)(3), Fed.R.Crim. P. 6(e)	In re Grand Jury Investigation, Ven-Fuel, 510 F. Supp. 1047 (D.D.C. 1979).
(1111)	(b)(7)	In re Grand Jury Witness Subpoenas, 370 F. Supp. 1282 (S.D. Fla. 1974).
(1112)	(b)(5), (b)(7)(A), attorney work-product privilege, deliberative process	Grand Laboratories, Inc. v. HHS, 3 GDS ¶82,306 (D.D.C. 1982).
(1113)	(b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, FOIA as a discovery tool	Grand Laboratories, Inc. v. USDA, 3 GDS ¶82,277 (D.D.C. 1979), aff'd mem., 3 GDS ¶82,278 (D.C. Cir. 1980).
(1114)	Exhaustion of administrative remedies	Grange v. Federal Bureau of Prisons, Civil No. 84-0997-TUC-ACM (D. Ariz. July 24, 1985).
(1115)	(b)(5), (b)(6)	Grassetti v. Weinberger, 408 F. Supp. 142 (N.D. Cal. 1976).
(1116)	(b)(3), 26 U.S.C. §6103(e)(7), (b)(7)(A), displacement of FOIA	Grasso v. IRS, 785 F.2d 70 (3d Cir. 1986).
(1117)	(b)(6), waiver of exemption	Gray v. Farmers Home Admin., Civil No. 84-4451 (D.D.C. Aug. 6, 1985).
(1118)	Jurisdiction, mootness	Grayson v. DOJ, Civil No. 84-3651 (D.D.C. May 28, 1985).
(1119)	(b)(5)	Grayson v. DOJ, Civil No. 85-2640 (D.D.C. Oct. 17, 1986).
(1120)	(b)(5)	Grayson v. DOJ, Civil No. 85-2641 (D.D.C. Oct. 17, 1986).
(1121)	(b)(1), E.O. 12065, E.O. 12356, (b)(3), 50 U.S.C. §403(d)(3), discovery in FOIA litigation, in camera inspection	Green v. Defense Intelligence Agency, Civil No. 82-101 (D. Vt. June 3, 1983), partial summary judgment granted (D. Vt. Sept. 28, 1984).
(1122)	(b)(3), 50 U.S.C. app. §2403(b), (b)(4), attorney's fees	Green v. Department of Commerce, Civil No. 77-0363 (D.D.C. Nov. 15, 1977), subsequent decision, 468 F. Supp. 691 (D.D.C. 1979), aff'd in part mem., No. 79-1509 (D.C. Cir. 1979), appeal dismissed, 618 F.2d 836 (D.C. Cir. 1980), judgment modified, 489 F. Supp. 977 (D.D.C. 1980), attorney's fees granted, 3 GDS ¶82,514 (D.D.C. 1981).

(1123)	(b)(3), 26 U.S.C. §6103, displacement of FOIA	Green v. IRS, 47 A.F.T.R. 2d 81-1261, 2 GDS ¶81,245 (S.D. Ind. 1981).
(1124)	Privacy Act access, (b)(3), 26 U.S.C. §6103(a), §6103(e)(7), (b)(5), attorney-client privilege, deliberative process, displacement of FOIA, Vaughn index	Green v. IRS, 556 F. Supp. 79 (N.D. Ind. 1982), aff'd, No. 83-1107 (7th Cir. Apr. 3, 1984) (unpublished memorandum), mem., 734 F.2d 18 (7th Cir. 1984).
(1125)	(b)(1), (b)(2), (b)(3), 50 U.S.C. §403, in camera inspection, Vaughn index	Green v. Kissinger, Civil No. 76-C-3899 (N.D. Ill. July 22, 1977).
(1126)	(b)(4), (b)(7), law enforcement purpose	Green v. Kleindienst, 378 F. Supp. 1397 (D.D.C. 1974).
(1127)	(b)(4), summary judgment	Greenberg v. FDA, Civil No. 83-2874 (D.D.C. Aug. 2, 1984), aff'd, 775 F.2d 1169 (D.C. Cir. 1985), vacated, No. 84-5672 (D.C. Cir. Jan. 6, 1986), rev'd & remanded, 803 F.2d 1213 (D.C. Cir. 1986), reh'g en banc denied (D.C. Cir. Jan. 8, 1987).
(1128)	Discovery/FOIA interface	Greene County Planning Bd. v. FPC, 559 F.2d 1227 (2d Cir. 1976), cert. denied, 434 U.S. 1086 (1978).
(1129)	Discovery/FOIA interface	Greenfield & Chimicles v. DOE, 561 F. Supp. 97 (E.D. Pa. 1983).
(1130)	(b)(3), 26 U.S.C. §6103, Fed.R.Crim.P. 6(e), (b)(5), deliberative process, duty to search, exceptional circumstances/due diligence, exhaustion of administrative remedies, fee waiver, jurisdiction, reasonably segregable	Greenspun v. Attorney Gen. of the United States, Civil No. 84-3427 (D.D.C. June 17, 1985), partial summary judgment granted (D.D.C. Aug. 26, 1985), partial summary judgment granted (D.D.C. Mar. 3, 1986).
(1131)	Privacy Act access, (b)(3), 26 U.S.C. §6103(b)(2), Fed.R. Crim.P. 6(e), (b)(7)(C), adequacy of agency affidavit, duty to search, judicial records, pro se litigant, reasonably segregable	Greenspun v. Commissioner, Civil No. 84-3426 (D.D.C. June 26, 1985), renewed motion for summary judgment granted, 622 F. Supp. 551 (D.D.C. 1985).

(1132)	Privacy Act access, (b)(2), (b)(3), 5 U.S.C. §552a(j)(2), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality, exceptional circumstances/due diligence, FOIA/PA interface	Greentree v. DEA, 1 GDS ¶80,201 (D.D.C. 1980), summary judgment granted, 2 GDS ¶81,224 (D.D.C. 1981), rev'd, 674 F.2d 74 (D.C. Cir. 1982) (consolidated), subsequent decision, Civil No. 80-1007 (D.D.C. Nov. 29, 1983).
(1133)	Privacy Act access, (b)(3), 5 U.S.C. §552a(j)(2), FOIA/PA interface	Greentree v. United States Customs Serv., 515 F. Supp. 1145 (D.D.C. 1981), rev'd, 674 F.2d 74 (D.C. Cir. 1982) (consolidated), dismissed, Civil No. 80-1869 (D.D.C. Aug. 22, 1983).
(1134)	Adequacy of request, summary judgment	Greer v. Department of the Army, 3 GDS ¶83,187 (D.D.C. 1983).
(1135)	(b)(7)(D)	Gregg v. IRS, 1 GDS ¶80,056 (D.D.C. 1980).
(1136)	(b)(4), (b)(5), deliberative process	Gregory v. Board of Governors of the Fed. Reserve Sys., 496 F. Supp. 342 (D.D.C. 1980).
(1137)	(b)(5), (b)(6), (b)(7), (b)(8), attorney-client privilege, attorney's fees, deliberative process, law enforcement purpose	Gregory v. FDIC, 470 F. Supp. 1329 (D.D.C. 1979), aff'd in part, rev'd in part, 631 F.2d 896 (D.C. Cir. 1980).
(1138)	(b)(3), 26 U.S.C. §6103, §6110, displacement of FOIA	Grenier v. IRS, 449 F. Supp. 834 (D. Md. 1978).
(1139)	Fee waiver	Griffin v. DOJ, Civil No. 83-1634 (D.D.C. Jan. 6, 1984).
(1140)	Attorney's fees	Griffin v. Department of Labor, 3 GDS ¶82,340 (N.D. Ill. 1981).
(1141)	Jurisdiction	Grissom v. NLRB, 364 F. Supp. 1151 (M.D. La. 1973), aff'd sub nom. NLRB v. Big Three Indus., 497 F.2d 43 (5th Cir. 1974).
(1142)	(b)(5), attorney-client privilege, attorney work-product privilege, in camera inspection	Grolier Inc. v. FTC, 2 GDS ¶82,186 (D.D.C. 1980), in camera inspection ordered, 1 GDS ¶80,245 (D.D.C. 1980), aff'd in part, rev'd in part & remanded, 671 F.2d 553 (D.C. Cir. 1982), reh'g en banc denied, 2 GDS ¶82,472 (D.C. Cir. 1982), rev'd, 462 U.S. 19 (1983).

(1143)	(b)(5), attorney work-product privilege, deliberative process, discovery in FOIA litigation, duty to search	Grolier Inc. v. FTC, Civil No. 76-1559 (D.D.C. Dec. 13, 1976), renewed motion for summary judgment granted (D.D.C. Mar. 10, 1978).
(1144)	Attorney's fees	Grooms v. Snyder, 474 F. Supp. 380 (N.D. Ind. 1979).
(1145)	(b)(7)(A), (b)(7)(C), (b)(7)(D), exhaustion of administrative remedies	Grossman v. McMillan, 76-2 U.S. Tax Cas. (CCH) ¶9490 (S.D. Fla. 1976).
(1146)	(b)(1), E.O. 12065, attorney's fees, duty to search	Ground Saucer Watch, Inc. v. CIA, 1 GDS ¶80,128 (D.D.C. 1980), aff'd, 692 F.2d 770 (D.C. Cir. 1981).
(1147)	Preliminary injunction	Grove Press, Inc. v. CIA, 398 F. Supp. 1139 (S.D.N.Y. 1975).
(1148)	Adequacy of request, duty to search, exhaustion of administrative remedies	Grove Press, Inc. v. DOJ, Civil No. 75-6204-GLG (S.D.N.Y. June 12, 1979).
(1149)	Attorney's fees	Grumman Aerospace Corp. v. United States, 579 F.2d 586 (Ct. Cl. 1978).
(1150)	(a)(2)(A), (b)(4), (b)(5), agency, deliberative process, inter- or intra-agency memoranda	Grumman Aircraft Eng'g Corp. v. Renegotiation Bd., 425 F.2d 578 (D.C. Cir. 1970), on remand, 325 F. Supp. 1146 (D.D.C. 1971), aff'd, 482 F.2d 710 (D.C. Cir. 1973), rev'd, 421 U.S. 168 (1975), vacated mem., 515 F.2d 1017 (D.C. Cir. 1975).
(1151)	Reverse FOIA, (b)(3), 15 U.S.C. §2055, improper withholding	GTE Sylvania, Inc. v. Consumer Prod. Safety Comm'n, 443 F. Supp. 1152 (D. Del. 1977), aff'd, 598 F.2d 790 (3d Cir. 1979), aff'd, 447 U.S. 102 (1980).
(1152)	Attorney's fees, exhaustion of administrative remedies, FOIA as a discovery tool	Guam Contractors Ass'n v. Department of Labor, 570 F. Supp. 163 (N.D. Cal. 1983).
(1153)	(b)(5), attorney work-product privilege, deliberative process, inter- or intra-agency memoranda	Guckian v. GSA, Civil No. 75-2156, 38 Ad. L. 2d (P & F) 1061 (D.D.C. 1976), remanded with instructions to vacate, No. 76-1410 (D.C. Cir. July 8, 1976).
(1154)	Privacy Act access	Guerra v. Bell, Civil No. 78-1509 (D.D.C. Mar. 23, 1979).
(1155)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Guerra v. Guajardo, 466 F. Supp. 1046 (S.D. Tex. 1978), aff'd mem., 597 F.2d 769 (5th Cir. 1979).

(1156)	Summary judgment	Guillette v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 83-2079 (D.D.C. Dec. 19, 1983).
(1157)	(b)(4), waiver of exemption	Gulf & W. Indus. v. United States, Civil No. 77-1816 (D.D.C. June 1, 1978), aff'd, 615 F.2d 527 (D.C. Cir. 1979).
(1158)	Reverse FOIA, preliminary injunction	Gulf Apparel Corp. v. United States, Civil No. 82-356-N (M.D. Ala. May 10, 1982), dismissed by stipulation (M.D. Ala. Aug. 23, 1983).
(1159)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), case or controversy, mootness	Gulf Oil Corp. v. Marshall, 1 GDS ¶79,163 (D.D.C. 1979), rev'd & remanded sub nom. Gulf Oil Corp. v. Brock, 778 F.2d 834 (D.C. Cir. 1985).
(1160)	(a)(1)	Gulf States Mfrs. v. NLRB, 579 F.2d 1298 (5th Cir. 1978).
(1161)	(a)(1)(D)	Gunter v. Comptroller of the Currency, Civil No. C78-792A (N.D. Ga. Dec. 1, 1978).
(1162)	(b)(7)(C), (b)(7)(D), assurance of confidentiality	Gutman v. Kelley, Civil No. 75-C-3576 (N.D. Ill. Feb. 3, 1978), subsequent decision sub nom. Gutman v. Webster (N.D. Ill. Nov. 27, 1978).
(1163)	(b)(5), commercial privilege	Hack v. DOE, 538 F. Supp. 1098 (D.D.C. 1982).
(1164)	Exhaustion of administrative remedies, fees	Hackett v. FBI, Civil No. 84-3353 (D.D.C. Dec. 21, 1984).
(1165)	Res judicata	Hacopian v. Department of Labor, 709 F.2d 1295 (9th Cir. 1983), dismissed, Civil No. 81-2042-MML (C.D. Cal. Jan. 4, 1985).
(1166)	Fees, pro se litigant	Hacopian v. HHS, Civil No. 82-6663-ER-Px (C.D. Cal. Mar. 9, 1983).
(1167)	FOIA as a discovery tool	In re Halkin, 598 F.2d 176 (D.C. Cir. 1979).
(1168)	(b)(1), discretionary release, in camera inspection, leaks	Halkin v. Department of State, Nos. 77-1922, 77-1923 (D.C. Cir. June 16, 1978).

(1169)	(b)(1), E.O. 11652, E.O. 12065, (b)(2), (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, in camera inspection	Halkin v. FBI, 3 GDS ¶82,369 (N.D. Ill. 1980), reconsideration granted, 3 GDS ¶82,370 (N.D. Ill. 1980).
(1170)	(a)(1)(D), publication	Hall v. Heckler, 602 F. Supp. 1169 (N.D. Cal. 1985).
(1171)	(b)(6), (b)(7)(C), attorney's fees	Halloran v. VA, Civil No. H-86-4050 (S.D. Tex. Aug. 1, 1988).
(1172)	(b)(1), E.O. 11652, (b)(3), 50 U.S.C. §403(d)(3)	Halperin v. CIA, Civil No. 76-1082 (D.D.C. Dec. 23, 1977), summary judgment granted, 446 F. Supp. 661 (D.D.C. 1978).
(1173)	(b)(3), 50 U.S.C. §403(d)(3), §403g, adequacy of agency affidavit, "mosaic," summary judgment	Halperin v. CIA, Civil No. 77-1859 (D.D.C. July 25, 1979), aff'd, 629 F.2d 144 (D.C. Cir. 1980).
(1174)	(b)(1), E.O. 11652, "mosaic"	Halperin v. Colby, Civil No. 75-0676 (D.D.C. June 4, 1976).
(1175)	(b)(1), E.O. 11652, belated classification, equitable discretion, in camera inspection, waiver of exemption	Halperin v. Department of State, 565 F.2d 699 (D.C. Cir. 1977).
(1176)	(b)(1), E.O. 11652, in camera inspection, reasonably segregable	Halperin v. NSC, Civil No. 75-0675 (D.D.C. Jan. 19, 1976), summary judgment granted, 452 F. Supp. 47 (D.D.C. 1978), aff'd, No. 78-1858 (D.C. Cir. Jan. 14, 1980) (unpublished memorandum), mem., 612 F.2d 586 (D.C. Cir. 1980), reconsideration denied, 2 GDS ¶82,165 (D.C. Cir. 1980).
(1177)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, duty to search, in camera inspection	Halprin v. Webster, Civil No. 78-1149 (D.D.C. May 18, 1979), motion for reconsideration denied (D.D.C. June 29, 1979), summary judgment granted, 1 GDS ¶79,108 (D.D.C. 1979).
(1178)	(b)(7)(C), (b)(7)(D), pro se litigant, summary judgment	Ham v. Bell, Civil No. 79-0082 (D.D.C. Aug. 30, 1979), rev'd & remanded sub nom. Ham v. Smith, 653 F.2d 628 (D.C. Cir. 1981), on remand, 2 GDS ¶82,025 (D.D.C. 1981).
(1179)	Exhaustion of administrative remedies	Hamilton v. DOJ, Civil No. 79-0945 (W.D. La. July 9, 1980).

(1180)	(b)(3), 26 U.S.C. §6103(b)(2), duty to search, summary judgment	Hamilton v. IRS, Civil No. 86-4146 (D. Idaho Dec. 1, 1986), aff'd, No. 87-3520 (9th Cir. Dec. 23, 1987), reh'g denied (9th Cir. Jan. 27, 1988).
(1181)	(a)(6)(A), (a)(6)(B), (b)(1), E.O. 12065, (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), attorney's fees, exceptional circumstances/due diligence, proper party defendant, Vaughn index	Hamlin v. Kelley, 433 F. Supp. 180 (N.D. Ill. 1977), modified on reconsideration, 2 GDS ¶81,378 (N.D. Ill. 1980).
(1182)	(b)(7)(D), discovery/FOIA interface, FOIA as a discovery tool	Han v. Food & Nutrition Serv. of the USDA, 580 F. Supp. 1564 (D.N.J. 1984).
(1183)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), injunction of agency proceeding pending resolution of FOIA claim	Hankamer Ready Mix Concrete Co. v. NLRB, 92 L.R.R.M. 2720 (D. Kan. 1976).
(1184)	Exhaustion of administrative remedies	Hanlon v. Department of Commerce, Civil No. 86-2906 (D.D.C. July 13, 1987), vacated (D.D.C. July 17, 1987).
(1185)	(b)(7)(A)	Hanson v. IRS, 46 A.F.T.R. 2d 80-5999 (N.D. Tex. 1980).
(1186)	(b)(7)	Harbolt v. Alldredge, 464 F.2d 1243 (10th Cir. 1972), cert. denied, 409 U.S. 1025 (1972).
(1187)	Agency records, proper party defendant	Harbolt v. Bensinger, Civil No. 76-H-1737 (S.D. Tex. Feb. 28, 1977).
(1188)	(b)(7)(C), (b)(7)(D), attorney's fees, fee waiver	Harbolt v. Canales, 3 GDS ¶83,028 (S.D. Tex. 1982).
(1189)	(b)(2), mootness	Harbolt v. Carlson, Civil No. 77-0341A (N.D. Ga. June 15, 1978).
(1190)	(b)(6)	Harbolt v. Department of State, Civil No. H-77-1952 (S.D. Tex. Apr. 23, 1979), aff'd, 616 F.2d 772 (5th Cir. 1980), cert. denied, 449 U.S. 856 (1980).
(1191)	(a)(2)(C), (b)(2), equitable discretion, interaction of (a)(2) & (a)(3)	Hardy v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 78-189-TUC-MAR (D. Ariz. Jan. 17, 1979), rev'd, 631 F.2d 653 (9th Cir. 1980).

(1192)	(a)(1)(D), (a)(1)(E), publication	Hark v. Dragon, 477 F. Supp. 308 (D. Vt. 1979), aff'd, 611 F.2d 11 (2d Cir. 1979).
(1193)	(b)(7)(A), (b)(7)(C), (b)(7)(D)	Harowe Servo Controls, Inc. v. NLRB, 92 L.R.R.M. 2572 (E.D. Pa. 1976).
(1194)	(b)(2), (b)(3), 28 U.S.C. §534, Fed.R.Crim.P. 6(e), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), law enforcement purpose, summary judgment, Vaughn index	Harper v. DOJ, Civil No. 85-3714 (D.D.C. July 1, 1986), summary affirmance granted in part & remanded in part, No. 86-5489 (D.C. Cir. Sept. 22, 1987).
(1195)	(b)(2), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F)	Harper v. Department of the Treasury, 2 GDS ¶82,054 (D.D.C. 1981).
(1196)	Agency, de novo review, fee waiver	Harper v. FBI, 3 GDS ¶83,048 (M.D. Pa. 1981), reconsideration denied, 3 GDS ¶83,049 (M.D. Pa. 1982).
(1197)	(b)(2), attorney's fees, mootness	Harrison Bros. Meat Packing Co. v. USDA, 640 F. Supp. 402 (M.D. Pa. 1986).
(1198)	(b)(5), (b)(6), deliberative process	Hartford Accident & Indem. Co. v. Department of the Navy, Civil No. 88-45-N (E.D. Va. June 24, 1988).
(1199)	Exhaustion of administrative remedies, injunction of agency proceeding pending resolution of FOIA claim	Hartford Fire Ins. Co. v. NLRB, 73 Lab. Cas. (CCH) ¶14,409 (D.D.C. 1974).
(1200)	(b)(7)(A), FOIA as a discovery tool, Vaughn index	Hartman v. IRS, 41 A.F.T.R. 2d 78-305 (W.D. Pa. 1977).
(1201)	(b)(7)(A), exhaustion of administrative remedies, in camera inspection	Harvey's Wagon Wheel, Inc. v. NLRB, 91 L.R.R.M. 2410 (N.D. Cal. 1976), aff'd in part, rev'd in part & remanded, 550 F.2d 1139 (9th Cir. 1976).
(1202)	(b)(3), 39 U.S.C. §410(c)(6), (b)(7), (b)(7)(A), FOIA as a discovery tool, law enforcement purpose	Hatcher v. United States Postal Serv., 556 F. Supp. 331 (D.D.C. 1982).
(1203)	(b)(4), discretionary release	Hawaiian Int'l Shipping Corp. v. Department of Commerce, 3 GDS ¶82,366 (D.D.C. 1982).

(1204)	(b)(4)	Hawaiian Int'l Shipping Corp. v. Department of the Navy, 2 GDS ¶81,269 (D.D.C. 1981), subsequent decision, 2 GDS ¶81,273 (D.D.C. 1981).
(1205)	(b)(4), adequacy of agency affidavit, summary judgment	Hawaiian W. Steel Ltd. v. United States Customs Serv., Civil No. 84-0440 (D. Haw. Feb. 13, 1985).
(1206)	(a)(2)(C), (b)(2)	Hawkes v. IRS, 71-2 U.S. Tax Cas. (CCH) ¶9640 (W.D. Tenn. 1971), rev'd & remanded, 467 F.2d 787 (6th Cir. 1972), on remand, Civil No. C70-409 (W.D. Tenn. Nov. 5, 1973), aff'd, 507 F.2d 481 (6th Cir. 1974).
(1207)	(b)(1), E.O. 11652, E.O. 12065, (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), adequacy of agency affidavit, adequacy of request, attorney's fees, discovery in FOIA litigation, in camera inspection, res judicata, Vaughn index	Hayden v. CIA, Civil No. 76-0284 (D.D.C. Sept. 29, 1976), partial summary judgment granted (D.D.C. Oct. 18, 1976), on in camera inspection (D.D.C. Dec. 3, 1976), summary judgment granted (D.D.C. Apr. 15, 1977), on in camera inspection (D.D.C. May 19, 1977), attorney's fees denied (D.D.C. Sept. 27, 1977), remanded, No. 77-1894 (D.C. Cir. Nov. 15, 1978), on remand, 1 GDS ¶80,065 (D.D.C. 1980), renewed motion for attorney's fees denied, 3 GDS ¶82,279 (D.D.C. 1982).
(1208)	(a)(4)(C), (a)(6)(A), (a)(6)(B)	Hayden v. DOJ, 413 F. Supp. 1285 (D.D.C. 1976).
(1209)	(b)(1), E.O. 11652, (b)(3), 50 U.S.C. §402, in camera inspection, summary judgment, Vaughn index	Hayden v. National Sec. Agency/Cent. Sec. Serv., 452 F. Supp. 247 (D.D.C. 1978), aff'd, 608 F.2d 1381 (D.C. Cir. 1979), cert. denied, 446 U.S. 937 (1980).
(1210)	Pro se litigant	Hayles v. DOJ, Civil No. H-79-1599 (S.D. Tex. Oct. 20, 1982), dismissed (S.D. Tex. Nov. 2, 1982).
(1211)	(b)(2), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E)	Hayward v. DOJ, 2 GDS ¶81,231 (D.D.C. 1981).
(1212)	(b)(2), (b)(7)(C), (b)(7)(F)	Hayward v. DOJ, 2 GDS ¶82,230 (D.D.C. 1982).
(1213)	(b)(2), (b)(7)(C), (b)(7)(D), duty to search, proper party defendant	Headley v. FBI, Civil No. 75-3200-DWW (C.D. Cal. Mar. 15, 1976).
(1214)	Agency	Health Sys. Medical Supply v. Blue Cross-Blue Shield, Civil No. 77-P-0988-NE (N.D. Ala. Nov. 2, 1977).

(1215)	(b)(2), (b)(3), 26 U.S.C. §6103, Fed.R. Crim.P. 6(e), (b)(4), (b)(5), (b)(7)(C), (b)(7)(D), assurance of confidentiality	Hearnes v. IRS, 44 A.F.T.R. 2d 79-5594 (E.D. Mo. 1979).
(1216)	Summary judgment	Hecht v. Department of the Interior, Civil No. 345-71-R (E.D. Va. Apr. 5, 1972).
(1217)	Duty to search, summary judgment	Heckman v. Executive Branch, United States Fed. Gov't, Civil No. 86-132 (E.D.N.Y. Jan. 29, 1987), aff'd, No. 87-6039 (2d Cir. June 26, 1987).
(1218)	Exhaustion of administrative remedies	Hedley v. United States, 594 F.2d 1043 (5th Cir. 1979).
(1219)	(b)(1), E.O. 11652, (b)(2), (b)(7)(C), (b)(7)(D), proper party defendant	Heifler v. FBI, Civil No. 78-1670-MML (C.D. Cal. Oct. 13, 1978).
(1220)	(b)(6), FOIA/PA interface	Heights Community Congress v. VA, 3 GDS ¶82,284 (N.D. Ohio 1982), aff'd, 732 F.2d 526 (6th Cir. 1984), cert. denied, 469 U.S. 1034 (1984).
(1221)	Case or controversy	Heimerle v. Bureau of Prisons, Civil No. 84-1973 (D.D.C. July 11, 1984).
(1222)	Exhaustion of administrative remedies, fees, fee waiver	Heimerle v. DOJ, 3 GDS ¶82,261 (D.D.C. 1982).
(1223)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney's fees, in camera inspection, mootness, waiver of exemption	Heimerle v. DOJ, Civil No. 83-1994-MEL (S.D.N.Y. Sept. 26, 1984), partial summary judgment granted (S.D.N.Y. Jan. 2, 1985), on motion for attorney's fees (S.D.N.Y. Mar. 4, 1985).
(1224)	(b)(7)(C), (b)(7)(D), (b)(7)(F), assurance of confidentiality, summary judgment	Heimerle v. DOJ, Civil No. 84-1406 (D.D.C. Jan. 30, 1985).
(1225)	No record within scope of request	Heimerle v. Fiske, Civil No. 78-1388-WCC (S.D.N.Y. Mar. 2, 1979).
(1226)	(b)(5), (b)(6), (b)(7)(C), deliberative process	Heimerle v. United States Attorney Gen., 1 GDS ¶80,023 (D.D.C. 1980).
(1227)	Exceptional circumstances/due diligence	Heimerle v. United States Marshals Serv., Civil No. 84-1194 (D.D.C. Sept. 6, 1984).

(1228)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, deliberative process	Heimerle v. United States Secret Serv., Civil No. 78-2015 (D.D.C. July 6, 1979).
(1229)	(b)(3), 26 U.S.C. §6103(e)(7), (b)(7)(D), displacement of FOIA	Heinsohn v. IRS, 553 F. Supp. 791 (E.D. Tenn. 1982).
(1230)	(b)(3), 5 U.S.C. §552a(j)(2), §552a(k)(2), FOIA/PA interface	Heinzl v. INS, 3 GDS ¶83,121 (N.D. Cal. 1981).
(1231)	(b)(2), (b)(5), (b)(6), (b)(7)(C), attorney work-product privilege, deliberative process, waiver of exemption	Heller v. United States Marshals Serv., 655 F. Supp. 1088 (D.D.C. 1987).
(1232)	(b)(6), adequacy of request	Hemenway v. Hughes, 601 F. Supp. 1002 (D.D.C. 1985).
(1233)	Attorney's fees	Henry v. Office of Educ. of HEW, 2 GDS ¶81,085 (D. Colo. 1980).
(1234)	Res judicata	Hensley v. DOJ, 3 GDS ¶82,343 (S.D. Ohio 1981).
(1235)	(b)(2), (b)(3), 18 U.S.C. §2510, (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F)	Hensley v. DEA, 3 GDS ¶82,342 (S.D. Ohio 1980) (magistrate's report adopted).
(1236)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), adequacy of agency affidavit, agency records, de novo review, mootness	Hercules, Inc. v. Marsh, 659 F. Supp. 849 (W.D. Va. 1987), aff'd, 839 F.2d 1027 (4th Cir. 1988).
(1237)	(b)(6)	Herman v. Middendorf, Civil No. 75-1246 (D.D.C. Dec. 16, 1975).
(1238)	(b)(7)(C), (b)(7)(D), (b)(7)(E), pro se litigant, Vaughn index	Hernandez v. FBI, Civil No. 77-2099 (D.D.C. June 1, 1978).
(1239)	(a)(1)(D), (a)(2)(C), publication	Herron v. Heckler, 576 F. Supp. 218 (N.D. Cal. 1983).
(1240)	(b)(5), (b)(7)(A), in camera inspection	Heublein v. FTC, 457 F. Supp. 52 (D.D.C. 1978).
(1241)	(b)(2)	Hicks v. Freeman, 397 F.2d 193 (4th Cir. 1968), cert. denied, 393 U.S. 1064 (1969).

(1242)	Exhaustion of administrative remedies	Hicks v. Hanberry, Civil No. C78-1044A (N.D. Ga. Dec. 22, 1978).
(1243)	Privacy Act access, (b)(1), E.O. 11652, (b)(2), (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(6), (b)(7)(D), (b)(7)(E), (b)(7)(F), duty to search, FOIA/PA interface, in camera inspection, reasonably segregable	Higgs v. CIA, Civil No. 76-0884 (D.D.C. Jan. 13, 1977), subsequent decision (D.D.C. Mar. 7, 1977).
(1244)	(a)(6)(A), exceptional circumstances/due diligence, exhaustion of administrative remedies, failure to meet time limits, fees, fee waiver	Hill v. Department of the Air Force, Civil No. 85-1485-JB (D.N.M. Sept. 4, 1987), aff'd on other grounds, No. 86-2418 (10th Cir. Mar. 30, 1988).
(1245)	(b)(6), adequacy of agency affidavit, attorney's fees, mootness, no record within scope of request, proper party defendant	Hill v. Secretary of the Air Force, Civil No. 83-0804-JB (D.N.M. Feb. 2, 1984), attorney's fees awarded (D.N.M. June 4, 1984).
(1246)	Duty to search, summary judgment	Hill v. United States, Civil No. 5-82-84 (D. Minn. July 14, 1983).
(1247)	Attorney's fees, burden of proof, duty to search, improper withholding, interaction of (a)(2) & (a)(3), mootness, personal records, transfer of FOIA case	Hill v. United States Air Force, Civil No. 84-1952 (D.D.C. Feb. 11, 1985), subsequent decision (D.D.C. May 24, 1985), summary judgment granted (D.D.C. June 26, 1985), motion for reconsideration denied (D.D.C. May 16, 1986), aff'd, 795 F.2d 1067 (D.C. Cir. 1986).
(1248)	(b)(3), Fed.R.Crim.P. 6(e), (b)(7)(A), adequacy of agency affidavit, proper party defendant, summary judgment, Vaughn index	Hillcrest Equities, Inc. v. DOJ, Civil No. 3-85-2351-R (N.D. Tex. Jan. 26, 1987).
(1249)	Fee waiver, jurisdiction	Hilliard v. Northeast Region Agency Bureau of Prisons, Civil No. 85-2818 (E.D. Pa. Dec. 20, 1985).
(1250)	(b)(1), (b)(7)(C), (b)(7)(D), exceptional circumstances/due diligence, Vaughn index	Hinton v. FBI, 527 F. Supp. 223 (E.D. Pa. 1981), Vaughn index ordered, Civil No. 81-0740 (E.D. Pa. May 7, 1987), appeal dismissed sub nom. Hinton v. DOJ, 844 F.2d 126 (3d Cir. 1988).

(1251)	Attorney's fees	Hiranport Co. v. Department of the Treasury, No. 79-4558 (9th Cir. Oct. 16, 1980).
(1252)	(b)(3), Fed.R.Crim. P. 6(e)	Hiss v. DOJ, 441 F. Supp. 69 (S.D.N.Y. 1977).
(1253)	(a)(1)(C), publication	Historic Green Springs, Inc. v. Bergland, 497 F. Supp. 839 (E.D. Va. 1980).
(1254)	(b)(4), FOIA as a discovery tool	HLI Lordship Indus. v. Committee for Purchase from the Blind & Other Severely Handicapped, 663 F. Supp. 246 (E.D. Va. 1987).
(1255)	(b)(6)	HMG Mktg. Assocs. v. Freeman, 523 F. Supp. 11 (S.D.N.Y. 1980).
(1256)	(a)(2)(C), (b)(2), (b)(3), 42 U.S.C. §2000e-8(e), (b)(5), (b)(7), (b)(7)(A), (b)(7)(E), deliberative process, FOIA as a discovery tool, interaction of (a)(2) & (a)(3)	Hobart Corp. v. EEOC, 603 F. Supp. 1431 (S.D. Ohio 1984), vacated, Civil No. C-3-80-326 (S.D. Ohio Nov. 22, 1985).
(1257)	(b)(1), E.O. 12065, E.O. 12356, (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(5), (b)(6), adequacy of agency affidavit, deliberative process, in camera inspection, reasonably segregable	Hoch v. CIA, 593 F. Supp. 675 (D.D.C. 1984).
(1258)	(a)(2)	Hodge v. Alexander, Civil No. 77-0288 (D.D.C. May 13, 1977).
(1259)	Proper service of process	Hodge v. Rostker, 501 F. Supp. 332 (D.D.C. 1980).
(1260)	(b)(5), (b)(7), discovery/FOIA interface	Hodgson v. Carl Roessler, Inc., 70 Lab. Cas. (CCH) ¶32,849 (D. Conn. 1973).
(1261)	FOIA as a discovery tool	Hodgson v. General Motors Acceptance Corp., 54 F.R.D. 445 (S.D. Fla. 1972).
(1262)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), (b)(6), in camera inspection	Hofmann v. CIA, 2 GDS ¶81,339 (D.D.C. 1981).
(1263)	(b)(2), (b)(5), attorney work-product privilege, exhaustion of administrative remedies	Hogan v. United States, Civil No. 73-1385-WM (S.D. Fla. Jan. 25, 1974).

(1264)	Attorney's fees, proper party defendant	Hogg v. Chandler, Civil No. 3-84-2062 (N.D. Tex. May 16, 1985), magistrate's ruling adopted in part (N.D. Tex. Oct. 31, 1985).
(1265)	Publication	Hogg v. United States, 428 F.2d 274 (6th Cir. 1970).
(1266)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Holiday Inns, Inc. v. Kleppe, 40 Ad. L. 2d (P & F) 66 (W.D. Tenn. 1976).
(1267)	(b)(7)	Holiday Magic, Inc. v. FTC, 32 Ad. L. 2d (P & F) 703 (D.D.C. 1973).
(1268)	(b)(2), (b)(3), 28 U.S.C. §534, Fed.R. Crim.P. 6(e), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, in camera affidavit, Vaughn index	Holland v. DOJ, Civil No. 85-1140 (E.D. Pa. Sept. 4, 1985), summary judgment granted (E.D. Pa. Mar. 11, 1986).
(1269)	Adequacy of agency affidavit	Holland v. Harris, Civil No. 83-2207 (D.D.C. Feb. 6, 1984), aff'd, No. 84-5193 (D.C. Cir. Aug. 17, 1984).
(1270)	Exhaustion of administrative remedies	Holland v. Webster, Civil No. 83-2308 (D.D.C. Oct. 30, 1983).
(1271)	(b)(1), (b)(2), (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(6), (b)(7)(C), (b)(7)(D)	Hollander v. Kelley, Civil No. 77-204-M (D.N.M. Aug. 11, 1978).
(1272)	Privacy Act access, (b)(6), FOIA/PA interface	Hollis v. Department of the Army, Civil No. 85-3218 (D.D.C. July 2, 1986).
(1273)	(b)(6), (b)(7)(C), attorney's fees, disciplinary proceedings, pro se litigant	Holly v. Acree, Civil No. 75-2116 (D.D.C. Mar. 30, 1976), on motion for attorney's fees, 72 F.R.D. 115 (D.D.C. 1976), aff'd mem. sub nom. Holly v. Chasen, 569 F.2d 160 (D.C. Cir. 1977), on motion for attorney's fees (D.D.C. Feb. 2, 1979), rev'd, 639 F.2d 795 (D.C. Cir. 1981).
(1274)	Jurisdiction	Holmes v. CIA, Civil No. 84-0146-C (N.D. W. Va. Mar. 26, 1985).
(1275)	(b)(3), 26 U.S.C. §6103	Holmes v. IRS, 1 GDS ¶80,196 (S.D. Cal. 1980).
(1276)	(b)(5), pro se litigant, stay pending appeal	Holt v. DOJ, Civil No. 86-0232 (D.D.C. Apr. 30, 1986), dismissed (D.D.C. Sept. 23, 1986).

(1277)	(b)(1), (b)(3), 50 U.S.C. §403, adequacy of agency affidavit, attorney's fees, belated classification, Congressional records, in camera affidavit, in camera inspection, referral of request to another agency	Holy Spirit Ass'n v. CIA, Civil No. 79-0151 (D.D.C. July 27, 1979), aff'd in part, rev'd in part, 636 F.2d 838 (D.C. Cir. 1980), cert. granted, vacated in part & remanded, 455 U.S. 997 (1982), remanded, 3 GDS ¶83,144 (D.C. Cir. 1982) (unpublished memorandum), on motion for summary judgment, 558 F. Supp. 41 (D.D.C. 1983), attorney's fees awarded (D.D.C. Mar. 5, 1984).
(1278)	(b)(1), E.O. 12065, (b)(3), 8 U.S.C. §1202(f), 50 U.S.C. §403g, (b)(6), adequacy of agency affidavit, in camera inspection	Holy Spirit Ass'n v. Department of State, 526 F. Supp. 1022 (S.D.N.Y. 1981).
(1279)	(b)(1), E.O. 12065, (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, duty to search, law enforcement purpose	Holy Spirit Ass'n v. FBI, 2 GDS ¶82,235 (D.D.C. 1981), subsequent decision, 2 GDS ¶82,236 (D.D.C. 1981), on motion for reconsideration, 2 GDS ¶82,237 (D.D.C. 1981), aff'd, 683 F.2d 562 (D.C. Cir. 1982).
(1280)	Reverse FOIA, (b)(3), 15 U.S.C. §2055(b)(1)	Honeywell, Inc. v. Consumer Prod. Safety Comm'n, 582 F. Supp. 1072 (D.D.C. 1984), summary judgment granted, Civil No. 83-3922 (D.D.C. Apr. 1, 1985).
(1281)	Reverse FOIA	Honeywell Information Sys. v. Andrus, Civil No. 77-2018 (D.D.C. Feb. 9, 1978).
(1282)	Reverse FOIA, (b)(4), discretionary release	Honeywell Information Sys. v. NASA, Civil Nos. 76-353, 76-377 (D.D.C. July 28, 1976).
(1283)	(b)(5), (b)(7)(A)	Hook Drugs v. NLRB, 91 L.R.R.M. 2797 (S.D. Ind. 1976).
(1284)	(b)(5), FOIA as a discovery tool	Hoover v. Department of the Interior, 611 F.2d 1132 (5th Cir. 1980).
(1285)	(b)(6), attorney's fees, waiver of exemption	Hopkins v. Department of the Navy, Civil No. 84-1868 (D.D.C. Feb. 5, 1985), attorney's fees denied (D.D.C. July 10, 1985), appeal dismissed, No. 85-5356 (D.C. Cir. July 11, 1985).
(1286)	(b)(7)(C), (b)(7)(D), (b)(7)(F), assurance of confidentiality, in camera affidavit	Hopkinson v. DOJ, Civil No. C85-0483 (D. Wyo. July 23, 1986).

(1287)	Judicial records	Hornbaker v. United States Parole Comm'n, Civil No. 81-1017 (M.D. Pa. Jan. 21, 1982) (magistrate's report adopted).
(1288)	(b)(3), 26 U.S.C. §6103(e), (b)(7)(A), displacement of FOIA	Hosner v. IRS, 3 GDS ¶83,164 (D.D.C. 1983), relief from summary judgment denied, Civil No. 82-2441 (D.D.C. Nov. 8, 1983).
(1289)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Hospital Affiliates Int'l, Inc. v. Califano, Civil No. 78-226-J-S (M.D. Fla. May 8, 1978).
(1290)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, nexus test	Hospital Affiliates Int'l, Inc. v. Califano, 1 GDS ¶79,152 (N.D. Ill. 1979).
(1291)	Vaughn index	Hospital Corp. v. DOJ, Civil No. 83-1575 (D.D.C. July 13, 1983).
(1292)	(b)(5), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(F), assurance of confidentiality, deliberative process, law enforcement amendments (1986), law enforcement purpose, waiver of exemption	Housley v. Department of the Treasury, 688 F. Supp. 37 (D.D.C. 1988).
(1293)	(b)(3), 26 U.S.C. §6103(a), (b)(6), (b)(7), (b)(7)(C), law enforcement amendments (1986), law enforcement purpose, summary judgment	Housley v. Department of the Treasury, Civil No. 87-3427 (D.D.C. June 29, 1988).
(1294)	(b)(2), (b)(5), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), assurance of confidentiality, attorney work-product privilege, law enforcement amendments (1986), law enforcement purpose, summary judgment	Housley v. FBI, Civil Nos. 87-2579, 87-3231 (D.D.C. Mar. 18, 1988).
(1295)	Privacy Act access, attorney's fees, exceptional circumstances/due diligence, proper party defendant	Houston v. Prado, Civil No. SA-84-401 (W.D. Tex. June 4, 1984), summary judgment recommended sub nom. Houston v. DOJ (W.D. Tex. Aug. 14, 1985) (magistrate's report).
(1296)	(b)(5), (b)(6), (b)(7)	Howard Johnson Co. v. NLRB, 444 F. Supp. 843 (E.D. Mich. 1977), rev'd, 618 F.2d 1 (6th Cir. 1980).

(1297)	(b)(5), (b)(6), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), injunction of agency proceeding pending resolution of FOIA claim, law enforcement purpose	Howard Johnson Restaurant, Inc. v. NLRB, 95 L.R.R.M. 2471 (W.D.N.Y. 1977), summary judgment granted, Civil No. 77-0124 (W.D.N.Y. June 9, 1977).
(1298)	(b)(5), deliberative process	Howdyshell v. Department of the Navy, 3 GDS ¶82,341 (S.D. Ohio 1981).
(1299)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(6), adequacy of agency affidavit, in camera inspection	Hrones v. CIA, 2 GDS ¶82,133 (D. Mass. 1980), summary judgment granted, 3 GDS ¶82,456 (D. Mass. 1981), aff'd, 685 F.2d 13 (1st Cir. 1982).
(1300)	No record within scope of request	Hrynko v. Crawford, 402 F. Supp. 1083 (E.D. Pa. 1975).
(1301)	(b)(7)(A), attorney's fees	Hubbell Mechanical Supply Co. v. FBI, Civil No. 85-3258-S-2 (W.D. Mo. Feb. 27, 1986), attorney's fees awarded (W.D. Mo. Apr. 15, 1986).
(1302)	(b)(5), deliberative process	Huber, Hunt & Nichols, Inc. v. GSA, Civil No. 77-1709 (D.D.C. Mar. 31, 1978).
(1303)	Summary judgment	Hudgins v. IRS, Civil No. 84-1712 (D.D.C. Sept. 10, 1984).
(1304)	(a)(1)(C)	Hudgins v. IRS, Civil No. 84-2693 (D.D.C. Jan. 15, 1985).
(1305)	(a)(6)(A), adequacy of request, duty to create a record, exhaustion of administrative remedies	Hudgins v. IRS, 620 F. Supp. 19 (D.D.C. 1985), aff'd, No. 85-5992 (D.C. Cir. Jan. 8, 1987) (unpublished memorandum), mem., 808 F.2d 137 (D.C. Cir. 1987).
(1306)	(b)(6)	Hudson v. Department of the Army, Civil No. 86-1114 (D.D.C. Jan. 29, 1987).
(1307)	(a)(1)(D), publication	Hudson v. United States, 766 F.2d 1288 (9th Cir. 1985).
(1308)	(b)(3), 26 U.S.C. §6103(e)(7), de novo review, displacement of FOIA, in camera inspection, summary judgment	Huene v. IRS, 3 GDS ¶83,237 (E.D. Cal. 1983), magistrate's report adopted sub nom. Huene v. United States, 3 GDS ¶83,238 (E.D. Cal. 1983), rev'd & remanded, No. 83-2183 (9th Cir. Dec. 13, 1984).
(1309)	(b)(3), 26 U.S.C. §6103, burden of proof, in camera inspection	Huff v. IRS, 46 A.F.T.R. 2d 80-5842, 2 GDS ¶81,051 (D. Alaska 1980).

(1310)	(b)(6)	Hughes v. Bowen, Civil No. 87-6105-NCR (S.D. Fla. Oct. 22, 1987).
(1311)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §2000e, (b)(4)	Hughes Aircraft Co. v. Schlesinger, 384 F. Supp. 292 (C.D. Cal. 1974).
(1312)	Attorney's fees	Hull v. Civil Serv. Comm'n, Civil No. C77-577A (N.D. Ga. Aug. 8, 1978).
(1313)	(b)(3), 26 U.S.C. §6103, (b)(7)(A), displacement of FOIA	Hulsey v. IRS, 497 F. Supp. 617 (N.D. Tex. 1980).
(1314)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Humana of Va., Inc. v. Blue Cross, 455 F. Supp. 1174 (E.D. Va. 1978), rev'd & remanded, 622 F.2d 76 (4th Cir. 1980).
(1315)	(a)(1)	Human Resources Management, Inc. v. Weaver, 442 F. Supp. 241 (D.D.C. 1978).
(1316)	Attorney's fees, exhaustion of administrative remedies, fee waiver, pro se litigant	Humphrey v. DOJ, 3 GDS ¶82,285 (W.D. Okla. 1981).
(1317)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(6), attorney's fees	Hunt v. CIA, Civil No. 78-146A (E.D. Va. Oct. 4, 1978).
(1318)	(b)(3), 7 U.S.C. §12, (b)(5), (b)(7)(A)	Hunt v. Commodity Futures Trading Comm'n, 484 F. Supp. 47 (D.D.C. 1979).
(1319)	(b)(1), E.O. 12065, (b)(4), (b)(5), (b)(6), deliberative process	Hunt v. Department of State, 2 GDS ¶81,060 (D.D.C. 1981).
(1320)	Discovery in FOIA litigation, Fed.R. Civ.P. 34	Hurt v. United States, No. 72-3183 (9th Cir. Sept. 11, 1974).
(1321)	(b)(4)	Hustead v. Norwood, 529 F. Supp. 323 (S.D. Fla. 1981).
(1322)	(b)(7)(D), (b)(7)(E)	Hyde Park Prods. Corp. v. Acree, Civil No. 75-2713 (S.D.N.Y. Nov. 18, 1975).
(1323)	Attorney's fees, summary judgment	Hydron Laboratories, Inc. v. EPA, 560 F. Supp. 718 (D.R.I. 1983).
(1324)	Exhaustion of administrative remedies	Hymen v. Merit Sys. Protection Bd., 799 F.2d 1421 (9th Cir. 1986).

(1325)	(b)(5), attorney work-product privilege, deliberative process, fee waiver, FOIA as a discovery tool	Idaho Wildlife Fed'n v. United States Forest Serv., 3 GDS ¶83,271 (D.D.C. 1983).
(1326)	(b)(1), (b)(3), 26 U.S.C. §6103(a), 50 U.S.C. §403(d)(3), Fed.R.Crim.P. 6(e), (b)(4), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), attorney work-product privilege, Congressional records, in camera inspection, reasonably segregable	Iglesias v. CIA, 525 F. Supp. 547 (D.D.C. 1981), supplemental order, Civil No. 80-2276 (D.D.C. Feb. 18, 1982).
(1327)	(b)(5), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, deliberative process, duty to search, law enforcement purpose, "mosaic," reasonably segregable, referral of request to another agency	Iglesias v. FBI, Civil No. G79-350-6 (W.D. Mich. July 3, 1985), subsequent opinion (W.D. Mich. Nov. 18, 1985).
(1328)	Agency, agency records, attorney's fees, de novo review, improper withholding, waiver of exemption	Illinois Inst. for Continuing Legal Educ. v. Department of Labor, 3 GDS ¶83,029 (N.D. Ill. 1982), summary judgment granted, 545 F. Supp. 1229 (N.D. Ill. 1982), attorney's fees denied, Civil No. 81-C-1629 (N.D. Ill. Jan. 28, 1983).
(1329)	(b)(5), attorney work-product privilege, deliberative process, in camera inspection, mootness	Illinois State Bd. of Educ. v. Bell, Civil No. 84-0337 (D.D.C. Mar. 25, 1985), summary judgment granted (D.D.C. May 31, 1985).
(1330)	Agency	Independent Investor Protective League v. New York Stock Exchange, 367 F. Supp. 1376 (S.D.N.Y. 1973).
(1331)	(b)(4), attorney's fees, promise of confidentiality	Indian Law Resource Center v. Department of the Interior, 477 F. Supp. 144 (D.D.C. 1979), vacated as moot, No. 79-2254 (D.C. Cir. July 3, 1980), on motion for attorney's fees, 2 GDS ¶81,197 (D.D.C. 1981).
(1332)	(b)(5), (b)(6), (b)(7)(C), deliberative process, proper party defendant	Information Acquisition Corp. v. DOJ, Civil No. 77-0839 (D.D.C. May 23, 1979).

(1333)	(b)(5), (b)(6), (b)(7), deliberative process, exhaustion of administrative remedies, law enforcement purpose, proper party defendant	Information Acquisition Corp. v. DOJ, Civil No. 77-0840 (D.D.C. Apr. 7, 1978), on motion for reconsideration (D.D.C. June 6, 1978).
(1334)	(b)(5), (b)(6), (b)(7)(C), deliberative process, proper party defendant	Information Acquisition Corp. v. DOJ, Civil No. 77-0884 (D.D.C. Dec. 7, 1977), summary judgment granted, 3 GDS ¶83,149 (D.D.C. 1981).
(1335)	(b)(6), (b)(7)(C), exhaustion of administrative remedies, Vaughn index	Information Acquisition Corp. v. DOJ, 444 F. Supp. 458 (D.D.C. 1978).
(1336)	Exhaustion of administrative remedies, failure to meet time limits, fees	Information Acquisition Corp. v. Department of State, Civil No. 77-0921 (D.D.C. Oct. 27, 1977).
(1337)	(b)(7)(C), (b)(7)(D), duty to disclose, in camera inspection	Ingle v. DOJ, 2 GDS ¶81,238 (M.D. Tenn. 1981), subsequent decision, 2 GDS ¶81,239 (M.D. Tenn. 1981), aff'd in part, rev'd in part & remanded, 698 F.2d 259 (6th Cir. 1983).
(1338)	Privacy Act access, mootness	Ingraham v. United States Postal Serv., No. 86-3142 (4th Cir. Apr. 1, 1987), reh'g denied (4th Cir. June 12, 1987).
(1339)	(b)(7)(A)	Injex Indus. v. NLRB, Civil No. C86-3850-TEH (N.D. Cal. Dec. 18, 1986).
(1340)	Exhaustion of administrative remedies	In-Place Machining Co. v. TVA, Civil No. 85-C-1005 (E.D. Wis. Sept. 5, 1986).
(1341)	(b)(1), in camera affidavit	Inside Story/Press & Public Project, Inc. v. CIA, Civil No. 84-1311 (D.D.C. Feb. 14, 1985).
(1342)	(b)(2), summary judgment	Institute for Policy Studies v. Department of the Air Force, 676 F. Supp. 3 (D.D.C. 1987).
(1343)	(b)(7)	Institute for Weight Control, Inc. v. Klassen, 348 F. Supp. 1304 (D.N.J. 1972), aff'd mem., 474 F.2d 1338 (3d Cir. 1973).
(1344)	(b)(4), FOIA as a discovery tool	Instrument Sys. Corp. v. United States, 546 F.2d 357 (Ct. Cl. 1976).

(1345)	Reverse FOIA, (b)(4), promise of confidentiality	Interco, Inc. v. FTC, Civil No. 78-929-C(3) (E.D. Mo. Dec. 22, 1978) (case transferred to D.D.C.), subsequent decision, 478 F. Supp. 103 (D.D.C. 1979), remanded, No. 79-1423 (D.C. Cir. May 17, 1979), on remand, 490 F. Supp. 39 (D.D.C. 1979).
(1346)	(b)(6)	International Bhd. of Elec. Workers v. HUD, 593 F. Supp. 542 (D.D.C. 1984), aff'd, 763 F.2d 435 (D.C. Cir. 1985).
(1347)	(b)(6)	International Bhd. of Elec. Workers v. HUD, 852 F.2d 87 (3d Cir. 1988).
(1348)	Agency records	International Bhd. of Teamsters v. National Mediation Bd., 2 GDS ¶81,276 (D.D.C. 1981), aff'd, 712 F.2d 1495 (D.C. Cir. 1983).
(1349)	(b)(5), deliberative process	International Paper Co. v. FPC, 438 F.2d 1349 (2d Cir. 1971), cert. denied, 404 U.S. 827 (1971).
(1350)	Duty to create a record, duty to search, no improper withholding, summary judgment	International Trade Overseas, Inc. v. AID, 688 F. Supp. 33 (D.D.C. 1988).
(1351)	(b)(7)(D), assurance of confidentiality, waiver of exemption	Interstate Motor Freight Sys. v. Department of Labor, 554 F. Supp. 692 (W.D. Mich. 1982).
(1352)	(b)(2), (b)(7)(D), attorney's fees, fee waiver, improper withholding, law enforcement amendments (1986), waiver of exemption	Irons v. FBI, 571 F. Supp. 1241 (D. Mass. 1983), subsequent decision, Civil No. 82-1143-G (D. Mass. Mar. 31, 1986), rev'd & remanded, 811 F.2d 681 (1st Cir. 1987), on remand (D. Mass. Apr. 21, 1987), interim attorney's fees denied (D. Mass. June 26, 1987), vacated & remanded, 851 F.2d 532 (1st Cir. 1988).
(1353)	Privacy Act access, (b)(1), E.O. 11652, (b)(7), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, adequacy of request, burden of proof, in camera inspection, law enforcement purpose	Irons v. Levi, 451 F. Supp. 751 (D. Mass. 1978), rev'd sub nom. Irons v. Bell, 596 F.2d 468 (1st Cir. 1979), on remand sub nom. Irons v. Civiletti, Civil No. 76-963-S (D. Mass. Jan. 21, 1980).

(1354)	(a)(2), (a)(2)(A), (b)(3), 35 U.S.C. §122, (b)(4), adequacy of request, agency records, fees, reasonably segregable	Irons v. Schuyler, 321 F. Supp. 628 (D.D.C. 1970), aff'd in part, rev'd in part & remanded, 465 F.2d 608 (D.C. Cir. 1972), cert. denied, 409 U.S. 1076 (1972), on remand sub nom. Irons v. Gottschalk, 369 F. Supp. 403 (D.D.C. 1974), remanded, 548 F.2d 992 (D.C. Cir. 1976), cert. denied, 434 U.S. 965 (1977), on remand sub nom. Irons v. Diamond, Civil No. 70-0075 (D.D.C. July 31, 1980), aff'd in part, rev'd in part & remanded, 670 F.2d 265 (D.C. Cir. 1981), dismissed sub nom. Irons v. Mossinghoff, 3 GDS ¶82,383 (D.D.C. 1982).
(1355)	(b)(4)	Irons & Sears v. Chasen, Civil No. 78-2372 (D.D.C. July 19, 1979).
(1356)	(b)(3), 35 U.S.C. §122	Irons & Sears v. Dann, 606 F.2d 1215 (D.C. Cir. 1979), cert. denied, 444 U.S. 1075 (1980).
(1357)	Adequacy of request	Irvin v. Califano, Civil No. 79-717A (N.D. Ga. Feb. 5, 1980).
(1358)	Duty to disclose	In re Irving, 600 F.2d 1027 (2d Cir. 1979), cert. denied, 444 U.S. 866 (1979).
(1359)	Agency	Irwin Memorial Blood Bank v. American Nat'l Red Cross, 640 F.2d 1051 (9th Cir. 1981).
(1360)	Attorney's fees, mootness	Isometrics, Inc. v. Orr, Civil No. 85-3066 (D.D.C. Apr. 29, 1986), attorney's fees denied (D.D.C. Feb. 27, 1987).
(1361)	(b)(5), (b)(7)(A), (b)(7)(D), attorney work-product privilege, injunction of agency proceeding pending resolution of FOIA claim	ITT Am. Elec. v. NLRB, 92 L.R.R.M. 2815 (N.D. Miss. 1976).
(1362)	(b)(7)(A)	ITT Continental Baking Co. v. FTC, 40 Ad. L. 2d (P & F) 183 (D.D.C. 1976).
(1363)	(b)(4), (b)(5)	ITT Gilfillan, Inc. v. Froehlke, Civil No. 73-416 (D.D.C. June 27, 1973).

(1364)	(b)(5), attorney-client privilege, deliberative process	ITT World Communications, Inc. v. FCC, 1 GDS ¶80,260 (D.D.C. 1980), amended, 2 GDS ¶81,045 (D.D.C. 1980), aff'd in part, rev'd in part & remanded, 699 F.2d 1219 (D.C. Cir. 1983), reh'g en banc denied, Nos. 80-1721, 80-2324, 80-2401 (D.C. Cir. Apr. 6, 1983), rev'd & remanded on other grounds, 466 U.S. 463 (1984), remanded mem. (D.C. Cir. June 12, 1984), dismissed by stipulation, Civil No. 80-0428 (D.D.C. June 29, 1984).
(1365)	(b)(3), 26 U.S.C. §6103, §6110, duty to search	IU Int'l Corp. v. Maritime Admin., Civil No. 77-0498 (D.D.C. Dec. 19, 1977).
(1366)	Reverse FOIA, (b)(3), 7 U.S.C. §608, (b)(4), (b)(6), discretionary release	Ivanhoe Citrus Ass'n v. Handley, 612 F. Supp. 1560 (D.D.C. 1985).
(1367)	Vaughn index	Iverson v. Department of State, 2 GDS ¶81,065 (D.D.C. 1981).
(1368)	(b)(3), (b)(5), deliberative process, inter- or intra-agency memoranda, waiver of exemption	Izzi v. United States Parole Comm'n, Civil No. 84-3030 (D.D.C. Apr. 22, 1985), stay denied (D.D.C. June 7, 1985), rev'd, 804 F.2d 701 (D.C. Cir. 1986) (consolidated), reh'g denied, 806 F.2d 1122 (D.C. Cir. 1986) (consolidated), cert. granted, judgment vacated & remanded, 108 S. Ct. 2010 (1988) (consolidated).
(1369)	Summary judgment	Jabara v. Schultz, Civil No. 81-71421-DT (E.D. Mich. Mar. 15, 1985).
(1370)	(b)(5), (b)(6), (b)(7), deliberative process, law enforcement purpose, reasonably segregable, summary judgment	Jackson v. Federal Bureau of Prisons, No. 87-5186 (D.C. Cir. Jan. 5, 1988).
(1371)	(b)(7)(A)	Jackson v. IRS, Civil Nos. 83-0530A, 83-0531A, 83-0532A (W.D. Va. Sept. 10, 1984).
(1372)	Agency	Jackson v. Just, 3 GDS ¶82,440 (D.D.C. 1982).
(1373)	(b)(3), 26 U.S.C. §6103(b)(2)	Jacobson v. Commissioner, Civil No. 85-4424-KTD (S.D.N.Y. July 28, 1986).
(1374)	(b)(6), FOIA/PA interface	Jafari v. Department of the Navy, 3 GDS ¶83,250 (E.D. Va. 1983), aff'd, 728 F.2d 247 (4th Cir. 1984).

(1375)	(b)(1), E.O. 12065, (b)(2), (b)(3), 8 U.S.C. §1202(f), 50 U.S.C. §402, §403(d)(3), §403g, (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, attorney's fees, de novo review, in camera affidavit, in camera inspection	Jaffe v. CIA, Civil No. 76-1394 (D.D.C. Apr. 7, 1977), on motion for attorney's fees, 1 GDS ¶79, 157 (D.D.C. 1979), subsequent decision, 516 F. Supp. 576 (D.D.C. 1981), limited enlargement of time granted, 520 F. Supp. 124 (D.D.C. 1981), summary judgment granted, 573 F. Supp. 377 (D.D.C. 1983).
(1376)	Summary judgment	Jaffe v. IRS, 47 A.F.T.R. 2d 81-1109, 2 GDS ¶81,191 (S.D. Fla. 1981).
(1377)	Privacy Act access, exhaustion of administrative remedies	Jaffess v. Secretary, HEW, 393 F. Supp. 626 (S.D.N.Y. 1975).
(1378)	(b)(5), (b)(7)(A), attorney work-product privilege	Jamco Int'l, Inc. v. NLRB, 91 L.R.R.M. 2446 (N.D. Okla. 1976).
(1379)	(b)(6), FOIA/PA interface	James v. Department of the Interior, Civil No. 87-204-C (E.D. Okla. June 18, 1987).
(1380)	(b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, law enforcement amendments (1986), law enforcement purpose	James v. FBI, Civil No. 86-2556 (D.D.C. Aug. 10, 1987), summary affirmance granted, No. 87-5346 (D.C. Cir. Apr. 7, 1988).
(1381)	Equitable discretion, status of plaintiff	Javelin Int'l, Ltd. v. DOJ, 2 GDS ¶82,141 (D.D.C. 1981).
(1382)	Reverse FOIA, (b)(3), 15 U.S.C. §46(f), agency records	Jaymar-Ruby, Inc. v. FTC, 496 F. Supp. 838 (N.D. Ind. 1980), aff'd, 651 F.2d 506 (7th Cir. 1981).
(1383)	Exhaustion of administrative remedies	Jechura v. DOJ, Civil No. 86-5836-Kn (C.D. Cal. June 2, 1987), appeal dismissed, No. 87-6062 (9th Cir. Dec. 23, 1987).
(1384)	(b)(6), no record within scope of request	Jenkins v. Robinson, Civil No. 80-2344-WCC (S.D.N.Y. Nov. 7, 1980).
(1385)	Attorney's fees, exhaustion of administrative remedies	Jenks v. United States Marshals Serv., 514 F. Supp. 1383 (S.D. Ohio 1981).
(1386)	(b)(7)(A), (b)(7)(C), Vaughn index	Jenks v. United States Secret Serv., 517 F. Supp. 307 (S.D. Ohio 1981).

(1387)	Attorney's fees, mootness	Jennings v. Selective Serv. Sys., Civil No. 83-0072 (D.D.C. May 24, 1983), attorney's fees denied (D.D.C. Nov. 23, 1983).
(1388)	Fee waiver	Jester v. DOJ, 2 GDS ¶81,027 (D.D.C. 1979).
(1389)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	J.H. Lawrence Co. v. Smith, 545 F. Supp. 421 (D. Md. 1982), subsequent decision, Civil Nos. J-81-2993, J-82-361 (D. Md. Nov. 10, 1982).
(1390)	(b)(3), 38 U.S.C. §3305, (b)(5), attorney work-product privilege, reasonably segregable	Jochen v. Office of Special Counsel, Civil No. 86-4765-MRP (C.D. Cal. Feb. 4, 1987).
(1391)	(b)(5), adequacy of agency affidavit, commercial privilege	Johannson v. DOJ, 2 GDS ¶81,079 (D.D.C. 1981).
(1392)	(b)(3), Fed.R.Crim. P. 6(e), (b)(7), (b)(7)(A), law enforcement purpose, Vaughn index	John Doe Corp. v. John Doe Agency, 850 F.2d 105 (2d Cir. 1988).
(1393)	Mootness, summary judgment	Johnson v. Brock, Civil No. 85-1955 (D.D.C. Dec. 18, 1985), aff'd, No. 86-5122 (D.C. Cir. June 10, 1987) (unpublished memorandum), mem., 819 F.2d 318 (D.C. Cir. 1987).
(1394)	(b)(3), Fed.R.Crim. P. 6(e), attorney's fees, referral of request to another agency	Johnson v. DOJ, Civil No. 77-2092 (E.D. La. May 23, 1978).
(1395)	(b)(7)(C), exhaustion of administrative remedies, in camera inspection, proper party defendant	Johnson v. DOJ, Civil No. 77-2276 (E.D. La. Apr. 25, 1978).
(1396)	(b)(7), (b)(7)(D), in camera inspection, law enforcement purpose, reasonably segregable	Johnson v. DOJ, 2 GDS ¶82,041 (D. Or. 1980).
(1397)	(b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality	Johnson v. DOJ, 739 F.2d 1514 (10th Cir. 1984).
(1398)	(b)(5), attorney work-product privilege, Vaughn index	Johnson v. DOJ, Civil No. 85-0714-SSH (D.D.C. Mar. 7, 1988).

(1399)	(b)(4), attorney's fees, in camera inspection	Johnson v. HEW, 462 F. Supp. 336 (D.D.C. 1978), on motion for attorney's fees, Civil No. 77-2013 (D.D.C. Nov. 3, 1980).
(1400)	Summary judgment	Johnson v. National Sec. Agency, Civil No. 86-2546 (D.D.C. June 30, 1987).
(1401)	(b)(5)	Johnson Oil Co. v. DOE, 3 GDS ¶83,089 (D. Utah 1981).
(1402)	(b)(3), 26 U.S.C. §6103, (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, displacement of FOIA, in camera inspection, proper party defendant	Johnston v. IRS, Civil No. 82-743C (W.D.N.Y. June 26, 1985), subsequent decision (W.D.N.Y. Oct. 3, 1986).
(1403)	Agency	Johnston, Davidson & McGeorge v. Council of Economic Advisers, Civil No. 81-2782 (D.D.C. July 11, 1985).
(1404)	Adequacy of request, exhaustion of administrative remedies	Jonak v. CIA, Civil No. 78-401-N (E.D. Va. Oct. 23, 1978).
(1405)	Adequacy of request, dismissal for failure to prosecute, no record within scope of request	Jonak v. CIA, 3 GDS ¶82,474 (E.D. Va. 1980), dismissed, 3 GDS ¶82,502 (E.D. Va. 1981), aff'd, 3 GDS ¶82,516 (4th Cir. 1982).
(1406)	Discovery in FOIA litigation, Vaughn index	Jones v. FBI, Civil No. C77-1001 (N.D. Ohio Apr. 14, 1983).
(1407)	Privacy Act access, (b)(5), deliberative process, no record within scope of request	Jones v. Merit Sys. Protection Bd., Civil Nos. 85-0-49, 85-0-722 (D. Neb. Sept. 5, 1986), aff'd sub nom. Jones v. Farm Credit Admin., No. 86-2243 (8th Cir. Apr. 13, 1987), reh'g denied (8th Cir. May 12, 1987).
(1408)	Jurisdiction	Jones v. NRC, 654 F. Supp. 130 (D.D.C. 1987).
(1409)	Attorney's fees, pro se litigant	Jones v. United States Secret Serv., 81 F.R.D. 700 (D.D.C. 1979).

(1410)	(a)(2), (a)(2)(C), (b)(2), (b)(5), (b)(7)(E), attorney work-product privilege, attorney's fees, deliberative process, interaction of (a)(2) & (a)(3), waiver of exemption (failure to assert in litigation)	Jordan v. DOJ, Civil No. 76-0276 (D.D.C. Jan. 18, 1977), aff'd on other grounds, 591 F.2d 753 (D.C. Cir. 1978) (en banc), attorney's fees denied, 89 F.R.D. 537 (D.D.C. 1981), rev'd & remanded, 691 F.2d 514 (D.C. Cir. 1982).
(1411)	(b)(5), attorney's fees, commercial privilege, deliberative process, inter- or intra-agency memoranda, stay pending appeal	Jordan, Gresham, Varner, Savage & Nolan v. Department of the Interior, Civil No. 80-97-LTL-Px (C.D. Cal. May 19, 1980).
(1412)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), attorney work-product privilege, deliberative process	Joseph Horne Co. v. NLRB, 455 F. Supp. 1383 (W.D. Pa. 1978).
(1413)	(b)(5), (b)(7)(C), (b)(7)(D), assurance of confidentiality, deliberative process	Joslin v. Department of Labor, Civil No. 86-C-2449 (D. Colo. May 9, 1988).
(1414)	Reverse FOIA, (b)(3), Fed.R.Crim.P. 6(e), (b)(7), stay pending appeal, waiver of exemption (failure to assert in litigation)	Jos. Schlitz Brewing Co. v. SEC, 548 F. Supp. 6 (D.D.C. 1982), stay denied, 2 GDS ¶82,246 (D.D.C. 1982), aff'd, No. 82-1256 (D.C. Cir. June 30, 1982).
(1415)	(b)(2), (b)(3), 18 U.S.C. §1905, 49 U.S.C. §11910, (b)(4), (b)(5), discovery in FOIA litigation, mootness, "mosaic," reasonably segregable, summary judgment, Vaughn index, waiver of exemption	Journal of Commerce, Inc. v. Department of the Treasury, Civil No. 86-1075 (D.D.C. Oct. 10, 1986), summary judgment granted in part (D.D.C. June 1, 1987), on renewed motion for summary judgment (D.D.C. Mar. 30, 1988).
(1416)	(b)(3), 42 U.S.C. §2000e-5(b), §2000e-8(e), (b)(7)(A), FOIA as a discovery tool	J.P. Stevens & Co. v. Perry, 710 F.2d 136 (4th Cir. 1983).
(1417)	Exhaustion of administrative remedies	J.P. Stevens Employees Educ. Comm. v. NLRB, 582 F.2d 326 (4th Cir. 1978).

(1418)	(b)(3), 18 U.S.C. §4208(c), Fed.R. Crim.P. 32, (b)(5), deliberative process, displacement of FOIA, reasonably segregable, waiver of exemption	Julian v. DOJ, 806 F.2d 1411 (9th Cir. 1986), aff'd, 108 S. Ct. 1606 (1988).
(1419)	(b)(3), 26 U.S.C. §6103, burden of proof	Juliano v. IRS, Civil No. C78-1070A (N.D. Ga. June 28, 1979).
(1420)	(b)(5), attorney-client privilege, deliberative process, discovery/FOIA interface	Jupiter Painting Contracting Co. v. United States, 87 F.R.D. 593 (E.D. Pa. 1980).
(1421)	Exhaustion of administrative remedies, pro se litigant	Jurgins v. Department of State, Civil No. 85-3390 (D.D.C. Mar. 25, 1986) (consolidated), dismissed (D.D.C. Apr. 29, 1986).
(1422)	Privacy Act access, duty to create a record, mootness	Jurgins v. Department of the Navy, Civil No. 83-1227 (D.D.C. Jan. 20, 1984), aff'd, No. 84-5115 (D.C. Cir. Nov. 30, 1984).
(1423)	Mootness, pro se litigant	Jurgins v. Department of the Navy, Civil No. 85-3542 (D.D.C. Mar. 25, 1986) (consolidated), dismissed as moot (D.D.C. Apr. 29, 1986).
(1424)	Dismissal for failure to prosecute	Jurgins v. HHS, Civil No. 85-3655 (D.D.C. June 3, 1986).
(1425)	(b)(7)(A), Vaughn index	Kacilauskas v. DOJ, 565 F. Supp. 546 (N.D. Ill. 1983).
(1426)	(b)(2), exhaustion of administrative remedies	Kaganove v. EPA, 664 F. Supp. 352 (N.D. Ill. 1987), rev'd, No. 87-2286 (7th Cir. Sept. 1, 1988).
(1427)	(b)(7), (b)(7)(C), (b)(7)(D), duty to search, law enforcement purpose	Kahle v. DOJ, No. 87-5198 (D.C. Cir. Feb. 29, 1988).
(1428)	(a)(1)(D), publication	Kahn v. United States, 753 F.2d 1208 (3d Cir. 1985).
(1429)	(b)(4), (b)(5), (b)(6)	Kall v. SBA, 3 GDS ¶82,325 (N.D.N.Y. 1981).
(1430)	Privacy Act access, (b)(5), (b)(6), deliberative process, FOIA/PA interface, personal records	Kalmin v. Department of the Navy, 605 F. Supp. 1492 (D.D.C. 1985).

(1431)	(b)(7)(A), (b)(7)(C), (b)(7)(D), agency records, assurance of confidentiality, in camera inspection	Kaminer v. NLRB, 90 L.R.R.M. 2269 (S.D. Miss. 1975).
(1432)	Duty to disclose, exhaustion of administrative remedies	Kaminskas v. DOJ, Civil No. H-76-511 (D. Conn. Jan. 11, 1978).
(1433)	Exhaustion of administrative remedies	Kaminski v. Civil Serv. Comm'n, Civil No. 75-458 (W.D.N.Y. June 29, 1977).
(1434)	(b)(1), E.O. 12065, (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(E), in camera inspection	Kanter v. Department of State, Civil No. 78-0077 (D.D.C. May 31, 1979), summary judgment granted, 479 F. Supp. 921 (D.D.C. 1979).
(1435)	(b)(2), (b)(3), 26 U.S.C. §6103, (b)(5), (b)(7), (b)(7)(A), (b)(7)(C), burden of proof, FOIA as a discovery tool, in camera affidavit	Kanter v. IRS, 433 F. Supp. 812 (N.D. Ill. 1977), dismissed, 478 F. Supp. 552 (N.D. Ill. 1979).
(1436)	(b)(3), 26 U.S.C. §6103, Fed.R.Crim. P. 6(e), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), attorney-client privilege, attorney work-product privilege, deliberative process, displacement of FOIA	Kanter v. IRS, 496 F. Supp. 1004 (N.D. Ill. 1980).
(1437)	(b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(6), de novo review, "Glomar" denial, proper party defendant, summary judgment	Kapsa v. CIA, Civil No. C-2-78-1062 (S.D. Ohio Mar. 6, 1985).
(1438)	Jurisdiction	Kardash v. Commissioner, Civil No. 82-3126 (D.D.C. Nov. 18, 1982).
(1439)	Publication	Karpowycz v. United States, 586 F. Supp. 48 (N.D. Ill. 1984).
(1440)	(b)(3), Fed.R.Crim. P. 6(e), (b)(7)(C), (b)(7)(D), assurance of confidentiality, summary judgment, Vaughn index	Karu v. DOJ, Civil No. 86-0771 (D.D.C. Dec. 1, 1987).
(1441)	(b)(5), inter- or intra-agency memoranda, stay pending appeal	Katsougrakis v. United States Parole Comm'n, Civil No. 85-3259 (D.D.C. Dec. 11, 1985), dismissed (D.D.C. Sept. 17, 1986).

(1442)	(b)(2), (b)(7)(C), (b)(7)(D), attorney's fees	Katz v. DOJ, 498 F. Supp. 177 (S.D.N.Y. 1979).
(1443)	Res judicata	Katz v. DOJ, 596 F. Supp. 196 (E.D. Mo. 1984), aff'd mem., 767 F.2d 930 (8th Cir. 1985).
(1444)	(b)(3), 28 U.S.C. §534, Fed.R.Crim.P. 6(e), (b)(5), (b)(7)(C), (b)(7)(D), attorney work-product privilege, FOIA as a discovery tool, law enforcement amendments (1986), Vaughn index	Katz v. FBI, No. 87-3712 (5th Cir. Mar. 30, 1988).
(1445)	(b)(1), E.O. 12356, (b)(2), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, attorney's fees, in camera inspection, law enforcement purpose, proper party defendant	Katz v. Webster, Civil No. 82-1092-MJL (S.D.N.Y. Aug. 31, 1983), subsequent decision (S.D.N.Y. May 20, 1985), attorney's fees granted (S.D.N.Y. May 21, 1987).
(1446)	Fee waiver, jurisdiction	Kaufman v. United States, Civil No. H-78-910 (D. Md. Apr. 10, 1979).
(1447)	(a)(2)(B), (b)(5), deliberative process, incorporation by reference, reasonably segregable	Kay v. Department of State, 3 GDS ¶83,247 (N.D. Tex. 1983).
(1448)	(b)(7), (b)(8), attorney's fees, mootness	Kaye v. Burns, 411 F. Supp. 897 (S.D.N.Y. 1976).
(1449)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E)	Kazonis v. Bell, 1 GDS ¶79,189 (D.D.C. 1979).
(1450)	No record within scope of request	Kazonis v. Stutely, 1 GDS ¶79,113 (D.D.C. 1979).
(1451)	(b)(5)	Kearns v. Kreps, Civil No. 77-1668 (D.D.C. June 22, 1978).
(1452)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(F), duty to search, proper party defendant	Keeney v. FBI, Civil No. H-76-396 (D. Conn. Oct. 2, 1979), rev'd & remanded, 630 F.2d 114 (2d Cir. 1980), on remand (D. Conn. Mar. 3, 1982).
(1453)	Adequacy of request, exhaustion of administrative remedies, Vaughn index	Keese v. United States, 632 F. Supp. 85 (S.D. Tex. 1985).

(1454)	Privacy Act access, (b)(5), (b)(7)(D), deliberative process, exhaustion of administrative remedies, law enforcement amendments (1986)	Kele v. DOJ, Civil No. 86-0796 TFH/PJA (D.D.C. Nov. 6, 1987), motion to vacate judgment denied (D.D.C. June 9, 1988) (magistrate's recommendation).
(1455)	(b)(5), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, attorney-client privilege, attorney work-product privilege, proper party defendant, summary judgment	Kele v. DOJ, Civil No. 86-1795 TFH/PJA (D.D.C. Nov. 4, 1987), summary judgment granted (D.D.C. Feb. 29, 1988) (magistrate's recommendation), adopted (D.D.C. Mar. 15, 1988).
(1456)	Exhaustion of administrative remedies, proper party defendant	Kele v. United States Parole Comm'n, Civil No. 85-4058 (D.D.C. Oct. 31, 1986).
(1457)	In camera inspection, proper party defendant	Kellogg Co. v. FTC, 2 GDS ¶81,301 (D.D.C. 1981).
(1458)	(b)(1), E.O. 12065, (b)(7)(C), (b)(7)(D), agency	Kelly v. FBI, 2 GDS ¶82,059 (D.D.C. 1981).
(1459)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), in camera inspection	Kemple v. DOJ/DEA, Civil No. C-2-83-1566 (S.D. Ohio Sept. 7, 1984), summary judgment granted (S.D. Ohio Oct. 23, 1984), amended (S.D. Ohio Feb. 8, 1985).
(1460)	Attorney's fees	Kendland Co. v. Department of the Navy, 599 F. Supp. 936 (D. Me. 1984).
(1461)	Attorney's fees	Kennedy v. OPM, Civil No. 84-1523 (D.D.C. Oct. 5, 1984).
(1462)	(a)(2)(A), (a)(2)(B), (a)(2)(C), (b)(5), attorney work-product privilege	Kent Corp. v. NLRB, Civil No. 73-M-1090 (N.D. Ala. Feb. 27, 1974), rev'd, 530 F.2d 612 (5th Cir. 1976), cert. denied, 429 U.S. 920 (1976).
(1463)	Jurisdiction	Kerase v. Commissioner, Civil No. 82-3058 (D.D.C. Nov. 18, 1982).
(1464)	(b)(2), (b)(3), 26 U.S.C. §6103, (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, Vaughn index	Kerner v. Department of the Treasury, 1 GDS ¶79,228 (D.D.C. 1979), supplemental Vaughn index ordered, 1 GDS ¶80,261 (D.D.C. 1980), on motion for summary judgment, 1 GDS ¶80,244 (D.D.C. 1980).
(1465)	Agency, FOIA as a discovery tool	Kerr v. United States Dist. Court, 511 F.2d 192 (9th Cir. 1975), aff'd on other grounds, 426 U.S. 394 (1976).

(1466)	(b)(1), E.O. 12356, (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, law enforcement amendments (1986), law enforcement purpose, Vaughn index	Keys v. DOJ, Civil No. 85-2588 (D.D.C. May 12, 1986), aff'd, 830 F.2d 337 (D.C. Cir. 1987).
(1467)	Pro se litigant	Kight v. United States Postal Serv., Civil No. 78-149-JAG (S.D. Fla. Mar. 2, 1979).
(1468)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, deliberative process, inter- or intra-agency memoranda, reasonably segregable, waiver of exemption	Kilroy v. NLRB, 633 F. Supp. 136 (S.D. Ohio 1985), aff'd, No. 86-3033 (6th Cir. July 15, 1987) (unpublished memorandum), mem., 823 F.2d 553 (6th Cir. 1987).
(1469)	Adequacy of request, exhaustion of administrative remedies	Kim v. DOJ, Civil No. 85-C-4540 (N.D. Ill. July 23, 1986).
(1470)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, in camera inspection, res judicata, waiver of exemption (failure to assert in litigation)	Kimberlin v. Department of the Treasury, 774 F.2d 204 (7th Cir. 1985).
(1471)	Privacy Act access, (b)(2), (b)(3), 5 U.S.C. §552a(j)(2), §552a(k)(2), (b)(7), adequacy of agency affidavit, FOIA/PA interface	Kimberlin v. United States Customs Serv., Civil No. IP-82-1505C (S.D. Ind. July 22, 1983).
(1472)	Jurisdiction	King v. Califano, 471 F. Supp. 180 (D.D.C. 1979).
(1473)	(b)(1), E.O. 12065, (b)(7), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality, law enforcement amendments (1986), law enforcement purpose, Vaughn index	King v. DOJ, 2 GDS ¶81,277 (D.D.C. 1981), summary judgment granted, 586 F. Supp. 286 (D.D.C. 1983), aff'd in part & remanded in part, 830 F.2d 210 (D.C. Cir. 1987).
(1474)	Duty to search, no record within scope of request	King v. FBI, 3 GDS ¶82,324 (N.D. Ill. 1981).

(1475)	(b)(3), 26 U.S.C. §6103, (b)(5), attorney-client privilege, deliberative process, displacement of FOIA, waiver of exemption (failure to assert in litigation)	King v. IRS, 2 GDS ¶82,113 (N.D. Ill. 1981), reconsideration denied, 3 GDS ¶83,071 (N.D. Ill. 1981) (on Exemption 5 issue), partial summary judgment granted, 3 GDS ¶83,072 (N.D. Ill. 1981) (on Exemption 3 issue), rev'd, 684 F.2d 517 (7th Cir. 1982) (on Exemption 5 issue), rev'd, 688 F.2d 488 (7th Cir. 1982) (on Exemption 3 issue).
(1476)	(b)(3), 26 U.S.C. §6103(b)(2), adequacy of request	King v. IRS, 49 A.F.T.R. 2d 82-403, 2 GDS ¶82,097 (N.D. Ill. 1981).
(1477)	(b)(2), (b)(3), 26 U.S.C. §6103, 28 U.S.C. §534, (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), attorney's fees, FOIA/PA interface, in camera inspection, waiver of exemption	Kiraly v. FBI, 3 GDS ¶82,465 (N.D. Ohio 1982), motion to amend denied, 3 GDS ¶82,466 (N.D. Ohio 1982), aff'd, 728 F.2d 273 (6th Cir. 1984).
(1478)	(b)(1), attorney's fees, in camera inspection	Klaus v. Blake, 428 F. Supp. 37 (D.D.C. 1976), attorney's fees awarded sub nom. Klaus v. CIA, Civil No. 76-1274 (D.D.C. Jan. 18, 1977).
(1479)	(b)(1), (b)(3)	Klaus v. NSC, Civil No. 75-1093 (D.D.C. Oct. 22, 1976).
(1480)	(b)(5), attorney work-product privilege, summary judgment	Klayman & Gurley v. United States Int'l Trade Comm'n, Civil No. 84-3084 (D.D.C. Apr. 7, 1987).
(1481)	Exhaustion of administrative remedies	Klein v. Civiletti, 3 GDS ¶83,155 (D.D.C. 1980).
(1482)	Duty to search	Kleinbart v. Secretary, HEW, 1 GDS ¶80,062 (D.D.C. 1980).
(1483)	No record within scope of request	Kleinerman v. United States Patent & Trademark Office, Civil No. 82-0295-F (D. Mass. Apr. 25, 1983).
(1484)	(b)(4), (b)(5), deliberative process, pro se litigant, Vaughn index	Kleinerman v. United States Postal Serv., Civil No. 81-0357-F (D. Mass. June 12, 1984).
(1485)	(b)(1), E.O. 12356, in camera inspection	Kline v. Republic of El Sal., Civil No. 83-2917 (D.D.C. Feb. 18, 1986).
(1486)	(b)(5), (b)(7)(C), (b)(7)(D), assurance of confidentiality	K.M.G. Constr. Co. v. Department of Labor, Civil No. 86-3278-WD (D. Mass. May 5, 1987).

(1487)	(b)(2), (b)(4), (b)(5), attorney-client privilege, attorney work-product privilege, deliberative process	Knight v. DOD, Civil No. 87-0480 (D.D.C. Dec. 7, 1987), partial summary judgment granted (D.D.C. Feb. 11, 1988).
(1488)	(a)(4)(C), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), attorney's fees, "Glomar" denial, in camera affidavit, jurisdiction, summary judgment, Vaughn index	Knight Publishing Co. v. DOJ, 608 F. Supp. 747 (W.D.N.C. 1984), motion for protective order denied, Civil No. C-C-84-510-P (W.D.N.C. Jan. 3, 1985), on motion for in camera inspection (W.D.N.C. Feb. 27, 1985), subsequent decision (W.D.N.C. Mar. 28, 1985), summary judgment granted (W.D.N.C. Dec. 18, 1985).
(1489)	Exhaustion of administrative remedies	Knight's, Inc. v. EEOC, Civil No. LR-C-85-232 (E.D. Ark. Oct. 8, 1986).
(1490)	(a)(1)(D), publication	Knutzen v. Eben Ezer Lutheran Hous. Center, 815 F.2d 1343 (10th Cir. 1987).
(1491)	(b)(5), (b)(7), deliberative process, law enforcement purpose	Koch v. DOJ, 376 F. Supp. 313 (D.D.C. 1974).
(1492)	Attorney's fees	Kohn v. FBI, 581 F. Supp. 48 (D. Mass. 1984).
(1493)	(b)(7), (b)(7)(A), law enforcement amendments (1986), law enforcement purpose, summary judgment, Vaughn index	Korkala v. DOJ, Civil No. 86-0242 (D.D.C. July 31, 1987).
(1494)	Privacy Act access, exhaustion of administrative remedies, failure to meet time limits	Kotmair v. IRS, 47 A.F.T.R. 2d 81-985, 2 GDS ¶81,122 (D. Md. 1981).
(1495)	Privacy Act access, (b)(7)(A), FOIA/PA interface	Kowalski v. FBI, Civil No. 84-5035 (S.D. Ill. Oct. 9, 1984).
(1496)	(b)(1), failure to meet time limits, waiver of exemption	Kownacki v. Draper, 3 GDS ¶82,539 (N.D. Cal. 1982).
(1497)	(b)(1), (b)(7), (b)(7)(D), Vaughn index	Kozol v. FBI, Civil No. 84-3707Y (D. Mass. May 30, 1986).
(1498)	(b)(7)(A), declaratory relief, mootness	Kramer v. Antitrust Div., DOJ, 40 Ad. L. 2d (P & F) 7 (D.D.C. 1976), aff'd mem., 559 F.2d 187 (D.C. Cir. 1977).

(1499)	(b)(4), (b)(5), (b)(6), in camera inspection	Kreindler v. Department of the Navy, 363 F. Supp. 611 (S.D.N.Y. 1973), on motion for summary judgment, 372 F. Supp. 333 (S.D.N.Y. 1974).
(1500)	(b)(7)(C), (b)(7)(D), FOIA as a discovery tool	Kreitlow v. DOJ, Civil No. 80-2754 (D.D.C. Oct. 6, 1981).
(1501)	Adequacy of request, duty to create a record, no record within scope of request	Krohn v. DOJ, Civil No. 78-1311 (D.D.C. July 6, 1979), aff'd, 628 F.2d 195 (D.C. Cir. 1980).
(1502)	(b)(5), in camera inspection	Krohn v. DOJ, Civil No. 78-1535 (D.D.C. Aug. 27, 1979).
(1503)	(b)(1), E.O. 12065, (b)(3), 28 U.S.C. §534, Fed.R.Crim.P. 6(e), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, assurance of confidentiality, attorney work-product privilege, fees, fee waiver, in camera inspection, waiver of exemption (administrative release)	Krohn v. DOJ, 3 GDS ¶83,120 (D.D.C. 1979), subsequent decision, 1 GDS ¶80,053 (D.D.C. 1980), summary judgment granted, Civil No. 79-0667 (D.D.C. Mar. 19, 1984).
(1504)	(b)(5), (b)(7)(C), adequacy of agency affidavit, agency records, discovery/ FOIA interface, duty to search, Vaughn index	Krohn v. DOJ, 2 GDS ¶82,155 (D.D.C. 1981).
(1505)	FOIA/PA interface	Krohn v. DOJ, Civil No. 78-1536 (D.D.C. Mar. 19, 1984), vacated (D.D.C. Nov. 29, 1984).
(1506)	Judicial records	Kros v. DOJ, 2 GDS ¶82,138 (D. Conn. 1980).
(1507)	Attorney's fees, no record within scope of request	Kruger v. Carlson, Civil No. 86-2451 (D.D.C. Feb. 27, 1987).
(1508)	(b)(1), E.O. 11652	Kruh v. GSA, 64 F.R.D. 1 (E.D.N.Y. 1974).
(1509)	(b)(3), 49 U.S.C. §1504	Kruh v. GSA, 421 F. Supp. 965 (E.D.N.Y. 1976).
(1510)	(b)(2), (b)(7), (b)(7)(C), (b)(7)(D), law enforcement purpose, Vaughn index	Kuehnert v. Webster, 472 F. Supp. 362 (E.D. Mo. 1979), aff'd in part, rev'd in part & remanded, 620 F.2d 662 (8th Cir. 1980).

(1511)	(b)(4), FOIA as a discovery tool, jurisdiction, proper party defendant	Kurz-Kasch, Inc. v. DOD, 113 F.R.D. 147 (S.D. Ohio 1986), summary judgment granted, 688 F. Supp. 311 (S.D. Ohio 1987).
(1512)	(b)(6)	Kurzon v. HHS, 649 F.2d 65 (1st Cir. 1981).
(1513)	(b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, law enforcement purpose, waiver of exemption	Kuzma v. FBI, Civil No. 84-481E (W.D.N.Y. Nov. 29, 1985).
(1514)	(b)(5), (b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney's fees, deliberative process, displacement of FOIA, in camera affidavit, law enforcement purpose, mootness, waiver of exemption	Kuzma v. IRS, Civil No. 81-600E (W.D.N.Y. Dec. 31, 1984), aff'd, 775 F.2d 66 (2d Cir. 1985), costs awarded (W.D.N.Y. July 31, 1986), rev'd & remanded, 821 F.2d 930 (2d Cir. 1987).
(1515)	(b)(7)(A), (b)(7)(D), attorney's fees	Kuzma v. United States Postal Serv., Civil No. 81-859E (W.D. N.Y. June 29, 1983), aff'd in part, rev'd in part & remanded, 725 F.2d 16 (2d Cir. 1984), cert. denied, 469 U.S. 831 (1984).
(1516)	(b)(4), (b)(5), (b)(6), deliberative process, in camera inspection, inter- or intra-agency memoranda, reasonably segregable	Kyle v. United States, Civil No. 80-1038E (W.D.N.Y. Oct. 24, 1986), partial summary judgment granted (W.D.N.Y. July 15, 1987), amended (W.D.N.Y. Sept. 30, 1987).
(1517)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, FOIA as a discovery tool, waiver of exemption	L&C Marine Transp. v. United States, 740 F.2d 919 (11th Cir. 1984).
(1518)	(b)(7), (b)(7)(C), discovery in FOIA litigation, in camera affidavit, in camera inspection, leaks, reasonably segregable, summary judgment, waiver of exemption (unauthorized release)	Laborers' Int'l Union v. DOJ, 578 F. Supp. 52 (D.D.C. 1983), aff'd, 772 F.2d 919 (D.C. Cir. 1984).
(1519)	Dismissal for failure to prosecute	Lacaze-Gardner School v. DOJ, 3 GDS ¶83,165 (D.D.C. 1983).
(1520)	(b)(5), agency records, attorney's fees, deliberative process	Lacy v. Department of the Navy, 593 F. Supp. 71 (D. Md. 1984).

(1521)	(a)(1), publication	Lambert v. Sperry Road Corp., 8 Empl. Prac. Dec. (CCH) ¶9819 (W.D. La. 1974).
(1522)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, in camera affidavit, summary judgment, Vaughn index, waiver of exemption (failure to assert in litigation)	Lame v. DOJ, Civil No. 79-4047 (E.D. Pa. July 28, 1980), rev'd & remanded, 654 F.2d 917 (3d Cir. 1981), reh'g denied, No. 80-2458 (3d Cir. 1981), summary judgment granted (E.D. Pa. Sept. 20, 1984), aff'd, 767 F.2d 66 (3d Cir. 1985).
(1523)	(b)(1), E.O. 12065, (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, burden of proof, in camera inspection, law enforcement purpose, summary judgment	Lamont v. DOJ, 475 F. Supp. 761 (S.D.N.Y. 1979), supplemental decision, Civil No. 76-3092 (S.D.N.Y. Dec. 20, 1979), aff'd in part, rev'd in part, No. 81-6078 (2d Cir. Sept. 25, 1981).
(1524)	Attorney's fees	Lamonte v. FBI, Civil No. 85-H-1746S (N.D. Ala. June 25, 1986).
(1525)	(b)(7)	LaMorte v. Mansfield, 438 F.2d 448 (2d Cir. 1971).
(1526)	Transfer of FOIA case	Landes v. Gracey, Civil No. 86-1546 (D.D.C. July 22, 1986).
(1527)	Duty to search	Landes v. Shultz, Civil No. 86-0220 (E.D. Pa. Sept. 25, 1986), aff'd, No. 86-1647 (3d Cir. Feb. 4, 1987).
(1528)	Jurisdiction, no record within scope of request, proper party defendant	Landes v. Smith, Civil No. 83-3615 (D.D.C. Aug. 28, 1984), aff'd, No. 84-5635 (D.C. Cir. Jan. 23, 1985), cert. denied sub nom. Landes v. DOJ, 474 U.S. 821 (1985), reh'g denied, 474 U.S. 1014 (1985).
(1529)	(b)(4), (b)(5), deliberative process, in camera inspection, promise of confidentiality, reasonably segregable, summary judgment	Landfair v. Department of the Army, 645 F. Supp. 325 (D.D.C. 1986).
(1530)	(b)(5), deliberative process, duty to search	Lane v. EPA, 2 GDS ¶81,221 (D.D.C. 1981).
(1531)	Duty to search	Lansberry v. Postmaster General, Civil No. 83-1982 (W.D. Pa. Feb. 13, 1984) (magistrate's report adopted).

(1532)	Privacy Act access, (b)(1), E.O. 12356, (b)(2), (b)(3), 50 U.S.C. §403(d)(3), §403g, Fed.R.Crim.P. 6(e), (b)(5), (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, assurance of confidentiality, attorney-client privilege, attorney work-product privilege, deliberative process, duty to search, exhaustion of administrative remedies, FOIA/PA interface, in camera inspection, judicial records, law enforcement amendments (1986), law enforcement purpose, preliminary injunction	Laroque v. DOJ, Civil No. 86-2677 (D.D.C. Nov. 18, 1986), summary judgment granted in part (D.D.C. Mar. 16, 1988), on renewed motion for summary judgment (D.D.C. July 12, 1988).
(1533)	Reverse FOIA, (b)(1), E.O. 11652, (b)(6), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality, attorney's fees, declaratory relief, duty to search, exceptional circumstances/due diligence, failure to meet time limits, in camera inspection	Larouche v. Kelley, Civil No. 75-6010 (S.D.N.Y. Feb. 15, 1977), subsequent decision (S.D.N.Y. May 7, 1979), on in camera inspection, 522 F. Supp. 425 (S.D. N.Y. 1981), rev'd & remanded sub nom. Larouche v. FBI, 677 F.2d 256 (2d Cir. 1982), summary judgment granted sub nom. Larouche v. Webster (S.D.N.Y. Oct. 23, 1984).
(1534)	Privacy Act access	Larry v. Lawler, 605 F.2d 954 (7th Cir. 1978).
(1535)	Fee waiver, fee waiver (Reform Act)	Larson v. CIA, 664 F. Supp. 15 (D.D.C. 1987), summary affirmance granted, 843 F.2d 1481 (D.C. Cir. 1988).
(1536)	Exhaustion of administrative remedies, fee waiver, mootness, pro se litigant, Vaughn index	Larson v. DOJ, Civil No. 85-2991 (D.D.C. Sept. 30, 1986), reconsideration denied (D.D.C. Oct. 29, 1986).
(1537)	(b)(3), (b)(5), (b)(7)(C), (b)(7)(D), mootness	Larson v. Executive Office for U.S. Attorneys, No. 85-6226 (D.C. Cir. Apr. 6, 1988).
(1538)	(b)(5), inter- or intra-agency memoranda	Larson v. Federal Bureau of Prisons, Civil No. 85-2576 (D.D.C. Sept. 17, 1986).

(1539)	(a)(6)(A), exhaustion of administrative remedies	Larson v. IRS, Civil No. 85-3076 (D.D.C. Dec. 11, 1985).
(1540)	Attorney's fees	LaSalle Extension Univ. v. FTC, Civil No. 77-0002 (D.D.C. Jan. 26, 1979), aff'd, 627 F.2d 481 (D.C. Cir. 1980).
(1541)	(b)(5), waiver of exemption (administrative release), waiver of exemption (unauthorized release)	Lasker-Goldman Corp. v. GSA, 2 GDS ¶81,125 (D.D.C. 1981).
(1542)	Agency records, Vaughn index	LaVerde v. HUD, Civil No. 81-1260 (D. Mass. 1981).
(1543)	Fee waiver	Lawrence v. FBI, Civil No. 78-2247 (D.D.C. Feb. 28, 1979).
(1544)	Summary judgment	Lawrence v. United States Postal Serv., Civil No. 86-0140 (D.D.C. Sept. 11, 1986).
(1545)	(b)(7)(A), adequacy of agency affidavit, duty to search, fee waiver	Leach v. United States Customs Serv., Civil No. 85-1195 (D.D.C. Oct. 22, 1985), supplemental memorandum (D.D.C. Oct. 28, 1985).
(1546)	(b)(5), discovery in FOIA litigation, in camera inspection, reasonably segregable	Lead Indus. Ass'n v. OSHA, 471 F. Supp. 155 (S.D.N.Y. 1979), aff'd in part, rev'd in part, 610 F.2d 70 (2d Cir. 1979).
(1547)	(b)(5), (b)(7)(D), assurance of confidentiality	Leavitt v. Department of Labor, 2 GDS ¶82,158 (C.D. Cal. 1979), aff'd, 2 GDS ¶82,160 (9th Cir. 1981) (consolidated).
(1548)	(b)(5), (b)(7)(D), assurance of confidentiality	Leavitt v. FBI, 2 GDS ¶82,159 (C.D. Cal. 1979), aff'd, 2 GDS ¶82,160 (9th Cir. 1981) (consolidated).
(1549)	(b)(7)(D), assurance of confidentiality, attorney's fees, substantial compliance	Lebedun v. Civiletti, Civil No. 80-0353 (M.D. Pa. Oct. 21, 1981).
(1550)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F)	LeClair v. United States Secret Serv., Civil No. 82-2162-MA (D. Mass. Feb. 23, 1983).
(1551)	(b)(4), (b)(5), adequacy of request, attorney-client privilege, deliberative process, duty to search, reasonably segregable	Lederle Laboratories v. HHS, Civil No. 88-0249 (D.D.C. July 14, 1988).
(1552)	Agency, proper party defendant	Lee v. DOJ, Civil No. 84-1023 (D.D.C. May 23, 1984), summary judgment granted (D.D.C. Oct. 11, 1984).

(1553)	Mootness	Lee v. Meese, Civil No. 85-2881 (D.D.C. Mar. 17, 1986).
(1554)	(b)(3), 35 U.S.C. §122	Lee Pharmaceuticals v. Kreps, 577 F.2d 610 (9th Cir. 1978), cert. denied, 439 U.S. 1073 (1979).
(1555)	(b)(3), 42 U.S.C. §2000, (b)(4), (b)(7), adequacy of request, law enforcement purpose	Legal Aid Soc'y v. Shultz, 349 F. Supp. 771 (N.D. Cal. 1972).
(1556)	Improper withholding	Legal Times v. FDIC, 1 GDS ¶80,234 (D.D.C. 1980).
(1557)	(b)(6), (b)(7)(A), (b)(7)(C), injunction of agency proceeding pending resolution of FOIA claim	L'Eggs Prods., Inc. v. NLRB, 93 L.R.R.M. 2488 (C.D. Cal. 1976).
(1558)	Duty to search	Leib v. VA, 2 GDS ¶82,209 (D.D.C. 1982), summary judgment granted, 546 F. Supp. 758 (D.D.C. 1982).
(1559)	Injunction of agency proceeding pending resolution of FOIA claim	Lennon v. Richardson, 378 F. Supp. 39 (S.D.N.Y. 1974).
(1560)	(b)(1), E.O. 11652, (b)(2), (b)(7), (b)(7)(C), (b)(7)(D), belated classification, law enforcement purpose, leaks	Lesar v. DOJ, 455 F. Supp. 921 (D.D.C. 1978), aff'd, 636 F.2d 472 (D.C. Cir. 1980).
(1561)	(b)(3), 50 U.S.C. app. §2411(c)	Lessner v. Department of Commerce, 827 F.2d 1333 (9th Cir. 1987).
(1562)	(b)(1), (b)(3), 8 U.S.C. §1202(f), 50 U.S.C. §403(d)(3), (b)(5), (b)(7)(C), (b)(7)(D), attorney's fees, Congressional records, deliberative process, discovery in FOIA litigation	Letelier v. DOJ, 1 GDS ¶80,252 (D.D.C. 1980), subsequent decision, 3 GDS ¶82,257 (D.D.C. 1982).
(1563)	Summary judgment	Levine v. DOJ, Civil No. 81-1680-EPS (S.D. Fla. Sept. 30, 1982).
(1564)	(b)(1), E.O. 12356, adequacy of agency affidavit, summary judgment	Levine v. DOJ, Civil No. 83-1685 (D.D.C. Mar. 30, 1984).
(1565)	(b)(4), (b)(6)	Levine v. United States, 34 Ad. L. 2d (P & F) 633 (S.D. Fla. 1974).

(1566)	(b)(7), (b)(7)(A), law enforcement purpose	Levy v. IRS, 531 F. Supp. 485 (S.D. Fla. 1982).
(1567)	(b)(1), (b)(7)(C), (b)(7)(D), duty to search	Levy v. Knight, Civil No. 78-0307 (D.D.C. June 21, 1978).
(1568)	(b)(5), (b)(6), inter- or intra-agency memoranda	Lewis v. Federal Correctional Inst., Civil No. 80-91 (E.D. Ky. Dec. 30, 1980).
(1569)	(b)(3), 26 U.S.C. §6103(e)(7), (b)(7)(A), FOIA as a discovery tool, in camera inspection, Vaughn index	Lewis v. IRS, Civil No. F84-038 (D. Alaska Dec. 13, 1985), aff'd, 823 F.2d 375 (9th Cir. 1987).
(1570)	Injunction of agency proceeding pending resolution of FOIA claim	Lewis v. Reagan, 660 F.2d 124 (5th Cir. 1981).
(1571)	(b)(5), stay pending appeal	Lewis v. United States Parole Comm'n, Civil No. 85-4059 (D.D.C. Mar. 13, 1986), dismissed (D.D.C. Sept. 23, 1986).
(1572)	(a)(1)(D), publication	Lewis v. Weinberger, 415 F. Supp. 652 (D.N.M. 1976).
(1573)	Adequacy of request, agency records, attorney's fees, duty to search, mootness, Vaughn index	Lewisburg Prison Project, Inc. v. Federal Bureau of Prisons, Civil No. 86-1339 (M.D. Pa. Dec. 16, 1986), dismissed (M.D. Pa. Dec. 18, 1986), aff'd mem., 826 F.2d 1056 (3d Cir. 1987).
(1574)	(b)(3), 26 U.S.C. §6103, Fed.R.Crim.P. 6(e), (b)(7)(C), (b)(7)(E)	Librach v. FBI, 587 F.2d 372 (8th Cir. 1978), cert. denied, 440 U.S. 910 (1979).
(1575)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(5), (b)(6), summary judgment	Liechty v. CIA, Civil No. 79-2065 (D.D.C. Apr. 16, 1981), on motion for attorney's fees, 3 GDS ¶82, 482 (D.D.C. 1982).
(1576)	(b)(1), E.O. 12356, (b)(2), (b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, belated classification, law enforcement purpose, waiver of exemption	Lieverman v. DOJ, 597 F. Supp. 84 (E.D. Pa. 1984).
(1577)	(a)(6)(A), exhaustion of administrative remedies	Lilienthal v. Parks, 574 F. Supp. 14 (E.D. Ark. 1983).

(1578)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, in camera inspection, jurisdiction	Lincoln Nat'l Bank v. DOJ, Civil No. 76-C-4531 (N.D. Ill. May 5, 1978), aff'd, No. 78-1920 (7th Cir. June 18, 1979).
(1579)	Adequacy of request, FOIA as a discovery tool	Lincoln Nat'l Bank v. Lampe, 421 F. Supp. 346 (N.D. Ill. 1976).
(1580)	No record within scope of request, summary judgment	Lindgren v. CIA, Civil No. 78-1246-RJW (S.D.N.Y. Oct. 3, 1978).
(1581)	Judicial records	Lindsey v. Bureau of Prisons, 736 F.2d 1462 (11th Cir. 1984), cert. granted, vacated & remanded, 469 U.S. 1082 (1984).
(1582)	No record within scope of request, summary judgment	Lindsey v. NSC, Civil No. 84-3897 (D.D.C. Mar. 11, 1985), summary judgment granted (D.D.C. July 12, 1985), motion to vacate denied (D.D.C. Oct. 16, 1985).
(1583)	(b)(1), E.O. 11652, (b)(2), (b)(7), (b)(7)(C), (b)(7)(E), law enforcement purpose	Linebarger v. FBI, Civil No. C76-1826-WWS (N.D. Cal. Aug. 1, 1977).
(1584)	Case or controversy	Lineberry v. IRS, Civil No. C-C-016-M (W.D.N.C. July 22, 1986).
(1585)	Exhaustion of administrative remedies	Lingenfelter v. FBI, Civil No. 83-3129 (D.D.C. Mar. 21, 1984).
(1586)	(b)(3), Fed.R.Crim. P. 32, judicial records, waiver of exemption	Lininger v. DOJ, Civil No. 84-1129 (D.D.C. Oct. 30, 1984).
(1587)	(b)(5), attorney work-product privilege	Linker v. Hills, 453 F. Supp. 556 (S.D.N.Y. 1978).
(1588)	(a)(1)(D), publication	Linoz v. Heckler, 598 F. Supp. 486 (D. Haw. 1984).
(1589)	(b)(3), 26 U.S.C. §6103(e)(7), (b)(7)(A), displacement of FOIA, FOIA as a discovery tool	Linsteadt v. IRS, 3 GDS ¶83,235 (N.D. Tex. 1983), aff'd, 729 F.2d 998 (5th Cir. 1984).
(1590)	Duty to search	Ljubas v. FBI, Civil No. 83-2178 (D.D.C. Oct. 4, 1983).
(1591)	Attorney's fees, mootness	Lloyd v. DOJ, Civil No. C83-1790A (N.D. Ga. July 31, 1984).
(1592)	(b)(5), (b)(7)(C), (b)(7)(D), FOIA as a discovery tool	Lloyd & Henniger v. Marshall, 526 F. Supp. 485 (M.D. Fla. 1981).

(1593)	Privacy Act access, (a)(2)(A), (b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney's fees, attorney work-product privilege, discovery in FOIA litigation, in camera inspection	Lobosco v. IRS, Civil No. 77-1464 (E.D.N.Y. Nov. 29, 1977), summary judgment granted, 42 A.F.T.R. 2d 78-5630 (E.D.N.Y. 1978), on motion for attorney's fees, 2 GDS ¶81,207 (E.D.N.Y. 1981).
(1594)	(b)(6)	Local 1928, Am. Fed'n of Gov't Employees v. Department of the Navy, Civil No. 81-1478 (D.D.C. Nov. 25, 1981).
(1595)	(b)(5), (b)(6), deliberative process, discovery in FOIA litigation, FOIA as a discovery tool, in camera inspection, reasonably segregable, summary judgment	Local 3, Int'l Bhd. of Elec. Workers v. NLRB, 126 L.R.R.M. 2743 (S.D.N.Y. 1987), aff'd, 845 F.2d 1177 (2d Cir. 1988).
(1596)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D)	Local 30, AFL-CIO v. NLRB, 408 F. Supp. 520 (E.D. Pa. 1976).
(1597)	(b)(5), (b)(7)(A), (b)(7)(C)	Local 32, AFL-CIO v. Irving, 91 L.R.R.M. 2513 (W.D. Wash. 1976).
(1598)	(b)(7)(A)	Local Unions v. NLRB, 446 F. Supp. 1037 (E.D. Wis. 1978).
(1599)	(b)(3), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), in camera inspection, summary judgment	Locklear v. DOJ (FBI), Civil No. 83-1707 (D.D.C. Feb. 15, 1984).
(1600)	Summary judgment	Lombardo v. DOJ, Civil No. 87-2652 (D.D.C. June 22, 1988).
(1601)	Agency	Lombardo v. Handler, 397 F. Supp. 792 (D.D.C. 1975), aff'd mem., 546 F.2d 1043 (D.C. Cir. 1976), cert. denied, 431 U.S. 932 (1977).
(1602)	Privacy Act access, (b)(7)(D), assurance of confidentiality, FOIA/PA interface, Vaughn index	Londrigan v. FBI, Civil No. 78-1360 (D.D.C. Jan. 30, 1979), rev'd & remanded, 670 F.2d 1164 (D.C. Cir. 1981), on remand (D.D.C. Nov. 18, 1982), rev'd & remanded, 722 F.2d 840 (D.C. Cir. 1983).

(1603)	(b)(3),.(b)(4), (b)(5), (b)(7)(A), attorney work-product privilege, deliberative process, waiver of exemption (unauthorized disclosure)	Lone Star Indus. v. FTC, Civil No. 82-3150 (D.D.C. June 8, 1983), summary judgment granted (D.D.C. Mar. 26, 1984).
(1604)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, proper party defendant	Loney v. DOJ, Civil No. 83-340A (E.D. Va. June 15, 1983).
(1605)	(a)(4)(C), (a)(4)(D), (b)(3), 26 U.S.C. §6103(b)(2), de novo review, displacement of FOIA, duty to create a record, jurisdiction, reasonably segregable, summary judgment	Long v. Bureau of Economic Analysis, 2 GDS ¶81,063 (W.D. Wash. 1981), aff'd & remanded to determine attorney's fees, 646 F.2d 1310 (9th Cir. 1981), vacated & remanded, 454 U.S. 934 (1981), remanded to determine attorney's fees, 671 F.2d 1229 (9th Cir. 1982), fee waiver granted, 566 F. Supp. 799 (W.D. Wash. 1983), rev'd & remanded, 742 F.2d 1173 (9th Cir. 1984), on remand, Civil No. C-78-176C (W.D. Wash. Mar. 14, 1986), aff'd in part, rev'd in part & remanded, 825 F.2d 225 (9th Cir. 1987), cert. granted, vacated & remanded, 108 S. Ct. 2839 (1988).
(1606)	Fee waiver, venue	Long v. DOJ, Civil No. 79-169-N (N.D. Ala. Aug. 14, 1979).
(1607)	(b)(2), (b)(5), (b)(7), adequacy of request	Long v. IRS, 339 F. Supp. 1266 (W.D. Wash. 1971), subsequent decision, 349 F. Supp. 871 (W.D. Wash. 1972).
(1608)	(b)(3), 26 U.S.C. §6103(b)(2), de novo review, discovery in FOIA litigation, displacement of FOIA, duty to create a record, equitable discretion, fees, "mosaic," reasonably segregable, waiver of exemption (failure to assert in litigation)	Long v. IRS, Civil No. C75-228S (W.D. Wash. June 1, 1976), rev'd, 596 F.2d 362 (9th Cir. 1979), reh'g en banc denied, No. 76-3734 (9th Cir. Nov. 9, 1979), cert. denied, 446 U.S. 917 (1980), on remand, 3 GDS ¶82,436 (W.D. Wash. 1982), rev'd & remanded, 693 F.2d 907 (9th Cir. 1982), fee waiver granted, 566 F. Supp. 799 (W.D. Wash. 1983), rev'd & remanded, 742 F.2d 1173 (9th Cir. 1984), on remand (W.D. Wash. Mar. 14, 1986), aff'd in part, rev'd in part & remanded, 825 F.2d 225 (9th Cir. 1987), cert. granted, vacated & remanded, 108 S. Ct. 2839 (1988).

(1609)	(b)(2), (b)(3), 26 U.S.C. §6103, (b)(5), deliberative process, disciplinary proceedings, discovery/FOIA interface, duty to search, jurisdiction, waiver of exemption (failure to assert in litigation)	Long v. IRS, 1 GDS ¶79,176 (W.D. Wash. 1979), remanded in part, 1 GDS ¶79,177 (W.D. Wash. 1979), on remand, 3 GDS ¶82,434 (W.D. Wash. 1981), injunctive relief denied, 3 GDS ¶82,435 (W.D. Wash. 1981), rev'd, 3 GDS ¶83,013 (9th Cir. 1982), permanent injunction ordered, Civil No. C77-650V (W.D. Wash. Oct. 11, 1983).
(1610)	(b)(1), (b)(7)(C), (b)(7)(D), attorney's fees, exhaustion of administrative remedies, in camera inspection	Lopez Pacheco v. FBI, 470 F. Supp. 1091 (D.P.R. 1979), attorney's fees denied, Civil No. 76-83 (D.P.R. Jan. 10, 1980).
(1611)	(b)(2), (b)(7)(C), (b)(7)(E), (b)(7)(F), adequacy of agency affidavit	Lopiccolo v. Aruslan, 2 GDS ¶81, 032 (D.D.C. 1980).
(1612)	(a)(2)(C), (b)(2), (b)(5), attorney's fees	Lord & Taylor v. Department of Labor, Civil No. 75-2839 (S.D.N.Y. Aug. 27, 1976), attorney's fees denied (S.D.N.Y. Oct. 13, 1977).
(1613)	(a)(1)(D), publication	Louis v. Nelson, 544 F. Supp. 973 (S.D. Fla. 1982).
(1614)	Exhaustion of administrative remedies	Love v. IRS, 46 A.F.T.R. 2d 80-5034, 2 GDS ¶82,098 (N.D. Ga. 1980).
(1615)	Attorney's fees, disciplinary proceedings, mootness, pro se litigant	Lovell v. Alderete, Civil No. 78-438A (N.D. Ga. Apr. 30, 1979), aff'd, 630 F.2d 428 (5th Cir. 1980).
(1616)	Attorney's fees, duty to search, mootness	Lovell v. DOJ, Civil No. 83-0273 (D.D.C. Jan. 17, 1984), attorney's fees denied, 589 F. Supp. 150 (D.D.C. 1984).
(1617)	(b)(5), agency, attorney-client privilege, attorney work-product privilege, deliberative process, proper party defendant, waiver of exemption (administrative release)	LSB Indus. v. Commissioner, 556 F. Supp. 40 (W.D. Okla. 1982).
(1618)	(b)(5), (b)(7)(A)	In re LTV Sec. Litigation, 89 F.R.D. 595 (N.D. Tex. 1981).

(1619)	Proper party defendant, Vaughn index	Lufkin v. Director, Executive Office for U.S. Attorneys, Civil No. 85-1959 (D.D.C. Feb. 21, 1986), subsequent decision (D.D.C. Mar. 10, 1987).
(1620)	Privacy Act access, (b)(3), 26 U.S.C. §6103(b), (b)(5), (b)(7), (b)(7)(C), (b)(7)(F), deliberative process, law enforcement amendments (1986), law enforcement purpose	Luther v. IRS, Civil No. 5-86-130 (D. Minn. June 8, 1987) (magistrate's recommendation), adopted (D. Minn. Aug. 11, 1987).
(1621)	(b)(3), 26 U.S.C. §6103, §7213, (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney's fees	Luzaich v. United States, 435 F. Supp. 31 (D. Minn. 1977), aff'd mem., 564 F.2d 101 (8th Cir. 1977).
(1622)	(a)(2), fees, fee waiver	Lybarger v. Cardwell, 438 F. Supp. 1075 (D. Mass. 1977), aff'd, 577 F.2d 764 (1st Cir. 1978).
(1623)	Exhaustion of administrative remedies	Lykins v. DOJ, 3 GDS ¶83,092 (D.D.C. 1983).
(1624)	Fees, fee waiver	Lykins v. Rose, 3 GDS ¶82,486 (D.D.C. 1982).
(1625)	Fees, fee waiver	Lykins v. Rose, 3 GDS ¶82,487 (D.D.C. 1982).
(1626)	Privacy Act access, (b)(5), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, agency records, case or controversy, FOIA/PA interface, improper withholding, in camera affidavit, in camera inspection, jurisdiction, waiver of exemption (failure to assert in litigation)	Lykins v. Rose, 3 GDS ¶82,522 (D.D.C. 1982), aff'd in part & rev'd & remanded in part sub nom. Lykins v. DOJ, 725 F.2d 1455 (D.C. Cir. 1984), on remand sub nom. Lykins v. Rose, 608 F. Supp. 693 (D.D.C. 1984).
(1627)	(b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(A), discovery in FOIA litigation, discretionary release, duty to search, Vaughn index	Lyle v. IRS, Civil No. C77-942A (N.D. Ga. June 20, 1978), subsequent decision (N.D. Ga. Sept. 27, 1978).
(1628)	Fee waiver, improper withholding	Lyles v. DOJ, Civil No. 78-1826 (D.D.C. June 6, 1979).

(1629)	Adequacy of request, proper party defendant	Lynas v. DOJ, Civil No. 84-2387 (D.D.C. Nov. 2, 1984), motion for reconsideration denied (D.D.C. Jan. 25, 1985), summary judgment granted (D.D.C. Mar. 4, 1985).
(1630)	No record within scope of request	Lynch v. IRS, Civil No. 77-1370 (D.D.C. May 10, 1978).
(1631)	Failure to meet time limits, FOIA as a discovery tool, FOIA/PA interface	Lynch v. United States Parole Comm'n, 768 F.2d 491 (2d Cir. 1985).
(1632)	Dismissal for failure to prosecute	Lynott v. DOJ, Civil No. 86-2332 (D.D.C. Jan. 29, 1987).
(1633)	(b)(2), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), summary judgment	Lynott v. United States Parole Comm'n, Civil No. 85-0526 (D.D.C. Dec. 24, 1985).
(1634)	Dismissal for failure to prosecute	Lynott v. United States Parole Comm'n, Civil No. 85-3678 (D.D.C. Dec. 24, 1985).
(1635)	(b)(4), (b)(5), (b)(6), inter- or intra-agency memoranda, promise of confidentiality	M/A-COM Information Sys. v. HHS, 656 F. Supp. 691 (D.D.C. 1986).
(1636)	(b)(7)(C), (b)(7)(D), (b)(7)(F)	MacCloskey v. DOJ, 3 GDS ¶83,069 (D.D.C. 1983).
(1637)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F)	MacCloskey v. Department of the Treasury, 3 GDS ¶83,186 (D.D.C. 1983).
(1638)	Discovery in FOIA litigation, exceptional circumstances/ due diligence, Vaughn index	Mackenzie v. CIA, Civil No. 82-1676 (D.D.C. Mar. 26, 1984).
(1639)	(a)(1), (a)(1)(D), (a)(1)(E), publication	Mada-Luna v. Fitzpatrick, 813 F.2d 1006 (9th Cir. 1987).
(1640)	(b)(6)	Madeira Nursing Center v. NLRB, 96 L.R.R.M. 2411 (S.D. Ohio 1977), aff'd, 615 F.2d 728 (6th Cir. 1980).
(1641)	(b)(5), summary judgment, waiver of exemption	Madera Community Hosp. v. United States, Civil No. F-86-542-REC (E.D. Cal. June 28, 1988).
(1642)	Privacy Act access	Maher v. United States Parole Comm'n, 2 GDS ¶81,348 (W.D. Tex. 1980).

(1643)	Adequacy of request, exhaustion of administrative remedies, failure to meet time limits, fee waiver	Mahler v. Bureau of Prisons, 2 GDS ¶82,031 (D.D.C. 1980).
(1644)	Dismissal for failure to prosecute	Mahler v. Bureau of Prisons, Civil No. 81-74299 (E.D. Mich. Dec. 9, 1982).
(1645)	(b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(F), fee waiver, improper withholding	Mahler v. DOJ, 2 GDS ¶82,032 (D.D.C. 1981).
(1646)	Attorney's fees	Mahler v. IRS, Civil No. 79-3238 (D.D.C. Mar. 28, 1980).
(1647)	Exhaustion of administrative remedies	Maintanis v. Department of the Navy, Civil No. 79-C-1143 (N.D. Ill. Jan. 30, 1980).
(1648)	Dismissal for failure to prosecute	Majestic v. FBI, Civil No. 87-0146-JGP (D.D.C. Oct. 1, 1987).
(1649)	No record within scope of request	Malinowski v. FBI, Civil No. 86-2239-JFK (S.D.N.Y. June 17, 1987).
(1650)	(b)(1), E.O. 12065, (b)(2), (b)(3), 50 U.S.C. §403g, Fed.R. Crim.P. 6(e), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), adequacy of agency affidavit, burden of proof, in camera inspection	Malizia v. DOJ, 519 F. Supp. 338 (S.D.N.Y. 1981).
(1651)	(b)(1), E.O. 12356, in camera inspection, summary judgment	Malka v. FBI, Civil No. 84-0598-JFK (S.D.N.Y. Mar. 31, 1986).
(1652)	(b)(5), (b)(7)(C)	Mallin v. NLRB, Civil No. 78-C-1753 (N.D. Ill. May 31, 1979).
(1653)	(b)(2), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E)	Malloy v. DOJ, 457 F. Supp. 543 (D.D.C. 1978).
(1654)	(b)(7)(C), (b)(7)(D)	Maloley Bros. v. USDA, 1 GDS ¶80,264 (N.D. Ind. 1980).
(1655)	(b)(6), no record within scope of request	Malone v. Horner, Civil No. 86-5237-MRP (C.D. Cal. Feb. 5, 1987).
(1656)	Dismissal for failure to prosecute, pro se litigant	Mancini v. DOJ, Civil No. 87-2047 (D.D.C. Feb. 10, 1988), dismissed (D.D.C. May 20, 1988).

(1657)	Interaction of (a)(2) & (a)(3)	Mandel, Grunfeld and Herrick v. United States Customs Serv., 709 F.2d 41 (11th Cir. 1983).
(1658)	(b)(5)	Manion v. HHS, Civil No. C85-8527-JPV (N.D. Cal. May 12, 1986).
(1659)	(b)(6), (b)(7)(E)	Manley v. Young, Civil No. 82-1697-G-H (S.D. Cal. Dec. 21, 1983).
(1660)	(a)(2)(C), (b)(5), attorney work-product privilege, deliberative process, waiver of exemption	Manning v. IRS, Civil No. C78-315-G (M.D.N.C. Feb. 13, 1980), magistrate's report adopted (M.D.N.C. Mar. 5, 1980).
(1661)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), attorney's fees, deliberative process	Marathon Le Tourneau Co. v. NLRB, 414 F. Supp. 1074 (S.D. Miss. 1976).
(1662)	Discovery/FOIA interface	Marchiondo v. Brown, 1 GDS ¶79,200 (D.N.M. 1979).
(1663)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), attorney's fees	Maremont Corp. v. NLRB, 91 L.R.R.M. 2645 (W.D. Okla. 1976), rev'd, No. 76-1402 (10th Cir. Oct. 5, 1976).
(1664)	(b)(1), E.O. 11652, E.O. 12065, adequacy of agency affidavit	Marks v. Casey, 2 GDS ¶81,254 (D.D.C. 1981), summary judgment stayed, 2 GDS ¶82,106 (D.D.C. 1981), decision on renewed motion for summary judgment, 3 GDS ¶82,386 (D.D.C. 1982), renewed motion for summary judgment granted, 3 GDS ¶82,525 (D.D.C. 1982).
(1665)	(b)(1), E.O. 11652, (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(7), in camera inspection	Marks v. CIA, 426 F. Supp. 708 (D.D.C. 1976), rev'd, 590 F.2d 997 (D.C. Cir. 1978).
(1666)	Duty to search	Marks v. DOJ, 578 F.2d 261 (9th Cir. 1978).
(1667)	(b)(1), E.O. 11652, E.O. 12065, agency records	Marks v. Turner, 1 GDS ¶80,151 (D.D.C. 1980), remanded to agency, 2 GDS ¶81,254 (D.D.C. 1981), stay granted, 2 GDS ¶82,106 (D.D.C. 1981), motion for summary judgment denied, 3 GDS ¶82,386 (D.D.C. 1982), renewed motion for summary judgment granted, 3 GDS ¶82,525 (D.D.C. 1982).

(1668)	(b)(1), E.O. 11652, (b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), assurance of confidentiality, in camera inspection	Maroscia v. Levi, 569 F.2d 1000 (7th Cir. 1977).
(1669)	(b)(1), E.O. 12356, (b)(2), (b)(6), adequacy of agency affidavit, duty to search, "Glomar" denial, mootness	Marrera v. DOJ, 622 F. Supp. 51 (D.D.C. 1985), dismissed as moot, Civil No. 84-0232 (D.D.C. Nov. 5, 1985).
(1670)	(b)(5), exhaustion of administrative remedies, stay pending appeal	Marrera v. DOJ, Civil Nos. 84-3493, 84-3652 (D.D.C. Feb. 20, 1986), dismissed, Civil No. 84-3652 (D.D.C. Mar. 10, 1986), dismissed in part, Civil No. 84-3493 (D.D.C. Apr. 29, 1986), summary judgment granted, Civil No. 84-3493 (D.D.C. Dec. 9, 1986).
(1671)	Exhaustion of administrative remedies	Marrera v. Department of the Treasury, Civil No. 84-3731 (D.D.C. Apr. 23, 1985).
(1672)	(a)(6)(A), attorney's fees, exhaustion of administrative remedies, pro se litigant	Marschner v. Department of State, 470 F. Supp. 196 (D. Conn. 1979).
(1673)	(b)(3), 26 U.S.C. §6103, (b)(7)(A), attorney's fees	Martenson v. IRS, 2 GDS ¶82,215 (D. Minn. 1981).
(1674)	(b)(1), E.O. 12356, FOIA/PA interface, in camera affidavit, in camera inspection, reasonably segregable, Vaughn index	Martin v. DOJ, Civil No. 83-2674 (W.D. Pa. June 11, 1984), summary judgment granted (W.D. Pa. Dec. 17, 1984), remanded, No. 85-3091 (3d Cir. Dec. 17, 1985) (unpublished memorandum), mem., 782 F.2d 1029 (3d Cir. 1985), on remand (W.D. Pa. June 5, 1986), aff'd (3d Cir. July 2, 1986) (unpublished memorandum), mem., 800 F.2d 1135 (3d Cir. 1986), attorney's fees denied (W.D. Pa. July 8, 1986).
(1675)	(b)(6), (b)(7)(C), (b)(7)(D)	Martin v. Department of the Army, 1 GDS ¶79,120 (D.D.C. 1979).
(1676)	(b)(5), (b)(7)(D), assurance of confidentiality, reasonably segregable, Vaughn index	Martin v. EEOC, 40 Fair Empl. Prac. Cas. (BNA) 1290 (S.D. Tex. 1986).
(1677)	Privacy Act access, (b)(3), 5 U.S.C. §552a(j)(2), FOIA/PA interface	Martin v. FBI, Civil Nos. 83-C-123, 83-C-1620, 83-C-1846 (N.D. Ill. Sept. 30, 1983).
(1678)	(b)(7)(C), (b)(7)(D)	Martin v. HHS, No. 84-5531 (D.C. Cir. Sept. 26, 1984).

(1679)	(b)(5), attorney work-product privilege, deliberative process, incorporation by reference	Martin v. Merit Sys. Protection Bd., 3 GDS ¶82,416 (D.D.C. 1982), attorney's fees awarded, Civil No. 81-2471 (D.D.C. Aug. 27, 1982).
(1680)	Case or controversy	Martin v. Neuschel, 396 F.2d 759 (3d Cir. 1968).
(1681)	Privacy Act access, (b)(5), attorney work-product privilege, deliberative process, FOIA/PA interface, inter- or intra-agency memoranda	Martin v. Office of Special Counsel, 819 F.2d 1181 (D.C. Cir. 1987).
(1682)	Interaction of (a)(2) & (a)(3), mootness, proper party defendant	Martin & Merrell, Inc. v. United States Customs Serv., 657 F. Supp. 733 (S.D. Fla. 1986).
(1683)	Privacy Act access, (b)(1), E.O. 12356, (b)(2), (b)(3), 39 U.S.C. §410(c)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, assurance of confidentiality, exhaustion of administrative remedies, failure to meet time limits, FOIA/PA interface, leaks, summary judgment, waiver of exemption	Martinez v. FBI, 3 GDS ¶83,005 (D.D.C. 1982), supplemental affidavit ordered, 3 GDS ¶83,208 (D.D.C. 1983), summary judgment granted, Civil No. 82-1547 (D.D.C. Oct. 11, 1983), subsequent decision (D.D.C. Oct. 28, 1983), on in camera inspection (D.D.C. Nov. 9, 1983), summary judgment granted (D.D.C. Dec. 19, 1985).
(1684)	(b)(4), (b)(5), equitable discretion	Martin Marietta Aluminum v. GSA, 444 F. Supp. 945 (C.D. Cal. 1977).
(1685)	Reverse FOIA, (b)(3), 15 U.S.C. §46(f), 18 U.S.C. §1905, (b)(4)	Martin Marietta Corp. v. FTC, 475 F. Supp. 338 (D.D.C. 1979), aff'd mem., No. 79-1781 (D.C. Cir. May 27, 1980).
(1686)	(b)(5), (b)(6), (b)(7)(A)	Martins Ferry Hosp. Ass'n v. NLRB, Civil No. C-2-78-529 (S.D. Ohio Feb. 6, 1979).
(1687)	(b)(5), (b)(6), (b)(7)(A), (b)(7)(C)	Martins Ferry Hosp. Ass'n v. NLRB, 2 GDS ¶81,073 (S.D. Ohio 1981), aff'd, 649 F.2d 445 (6th Cir. 1981).
(1688)	(b)(3), Fed.R.Crim. P. 6(e), (b)(5), (b)(7)(C), (b)(7)(D), attorney work-product privilege, deliberative process, in camera inspection	Martorano v. DOJ, 3 GDS ¶82,344 (D.D.C. 1982).

(1689)	(b)(5), (b)(6), (b)(7)(A), (b)(7)(C), agency records, in camera inspection, reasonably segregable	Marzen v. HHS, 632 F. Supp. 785 (N.D. Ill. 1986), aff'd, 825 F.2d 1148 (7th Cir. 1987).
(1690)	(b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), summary judgment, Vaughn index	Masat v. IRS, Civil No. TY-86-138 (E.D. Tex. June 5, 1987).
(1691)	(b)(3), 18 U.S.C. §1905, (b)(4), (b)(5), (b)(7)	M.A. Shapiro & Co. v. SEC, 339 F. Supp. 467 (D.D.C. 1972).
(1692)	Fees	Mason v. Bell, Civil No. 78-719A (E.D. Va. Mar. 16, 1979).
(1693)	(b)(3), 26 U.S.C. §6103, §7213, adequacy of request, duty to search, no record within scope of request, proper party defendant	Mason v. Hoffman, Civil No. 76-182A (E.D. Va. Mar. 30, 1977) (consolidated), aff'd sub nom. Mason v. Callaway, 554 F.2d 129 (4th Cir. 1977) (consolidated), cert. denied, 434 U.S. 877 (1977), reh'g denied, 434 U.S. 935 (1977).
(1694)	Exhaustion of administrative remedies	Matthews v. United States, 2 GDS ¶82,143 (D. Conn. 1979).
(1695)	Exhaustion of administrative remedies, fee waiver	Matthews v. Webster, Civil No. 78-1217-SMA (S.D. Fla. Nov. 16, 1978).
(1696)	Adequacy of request, agency, duty to search, failure to meet time limits, proper party defendant, proper service of process	Mattingly v. CIA, Civil No. 76-C-3684 (N.D. Ill. Aug. 31, 1977).
(1697)	Privacy Act access, exhaustion of administrative remedies, proper party defendant	Matusavage v. United States, Civil No. 85-7385 (E.D. Pa. Mar. 31, 1986).
(1698)	Agency	Maxberry v. Eastern Plasma, No. 87-3022 (6th Cir. Aug. 11, 1987) (unpublished memorandum), mem., 826 F.2d 1064 (6th Cir. 1987).
(1699)	Attorney's fees	Maxwell Broadcasting Corp. v. FBI, 490 F. Supp. 254 (N.D. Tex. 1980).
(1700)	(b)(7)(C), (b)(7)(D), (b)(7)(E), attorney's fees	May v. DOJ, Civil No. 77-264-SD (D. Me. Oct. 10, 1978).

(1701)	Privacy Act access, (b)(5), (b)(6), deliberative process, discovery/FOIA interface, duty to create a record, FOIA/PA interface, incorporation by reference	May v. Department of the Air Force, Civil No. S84-0340R (S.D. Miss. Dec. 7, 1984), aff'd, 777 F.2d 1012 (5th Cir. 1985), reh'g & reh'g en banc denied, 800 F.2d 1402 (5th Cir. 1986), on remand (S.D. Miss. Mar. 31, 1987), dismissed (S.D. Miss. Aug. 11, 1987).
(1702)	(b)(3), 26 U.S.C. §6103, (b)(6), displacement of FOIA	May v. IRS, 3 GDS ¶82,387 (W.D. Mo. 1982).
(1703)	Mootness	Mayock v. INS, Civil No. C85-5169-CAL (N.D. Cal. July 6, 1988).
(1704)	Attorney's fees	MCA, Inc. v. IRS, 434 F. Supp. 212 (C.D. Cal. 1977).
(1705)	Duty to search	McAllister v. Department of the Army, Civil No. 86-1692 (M.D. Pa. Jan. 22, 1988).
(1706)	(b)(3), 26 U.S.C. §6103(b)(2), (b)(5), attorney-client privilege, deliberative process	McCarthy v. IRS, Civil No. 87-38 (WWE) (D. Conn. Sept. 2, 1987).
(1707)	(b)(5), FOIA as a discovery tool	McClelland v. Andrus, 606 F.2d 1278 (D.C. Cir. 1979).
(1708)	Exhaustion of administrative remedies, fee waiver, fee waiver (Reform Act), FOIA as a discovery tool	McClellan Ecological Seepage Situation (MESS) v. Weinberger, Civil No. 86-264-RAR-JFM (E.D. Cal. Oct. 21, 1986), aff'd sub nom. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282 (9th Cir. 1987).
(1709)	(b)(3), 18 U.S.C. §2518(8), 39 U.S.C. §410(c)(6), Fed.R. Crim.P. 6(e), (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, attorney work-product privilege, deliberative process, Vaughn index	McCloskey v. DOJ, Civil No. 77-470 (D.D.C. June 14, 1978), summary judgment granted (D.D.C. Nov. 8, 1978).
(1710)	No improper withholding	McCloud v. Meese, No. 87-3011 (6th Cir. Sept. 30, 1987).
(1711)	(b)(5), (b)(7)(C), (b)(7)(D)	McCorstin v. Department of Labor, 630 F.2d 242 (5th Cir. 1980), cert. denied, 450 U.S. 999 (1981).
(1712)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §1306, (b)(4)	McCoy v. Weinberger, 386 F. Supp. 504 (W.D. Ky. 1974).

(1713)	(b)(7)(C), (b)(7)(D), (b)(7)(E), pro se litigant, summary judgment	McCray v. FBI, Civil No. 78-0367 (D.D.C. Aug. 11, 1979).
(1714)	(b)(6), (b)(8), agency records, reasonably segregable	McCullough v. FDIC, 1 GDS ¶80,194 (D.D.C. 1980).
(1715)	(b)(3), 15 U.S.C. §57b-2(f), (b)(4), (b)(5), (b)(7)(A), attorney work-product privilege, deliberative process, Vaughn index	McDermott v. FTC, 1 GDS ¶80,254 (D.D.C. 1980), Vaughn index ordered, 2 GDS ¶81,192 (D.D.C. 1981), on motion for summary judgment, 2 GDS ¶81,193 (D.D.C. 1981).
(1716)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality	McDonnell Douglas Corp. v. NLRB, 92 L.R.R.M. 2072 (C.D. Cal. 1976).
(1717)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403(d)(3), §403g, adequacy of agency affidavit, discovery in FOIA litigation, duty to search, referral of request to another agency, summary judgment	McGehee v. CIA, 533 F. Supp. 861 (D.D.C. 1982), rev'd & remanded, 697 F.2d 1095 (D.C. Cir. 1983), vacated in part on panel reh'g, reh'g en banc denied, 711 F.2d 1076 (D.C. Cir. 1983).
(1718)	(b)(2), (b)(5), (b)(7)	McIntyre v. Warner, Civil No. 73-1350 (D.D.C. Oct. 3, 1974).
(1719)	Privacy Act access, (b)(2), (b)(3), 5 U.S.C. §552a(j)(2), (b)(7), summary judgment	McKean v. DEA, Civil No. 81-425-T-10 (M.D. Fla. May 25, 1983).
(1720)	(a)(1)(D), publication	McKenzie v. Heckler, 602 F. Supp. 1150 (D. Minn. 1985), supplemental order, 605 F. Supp. 1217 (D. Minn. 1985), rev'd & vacated sub nom. McKenzie v. Bowen, 787 F.2d 1216 (8th Cir. 1986).
(1721)	(a)(1)(D), publication	McNabb v. Bowen, 829 F.2d 787 (9th Cir. 1987).
(1722)	(b)(6), FOIA/PA interface	McNeal v. DOJ, Civil No. 6-70-890 (E.D. Mich. Nov. 8, 1976).
(1723)	(b)(3), 13 U.S.C. §9	McNichols v. Klutznick, Civil No. 80-C-1157 (D. Colo. Sept. 17, 1980), rev'd, 644 F.2d 844 (10th Cir. 1981), aff'd sub nom. Baldrige v. Shapiro, 455 U.S. 345 (1982).

(1724)	(b)(1), E.O. 12356, (b)(3), 8 U.S.C. §1202(f), (b)(7)(C), adequacy of request, attorney's fees, discovery in FOIA litigation, in camera inspection, "mosaic," Vaughn index	McTigue v. DOJ, Civil No. 84-3583 (D.D.C. Dec. 3, 1985), on in camera inspection (D.D.C. Feb. 18, 1986), aff'd, No. 86-5224 (D.C. Cir. Jan. 13, 1987), amended (D.C. Cir. Jan. 29, 1987), attorney's fees awarded (D.D.C. Aug. 20, 1987).
(1725)	(b)(5), attorney-client privilege, deliberative process, de novo review, discovery/FOIA interface, in camera inspection, reasonably segregable, Vaughn index, waiver of exemption	Mead Data Cent., Inc. v. Department of the Air Force, 402 F. Supp. 460 (D.D.C. 1975), remanded, 566 F.2d 242 (D.C. Cir. 1977).
(1726)	(b)(5), deliberative process, in camera inspection, reasonably segregable	Mead Data Cent., Inc. v. Department of the Air Force, Civil No. 76-0202 (D.D.C. 1977), aff'd, 575 F.2d 932 (D.C. Cir. 1978).
(1727)	(b)(3), 8 U.S.C. §1202(f), waiver of exemption (unauthorized release)	Medina-Hincapie v. Department of State, 700 F.2d 737 (D.C. Cir. 1983).
(1728)	(b)(3), 50 U.S.C. §403(d)(3), §403g, adequacy of request, "Glomar" denial	Medoff v. CIA, 464 F. Supp. 158 (D.N.J. 1978), summary judgment granted, Civil No. 78-733 (D.N.J. Mar. 13, 1979).
(1729)	Fees	Meeks v. Shea, Civil No. 81-5893-ADS (S.D.N.Y. Aug. 18, 1982).
(1730)	(b)(1), E.O. 11652, E.O. 12065, (b)(2), (b)(3), 8 U.S.C. §1202(f), 26 U.S.C. §6103, 42 U.S.C. §2612(a), 50 U.S.C. §402, §403(d)(3), §403g, Fed.R.Crim.P. 6(e), (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), Congressional records, discovery in FOIA litigation, duty to disclose, duty to search, improper withholding, in camera inspection, summary judgment	Meeropol v. Smith, Civil No. 75-1121 (D.D.C. Feb. 29, 1984), aff'd in part & remanded in part sub nom. Meeropol v. Meese, 790 F.2d 942 (D.C. Cir. 1986).
(1731)	(b)(3), 18 U.S.C. §1426(h), (b)(7)(C), (b)(7)(D), FOIA/PA interface, proper party defendant	Meier v. DOJ, Civil No. 78-3124-AAH-Sx (C.D. Cal. June 25, 1979).

(1732)	Privacy Act access, (b)(2), (b)(5), (b)(7)(C), (b)(7)(D), attorney's fees	Meisler v. DOJ, Civil No. 75-417 (W.D.N.Y. Feb. 24, 1977).
(1733)	(b)(2), (b)(3), 26 U.S.C. §6103, attorney work-product privilege, displacement of FOIA	Menard v. Department of the Treasury, 2 GDS ¶81,281 (D. Ariz. 1981).
(1734)	(b)(7)(C), (b)(7)(E), (b)(7)(F)	Mendoza v. DOJ, Civil No. SA-79-475 (W.D. Tex. Nov. 16, 1981).
(1735)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E), attorney's fees, proper party defendant	Mendoza v. Department of the Treasury, 3 GDS ¶82,419 (C.D. Cal. 1981), subsequent decision, 3 GDS ¶82,420 (C.D. Cal. 1981).
(1736)	FOIA as a discovery tool, injunction of agency proceeding pending resolution of FOIA claim	Mercy Hosp. v. NLRB, 449 F. Supp. 594 (S.D. Iowa 1978).
(1737)	Vaughn index	Merit Sec. v. IRS, Civil No. 86-2412 (D.D.C. Feb. 10, 1987).
(1738)	(b)(8), reasonably segregable	Mermelstein v. SEC, 629 F. Supp. 672 (D.D.C. 1986).
(1739)	Discovery in FOIA litigation	Merola v. IRS, Civil No. 83-3323 (D.D.C. Sept. 17, 1984).
(1740)	(a)(1)(D), (a)(2)(B), (b)(2), (b)(5), commercial privilege, deliberative process, prompt disclosure, reasonably segregable	Merrill v. Federal Open Market Comm., 413 F. Supp. 494 (D.D.C. 1976), aff'd, 565 F.2d 778 (D.C. Cir. 1977), rev'd & remanded, 443 U.S. 340 (1979), on remand, 516 F. Supp. 1028 (D.D.C. 1981).
(1741)	(b)(7)(A), (b)(7)(C), injunction of agency proceeding pending resolution of FOIA claim	Merrill Lynch, Pierce, Fenner & Smith, Inc. v. SEC, 39 Ad. L. 2d (P & F) 254 (D.D.C. 1976).
(1742)	Privacy Act access	Mervin v. Bonfanti, 410 F. Supp. 1205 (D.D.C. 1976).
(1743)	(b)(5), attorney work-product privilege, in camera inspection, reasonably segregable	Mervin v. FTC, Civil No. 76-0686 (D.D.C. Dec. 1, 1976), aff'd, 591 F.2d 821 (D.C. Cir. 1978).
(1744)	Attorney's fees	Messer v. HUD, Civil No. 79-0112 (E.D. Ky. Feb. 28, 1985).
(1745)	(b)(7)(C), FOIA as a discovery tool, summary judgment	Metex Corp. v. ACS Indus., 748 F.2d 150 (3d Cir. 1984), summary judgment denied, Civil No. 83-C384 (D.N.J. Apr. 30, 1985) (magistrate's report).

(1746)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §2000e-8, 44 U.S.C. §3508, (b)(4), (b)(6), (b)(7), de novo review, discretionary release	Metropolitan Life Ins. Co. v. Usery, 426 F. Supp. 150 (D.D.C. 1976), cert. before judgment denied sub nom. Prudential Ins. Co. v. NOW, 431 U.S. 924 (1977), aff'd sub nom. NOW v. Social Sec. Admin., 736 F.2d 727 (D.C. Cir. 1984).
(1747)	Duty to search	Metzgar v. CIA, Civil No. 84-1784 (D.D.C. May 30, 1985).
(1748)	(b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(C), burden of proof, deliberative process, displacement of FOIA, reasonably segregable, Vaughn index	Meyer v. Department of the Treasury, 82-2 U.S. Tax Cas. (CCH) ¶9678 (W.D. Mich. 1982).
(1749)	(b)(4), (b)(6)	Miami Herald Publishing Co. v. SBA, 3 GDS ¶82,396 (S.D. Fla. 1979), aff'd, 670 F.2d 610 (5th Cir. 1982).
(1750)	Res judicata	Michaels v. United States Postal Serv., Civil No. TX-85-144 (E.D. Tex. Feb. 18, 1986).
(1751)	(b)(5), attorney work-product privilege, in camera inspection, inter- or intra-agency memoranda, reasonably segregable	Michelson v. Department of Labor, Civil No. 85-2518 (D.D.C. June 30, 1986).
(1752)	(b)(3), 42 U.S.C. §2000e-5(b), (b)(5), (b)(7)(A), burden of proof, deliberative process	Midwest Alloys, Inc. v. EEOC, Civil No. 80-112-C(3) (E.D. Mo. Mar. 31, 1982), partial summary judgment granted (E.D. Mo. May 20, 1982), on renewed motions for summary judgment (E.D. Mo. Dec. 30, 1982).
(1753)	(b)(5), (b)(7)(C), (b)(7)(D), assurance of confidentiality, discovery/FOIA interface	Miles v. Department of Labor, 546 F. Supp. 437 (M.D. Pa. 1982).
(1754)	Attorney's fees	Miles v. Federal Home Loan Bank Bd., Civil No. 84-2527 (D.D.C. Nov. 2, 1984).
(1755)	Attorney's fees, exceptional circumstances/due diligence, failure to meet time limits	Milic v. Department of State, 3 GDS ¶83,068 (D.D.C. 1983).

(1756)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403, discovery in FOIA litigation, in camera affidavit, in camera inspection, summary judgment, waiver of exemption	Military Audit Project v. Bush, 418 F. Supp. 876 (D.D.C. 1976), decision on in camera inspection, 418 F. Supp. 880 (D.D.C. 1976), procedural motion denied, No. 76-2037 (D.C. Cir. Jan. 14, 1977), on remand sub nom. Military Audit Project v. Colby, Civil No. 75-2103 (D.D.C. Oct. 4, 1979), aff'd sub nom. Military Audit Project v. Casey, 656 F.2d 724 (D.C. Cir. 1981).
(1757)	(b)(4), (b)(5), adequacy of agency affidavit, deliberative process	Military Audit Project v. Kettles, Civil No. 75-0666 (D.D.C. May 17, 1976).
(1758)	(b)(1), E.O. 12356, (b)(3), 50 U.S.C. §403(d)(3), "Glomar" denial, publication	Miller v. Casey, 3 GDS ¶83,095 (D.D.C. 1982), aff'd, 730 F.2d 773 (D.C. Cir. 1984).
(1759)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403, (b)(5), Congressional records, de novo review	Miller v. CIA, 2 GDS ¶81,174 (D.D.C. 1981).
(1760)	Agency records, duty to search, improper withholding	Miller v. Department of the Army, Civil No. 85-3622 (D.D.C. Mar. 26, 1986).
(1761)	Dismissal for failure to prosecute	Miller v. FBI, Civil No. 84-1704 (D.D.C. Dec. 21, 1984).
(1762)	(b)(1), E.O. 12356, adequacy of agency affidavit, attorney's fees, belated classification, duty to create a record, duty to search, proper party defendant	Miller v. Schultz, Civil No. 3-82-788 (D. Minn. July 11, 1984), aff'd & vacated & remanded sub nom. Miller v. Department of State, 779 F.2d 1378 (8th Cir. 1985).
(1763)	(b)(5)	Miller v. Smith, 292 F. Supp. 55 (S.D.N.Y. 1968).
(1764)	(b)(7), (b)(7)(D), exhaustion of administrative remedies, FOIA/PA interface, law enforcement purpose	Miller v. United States, 630 F. Supp. 347 (E.D.N.Y. 1986).

(1765)	(b)(1), E.O. 12356, (b)(7)(C), (b)(7)(D), adequacy of request, assurance of confidentiality, attorney's fees, disciplinary proceedings, FOIA/PA interface, proper party defendant, Vaughn index	Miller v. Webster, 483 F. Supp. 883 (N.D. Ill. 1979), aff'd in part, rev'd in part sub nom. Miller v. Bell, 661 F.2d 623 (7th Cir. 1981), cert. denied sub nom. Miller v. Webster, 456 U.S. 960 (1982), subsequent decision, Civil No. 77-C-3331 (N.D. Ill. Oct. 27, 1983), summary judgment granted (N.D. Ill. Feb. 29, 1984), remanded, No. 84-2074 (7th Cir. Dec. 10, 1984), summary judgment denied sub nom. Miller v. Director of the FBI (N.D. Ill. Oct. 7, 1987), summary judgment granted sub nom. Miller v. Sessions (N.D. Ill. Mar. 21, 1988), reconsideration denied (N.D. Ill. May 2, 1988).
(1766)	(b)(4), promise of confidentiality	Miller, Anderson, Nash, Yerke & Wiener v. DOE, 499 F. Supp. 767 (D. Or. 1980).
(1767)	Fee waiver, FOIA/PA interface	Mills v. McCreight, 1 GDS ¶79,151 (D.D.C. 1979).
(1768)	(b)(5)	Mims v. United States, Civil No. 8935 (D.N.M. July 8, 1971).
(1769)	(b)(3), 18 U.S.C. §4208(b), Fed.R. Crim.P. 32, (b)(5), deliberative process, inter- or intra-agency memoranda, waiver of exemption	Mineo v. DOJ, Civil No. 84-3899 (D.D.C. Apr. 30, 1985), rev'd, 804 F.2d 701 (D.C. Cir. 1986) (consolidated), reh'g denied, 806 F.2d 1122 (D.C. Cir. 1986) (consolidated), cert. granted, judgment vacated & remanded, 108 S. Ct. 2010 (1988) (consolidated).
(1770)	(b)(1), (b)(5), in camera inspection	Mink v. EPA, 464 F.2d 742 (D.C. Cir. 1971), rev'd, 410 U.S. 73 (1973).
(1771)	Discovery in FOIA litigation	Minneapolis Star & Tribune Co. v. Department of the Interior, 623 F. Supp. 577 (D. Minn. 1985).
(1772)	(b)(4), (b)(5), (b)(7)(E), deliberative process, discretionary release, promise of confidentiality	Minnesota v. DOE, Civil No. 4-81-434 (D. Minn. Dec. 14, 1982).
(1773)	Attorney's fees	Minnesota Mining & Mfg. Co. v. GSA, Civil No. 77-0306 (D.D.C. Aug. 10, 1977).
(1774)	(b)(6), proper party defendant	Minnis v. USDA, 3 GDS ¶83,231 (D. Or. 1981).

(1775)	(b)(6), exhaustion of administrative remedies, res judicata	Minnis v. USDA, 3 GDS ¶83,232 (D. Or. 1983), rev'd, 737 F.2d 784 (9th Cir. 1984), cert. denied, 471 U.S. 1053 (1985).
(1776)	Privacy Act access, (b)(7)(C), (b)(7)(D), assurance of confidentiality, mootness	Minor v. EEOC, Civil No. 81-2988-H (W.D. Tenn. Dec. 22, 1983) (magistrate's report adopted), vacated & remanded, No. 84-5162 (6th Cir. Sept. 20, 1984) (unpublished memorandum), mem., 745 F.2d 57 (6th Cir. 1984), on remand (W.D. Tenn. Mar. 18, 1985), dismissed (W.D. Tenn. Sept. 16, 1986) (magistrate's report adopted).
(1777)	(a)(1)(D), (a)(2)(C), publication	Minority Business Legal Defense & Educ. Fund, Inc. v. SBA, 557 F. Supp. 37 (D.D.C. 1982).
(1778)	Jurisdiction, personal records	Miranda Manor, Ltd. v. HHS, Civil No. 85-C-10015 (N.D. Ill. Apr. 7, 1986).
(1779)	(b)(3), 35 U.S.C. §122, (b)(4), (b)(5), mootness	Misegades & Douglas v. Schuyler, 328 F. Supp. 619 (E.D. Va. 1971), dismissed as moot, 456 F.2d 255 (4th Cir. 1972).
(1780)	(b)(3), 35 U.S.C. §122, attorney's fees, leaks	Misegades, Douglas & Levy v. Sonneberg, 76 F.R.D. 384 (E.D. Va. 1976), summary judgment granted, Civil No. 76-481A (E.D. Va. Jan. 13, 1977).
(1781)	(b)(3), 15 U.S.C. §46(f), (b)(4), (b)(5), (b)(7), adequacy of agency affidavit, mootness	Missouri Portland Cement Co. v. FTC, 1972 Trade Cas. (CCH) ¶74,124 (D.D.C. 1972).
(1782)	(b)(2), (b)(7)(A), (b)(7)(E), in camera inspection, summary judgment	Misterek v. IRS, Civil No. C87-421D (W.D. Wash. Nov. 16, 1987).
(1783)	(b)(5), stay pending appeal	Mitchell v. DOJ, Civil No. 85-3727 (D.D.C. Oct. 10, 1986), dismissed (D.D.C. Jan. 14, 1987).
(1784)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, discovery in FOIA litigation	Mitchell v. IRS, 1 GDS ¶80,103 (W.D. Okla. 1980).
(1785)	(b)(7)(D)	Mitchell v. Ralston, Civil No. 81-4478 (S.D. Ill. Oct. 14, 1982).
(1786)	Res judicata	Mitchell v. Smith, Civil No. 82-1525 (D.D.C. Nov. 15, 1982).

(1787)	(b)(4), (b)(7)(A), (b)(7)(D), exceptional circumstances/due diligence, FOIA as a discovery tool	Mitsubishi Elec. Corp. v. DOJ, 39 Ad. L. 2d (P & F) 1133 (D.D.C. 1976), summary judgment granted, Civil No. 76-0813 (D.D.C. Apr. 1, 1977).
(1788)	Transfer of FOIA case	Mobil Corp. v. SEC, 550 F. Supp. 67 (S.D.N.Y. 1982).
(1789)	(b)(3), 15 U.S.C. §46(f), (b)(4), (b)(5), (b)(7), (b)(7)(A), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, Vaughn index	Mobil Oil Corp. v. FTC, 406 F. Supp. 305 (S.D.N.Y. 1976), decision on reh'g, 430 F. Supp. 849 (S.D.N.Y. 1977), subsequent decision, Civil No. 74-311-MEL (S.D. N.Y. Dec. 7, 1978), summary judgment granted (S.D.N.Y. July 3, 1979).
(1790)	Attorney's fees	Mobley v. IRS, 42 A.F.T.R. 2d 78-5359 (N.D. Cal. 1978).
(1791)	(b)(7), (b)(7)(A), law enforcement purpose, Vaughn index, waiver of exemption	Moceo v. FBI, Civil No. C85-20072-WAI (N.D. Cal. Aug. 20, 1985).
(1792)	Privacy Act access, (b)(1), E.O. 12356, (b)(3), 50 U.S.C. §403(d)(3), §403g, FOIA/PA interface, in camera inspection, summary judgment	Moessmer v. CIA, Civil No. 86-948C (1) (E.D. Mo. Feb. 19, 1987).
(1793)	(b)(5), (b)(7)	Monsanto Co. v. Dawson Chem. Co., 176 U.S.P.Q. (BNA) 349 (S.D. Tex. 1972).
(1794)	Attorney's fees, mootness	Montrose Chem. Corp. v. EPA, Civil No. C84-6355-SC (N.D. Cal. Mar. 23, 1985), motion to amend denied (N.D. Cal. May 17, 1985), appeal dismissed, No. 85-2292 (9th Cir. Nov. 7, 1985).
(1795)	(b)(5), deliberative process, reasonably segregable	Montrose Chem. Corp. v. Ruckelshaus, Civil No. 72-1797 (D.D.C. Feb. 16, 1973), rev'd sub nom. Montrose Chem. Corp. v. Train, 491 F.2d 63 (D.C. Cir. 1974).
(1796)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), adequacy of agency affidavit, discovery in FOIA litigation, summary judgment	Moody v. DEA, Civil No. 83-2582 (D.D.C. Mar. 12, 1984), partial summary judgment granted (D.D.C. June 18, 1984), summary judgment granted, 592 F. Supp. 556 (D.D.C. 1984).

(1797)	(b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(C), (b)(7)(D), attorney work-product privilege, displacement of FOIA, summary judgment, waiver of exemption	Moody v. IRS, 1 GDS ¶80,055 (D.D.C. 1980), remanded, 654 F.2d 795 (D.C. Cir. 1981), on remand, 527 F. Supp. 535 (D.D.C. 1981), rev'd in part & remanded, 682 F.2d 266 (D.C. Cir. 1982), summary judgment granted, 52 A.F.T.R. 2d 83-6329 (D.D.C. 1983).
(1798)	(b)(3), 26 U.S.C. §6103	Moody v. IRS, Civil No. 82-3134 (D.D.C. Apr. 12, 1983).
(1799)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §402, disclosure to Congress, referral of request to another agency, waiver of exemption (administrative release)	Moon v. CIA, 514 F. Supp. 836 (S.D.N.Y. 1981).
(1800)	(b)(5), (b)(7)(D), (b)(7)(E), attorney's fees, deliberative process	Moore v. Department of the Treasury, 2 GDS ¶82,085 (S.D. Ohio 1981).
(1801)	(b)(1), E.O. 12356, (b)(7)(C), discovery in FOIA litigation, Vaughn index, waiver of exemption (administrative release)	Moore v. FBI, Civil No. 83-1541 (D.D.C. Mar. 9, 1984), aff'd mem., 762 F.2d 138 (D.C. Cir. 1985).
(1802)	(b)(7), (b)(7)(A), law enforcement purpose	Moorefield v. United States Secret Serv., Civil No. C77-906A (N.D. Ga. Feb. 8, 1978), aff'd, 611 F.2d 1021 (5th Cir. 1980), cert. denied, 449 U.S. 909 (1980).
(1803)	(b)(5), (b)(7)	Moore-McCormack Line v. I.T.O. Corp., 508 F.2d 945 (4th Cir. 1974).
(1804)	Privacy Act access, (b)(2), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(F)	Moran v. DEA, Civil No. 78-2831-JLK (S.D. Fla. July 3, 1979).
(1805)	(b)(7)(D), (b)(7)(E)	Morgan v. Federal Bureau of Prisons, Civil No. 84-3342 (D.D.C. Feb. 28, 1985).
(1806)	(b)(3), (b)(4), summary judgment	Morgan v. FDA, Civil No. 70-1928 (D.D.C. July 6, 1971), aff'd, No. 71-1709 (D.C. Cir. May 24, 1974).
(1807)	Summary judgment	Morgan v. Huff, Civil No. R-85-1699 (D. Md. June 23, 1986).
(1808)	Exhaustion of administrative remedies, proper party defendant	Morpurgo v. Board of Higher Educ., 423 F. Supp. 704 (S.D.N.Y. 1976).

(1809)	Improper withholding	Morris v. DOJ, 540 F. Supp. 898 (S.D. Tex. 1982).
(1810)	(b)(5), deliberative process, discovery in FOIA litigation, summary judgment	Morrison v. DOJ, Civil No. 87-3394 (D.D.C. Apr. 29, 1988).
(1811)	(b)(5), commercial privilege	Morrison-Knudsen Co. v. Department of the Army, 595 F. Supp. 352 (D.D.C. 1984), aff'd mem., 762 F.2d 138 (D.C. Cir. 1985).
(1812)	(a)(1)(D), publication	Morton v. Ruiz, 415 U.S. 199 (1974).
(1813)	(b)(2), (b)(5), in camera inspection, reasonably segregable	Morton-Norwich Prods., Inc. v. Mathews, 415 F. Supp. 78 (D.D.C. 1976).
(1814)	Exceptional circumstances/due diligence, exhaustion of administrative remedies, failure to meet time limits, FOIA as a discovery tool	Moskowitz v. Kelley, Civil No. 77-C-705 (E.D.N.Y. July 23, 1977).
(1815)	(b)(1)	Moss v. Laird, Civil No. 71-1254 (D.D.C. Dec. 7, 1971).
(1816)	(b)(3), 15 U.S.C. §1314(g)	Motion Picture Ass'n v. DOJ, Civil No. 80-6612-VLB (S.D.N.Y. Oct. 6, 1981).
(1817)	Proper party defendant	Mott v. Clauson, Cause No. S87-0045 (N.D. Ind. Mar. 10, 1988).
(1818)	Attorney's fees, fee waiver	Mountain v. Department of Labor, Civil No. R-83-380-JMB (D. Nev. Aug. 17, 1984).
(1819)	(b)(3), 19 U.S.C. §1677f, (b)(4), summary judgment	Mudge Rose Guthrie Alexander & Ferdon v. United States Int'l Trade Comm'n, Civil No. 86-1650 (D.D.C. June 2, 1987), remanded, 846 F.2d 1527 (D.C. Cir. 1988).
(1820)	(b)(3), 15 U.S.C. §2055(a)(2), §2055(b)(5), (b)(4), promise of confidentiality, Vaughn index	Mulloy v. Consumer Prod. Safety Comm'n, Civil No. C-2-85-0645 (S.D. Ohio Aug. 2, 1985), aff'd, No. 85-3720 (6th Cir. July 22, 1986).
(1821)	(b)(6), attorney's fees	Multnomah County Medical Soc'y v. Scott, Civil No. 85-0832 (D. Or. Nov. 14, 1985), aff'd, 825 F.2d 1410 (9th Cir. 1987).
(1822)	(b)(6), proper party defendant	Muntner v. INS, Civil No. 3-80-624 (D. Minn. Feb. 5, 1982).

(1823)	Disclosure to Congress, discretionary release, waiver of exemption (administrative release)	Murphy v. Department of the Army, 613 F.2d 1151 (D.C. Cir. 1979).
(1824)	(b)(3), Fed.R.Crim. P. 6(e), (b)(7)(A), discovery in FOIA litigation, in camera affidavit, leaks, Vaughn index, waiver of exemption (unauthorized release)	Murphy v. FBI, 490 F. Supp. 1134 (D.D.C. 1980), summary judgment granted, 490 F. Supp. 1138 (D.D.C. 1980), summary judgment vacated as moot, No. 80-1612 (D.C. Cir. Jan. 8, 1981).
(1825)	(b)(7)(C), (b)(7)(D), waiver of exemption	Murphy v. FBI, Civil No. 79-0919-W-5 (W.D. Mo. Sept. 1, 1981).
(1826)	(b)(5), attorney-client privilege, deliberative process, jurisdiction, reasonably segregable, settlement documents, waiver of exemption	Murphy v. TVA, 559 F. Supp. 58 (D.D.C. 1983), summary judgment granted, 571 F. Supp. 502 (D.D.C. 1983).
(1827)	Attorney's fees	Murty v. OPM, 3 GDS ¶83,253 (E.D. Va. 1982), aff'd, 707 F.2d 815 (4th Cir. 1983).
(1828)	(b)(7)(C), (b)(7)(F), waiver of exemption	Myers v. DOJ, Civil No. 85-1746 (D.D.C. Sept. 22, 1986).
(1829)	(b)(7)(A), (b)(7)(C), (b)(7)(D), FOIA as a discovery tool	Mylan Pharmaceuticals v. NLRB, 407 F. Supp. 1124 (W.D. Pa. 1976).
(1830)	(b)(5), inter- or intra-agency memoranda, settlement documents	NAACP Legal Defense & Educ. Fund v. DOJ, 612 F. Supp. 1143 (D.D.C. 1985).
(1831)	(b)(3), 35 U.S.C. §122	Nabisco Brands, Inc. v. Mossinghoff, Civil No. 84-1723F (D.N.J. June 11, 1985).
(1832)	Jurisdiction	Nachbaur v. NLRB, Civil No. 76-6172 (S.D.N.Y. 1977), appeal dismissed, 559 F.2d 1204 (2d Cir. 1977).
(1833)	(b)(5)	Nader v. Dunlop, 370 F. Supp. 177 (D.D.C. 1973).

(1834)	Privacy Act access, (a)(2), (b)(3), Fed. R.Crim.P. 6(e), (b)(5), (b)(7), (b)(7)(A), attorney work-product privilege, exhaustion of administrative remedies, FOIA/PA interface, proper party defendant, summary judgment	Nader v. ICC, Civil No. 82-1037 (D.D.C. Nov. 23, 1983).
(1835)	(b)(3), 49 U.S.C. §1472, §1504, in camera inspection	National Airlines v. CAB, Civil No. 75-613 (D.D.C. Oct. 10, 1975).
(1836)	(b)(5), (b)(6), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality, attorney work-product privilege, deliberative process, discretionary release, reasonably segregable, Vaughn index, waiver of exemption	National Ass'n of Arab Ams. v. DOJ, Civil No. 83-0984 (D.D.C. Feb. 20, 1985), subsequent decision (D.D.C. June 10, 1985), reconsideration denied (D.D.C. July 24, 1985), summary judgment granted (D.D.C. Apr. 14, 1986), all district court opinions vacated & remanded, Nos. 85-5878, 85-5917 (D.C. Cir. Aug. 26, 1986).
(1837)	(b)(6), attorney's fees, discovery in FOIA litigation, FOIA/PA interface	National Ass'n of Atomic Veterans v. Director, Defense Nuclear Agency, Civil No. 81-2662 (D.D.C. Sept. 12, 1983), summary judgment granted, 583 F. Supp. 1483 (D.D.C. 1984), attorney's fees granted (D.D.C. July 15, 1987).
(1838)	(a)(1), (a)(2), attorney's fees, publication	National Ass'n of Concerned Veterans v. Secretary of Defense, 487 F. Supp. 192 (D.D.C. 1979), on motion for attorney's fees, 3 GDS ¶82,537 (D.D.C. 1981), vacated & remanded, 675 F.2d 1319 (D.C. Cir. 1982), reh'g en banc denied, Nos. 81-1364, 81-1424 (D.C. Cir. 1982).
(1839)	(b)(3), 5 U.S.C. §8092, (b)(4), burden of proof, promise of confidentiality, summary judgment	National Ass'n of Gov't Employees v. Hampton, Civil No. 76-1041 (D.D.C. June 11, 1976), summary judgment denied (D.D.C. Sept. 3, 1976), aff'd in part, rev'd in part & remanded sub nom. National Ass'n of Gov't Employees v. Campbell, 593 F.2d 1023 (D.C. Cir. 1978), on remand, 1 GDS ¶80,129 (D.D.C. 1980).
(1840)	(b)(5), (b)(6)	National Ass'n of Postal Supervisors v. United States Postal Serv., Civil No. C77-2188-CBR (N.D. Cal. July 12, 1978), aff'd, No. 78-3245 (9th Cir. Feb. 27, 1980).

(1841)	(b)(6)	National Ass'n of Retired Fed. Employees v. Horner, 633 F. Supp. 1241 (D.D.C. 1986).
(1842)	Mootness	National Broadcasting Co. v. Department of the Air Force, Civil No. 84-1048 (D.D.C. July 18, 1984).
(1843)	(b)(4), (b)(5), adequacy of request, summary judgment	National Cable Television Ass'n v. FCC, 479 F.2d 183 (D.C. Cir. 1973).
(1844)	(b)(1), E.O. 12065, (b)(7)(D), assurance of confidentiality, belated classification, in camera inspection	National Catholic Reporter Publishing Co. v. FBI, Civil No. 80-0585 (D.D.C. May 20, 1980), on motion for summary judgment, 514 F. Supp. 1149 (D.D.C. 1981), on motion for reconsideration (D.D.C. June 17, 1981).
(1845)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), §403g	National Comm'n on Law Enforcement & Social Justice v. CIA, Civil No. 75-3644-MML (C.D. Cal. Oct. 20, 1976), aff'd, 576 F.2d 1373 (9th Cir. 1978).
(1846)	(a)(1), publication	National Conservative Political Action Comm. v. Federal Election Comm'n, Civil No. 78-0270 (D.D.C. Apr. 28, 1978), aff'd as modified, 626 F.2d 953 (D.C. Cir. 1980).
(1847)	Fees, fee waiver	National Consumers Congress v. AID, Civil No. 75-1209 (D.D.C. Sept. 15, 1976).
(1848)	(b)(5)	National Courier Ass'n v. Board of Governors of the Fed. Reserve Sys., 516 F.2d 1229 (D.C. Cir. 1975).
(1849)	Exceptional circumstances/due diligence	National Enquirer v. DOJ, Civil No. 76-1071 (D.D.C. Nov. 1, 1976).
(1850)	(b)(7)(A), (b)(7)(C)	NLRB v. Biophysics Sys., 91 L.R.R.M. 3079 (S.D.N.Y. 1976).
(1851)	(b)(7)(A), (b)(7)(C), (b)(7)(D), injunction of agency proceeding pending resolution of FOIA claim	NLRB v. Hardeman Garment Corp., 406 F. Supp. 510 (W.D. Tenn. 1976), on motion to stay agency proceedings, 91 L.R.R.M. 2425 (W.D. Tenn. 1976), rev'd, 557 F.2d 559 (6th Cir. 1977).
(1852)	(b)(5)	National Nutritional Foods Ass'n v. Mathews, 418 F. Supp. 394 (S.D.N.Y. 1976).
(1853)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), deliberative process	National Org. for the Reform of Marihuana Laws v. DEA, Civil No. 80-1339 (D.D.C. June 24, 1981).

(1854)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), de novo review, discretionary release	NOW v. Social Sec. Admin., 736 F.2d 727 (D.C. Cir. 1984).
(1855)	(b)(3), 18 U.S.C. §1905, (b)(4), (b)(6), burden of proof	National Parks & Conservation Ass'n v. Morton, 351 F. Supp. 404 (D.D.C. 1972), rev'd & remanded, 498 F.2d 765 (D.C. Cir. 1974), on remand, Civil No. 72-0436 (D.D.C. Oct. 23, 1975), aff'd in part, rev'd in part sub nom. National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673 (D.C. Cir. 1976).
(1856)	FOIA as a discovery tool	National Presto Indus. v. United States, No. 76-301 (Ct. Cl. Oct. 26, 1978).
(1857)	(a)(2)	National Prison Project v. Bureau of Prisons, Civil No. 78-0216 (D.D.C. Jan. 26, 1979).
(1858)	(a)(2)(A), (b)(6)	National Prison Project of the ACLU Found. v. Sigler, 390 F. Supp. 789 (D.D.C. 1975).
(1859)	(b)(5), (b)(7)(A), deliberative process	National Public Radio v. Bell, 431 F. Supp. 509 (D.D.C. 1977).
(1860)	(b)(5)	National Resources Defense Council v. NRC, Civil No. 76-0592 (D.D.C. Apr. 14, 1977).
(1861)	Fee waiver (Reform Act)	National Sec. Archive v. Department of Commerce, Civil No. 87-1581 (D.D.C. Nov. 25, 1987).
(1862)	Fees (Reform Act), fee waiver (Reform Act), summary judgment	National Sec. Archive v. DOD, Civil No. 86-3454 (D.D.C. Sept. 30, 1987), summary judgment granted (D.D.C. June 16, 1988).
(1863)	Agency records	National Sec. Archive v. Executive Office of the President, 688 F. Supp. 29 (D.D.C. 1988).
(1864)	Attorney's fees	National Senior Citizen Law Center v. Social Sec. Admin., 849 F.2d 401 (9th Cir. 1988).
(1865)	Discovery/FOIA interface	National Small Shipments Traffic Conference v. ICC, Civil No. 82-2895 (D.D.C. Dec. 16, 1982).
(1866)	Injunction of agency proceeding pending resolution of FOIA claim	National Steel Prods. Co. v. NLRB, Civil No. C78-293A (N.D. Ga. Oct. 16, 1978).

(1867)	(b)(5), deliberative process, inter- or intra-agency memoranda	National Tank Truck Carriers, Inc. v. OMB, 3 GDS ¶82,327 (D.D.C. 1982).
(1868)	(b)(6)	National Treasury Employees Union v. ACTION, Civil No. 78-1431 (D.D.C. Jan. 20, 1979).
(1869)	(b)(6)	National Treasury Employees Union v. Department of the Treasury, Civil No. 77-0465 (D.D.C. Aug. 29, 1978).
(1870)	(a)(2)(C), (b)(2)	National Treasury Employees Union v. Department of the Treasury, 487 F. Supp. 1321 (D.D.C. 1980).
(1871)	(b)(6), FOIA as a discovery tool, reasonably segregable	National Treasury Employees Union v. Department of the Treasury, 3 GDS ¶83,224 (D.D.C. 1983).
(1872)	(b)(6), summary judgment	National Treasury Employees Union v. FDIC, Civil No. 86-2537 (D.D.C. Nov. 25, 1987).
(1873)	Fees, fee waiver	National Treasury Employees Union v. Griffin, Civil No. 84-3291 (D.D.C. July 22, 1985), aff'd, 811 F.2d 644 (D.C. Cir. 1987).
(1874)	Res judicata	National Treasury Employees Union v. IRS, 765 F.2d 1174 (D.C. Cir. 1985).
(1875)	(b)(3), 5 U.S.C. §7114(b)(4), §7132	National Treasury Employees Union v. OPM, Civil No. 79-0695 (D.D.C. July 9, 1979).
(1876)	(b)(5), (b)(6)	National Treasury Employees Union v. United States, 2 GDS ¶81,146 (D.D.C. 1981).
(1877)	(b)(3), 5 U.S.C. §7114(b)(4), exceptional circumstances/due diligence, exhaustion of administrative remedies	National Treasury Employees Union v. United States Customs Serv., 2 GDS ¶82,191 (D.D.C. 1982).
(1878)	(b)(2), "mosaic," Vaughn index	National Treasury Employees Union v. United States Customs Serv., 602 F. Supp. 469 (D.D.C. 1984), aff'd, 802 F.2d 525 (D.C. Cir. 1986).
(1879)	(b)(3), 39 U.S.C. §410(c)(2), (b)(4), (b)(6), attorney's fees, proper party defendant	National W. Life Ins. Co. v. United States, 512 F. Supp. 454 (N.D. Tex. 1980).

(1880)	Attorney's fees, case or controversy, fee waiver, mootness	National Wildlife Fed'n v. Department of the Interior, 616 F. Supp. 889 (D.D.C. 1984), remanded, 780 F.2d 86 (D.C. Cir. 1986) (consolidated), motion to consolidate on remand denied, Civil No. 83-3586 (D.D.C. Apr. 8, 1986), dismissed as moot (D.D.C. Oct. 15, 1987), attorney's fees granted (D.D.C. Oct. 15, 1987), motion for additional attorney's fees denied (D.D.C. Aug. 19, 1988).
(1881)	(b)(5), deliberative process, summary judgment	National Wildlife Fed'n v. United States Forest Serv., Civil No. 86-1255 (D.D.C. Sept. 26, 1987).
(1882)	Attorney's fees	Nationwide Bldg. Maintenance v. Sampson, 559 F.2d 704 (D.C. Cir. 1977).
(1883)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §2000e, (b)(5), (b)(6), (b)(7), de novo review	Nationwide Mut. Ins. Co. v. Friedman, 451 F. Supp. 736 (D. Md. 1978).
(1884)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), (b)(5), Congressional records	Navasky v. CIA, 499 F. Supp. 269 (S.D.N.Y. 1980), subsequent decision, 521 F. Supp. 128 (S.D.N.Y. 1981), aff'd mem., 679 F.2d 873 (2d Cir. 1981), cert. denied, 459 U.S. 822 (1982).
(1885)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), preliminary injunction	Neal-Cooper Grain Co. v. Kissinger, 385 F. Supp. 769 (D.D.C. 1974).
(1886)	(b)(7)(A)	Nebraska Bulk Transp. v. NLRB, Civil No. 78-L-5 (D. Neb. Jan. 24, 1978).
(1887)	Vaughn index	Neely v. CIA, 3 GDS ¶82,393 (D.D.C. 1982), aff'd mem., 744 F.2d 878 (D.C. Cir. 1984), cert. denied, 471 U.S. 1022 (1985), reh'g denied, 472 U.S. 1013 (1985).
(1888)	Duty to create a record, duty to search, exhaustion of administrative remedies, FOIA/PA interface, mootness, summary judgment	Neff v. IRS, Civil No. 85-816 (S.D. Fla. Feb. 7, 1986) (magistrate's report), summary judgment granted (S.D. Fla. Nov. 24, 1986), aff'd as modified, No. 87-5231 (11th Cir. Feb. 2, 1988), judgment on costs (S.D. Fla. Mar. 15, 1988).
(1889)	(a)(1)(D), publication	Neighborhood Legal Servs., Inc. v. Legal Servs. Corp., 466 F. Supp. 1148 (D. Conn. 1979).
(1890)	Privacy Act access, (b)(5), deliberative process, FOIA/PA interface	Nelson v. EEOC, Civil No. 83-C-983 (E.D. Wis. Feb. 14, 1984).

(1891)	(b)(7)(A), (b)(7)(D)	Nemacolin Mines Corp. v. NLRB, 467 F. Supp. 521 (W.D. Pa. 1979).
(1892)	Privacy Act access, (b)(4), (b)(6), (b)(7)(C), proper party defendant	Nemetz v. Department of the Treasury, 446 F. Supp. 102 (N.D. Ill. 1978).
(1893)	(b)(3), 26 U.S.C. §6103(b)(2), (b)(5), attorney-client privilege, deliberative process, reasonably segregable	Neufeld v. IRS, 1 GDS ¶79,118 (D.D.C. 1979), aff'd in part, rev'd in part, 646 F.2d 661 (D.C. Cir. 1981).
(1894)	Duty to search	Neugent v. Department of the Interior, Civil No. 79-1229 (D.D.C. 1980), rev'd, 640 F.2d 386 (D.C. Cir. 1981).
(1895)	Dismissal for failure to prosecute	Neville v. Department of Commerce, Civil No. C-1-83-718 (S.D. Ohio Oct. 24, 1983).
(1896)	Dismissal for failure to prosecute	Neville v. DEA, Civil No. C-1-83-721 (S.D. Ohio Oct. 24, 1983).
(1897)	(b)(5), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney's fees, deliberative process, FOIA as a discovery tool	New England Apple Council, Inc. v. Donovan, 560 F. Supp. 231 (D. Mass. 1983), subsequent decision, Civil No. 80-2925-Z (D. Mass. Apr. 7, 1983), rev'd, 725 F.2d 139 (1st Cir. 1984), attorney's fees denied, 640 F. Supp. 16 (D. Mass. 1985).
(1898)	(b)(7)(A)	New England Medical Hosp. Center v. NLRB, 548 F.2d 377 (1st Cir. 1976).
(1899)	Adequacy of request, duty to disclose	Newman v. Legal Servs. Corp., 628 F. Supp. 535 (D.D.C. 1986).
(1900)	(b)(5)	New Mexico ex rel. Reynolds v. Kleppe, Civil No. 75-684-M (D.N.M. Dec. 10, 1976), subsequent decision (D.N.M. Feb. 24, 1977).
(1901)	Attorney's fees	Newport Aeronautical Sales v. Department of the Navy, Civil No. 84-0120 (D.D.C. Apr. 17, 1985).
(1902)	Fee waiver	Newsome v. FBI, 1 GDS ¶79,142 (M.D.N.C. 1979).
(1903)	Fee waiver, mootness	Newton v. DOJ, 3 GDS ¶82,455 (D.D.C. 1982).
(1904)	(a)(1), (a)(1)(D), publication	New York v. Lyng, 829 F.2d 346 (2d Cir. 1987).

(1905)	(b)(6)	New York Times Co. v. NASA, 679 F. Supp. 33 (D.D.C. 1987), stay pending appeal granted, Civil No. 86-2860 (D.D.C. July 16, 1987), aff'd, 852 F.2d 602 (D.C. Cir. 1988).
(1906)	(a)(1), (a)(1)(D), publication	Nguyen v. United States, 824 F.2d 697 (9th Cir. 1987).
(1907)	Attorney's fees	Nichols v. Landreau, 2 GDS ¶81,048 (D.D.C. 1980).
(1908)	Attorney's fees	Nichols v. Pierce, 740 F.2d 1249 (D.C. Cir. 1984).
(1909)	(b)(3), 44 U.S.C. §2107, §2108(c), agency records	Nichols v. United States, 325 F. Supp. 130 (D. Kan. 1971), aff'd, 460 F.2d 671 (10th Cir. 1972), cert. denied, 409 U.S. 966 (1972).
(1910)	(a)(2)(A)	Nicholson v. Brown, 599 F.2d 639 (5th Cir. 1979), modified on reh'g, 605 F.2d 209 (5th Cir. 1979).
(1911)	(a)(2)(A), (b)(5), attorney work-product privilege	Niemeir v. Watergate Special Prosecution Force, 420 F. Supp. 794 (N.D. Ill. 1976), rev'd & remanded, 565 F.2d 967 (7th Cir. 1977).
(1912)	(a)(1)(D), publication	NI Indus. v. United States, 841 F.2d 697 (9th Cir. 1987).
(1913)	(b)(3), 18 U.S.C. §1905, (b)(4), (b)(5), deliberative process, incorporation by reference	9 to 5 Org. for Women Office Workers v. Board of Governors of the Fed. Reserve Sys., 527 F. Supp. 1163 (D. Mass. 1981), on motion for summary judgment, Civil No. 80-2905-C (D. Mass. Dec. 21, 1981), revised Vaughn index ordered, 3 GDS ¶83,043 (D. Mass. 1982), subsequent decision, 547 F. Supp. 846 (D. Mass. 1982), summary judgment granted, 551 F. Supp. 1006 (D. Mass. 1982), motion to amend denied, 551 F. Supp. 1010 (D. Mass. 1982), vacated & remanded, 721 F.2d 1 (1st Cir. 1983).
(1914)	Discovery in FOIA litigation, duty to search	Niren v. INS, 103 F.R.D. 10 (D. Or. 1984).

(1915)	(b)(2), (b)(5), (b)(6), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, deliberative process, discovery in FOIA litigation, in camera inspection, law enforcement amendments (1986), law enforcement purpose, reasonably segregable, summary judgment, Vaughn index, waiver of exemption	Nishnic v. DOJ, Civil No. 86-2802-LFO (D.D.C. Mar. 16, 1987), summary judgment granted in part, 671 F. Supp. 771 (D.D.C. 1987), summary judgment granted in part, 671 F. Supp. 776 (D.D.C. 1987), aff'd, No. 87-5187 (D.C. Cir. Sept. 23, 1987), motion for reconsideration denied (D.D.C. Oct. 20, 1987).
(1916)	(b)(5), (b)(7)(A), attorney work-product privilege, waiver of exemption (administrative release)	Nissen Foods v. NLRB, 540 F. Supp. 584 (E.D. Pa. 1982).
(1917)	(b)(2), (b)(6), (b)(7)(C), (b)(7)(D), agency, attorney's fees	Nix v. DOJ, Civil No. 75-0935 (D.S.C. May 12, 1976), aff'd as modified & remanded sub nom. Nix v. United States, 572 F.2d 998 (4th Cir. 1978).
(1918)	(b)(1), (b)(3), 44 U.S.C. §2101, agency, agency records, attorney's fees, case or controversy, mootness	Nixon v. Sampson, 389 F. Supp. 107 (D.D.C. 1975), order stayed sub nom. Nixon v. Richey, 513 F.2d 427 (D.C. Cir. 1975), on reconsideration, 513 F.2d 430 (D.C. Cir. 1975), dismissed as moot, 437 F. Supp. 654 (D.D.C. 1977), rev'd sub nom. Reporters Comm. for Freedom of the Press v. Sampson, 591 F.2d 944 (D.C. Cir. 1978), on remand, Civil Nos. 74-1518, 74-1533, 74-1551 (D.D.C. June 12, 1980).
(1919)	Interaction of (a)(2) & (a)(3), jurisdiction	Nolen v. Rumsfeld, 535 F.2d 890 (5th Cir. 1976), cert. denied, 429 U.S. 1104 (1977).
(1920)	Reverse FOIA, mootness	Norman S. Fink Eng'g Co. v. Duncan, 2 GDS ¶82,007 (E.D. Wash. 1981).
(1921)	Attorney's fees	Norris v. DOJ, Civil No. 85-0421 (D.D.C. June 5, 1985), attorney's fees denied (D.D.C. July 16, 1985).
(1922)	(b)(7)(A), discovery/FOIA interface, res judicata	North v. Walsh, Civil No. 87-2700-LFO (D.D.C. Apr. 29, 1988), partial summary judgment granted (D.D.C. June 8, 1988), partial summary judgment granted (D.D.C. Aug. 31, 1988).
(1923)	(b)(7)(A), in camera affidavit	North Am. Man/Boy Love Ass'n v. FBI, 3 GDS ¶83,094 (S.D.N.Y. 1982), aff'd mem., 718 F.2d 1086 (2d Cir. 1983).

(1924)	(a)(1)	North Am. Van Lines v. United States, 412 F. Supp. 782 (N.D. Ind. 1976).
(1925)	(b)(5), discretionary release	North Dakota ex rel. Olson v. Department of the Interior, Civil No. A-77-1041 (D.N.D. Dec. 7, 1977), rev'd & remanded, 581 F.2d 177 (8th Cir. 1978).
(1926)	(a)(1)(B), (a)(1)(C)	Northern Cal. Power Agency v. Morton, 396 F. Supp. 1187 (D.D.C. 1975), aff'd mem. sub nom. Northern Cal. Power Agency v. Kleppe, 539 F.2d 243 (D.C. Cir. 1976).
(1927)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, nexus test	Northern Television, Inc. v. FCC, 1 GDS ¶80,124 (D.D.C. 1980).
(1928)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	North Fla. Regional Hosp., Inc. v. Mutual of Omaha Ins. Co., Civil No. C77-1808A (N.D. Ga. Dec. 22, 1977).
(1929)	(b)(5), (b)(6), adequacy of request, attorney work-product privilege, settlement documents, waiver of exemption	Norwood v. FAA, 580 F. Supp. 994 (W.D. Tenn. 1983).
(1930)	(a)(1)(D), publication	Notaro v. Luther, 800 F.2d 290 (2d Cir. 1986).
(1931)	(b)(3), 15 U.S.C. §57b-2(f), (b)(5), discretionary release, Vaughn index, waiver of exemption	Novo Laboratories v. FTC, 1 GDS ¶80,216 (D.D.C. 1980), on motion for summary judgment, 2 GDS ¶81, 320 (D.D.C. 1981).
(1932)	(b)(1), E.O. 12065, attorney's fees, "Glomar" denial	Nuclear Control Inst. v. NRC, 563 F. Supp. 768 (D.D.C. 1983), attorney's fees denied, 595 F. Supp. 923 (D.D.C. 1984).
(1933)	Attorney's fees	Nuclear Pac. v. Department of Commerce, Civil No. C83-1761C (W.D. Wash. July 18, 1984).
(1934)	(b)(2), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(F), FOIA/PA interface, Vaughn index	Nunez v. DEA, 497 F. Supp. 209 (S.D.N.Y. 1980).
(1935)	(a)(1), (a)(2), publication	Oahe Conservancy Sub-Dist. v. Alexander, 493 F. Supp. 1294 (D.S.D. 1980).
(1936)	(a)(1)(C), publication	Oakes v. IRS, Civil No. 86-2804 (D.D.C. Apr. 16, 1987).

(1937)	Privacy Act access, (b)(2), in camera inspection	Oatley v. United States, 3 GDS ¶83,274 (D.D.C. 1983).
(1938)	(b)(1), E.O. 12356, (b)(7)(C), (b)(7)(D)	Oatley v. United States, Civil No. 82-0991 (D.D.C. Oct. 14, 1983).
(1939)	(b)(6), duty to create a record	Oberholtzer v. United States Postal Serv., Civil No. R-86-3049 (D. Md. June 29, 1987).
(1940)	(b)(5), deliberative process, reasonably segregable	O'Brien v. Department of the Treasury, Civil No. 83-0092 (D.D.C. Oct. 14, 1983).
(1941)	Reverse FOIA, (b)(4)	Occidental Petroleum Corp. v. SEC, 622 F. Supp. 496 (D.D.C. 1987).
(1942)	Pro se litigant	Ochs v. DOJ, Civil No. 84-1970 (D.D.C. Nov. 16, 1984).
(1943)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(7)(C), (b)(7)(D), assurance of confidentiality, proper party defendant	Ochs v. FBI, 2 GDS ¶81,252 (D.D.C. 1981), aff'd mem., 679 F.2d 262 (D.C. Cir. 1982).
(1944)	(b)(5), (b)(7)(A), agency records, attorney work-product privilege, deliberative process	O'Donnell v. DOJ, 1 GDS ¶80,058 (D.D.C. 1980).
(1945)	Exhaustion of administrative remedies	Offord v. Egger, Civil No. 5-85-0060-EJG (E.D. Cal. Oct. 18, 1985).
(1946)	(b)(7)(A), exhaustion of administrative remedies, proper party defendant	OKC Corp. v. Williams, 461 F. Supp. 540 (N.D. Tex. 1978), aff'd, 614 F.2d 58 (5th Cir. 1980), partial summary judgment granted, 489 F. Supp. 576 (N.D. Tex. 1980), reh'g denied, 617 F.2d 1207 (5th Cir. 1980), cert. denied, 449 U.S. 952 (1980).
(1947)	Exhaustion of administrative remedies	Okken v. HHS, Civil No. C-86-0065 (N.D. Iowa Sept. 30, 1986), reconsideration denied (N.D. Iowa Dec. 12, 1986).
(1948)	(b)(3), Fed.R.Crim.P. 6(e), (b)(6), (b)(7), attorney's fees, law enforcement purpose, waiver of exemption (failure to assert in litigation)	Oklahoma Publishing Co. v. HUD, Civil No. 87-1935-P (W.D. Okla. June 17, 1988).

(1949)	Privacy Act access, (b)(3), Fed.R.Crim.P. 32, agency records, pro se litigant, venue	Oldham v. United States, Civil No. 86-0-42 (D. Neb. Nov. 25, 1986), subsequent order (D. Neb. May 4, 1987), motion for reconsideration denied (D. Neb. June 2, 1987), on notice of appeal (D. Neb. June 9, 1987).
(1950)	(b)(5), deliberative process, waiver of exemption	Old Orchard Citizens Group v. HUD, 636 F. Supp. 542 (N.D. Ohio 1986).
(1951)	(b)(2), attorney's fees, "mosaic," reasonably segregable, summary judgment, Vaughn index	Oliva v. DOJ, Civil No. 84-5741-JFK (S.D.N.Y. Nov. 21, 1985), on in camera inspection (S.D.N.Y. Feb. 28, 1986), attorney's fees denied (S.D.N.Y. Mar. 27, 1986).
(1952)	(b)(7)(C), (b)(7)(D), (b)(7)(E), duty to search, Vaughn index	Oliva v. FBI, Civil No. 83-3724 (D.D.C. Mar. 30, 1984).
(1953)	(b)(5), (b)(6), burden of proof, in camera inspection	Ollestad v. Kelly, Civil No. 74-2486-LTL (C.D. Cal. Dec. 18, 1975), aff'd in part, rev'd in part, 573 F.2d 1109 (9th Cir. 1978).
(1954)	(b)(2), (b)(7)(C), (b)(7)(D)	Olom v. FBI, Civil No. 76-M-1078 (D. Colo. Sept. 12, 1977).
(1955)	(b)(2), (b)(7)(C), (b)(7)(D), in camera inspection, law enforcement amendments (1986), summary judgment	O'Malley v. Legal Counsel, United States Marshals Office, Civil No. 87-1267 (D.D.C. Mar. 24, 1988).
(1956)	Displacement of FOIA	O'Neal v. IRS, Civil No. IP-86-797-C (S.D. Ind. Nov. 12, 1987).
(1957)	(a)(1)(B), (a)(1)(D), (a)(1)(E), (b)(2)	Onweiler v. United States, 432 F. Supp. 1226 (D. Idaho 1977).
(1958)	(a)(6)(A), (a)(6)(B), exceptional circumstances/due diligence, failure to meet time limits	Open Am. v. Watergate Special Prosecution Force, 547 F.2d 605 (D.C. Cir. 1976).
(1959)	(b)(5)	Orange County Vegetable Improvement Co-op Ass'n v. USDA, Civil No. 75-0842 (D.D.C. Nov. 17, 1975), attorney's fees denied (D.D.C. Mar. 4, 1976).
(1960)	Attorney's fees	Oregonian Publishing Co. v. INS, Civil No. 84-1524-RE (D. Or. Oct. 31, 1986).

(1961)	(b)(4), (b)(5), adequacy of agency affidavit, burden of proof	Orion Research Inc. v. EPA, Civil No. 75-5071-F (D. Mass. June 15, 1979), aff'd, 615 F.2d 551 (1st Cir. 1980), cert. denied, 449 U.S. 833 (1980).
(1962)	Equitable discretion, status of plaintiff	O'Rourke v. DOJ, 684 F. Supp. 716 (D.D.C. 1988).
(1963)	Vaughn index	Osborn v. IRS, 754 F.2d 195 (6th Cir. 1985).
(1964)	(b)(7)(A), exhaustion of administrative remedies, summary judgment	Osborne v. DOJ, 616 F. Supp. 15 (S.D.N.Y. 1984).
(1965)	Duty to search	Osborne v. DOJ, Civil No. 84-1910 (D.D.C. Feb. 28, 1985).
(1966)	Privacy Act access, (b)(2), (b)(7)(E), (b)(7)(F), duty to search	Osborne v. Department of State, Civil No. 84-1848 (D.D.C. Jan. 23, 1985).
(1967)	(b)(2), (b)(3), 26 U.S.C. §6103, adequacy of request, agency, agency records, attorney's fees, displacement of FOIA	Ostheimer v. Chumbley, 498 F. Supp. 890 (D. Mont. 1980), partial summary judgment granted, 3 GDS ¶82,359 (D. Mont. 1981), subsequent decision, 3 GDS ¶82,360 (D. Mont. 1981), decision on costs, 3 GDS ¶82,362 (D. Mont. 1982), aff'd, 746 F.2d 1487 (9th Cir. 1984).
(1968)	(b)(3), 26 U.S.C. §6103, Fed.R.Crim.P. 6(e), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney's fees, duty to search, referral of request to another agency	Ostrer v. DOJ, Civil No. 85-0506 (D.D.C. Feb. 7, 1986), amended (D.D.C. Apr. 9, 1986), summary judgment granted (D.D.C. Feb. 13, 1987), attorney's fees denied (D.D.C. Mar. 20, 1987).
(1969)	(b)(2), (b)(3), 28 U.S.C. §534, Fed.R. Crim.P. 6(e), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, attorney's fees, deliberative process, summary judgment, Vaughn index	Ostrer v. FBI, Civil No. 83-0328 (D.D.C. Apr. 6, 1983), summary judgment granted (D.D.C. Sept. 22, 1983), on motion for Vaughn index (D.D.C. Feb. 14, 1985), summary judgment granted (D.D.C. June 13, 1986), aff'd in part, remanded in part, No. 86-5445 (D.C. Cir. Jan. 19, 1988) (unpublished memorandum), mem., 836 F.2d 1408 (D.C. Cir. 1988), stay granted (D.D.C. May 11, 1988).
(1970)	(b)(5)	Ostrer v. United States Parole Comm'n, Civil No. 85-3048 (D.D.C. Dec. 29, 1986), summary affirmance granted, No. 87-5032 (D.C. Cir. June 2, 1987).

(1971)	(b)(5), deliberative process	Ostrer v. United States Parole Comm'n, Civil No. 86-1070 (D.D.C. Apr. 16, 1987).
(1972)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E), proper party defendant	Ott v. Levi, 419 F. Supp. 750 (E.D. Mo. 1976).
(1973)	(b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(A), (b)(7)(C), displacement of FOIA	Otworth v. Commissioner, 3 GDS ¶82,328, 50 A.F.T.R. 2d 82-5001 (C.D. Cal. 1982).
(1974)	(b)(6)	Ouellette v. Department of the Army, 2 GDS ¶82,214 (D.D.C. 1982).
(1975)	(b)(5), deliberative process, no record within scope of request	Owens v. Bureau of Prisons, 379 F. Supp. 547 (D.D.C. 1974), vacated, 509 F.2d 537 (D.C. Cir. 1975).
(1976)	(b)(1), (b)(2), (b)(7)(C), (b)(7)(D)	Owens v. FBI, 2 GDS ¶81,166 (D.D.C. 1981), aff'd mem., No. 81-1734 (D.C. Cir. July 14, 1982).
(1977)	(a)(2)(A), FOIA/PA interface	Owens v. Merit Sys. Protection Bd., Civil No. 3-83-0449-R (N.D. Tex. Sept. 14, 1983).
(1978)	Privacy Act access, (b)(7)(C), attorney's fees	Owens v. United States Attorney Gen., 2 GDS ¶81,259 (D.D.C. 1981), on motion for attorney's fees, 2 GDS ¶82,090 (D.D.C. 1981).
(1979)	Exhaustion of administrative remedies, fees	Pacella v. DEA, 2 GDS ¶82,217 (D.D.C. 1982).
(1980)	(b)(4), (b)(5), Vaughn index	Pacific Architects & Eng'rs, Inc. v. Renegotiation Bd., 505 F.2d 383 (D.C. Cir. 1974).
(1981)	Agency	Pacific Legal Found. v. Council on Envtl. Quality, Civil No. 79-116 (D.D.C. June 21, 1979), rev'd, 636 F.2d 1259 (D.C. Cir. 1980), on motion for attorney's fees (D.D.C. Dec. 8, 1981).
(1982)	(b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality	Pacific Molasses Co. v. NLRB, 95 L.R.R.M. 2638 (E.D. La. 1977), rev'd, 577 F.2d 1172 (5th Cir. 1978).
(1983)	(b)(7)(A)	Pacific Photo Type, Inc. v. NLRB, 92 L.R.R.M. 2560 (D. Haw. 1976).
(1984)	(b)(4), adequacy of agency affidavit, de novo review, duty to search, promise of confidentiality	Pacific Sky Supply, Inc. v. Department of the Air Force, Civil No. 86-2044 (D.D.C. Sept. 29, 1987), summary judgment granted (D.D.C. Nov. 20, 1987), motion for reconsideration denied (D.D.C. Dec. 16, 1987).

(1985)	Case or controversy, mootness, prompt disclosure	Packer v. Kleindienst, Civil No. 72-1988 (D.D.C. June 21, 1973), subsequent decision (D.D.C. July 8, 1974).
(1986)	Privacy Act access, (b)(5), (b)(6), FOIA/PA interface, Vaughn index	Packer v. United States Postal Serv., Civil No. 86-1479 (RO) (S.D.N.Y. Dec. 10, 1986).
(1987)	Adequacy of agency affidavit, duty to search, fee waiver	Pafenberg v. Department of the Army, Civil No. 82-2113 (D.D.C. Nov. 22, 1983).
(1988)	Privacy Act access, (b)(3), 5 U.S.C. §552a(k)(5), FOIA/PA interface	Painter v. FBI, Civil No. C78-682A (N.D. Ga. Mar. 29, 1979), aff'd in part, rev'd in part, 615 F.2d 689 (5th Cir. 1980).
(1989)	(b)(4), (b)(6), reasonably segregable, waiver of exemption	Painters Dist. Council #6 v. GSA, Civil No. C85-2971 (N.D. Ohio July 23, 1986), amended (N.D. Ohio Aug. 14, 1986).
(1990)	(b)(4), (b)(6), attorney's fees, declaratory relief, proper party defendant	Painting & Drywall Work Preservation Fund v. Department of the Navy, Civil No. 84-0066-MHP (N.D. Cal. Aug. 3, 1984), attorney's fees awarded (N.D. Cal. Jan. 18, 1985), reconsideration denied (N.D. Cal. Mar. 6, 1985), supplemental attorney's fees awarded (N.D. Cal. July 19, 1985).
(1991)	(b)(6), summary judgment	Painting & Drywall Work Preservation Fund v. HUD, Civil No. 86-2431 (D.D.C. Aug. 13, 1987).
(1992)	(b)(3), 39 U.S.C. §410(c)(2), (b)(4), (b)(6), proper party defendant	Painting & Drywall Work Preservation Fund v. United States Postal Serv., Civil No. C83-2027-JPV (N.D. Cal. Apr. 30, 1984), amended (N.D. Cal. June 14, 1984).
(1993)	(b)(5), Congressional records, referral of request to another agency	Paisley v. CIA, 3 GDS ¶83,051 (D.D.C. 1982), rev'd & remanded, 712 F.2d 686 (D.C. Cir. 1983), motion to intervene granted, reh'g granted & vacated in part, 724 F.2d 201 (D.C. Cir. 1984).
(1994)	(b)(3), 22 U.S.C. §987, (b)(5), attorney-client privilege, duty to search	Palm v. Department of State, 1 GDS ¶80,296 (D.D.C. 1980).
(1995)	Reverse FOIA, preliminary injunction	Pan Am World Servs., Inc. v. United States, Civil No. 88-0304 (RCL) (D.D.C. Mar. 9, 1988).
(1996)	(b)(5)	Parente v. DOJ, Civil No. 85-3293 (D.D.C. Oct. 17, 1986).

(1997)	Privacy Act access, (b)(7)(C), (b)(7)(D), law enforcement amendments (1986), proper party defendant, Vaughn index	Parente v. United States Parole Comm'n, Civil No. 86-2970 (D.D.C. Aug. 19, 1987).
(1998)	(b)(5), deliberative process, FOIA as a discovery tool	Parke, Davis & Co. v. Califano, 623 F.2d 1 (6th Cir. 1980).
(1999)	(b)(3), 42 U.S.C. §2000e	Parker v. EEOC, Civil No. 74-1262 (D.D.C. May 29, 1975), aff'd, 534 F.2d 977 (D.C. Cir. 1976).
(2000)	(b)(7)(A), discovery/FOIA interface, reasonably segregable, Vaughn index, waiver of exemption	Parker/Hunter, Inc. v. SEC, 2 GDS ¶81,167 (D.D.C. 1981), summary judgment granted, 2 GDS ¶81,168 (D.D.C. 1981).
(2001)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, nexus test	Parkridge Hosp. v. Blue Cross & Blue Shield, 430 F. Supp. 1093 (E.D. Tenn. 1977), rev'd sub nom. Parkridge Hosp. v. Califano, 625 F.2d 719 (6th Cir. 1980).
(2002)	Attorney's fees	Parsaei v. Nelson, Civil No. H-85-587 (S.D. Tex. Oct. 17, 1985).
(2003)	Duty to search	Parson v. IRS, Civil No. 86-1438-K (S.D. Cal. Feb. 20, 1987).
(2004)	(b)(7)(D), assurance of confidentiality	Parton v. DOJ, 727 F.2d 774 (8th Cir. 1984).
(2005)	(a)(1), publication	Pasco, Inc. v. Federal Energy Admin., 525 F.2d 1391 (Temp. Emer. Ct. App. 1975).
(2006)	Exhaustion of administrative remedies	Pascoe v. IRS, Civil No. 83-6259-AA (E.D. Mich. Sept. 16, 1983).
(2007)	(b)(5), deliberative process, in camera inspection	Pass v. Secretary of the Air Force, Civil No. 1-76-118 (E.D. Tenn. Oct. 1, 1976).
(2008)	(b)(7)(C), FOIA/PA interface, jurisdiction, preliminary injunction	Patriarca v. FBI, Civil No. 85-0707 (D.R.I. Nov. 13, 1985), motion to dismiss denied, 639 F. Supp. 1193 (D.R.I. 1986).
(2009)	Privacy Act access, fee waiver	Patterson v. Bureau of Prisons, 1 GDS ¶79,141 (W.D. Okla. 1979).
(2010)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403(d)(3), §403g, adequacy of agency affidavit	Patterson v. CIA, 2 GDS ¶81,175 (D.D.C. 1981).
(2011)	(b)(6), (b)(7)(C)	Patterson v. DOJ, 3 GDS ¶82,266 (D.D.C. 1982).

(2012)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403(d)(3), §403g, Fed.R.Crim.P. 6(e), (b)(5), (b)(6), (b)(7), (b)(7)(E), deliberative process, waiver of exemption (failure to assert in litigation)	Patterson v. Department of State, 3 GDS ¶82,292 (D.D.C. 1982).
(2013)	No record within scope of request	Patterson v. DEA, Civil No. 78-0035 (D.D.C. July 7, 1978).
(2014)	(b)(1), E.O. 12065, (b)(2), (b)(3), 50 U.S.C. §403(d)(3), §403g, Fed.R.Crim.P. 6(e), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), deliberative process, de novo review, duty to search, in camera inspection	Patterson v. FBI, 2 GDS ¶82,006 (D.D.C. 1981).
(2015)	(b)(2), (b)(6), (b)(7)(C), (b)(7)(D), assurance of confidentiality, FOIA/PA interface	Patton v. FBI, 626 F. Supp. 445 (M.D. Pa. 1985), motion for reconsideration denied, Civil No. 84-0481 (M.D. Pa. June 5, 1985), aff'd, No. 85-5298 (3d Cir. Jan. 22, 1986) (unpublished memorandum), mem., 782 F.2d 1030 (3d Cir. 1986).
(2016)	(b)(3), 26 U.S.C. §6103, attorney's fees, displacement of FOIA, Vaughn index	Patton v. IRS, 3 GDS ¶82,425 (N.D. Ga. 1981), summary judgment granted, 3 GDS ¶82,443 (N.D. Ga. 1981).
(2017)	(b)(6)	Paul v. Department of the Army, Civil No. C83-1555A (N.D. Ga. July 25, 1984).
(2018)	Jurisdiction, mootness	Payne Enters. v. United States, Civil No. 86-1987 (D.D.C. Nov. 17, 1986), summary affirmance denied, No. 87-5002 (D.C. Cir. July 30, 1987), rev'd & remanded, 837 F.2d 486 (D.C. Cir. 1988).
(2019)	Jurisdiction	Pearce v. United States, Civil No. 83-1854 (D.D.C. Jan. 24, 1985).
(2020)	(b)(3), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit	Pearson v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 85-3079 (D.D.C. Sept. 22, 1986).
(2021)	Pro se litigant	Pearson v. Bureau of Prisons, Civil No. 86-0522 (D.D.C. Mar. 6, 1986).

(2022)	Privacy Act access, (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), FOIA/PA interface	Pearson v. DEA, Civil No. 84-2740 (D.D.C. Jan. 31, 1986).
(2023)	Agency, mootness, proper party defendant	Pearson v. Reagan, Civil No. 84-2099 (D.D.C. Sept. 14, 1984).
(2024)	(b)(5), stay pending appeal	Pearson v. United States Parole Comm'n, Civil No. 85-3258 (D.D.C. Dec. 18, 1985), dismissed (D.D.C. Mar. 24, 1987).
(2025)	Adequacy of request, in camera inspection, jurisdiction, Vaughn index	Peck v. FBI, 1 GDS ¶79,168 (N.D. Ohio 1979), subsequent decision, 3 GDS ¶82,353 (N.D. Ohio 1981).
(2026)	(b)(5), deliberative process, FOIA/PA interface, mootness, waiver of exemption	Peck v. United States, 514 F. Supp. 210 (S.D.N.Y. 1981), modified, 522 F. Supp. 245 (S.D.N.Y. 1981), motion for certification denied, 2 GDS ¶82,182 (S.D.N.Y. 1981).
(2027)	(b)(2), (b)(7), Vaughn index	Peco v. DOJ, Civil No. 86-3185 (D.D.C. Mar. 4, 1987), dismissed (D.D.C. July 28, 1988).
(2028)	(b)(1), E.O. 12065, (b)(3), 28 U.S.C. §534, Fed.R.Crim.P. 6(e), (b)(6), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, FOIA/PA interface	Peltier v. DOJ, 3 GDS ¶83,146 (D.D.C. 1983), aff'd mem., 764 F.2d 926 (D.C. Cir. 1985).
(2029)	(b)(1), E.O. 12065, (b)(5), (b)(6), (b)(7)(C)	Pennington v. Department of State, 1 GDS ¶79,161 (D.D.C. 1979).
(2030)	(b)(5), adequacy of agency affidavit, attorney-client privilege, attorney work-product privilege, deliberative process, duty to search, in camera inspection, reasonably segregable	Pennsylvania Dep't of Pub. Welfare v. HHS, 623 F. Supp. 301 (M.D. Pa. 1985).
(2031)	(b)(5), proper party defendant	Pennzoil Co. v. DOE, Civil No. 78-335 (D. Del. Jan. 29, 1981).
(2032)	Reverse FOIA, (b)(4), (b)(9), discretionary release	Pennzoil Co. v. FPC, 534 F.2d 627 (5th Cir. 1976).

(2033)	(b)(3), 42 U.S.C. §1306	People v. Richardson, 351 F. Supp. 733 (N.D. Cal. 1972), aff'd sub nom. People v. Weinberger, 505 F.2d 767 (9th Cir. 1974).
(2034)	Injunction of agency proceeding pending resolution of FOIA claim	Pepsi Cola Bottling Co. v. NLRB, 92 L.R.R.M. 3527 (D. Kan. 1976).
(2035)	Improper withholding	Perez-Perez v. DOJ, Civil No. 85-3986 (D.D.C. June 13, 1986).
(2036)	(b)(3), 26 U.S.C. §6103(b)(2), (b)(7)(A), displacement of FOIA	Perkins v. IRS, Civil No. 80-8-MAC (M.D. Ga. Oct. 24, 1980).
(2037)	(b)(3), 26 U.S.C. §6103(b)(2), (b)(7)(C), adequacy of request, displacement of FOIA, duty to create a record, FOIA/PA interface	Perkins v. IRS, Civil No. 86-71551-DT (E.D. Mich. Dec. 16, 1986).
(2038)	Reverse FOIA, (b)(3), 18 U.S.C. §1905	Permian Corp. v. United States, 1 GDS ¶80,121 (D.D.C. 1980), aff'd in part, rev'd in part & remanded, 665 F.2d 1214 (D.C. Cir. 1981).
(2039)	(a)(1), publication	Perri v. Department of the Treasury, 637 F.2d 1332 (9th Cir. 1981).
(2040)	No record within scope of request	Perry v. Bergland, 3 GDS ¶83,108 (D.D.C. 1981).
(2041)	Adequacy of agency affidavit, duty to search, improper withholding, mootness, summary judgment	Perry v. Block, 684 F.2d 121 (D.C. Cir. 1982).
(2042)	Improper withholding	Peter Hand Brewing Co. v. SEC, 2 GDS ¶82,206 (D.D.C. 1982).
(2043)	Proper party defendant	Peterson v. Mack, Civil Nos. 84-1385-RE, 85-15-RE (D. Or. May 23, 1985).
(2044)	(b)(1), E.O. 12356, (b)(3), 50 U.S.C. §403(d)(3), "Glomar" denial, summary judgment, waiver of exemption	Peterzell v. CIA, Civil No. 85-2685 (D.D.C. July 11, 1986).
(2045)	(b)(7), (b)(7)(A), law enforcement purpose, summary judgment	Peterzell v. DOJ, 576 F. Supp. 1492 (D.D.C. 1983), remanded on procedural grounds, No. 84-5075 (D.C. Cir. July 23, 1984), summary judgment granted, Civil No. 82-3077 (D.D.C. June 27, 1985), remanded, No. 85-5893 (D.C. Cir. Sept. 19, 1986).

(2046)	(b)(1), E.O. 12356, (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(5), adequacy of agency affidavit, deliberative process, in camera affidavit, "mosaic," reasonably segregable, summary judgment, waiver of exemption	Peterzell v. Department of State, Civil No. 82-2853 (D.D.C. Apr. 3, 1984), motion for reconsideration granted in part (D.D.C. Oct. 16, 1984), vacated & remanded, No. 84-5805 (D.C. Cir. Apr. 2, 1985) (unpublished memorandum), mem., 759 F.2d 960 (D.C. Cir. 1985), on remand (D.D.C. Sept. 20, 1985).
(2047)	(b)(4), agency, promise of confidentiality, Vaughn index	Petkas v. Staats, 364 F. Supp. 680 (D.D.C. 1973), rev'd & remanded, 501 F.2d 887 (D.C. Cir. 1974).
(2048)	Proper party defendant	Petrus v. Bowen, 833 F.2d 581 (5th Cir. 1987).
(2049)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 21 U.S.C. §331(j), (b)(4), preliminary injunction, promise of confidentiality	Pharmaceutical Mfrs. Ass'n v. Weinberger, 401 F. Supp. 444 (D.D.C. 1975), summary judgment granted, 411 F. Supp. 576 (D.D.C. 1976).
(2050)	(b)(6), (b)(7)(C), (b)(7)(D)	Philadelphia Newspapers, Inc. v. DOJ, 405 F. Supp. 8 (E.D. Pa. 1975).
(2051)	(b)(5), (b)(7), deliberative process	Philadelphia Newspapers, Inc. v. HUD, 343 F. Supp. 1176 (E.D. Pa. 1972).
(2052)	(b)(1), (b)(3), 50 U.S.C. §403, (b)(5), (b)(6), adequacy of agency affidavit, deliberative process, "Glomar" denial, in camera affidavit, proper party defendant, waiver of exemption (administrative release)	Phillippi v. CIA, Civil No. 75-1265 (D.D.C. Dec. 1, 1975), rev'd, 546 F.2d 1009 (D.C. Cir. 1976), on remand (D.D.C. June 9, 1980), aff'd, 655 F.2d 1325 (D.C. Cir. 1981).
(2053)	(b)(2), (b)(5), (b)(6), (b)(7), (b)(7)(C), attorney's fees, deliberative process, law enforcement purpose, mootness	Phoenix Newspapers, Inc. v. FBI, Civil No. 86-1199-PHX-RGS (D. Ariz. July 9, 1987), motion to vacate denied (D. Ariz. Dec. 22, 1987).
(2054)	(b)(1), E.O. 12356, (b)(7)(C), (b)(7)(D)	Physicians for Social Responsibility v. DOJ, Civil No. 85-0169 (D.D.C. Aug. 23, 1985).
(2055)	(b)(2), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(F), in camera inspection	Picard v. DOJ, Civil No. 78-2084 (D.D.C. June 27, 1979).

(2056)	(b)(3), Fed.R.Crim. P. 6(e), (b)(7)(C), (b)(7)(D)	Piccolo v. DOJ, 2 GDS ¶81,077 (D.D.C. 1981), summary judgment granted, 90 F.R.D. 287 (D.D.C. 1981), appeal dismissed, 2 GDS ¶82,024 (D.C. Cir. 1981).
(2057)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F)	Piccolo v. DEA, Civil No. 78-2103 (D.D.C. Feb. 13, 1979).
(2058)	(b)(7)(C), (b)(7)(D), assurance of confidentiality	Piccolo v. FBI, Civil No. 78-1517 (D.D.C. Feb. 14, 1979).
(2059)	Reverse FOIA, (b)(3), 15 U.S.C. §2055, (b)(4), (b)(5), adequacy of request, inter- or intra-agency memoranda	Pierce & Stevens Chem. Corp. v. Consumer Prod. Safety Comm'n, 439 F. Supp. 247 (W.D.N.Y. 1977), aff'd & remanded mem., 578 F.2d 1369 (2d Cir. 1978), on remand, Civil No. 75-410 (W.D.N.Y. July 3, 1978), rev'd, 585 F.2d 1382 (2d Cir. 1978).
(2060)	(b)(5), deliberative process	Pies v. IRS, 484 F. Supp. 930 (D.D.C. 1979), rev'd, 668 F.2d 1350 (D.C. Cir. 1981).
(2061)	(b)(5), (b)(7), law enforcement purpose	Pilar v. S.S. Hess Petrol, 55 F.R.D. 159 (D. Md. 1972).
(2062)	Mootness	Pilot v. FDA, Civil No. 84-0323 (D.D.C. June 11, 1984).
(2063)	(b)(2), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), adequacy of agency affidavit, assurance of confidentiality	Pini v. DOJ, Civil No. 80-0651 (D.D.C. Sept. 19, 1980).
(2064)	(b)(2), (b)(5), deliberative process, reasonably segregable	Pitman v. Department of the Interior, Civil No. 76-F-1022 (D. Colo. May 24, 1977).
(2065)	(b)(6)	Plain Dealer Publishing Co. v. Department of Labor, 471 F. Supp. 1023 (D.D.C. 1979).
(2066)	Reverse FOIA, (b)(4)	Planning Research Corp. v. FPC, 555 F.2d 970 (D.C. Cir. 1977).
(2067)	(b)(2), (b)(3), Fed. R.Crim.P. 6(e), (b)(5), (b)(6), (b)(7), (b)(7)(A), (b)(7)(B), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, deliberative process, discovery/FOIA interface, in camera affidavit, law enforcement purpose	Playboy Enters. v. DOJ, 516 F. Supp. 233 (D.D.C. 1981), aff'd in part, rev'd in part, 677 F.2d 931 (D.C. Cir. 1982), order on remand, Civil No. 80-1172 (D.D.C. Oct. 15, 1982), attorney's fees awarded (D.D.C. Apr. 20, 1983).

(2068)	(b)(3), Fed.R.Civ.P. 26(a), (b)(4), (b)(5), discovery/FOIA interface	Pleasant Hill Bank v. United States, 58 F.R.D. 97 (W.D. Mo. 1973).
(2069)	Dismissal for failure to prosecute	Politte v. DOJ, Civil No. 79-3275-S (W.D. Mo. Oct. 5, 1982).
(2070)	Attorney's fees	Poll v. Department of the Treasury, Civil No. NC-84-0115W (D. Utah June 3, 1985).
(2071)	(b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(C), adequacy of request, deliberative process	Pollack v. Commissioner, Civil No. 77-2428 (D.N.J. Nov. 17, 1980).
(2072)	(b)(1), (b)(7), (b)(7)(C), (b)(7)(D), in camera affidavit	Pollard v. FBI, 3 GDS ¶82,332 (W.D. Wash. 1981), on in camera inspection, 3 GDS ¶82,333 (W.D. Wash. 1981), aff'd, 705 F.2d 1151 (9th Cir. 1983).
(2073)	(b)(2), (b)(5)	Polymers, Inc. v. NLRB, 414 F.2d 999 (2d Cir. 1969), cert. denied, 396 U.S. 1010 (1970).
(2074)	(b)(7)(A), attorney's fees	Polynesian Cultural Center, Inc. v. NLRB, 600 F.2d 1327 (9th Cir. 1979).
(2075)	(b)(4)	Ponce v. Housing Auth., 389 F. Supp. 635 (E.D. Cal. 1975).
(2076)	(b)(5), attorney's fees, attorney work-product privilege	Pope v. United States, 459 F. Supp. 426 (S.D. Tex. 1977), aff'd, 585 F.2d 802 (5th Cir. 1978).
(2077)	(b)(7), (b)(7)(D), assurance of confidentiality, law enforcement purpose	Pope v. United States, 599 F.2d 1383 (5th Cir. 1979).
(2078)	(b)(1), E.O. 12065, (b)(5), adequacy of agency affidavit, deliberative process	Population Action Council v. Department of State, Civil No. 79-0502 (D.D.C. Dec. 17, 1980), summary judgment granted, 2 GDS ¶81,127 (D.D.C. 1981).
(2079)	Privacy Act access, (b)(1), E.O. 12356, (b)(3), 5 U.S.C. §552a(j)(2), discovery in FOIA litigation, FOIA/PA interface, waiver of exemption (failure to assert in litigation)	Porter v. DOJ, 551 F. Supp. 595 (E.D. Pa. 1982), rev'd & remanded, 717 F.2d 787 (3d Cir. 1983), vacated as moot, 469 U.S. 14 (1984) (consolidated).
(2080)	(b)(4), (b)(5), attorney-client privilege, personal records	Porter County Chapter of Isaak Walton League v. AEC, 380 F. Supp. 630 (N.D. Ind. 1974).

(2081)	Jurisdiction	Portland Sav. & Loan Ass'n v. SEC, Civil No. C82-45 (S.D. Tex. Aug. 25, 1982).
(2082)	(b)(3), 18 U.S.C. §2510, 28 U.S.C. §534, Fed.R.Crim.P. 6(e), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit	Posner v. DOJ, 2 GDS ¶82,229 (D.D.C. 1982).
(2083)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality	Poss v. NLRB, 91 L.R.R.M. 2232 (D. Colo. 1975), aff'd, 565 F.2d 654 (10th Cir. 1977).
(2084)	(a)(1)(D), publication	Powderly v. Schweiker, 704 F.2d 1092 (9th Cir. 1983).
(2085)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(5), (b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, law enforcement amendments (1986), summary judgment	Powell v. Department of the Treasury, Civil No. 87-3287 (D.D.C. July 29, 1988) (magistrate's recommendation).
(2086)	Adequacy of request	Powell v. Kopman, 511 F. Supp. 700 (S.D.N.Y. 1981).
(2087)	(b)(2), (b)(5), deliberative process, duty to search, reasonably segregable, Vaughn index	Powell v. SEC, Civil No. 87-3146 (D.D.C. June 17, 1988) (magistrate's recommendation).
(2088)	(b)(1), (b)(5), (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality, attorney's fees, attorney work-product privilege, deliberative process, in camera affidavit, in camera inspection, law enforcement purpose, stay pending appeal, Vaughn index, waiver of exemption	Powell v. United States, 569 F. Supp. 1192 (N.D. Cal. 1983), supplemental affidavits ordered, 584 F. Supp. 1508 (N.D. Cal. 1984), summary judgment granted in part, Civil No. C82-0326-MHP (N.D. Cal. Mar. 27, 1985), stay granted in part (N.D. Cal. June 14, 1985), stay denied, No. 85-1918 (9th Cir. July 18, 1985), stay denied, No. A-84 (U.S. July 31, 1985) (Rehnquist, J., Circuit Justice) (undocketed order), attorney's fees awarded (N.D. Cal. Sept. 15, 1985).
(2089)	(b)(6)	PPG Indus. v. NLRB, 99 L.R.R.M 3397 (W.D. Pa. 1978).

(2090)	(b)(3), 18 U.S.C. §1905, 42 U.S.C. §2133, (b)(4), agency records, discretionary release, mootness	Prairie Alliance v. NRC, Civil Nos. 80-2095, 80-2244 (C.D. Ill. Nov. 30, 1983), motion to vacate denied (C.D. Ill. June 26, 1984), aff'd in part, rev'd in part & remanded sub nom. General Elec. Co. v. NRC, 750 F.2d 1394 (7th Cir. 1984).
(2091)	(b)(1), E.O. 12065, (b)(2), (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, adequacy of request, duty to search, in camera inspection, law enforcement purpose	Pratt v. Webster, 508 F. Supp. 751 (D.D.C. 1981), subsequent decision, 2 GDS ¶81,298 (D.D.C. 1981), on motion for summary judgment, 2 GDS ¶81,299 (D.D.C. 1981), rev'd & remanded, 673 F.2d 408 (D.C. Cir. 1982).
(2092)	(b)(7)	Preferred Land Corp. v. SEC, [1974-75 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶94,555 (D.D.C. 1975).
(2093)	Dismissal for failure to prosecute	Pressley v. DOJ, 3 GDS ¶82,473 (D.S.C. 1981).
(2094)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney's fees, FOIA as a discovery tool	Price v. DOJ, Civil No. 84-330A (M.D. La. June 24, 1985), on motion for attorney's fees (M.D. La. Sept. 10, 1985), attorney's fees awarded (M.D. La. Sept. 23, 1985).
(2095)	(b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, law enforcement purpose	Price v. FBI, Civil No. 83-2508-MRP (C.D. Cal. Oct. 20, 1983).
(2096)	(b)(7)(A)	Printing Specialties & Paper Prods. Union v. Department of Labor, 3 GDS ¶82,424 (C.D. Cal. 1979).
(2097)	(b)(7)(A), (b)(7)(C), (b)(7)(D), exhaustion of administrative remedies, venue	Proctor & Gamble Mfg. Co. v. NLRB, Civil No. 3-78-0149-P (N.D. Tex. Feb. 10, 1978).
(2098)	Injunction of agency proceeding pending resolution of FOIA claim	Production Molded Plastics, Inc. v. NLRB, 408 F. Supp. 937 (N.D. Ohio 1976).
(2099)	(b)(4), (b)(5), (b)(6), deliberative process	Professional Review Org. v. HHS, 607 F. Supp. 423 (D.D.C. 1985).
(2100)	Adequacy of request	Profit v. Landreau, 2 GDS ¶81,057 (D. Conn. 1980).

(2101)	Privacy Act access, (b)(3), 5 U.S.C. §552a(j)(2), FOIA/PA interface	Provenzano v. DOJ, 3 GDS ¶83,125 (D.N.J. 1982), rev'd & remanded, 717 F.2d 799 (3d Cir. 1983), reh'g en banc denied, 722 F.2d 36 (3d Cir. 1983), vacated as moot, 469 U.S. 14 (1984) (consolidated), remanded mem., 755 F.2d 922 (3d Cir. 1985).
(2102)	(b)(3), 18 U.S.C. §§2510-2520, (b)(6), (b)(7)(C), (b)(7)(F), duty to disclose, FOIA/PA interface, proper party defendant, stay pending appeal, waiver of exemption (failure to assert in litigation)	Providence Journal Co. v. FBI, 460 F. Supp. 762 (D.R.I. 1978), subsequent decision, 460 F. Supp. 778 (D.R.I. 1978), stay pending appeal granted, 595 F.2d 889 (1st Cir. 1979), rev'd, 602 F.2d 1010 (1st Cir. 1979), cert. denied, 444 U.S. 1071 (1980).
(2103)	Privacy Act access, attorney's fees, Vaughn index	Prows v. DOJ, Civil No. 87-1657-LFO (D.D.C. Jan. 22, 1988).
(2104)	Exhaustion of administrative remedies	Prows v. United States Coast Guard, Civil No. C81-0369A (D. Utah May 22, 1981).
(2105)	(b)(5), case or controversy	Prows v. United States Parole Comm'n, Civil No. 86-2562 (D.D.C. Nov. 18, 1986).
(2106)	Jurisdiction	Pruden v. United States Marshals Serv., Civil No. 86-1293 (D.D.C. Jan. 22, 1987).
(2107)	(b)(7)(A), proper party defendant	Pruitt Elec. Co. v. Department of Labor, 587 F. Supp. 893 (N.D. Tex. 1984).
(2108)	Summary judgment	Pryzina v. EEOC, Civil No. 4-82-112 (D. Minn. June 30, 1983), aff'd, No. 83-1910 (8th Cir. Mar. 30, 1984).
(2109)	Reverse FOIA, (b)(3), 18 U.S.C. §1905	Psychiatric Inst. v. Group Hospitalization, No. 78-1645 (D.C. Cir. 1980).
(2110)	(b)(3), 28 U.S.C. §§591-598	Public Citizen v. DOJ, Civil No. 82-2909 (D.D.C. May 19, 1983).
(2111)	(b)(5), attorney's fees, discovery in FOIA litigation	Public Citizen v. EPA, Civil No. 86-0316 (D.D.C. Oct. 16, 1986), attorney's fees awarded (D.D.C. Feb. 3, 1987).
(2112)	Fee waiver, mootness	Public Citizen v. OSHA, Civil No. 86-0705 (D.D.C. Aug. 5, 1987).

(2113)	(b)(6), attorney's fees, duty to search, in camera affidavit, in camera inspection	Public Citizen Health Research Group v. Department of Labor, Civil No. 76-887 (D.D.C. May 20, 1977), remanded in part, No. 77-1683 (D.C. Cir. Jan. 18, 1978), on remand (D.D.C. Mar. 29, 1978), rev'd & remanded, 591 F.2d 808 (D.C. Cir. 1978), renewed motion for summary judgment denied (D.D.C. Mar. 14, 1979), on motion for in camera inspection (D.D.C. Apr. 23, 1979), attorney's fees awarded, 2 GDS ¶81,031 (D.D.C. 1979).
(2114)	(b)(3), 21 U.S.C. §360j(h), (b)(4)	Public Citizen Health Research Group v. FDA, 3 GDS ¶83,158 (D.D.C. 1981), summary judgment granted, 539 F. Supp. 1320 (D.D.C. 1982), aff'd in part, rev'd in part & remanded, 704 F.2d 1280 (D.C. Cir. 1983), on remand, Civil No. 79-1710 (D.D.C. Oct. 25, 1983).
(2115)	(b)(3), 42 U.S.C. §1320c-15, (b)(5), (b)(6), agency	Public Citizen Health Research Group v. HEW, 449 F. Supp. 937 (D.D.C. 1978), subsequent decision, 477 F. Supp. 595 (D.D.C. 1979), rev'd, 668 F.2d 537 (D.C. Cir. 1981).
(2116)	Attorney's fees	Public Law Educ. Inst. v. DOJ, 556 F. Supp. 476 (D.D.C. 1983), aff'd, 744 F.2d 181 (D.C. Cir. 1984).
(2117)	(b)(5), agency records, attorney work-product privilege, deliberative process	Public Law Educ. Inst. v. DOJ, Civil No. 82-2863 (D.D.C. Oct. 14, 1983).
(2118)	Agency, agency records	Putney v. White House Office, Civil No. 78-502-T-H (M.D. Fla. Apr. 2, 1980).
(2119)	Attorney's fees, discovery in FOIA litigation, mootness	Pyramid Lake Paiute Tribe of Indians v. DOJ, Civil No. 83-0384 (D.D.C. Mar. 29, 1983), subsequent decision (D.D.C. Aug. 18, 1983), aff'd, 750 F.2d 117 (D.C. Cir. 1984).
(2120)	(b)(5), adequacy of request, deliberative process, summary judgment	Quarles v. Department of the Navy, Civil No. 85-3395 (D.D.C. May 27, 1987), summary judgment granted (D.D.C. July 29, 1988).
(2121)	(b)(4), (b)(5), (b)(6), deliberative process	Rabbitt v. Department of the Air Force, 383 F. Supp. 1065 (S.D.N.Y. 1974), on motion for reconsideration, 401 F. Supp. 1206 (S.D.N.Y. 1974).

(2122)	(b)(4)	Racal-Milgo Gov't Sys. v. SBA, 559 F. Supp. 4 (D.D.C. 1981).
(2123)	(b)(3), Fed.R. Crim.P. 6(e), (b)(5), (b)(7)(C), adequacy of agency affidavit, attorney-client privilege, attorney work-product privilege, FOIA/PA interface	Rachel v. DOJ, Civil Nos. 83-C-0434, 83-C-1420 (N.D. Ill. Aug. 1, 1983).
(2124)	(b)(1), E.O. 12065, (b)(7)(C), (b)(7)(D)	Radical Information Project v. DOJ, Civil No. 78-F-952 (D. Colo. June 15, 1979).
(2125)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, duty to search, Vaughn index	Radice v. DEA, Civil Nos. 84-1590, 84-1591, 84-1592 (D.D.C. Mar. 19, 1985).
(2126)	(b)(6)	Radosh v. CIA, Civil No. 75-3371 (S.D.N.Y. Aug. 24, 1978).
(2127)	(b)(5), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, reasonably segregable	Radowich v. United States Attorney, 501 F. Supp. 284 (D. Md. 1980), rev'd & remanded, 658 F.2d 957 (4th Cir. 1981).
(2128)	Attorney's fees	Raede v. Department of State, Civil No. 83-3143-LEW-Px (C.D. Cal. Apr. 27, 1984).
(2129)	(b)(7)(C), duty to search, exhaustion of administrative remedies	Rafter v. FBI, Civil No. 77-1131-MEH (S.D.N.Y. July 21, 1977).
(2130)	Vaughn index	Railton v. Department of Labor, 2 GDS ¶81,066 (D.D.C. 1981).
(2131)	Agency	Railway Labor Executives' Ass'n v. Consolidated Rail Corp., 580 F. Supp. 777 (D.D.C. 1984).
(2132)	Privacy Act access, (b)(2), (b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(C), duty to create a record, FOIA/PA interface	Rakosi v. IRS, 2 GDS ¶81,271 (D. Ariz. 1981).
(2133)	(b)(7)(A), in camera inspection	Ralston Purina Co. v. NLRB, 84 Lab. Cas. (CCH) ¶10,737 (W.D. Mich. 1978).
(2134)	(a)(1)(D), (a)(2)(B), mootness, publication	Ramer v. Saxbe, 522 F.2d 695 (D.C. Cir. 1975).

(2135)	Fee waiver	Ramirez v. Bell, Civil No. 78-1484 (D.D.C. Mar. 16, 1979).
(2136)	(b)(2), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, burden of proof, duty to search, law enforcement purpose	Ramo v. Department of the Navy, 487 F. Supp. 127 (N.D. Cal. 1979), aff'd, 3 GDS ¶82,533 (9th Cir. 1982) (unpublished memorandum), mem., 692 F.2d 765 (9th Cir. 1982).
(2137)	Agency	Rankel v. Town of Greenburgh, 117 F.R.D. 50 (S.D.N.Y. 1987).
(2138)	(b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(F), adequacy of request, judicial records	Rastelli v. Civiletti, 1 GDS ¶80, 154 (D.D.C. 1980), on motion for summary judgment, 2 GDS ¶81,046 (D.D.C. 1980).
(2139)	Privacy Act access, (b)(1), E.O. 11652, FOIA/PA interface	Raven v. Panama Canal Co./Canal Zone Gov't, Civil No. 77-0051-B (D.C.Z. Jan. 19, 1978), aff'd, 583 F.2d 169 (5th Cir. 1978), cert. denied, 440 U.S. 980 (1979).
(2140)	(b)(1), E.O. 11652, (b)(3), 50 U.S.C. §403, (b)(6), (b)(7)(C), (b)(7)(F), adequacy of agency affidavit, de novo review, in camera inspection, reasonably segregable, Vaughn index	Ray v. Bush, 41 Ad. L. 2d (P & F) 28 (D.D.C. 1977), rev'd sub nom. Ray v. Turner, 587 F.2d 1187 (D.C. Cir. 1978), summary judgment granted, 468 F. Supp. 730 (D.D.C. 1978).
(2141)	Privacy Act access, (b)(5), (b)(6), (b)(7)(C), attorney work-product privilege, "Glomar" denial, res judicata	Ray v. DOJ, 558 F. Supp. 226 (D.D.C. 1982), motion to amend granted, 3 GDS ¶82,526 (D.D.C. 1982), aff'd mem., 720 F.2d 216 (D.C. Cir. 1983).
(2142)	(b)(7)(C)	Ray v. DOJ, Civil No. 3-84-1234 (M.D. Tenn. Nov. 28, 1984).
(2143)	(b)(7)(C)	Ray v. DOJ, No. 86-5972 (6th Cir. June 22, 1987), mem., 820 F.2d 1225 (6th Cir. 1987).
(2144)	Improper withholding	Ray v. NARS, Civil No. 79-1887 (D.D.C. Nov. 30, 1979).
(2145)	(b)(2), (b)(3), 26 U.S.C. §6103(a), §6103(b)(2), §6103(e)(7), (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), "mosaic," proper party defendant	Ray v. United States Customs Serv., Civil No. 83-1476 (D.D.C. Jan. 28, 1985).

(2146)	Exhaustion of administrative remedies	Rayford v. Koop, Civil No. C85-7212 (N.D. Ohio July 31, 1985), motion for reconsideration denied (N.D. Ohio Oct. 8, 1985).
(2147)	(b)(5), (b)(7)	Rayner & Stonington, Inc. v. FDA, Civil No. 68-1995 (E.D. Pa. Aug. 14, 1969).
(2148)	(b)(7)(A), agency records, burden of proof, Vaughn index	RCA Global Communications, Inc. v. FCC, 524 F. Supp. 579 (D. Del. 1981), motion for detailed Vaughn index denied, 2 GDS ¶82,096 (D. Del. 1981).
(2149)	Adequacy of agency affidavit, in camera inspection, proper party defendant	Reader's Digest Ass'n v. FBI, 524 F. Supp. 591 (S.D.N.Y. 1981).
(2150)	(b)(7)(A), injunction of agency proceeding pending resolution of FOIA claim	Read's, Inc. v. NLRB, 91 L.R.R.M. 2722 (D. Md. 1976).
(2151)	Exceptional circumstances/due diligence, exhaustion of administrative remedies	Reagan-Bush Comm. v. Federal Election Comm'n, 525 F. Supp. 1330 (D.D.C. 1981).
(2152)	Attorney's fees	Ream v. Department of the Navy, Civil No. 82-1347 (D.D.C. Aug. 27, 1985).
(2153)	Attorney's fees	Rector v. Commissioner, Civil No. A84-564 (D. Alaska Feb. 12, 1986), appeal dismissed on procedural grounds, No. 86-3764 (9th Cir. Apr. 7, 1987).
(2154)	(b)(1), E.O. 11652, (b)(7)(C), (b)(7)(D)	Rector v. DOJ, Civil No. 76-M-593 (D. Colo. Feb. 16, 1978).
(2155)	(b)(7)(A)	Red Food Stores, Inc. v. NLRB, 604 F.2d 324 (5th Cir. 1979).
(2156)	Privacy Act access, (b)(7)(D), discovery/ FOIA interface	Reeves v. DOJ, Civil No. 78-0329 (D. Haw. Aug. 30, 1978), motion for partial reconsideration denied, 3 GDS ¶82,395 (D. Haw. 1981).
(2157)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), preliminary injunction	Register Publishing Co. v. NLRB, Civil No. 78-0036 (W.D. Va. Mar. 23, 1978).
(2158)	(b)(5)	Regular Common Carrier Conference, Inc. v. ICC, 1 GDS ¶79,137 (D.D.C. 1979).
(2159)	Privacy Act access, duty to search	Reichstein v. United States, Civil No. 80-2567 (D.D.C. May 6, 1981).

(2160)	Privacy Act access, summary judgment	Reinier v. Department of Labor, Civil No. C-83-2251 (S.D. Ohio June 23, 1986), aff'd, No. 86-3741 (6th Cir. May 12, 1987) (unpublished memorandum), mem., 817 F.2d 757 (6th Cir. 1987).
(2161)	Fees	Reinoehl v. Hershey, 426 F.2d 815 (9th Cir. 1970).
(2162)	(a)(6)(A), adequacy of request, exhaustion of administrative remedies, fees, fee waiver	Reith v. IRS, 80-2 U.S. Tax Cas. (CCH) ¶9705 (N.D. Ind. 1980).
(2163)	(b)(3), 28 U.S.C. §534, (b)(6), (b)(7)(C), discovery in FOIA litigation, "Glomar" denial, Vaughn index	Reporters Comm. for Freedom of the Press v. DOJ, 2 GDS ¶81,374 (D.D.C. 1981), summary judgment granted, Civil No. 79-3308 (D.D.C. Aug. 5, 1985), reconsideration denied (D.D.C. Aug. 16, 1985), remanded, 816 F.2d 730 (D.C. Cir. 1987), modified on denial of petition for panel reh'g, 831 F.2d 1124 (D.C. Cir. 1987), reh'g en banc denied, Nos. 85-6020, 85-6144 (D.C. Cir. Dec. 4, 1987), cert. granted, 108 S. Ct. 1467 (1988).
(2164)	Agency, improper withholding, personal records	Reporters Comm. for Freedom of the Press v. Vance, 442 F. Supp. 383 (D.D.C. 1977), aff'd mem., 589 F.2d 1116 (D.C. Cir. 1978), aff'd in part, rev'd in part sub nom. Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136 (1980).
(2165)	(b)(1), E.O. 12065, E.O. 12356, (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(F), attorney's fees, in camera inspection, law enforcement purpose, summary judgment	Republic of New Afrika v. FBI, 656 F. Supp. 7 (D.D.C. 1985), attorney's fees denied, 645 F. Supp. 117 (D.D.C. 1986), reconsideration denied, Civil No. 78-1721 (D.D.C. Apr. 29, 1987).
(2166)	(b)(3), 47 U.S.C. §605	Reston v. FCC, 492 F. Supp. 697 (D.D.C. 1980).
(2167)	(b)(5), (b)(7)(C), attorney's fees, in camera inspection	Retail Credit Co. v. FTC, 1976-1 Trade Cas. (CCH) ¶60,727 (D.D.C. 1976), on motion for attorney's fees, 39 Ad. L. 2d (P & F) 1016 (D.D.C. 1976).
(2168)	Jurisdiction	Reyes-Pena v. DOJ, Civil No. 83-3112 (D.D.C. Aug. 29, 1984).
(2169)	(a)(1), (b)(6), duty to create a record	Reyling v. Egger, Civil No. 3-84-295 (E.D. Tenn. Aug. 27, 1984).

(2170)	(a)(1)	Reynolds Metals Co. v. Rumsfeld, 417 F. Supp. 365 (E.D. Va. 1976), aff'd in part, rev'd in part, 564 F.2d 663 (4th Cir. 1977), cert. denied, 435 U.S. 995 (1978).
(2171)	(b)(2), (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F)	Rhinehart v. Department of the Treasury, Civil No. 86-0346 (D.D.C. Aug. 18, 1987).
(2172)	Reverse FOIA, agency records, displacement of FOIA	Ricchio v. Carmen, Civil No. 80-0773 (D.D.C. Jan. 25, 1984), summary judgment granted (D.D.C. June 8, 1984), aff'd on other grounds sub nom. Ricchio v. Kline, 773 F.2d 1389 (D.C. Cir. 1985).
(2173)	Summary judgment	Ricci v. DOE, Civil No. 84-0861 (D.D.C. Apr. 27, 1984).
(2174)	(b)(2), (b)(7), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, duty to search, law enforcement purpose, summary judgment	Rice v. FBI, Civil No. 80-L-89 (D. Neb. July 1, 1983), partial summary judgment granted (D. Neb. June 18, 1984).
(2175)	Attorney's fees, no record within scope of request, referral of request to another agency	Richards v. Lehman, Civil No. 82-2076-CHH (C.D. Cal. Dec. 15, 1983), dismissed in part, aff'd in part mem., 740 F.2d 975 (9th Cir. 1984).
(2176)	Attorney's fees, mootness	Richards v. Lehman, Civil No. 83-6230-HLH-Gx (C.D. Cal. May 17, 1984).
(2177)	(b)(4), promise of confidentiality	Richards v. USDA, Civil No. 80-0080 (E.D. Ky. Oct. 1, 1980), summary judgment granted (E.D. Ky. Oct. 15, 1980), attorney's fees awarded (E.D. Ky. Nov. 19, 1980), on reconsideration (E.D. Ky. Dec. 7, 1981).
(2178)	(b)(1), E.O. 11652, (b)(3), 50 U.S.C. §403	Richardson v. Spahr, 416 F. Supp. 752 (W.D. Pa. 1976), aff'd mem., 547 F.2d 1163 (3d Cir. 1976), cert. denied, 434 U.S. 830 (1977).
(2179)	(b)(1), E.O. 12356, (b)(5), adequacy of agency affidavit, deliberative process	Ricks v. Department of State, Civil No. 82-3103 (D.D.C. July 3, 1984).
(2180)	Adequacy of agency affidavit, duty to search, no record within scope of request	Ricks v. Turner, Civil No. 77-1806 (D.D.C. Sept. 26, 1978).

(2181)	(b)(2), (b)(7)(C), (b)(7)(D), attorney's fees, summary judgment	Ridley v. Director, United States Secret Serv., 1 GDS ¶80,165 (D.D.C. 1980), aff'd in part, rev'd in part & remanded, No. 80-1816 (D.C. Cir. June 12, 1981), on remand, 2 GDS ¶82,176 (D.D.C. 1982), aff'd mem., No. 82-1252 (D.C. Cir. Oct. 22, 1982).
(2182)	(b)(3), 15 U.S.C. §57b-2(f)	Rigler v. FTC, 2 GDS ¶81,081 (D.D.C. 1981).
(2183)	(b)(6)	Ripskis v. HUD, 3 GDS ¶83,252 (D.D.C. 1983), aff'd, 746 F.2d 1 (D.C. Cir. 1984).
(2184)	Exceptional circumstances/due diligence, prompt disclosure, proper party defendant	Rivera v. DEA, 2 GDS ¶81,365 (D.D.C. 1981).
(2185)	Exhaustion of administrative remedies	Rivera v. Ford, 440 F. Supp. 732 (D.P.R. 1977).
(2186)	Reverse FOIA, (b)(4)	River Park House Assocs. v. HUD, Civil No. 76-1812 (E.D. Pa. Dec. 10, 1976).
(2187)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), judicial records, summary judgment	Rizzo v. Bureau of Prisons, Civil No. 83-2321 (D.D.C. Feb. 29, 1984).
(2188)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E), dismissal for failure to prosecute	Rizzo v. DOJ, Civil No. 84-2080 (D.D.C. Feb. 28, 1985), appeal dismissed, No. 85-5646 (D.C. Cir. Apr. 11, 1986).
(2189)	(b)(2), (b)(7)(C), (b)(7)(D)	Rizzo v. DOJ, Civil No. 84-2091 (D.D.C. Feb. 25, 1985).
(2190)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(F), deliberative process, dismissal for failure to prosecute, pro se litigant	Rizzo v. Department of the Treasury, Civil No. 84-2090 (D.D.C. Feb. 28, 1985), appeal dismissed, No. 85-5361 (D.C. Cir. Apr. 11, 1986).
(2191)	(b)(2), (b)(3), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), summary judgment	Rizzo v. DEA, Civil No. 83-3677 (D.D.C. Aug. 2, 1984), remanded, No. 84-5705 (D.C. Cir. Apr. 10, 1985).
(2192)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, assurance of confidentiality	Rizzo v. FBI, Civil No. 83-1924 (D.D.C. Feb. 10, 1984).

(2193)	(b)(3), 26 U.S.C. §6103, (b)(7)(C), (b)(7)(D), duty to search, summary judgment	Rizzo v. IRS, Civil No. 84-1130 (D.D.C. Oct. 20, 1986).
(2194)	De novo review, fee waiver, improper withholding	Rizzo v. Tyler, 438 F. Supp. 895 (S.D.N.Y. 1977).
(2195)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, dismissal for failure to prosecute	Rizzo v. United States Customs Serv., Civil No. 84-1131 (D.D.C. Mar. 7, 1985), appeal dismissed, No. 85-5645 (D.C. Cir. Apr. 11, 1986).
(2196)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), deliberative process, exhaustion of administrative remedies	Robbins Tire & Rubber Co. v. NLRB, 92 L.R.R.M. 2586 (M.D. Ala. 1976), aff'd, 563 F.2d 724 (5th Cir. 1977), rev'd, 437 U.S. 214 (1978).
(2197)	Pro se litigant	Roberts v. FBI, Civil No. 78-8059-CF (S.D. Fla. Nov. 14, 1978).
(2198)	(a)(2)(C)	Roberts v. IRS, 584 F. Supp. 1241 (E.D. Mich. 1984).
(2199)	(b)(3), 49 U.S.C. §1504	Robertson v. Butterfield, Civil No. 71-1970 (D.D.C. Oct. 31, 1972), aff'd, 498 F.2d 1031 (D.C. Cir. 1974), rev'd, 422 U.S. 255 (1975).
(2200)	(b)(3), 18 U.S.C. §1905, 42 U.S.C. §2000e, (b)(6), jurisdiction	Robertson v. DOD, 402 F. Supp. 1342 (D.D.C. 1975).
(2201)	(b)(5), deliberative process	Robertson v. IRS, 1 GDS ¶80,184 (M.D.N.C. 1980).
(2202)	FOIA as a discovery tool	Robins & Weill, Inc. v. United States, 63 F.R.D. 73 (M.D.N.C. 1974).
(2203)	Attorney's fees, exceptional circumstances/due diligence, proper party defendant	Robinson v. Department of Labor, 3 GDS ¶82,275 (D. Or. 1980), attorney's fees awarded, 3 GDS ¶82,276 (D. Or. 1981).
(2204)	Pro se litigant, res judicata	Robinson v. Perry, Civil No. 83-0383 (D.D.C. Feb. 10, 1983), appeal dismissed, No. 83-1647 (D.C. Cir. Aug. 29, 1983).
(2205)	No record within scope of request	Robinson v. President of the United States, Civil No. 82-1005-PHX-VAC (D. Ariz. Feb. 2, 1983).

(2206)	(b)(7)(C), (b)(7)(D), proper party defendant, publication, waiver of exemption	Robinson v. Shea, 2 GDS ¶82,075 (D.D.C. 1981), summary judgment granted, 2 GDS ¶82,136 (D.D.C. 1982), aff'd mem., 679 F.2d 262 (D.C. Cir. 1982), cert. denied, 459 U.S. 1015 (1982).
(2207)	(b)(6)	Robles v. EPA, 484 F.2d 843 (4th Cir. 1973).
(2208)	(b)(1), (b)(2), (b)(7)(C), (b)(7)(D), Vaughn index	Robnett v. DOJ, Civil No. 84-2469C(3) (E.D. Mo. June 11, 1985).
(2209)	Agency	Rocap v. Indiek, 539 F.2d 174 (D.C. Cir. 1976).
(2210)	(b)(7)(C), "Glomar" denial	Rochon v. DOJ, Civil No. 87-2239 (D.D.C. Jan. 21, 1988).
(2211)	Discovery/FOIA interface	Rodgers v. Hyatt, 91 F.R.D. 399 (D. Colo. 1980).
(2212)	(a)(1)(D)	Rodriguez v. Swank, 318 F. Supp. 289 (N.D. Ill. 1970) (three-judge court), aff'd mem., 403 U.S. 901 (1971).
(2213)	Fees, fee waiver	Roeder v. Federal Election Comm'n, Civil No. 79-0216 (D.D.C. July 5, 1979).
(2214)	Adequacy of request, proper service of process	Rogers v. IRS, Civil No. 85-55-M-CCL (D. Mont. Oct. 20, 1986).
(2215)	(b)(6), attorney's fees, stay pending appeal	Rogue River Raft Trips v. USDA, Civil No. 83-6241-ME-MAG (D. Or. Apr. 24, 1984).
(2216)	(b)(6)	Roofers & Waterproofers, Local 190 v. Department of the Army, Civil No. A85-311 (D. Alaska Nov. 12, 1987).
(2217)	Duty to search	Rose v. Commodity Futures Trading Comm'n, Civil No. 79-C-3459 (N.D. Ill. Oct. 1, 1980).
(2218)	(b)(2), (b)(6), reasonably segregable	Rose v. Department of the Air Force, Civil No. 72-1605-LFM (S.D.N.Y. Dec. 19, 1972), rev'd & remanded, 495 F.2d 261 (2d Cir. 1974), aff'd, 425 U.S. 352 (1976), on remand (S.D.N.Y. Jan. 21, 1977).
(2219)	Attorney's fees	Rosen v. Bush, Civil No. 76-0132 (D.D.C. Apr. 28, 1977).
(2220)	Privacy Act access, FOIA/PA interface	Rosenberg v. Meese, 622 F. Supp. 1451 (S.D.N.Y. 1985).
(2221)	Proper party defendant	Rosenberg v. SEC, Civil No. 77-1141 (D.D.C. Apr. 5, 1979).

(2222)	Fee waiver	Rosenfeld v. DOJ, Civil No. C85-2247-MHP (N.D. Cal. Oct. 29, 1985), motion for reconsideration denied (N.D. Cal. Mar. 25, 1986).
(2223)	(b)(4), (b)(5), (b)(6), deliberative process	Rosenfeld v. HHS, 3 GDS ¶83,082 (D.D.C. 1983), aff'd mem., No. 83-1341 (D.C. Cir. Nov. 30, 1983).
(2224)	(b)(5), deliberative process	Rosenthal & Schanfield v. IRS, 1 GDS ¶80,183 (N.D. Ill. 1980).
(2225)	(b)(3), 18 U.S.C. §§2510-2520, (b)(6), (b)(7)(C), FOIA/PA interface, "Glomar" denial	Rotondo v. FBI, Civil No. C-2-84-2004 (S.D. Ohio Aug. 29, 1985), vacated & remanded mem., 791 F.2d 935 (6th Cir. 1986).
(2226)	Adequacy of agency affidavit, attorney's fees, in camera inspection	Roy Bros. Carpentry v. Marshall, 2 GDS ¶81,211 (D. Conn. 1981), on motion for attorney's fees, 2 GDS ¶81,212 (D. Conn. 1981).
(2227)	Reverse FOIA, (b)(4)	Rubbermaid, Inc. v. Kleppe, 14 Fair Empl. Prac. Cas. (BNA) 1422 (D. Md. 1976).
(2228)	(b)(1), (b)(2), (b)(7)(C), (b)(7)(D), assurance of confidentiality, summary judgment	Rudich v. FBI, Civil No. N-80-447 (D. Conn. Aug. 5, 1986).
(2229)	(b)(7), adequacy of agency affidavit	Ruffalo v. Civiletti, 539 F. Supp. 949 (W.D. Mo. 1982).
(2230)	(a)(2), (b)(4), (b)(6), (b)(7), discretionary release, law enforcement purpose	Rural Hous. Alliance v. USDA, Civil No. 72-2460 (D.D.C. May 9, 1973), rev'd & remanded, 498 F.2d 73 (D.C. Cir. 1974), reh'g denied, 502 F.2d 1179 (D.C. Cir. 1974), decision on costs, 511 F.2d 1347 (D.C. Cir. 1974).
(2231)	(b)(1), E.O. 12065, duty to search, fee waiver, Vaughn index	Rush v. DOJ, 2 GDS ¶82,078 (D.D.C. 1981), subsequent decision, 3 GDS ¶82,309 (D.D.C. 1982).
(2232)	Duty to search, exhaustion of administrative remedies, proper party defendant	Rush v. Department of the Army, Civil No. C80-1414 (N.D. Ohio Jan. 31, 1984).
(2233)	(b)(6), (b)(7)(C), "Glomar" denial	Rushford v. Civiletti, 485 F. Supp. 477 (D.D.C. 1980), aff'd mem., 656 F.2d 900 (D.C. Cir. 1981).
(2234)	Agency, jurisdiction	Rushforth v. Council of Economic Advisers, Civil No. 83-2632 (D.D.C. June 29, 1984), aff'd, 762 F.2d 1038 (D.C. Cir. 1985).

(2235)	(b)(5), deliberative process	Russell v. Department of the Air Force, 2 GDS ¶81,235 (D.D.C. 1981), aff'd, 682 F.2d 1045 (D.C. Cir. 1982).
(2236)	(b)(7)	Russell Stover Candies, Inc. v. NLRB, 77 Lab. Cas. (CCH) ¶11,006 (W.D. Mo. 1975).
(2237)	Exceptional circumstances/due diligence, proper party defendant	Russo v. DOJ, Civil No. 76-131-C3 (D. Kan. Nov. 15, 1976).
(2238)	(b)(3), 26 U.S.C. §6103(b)	Ryan v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 82-0292 (D.D.C. Sept. 7, 1982), aff'd, 715 F.2d 644 (D.C. Cir. 1983).
(2239)	(b)(5), (b)(6), agency, agency records, waiver of exemption (failure to assert in litigation)	Ryan v. DOJ, 474 F. Supp. 735 (D.D.C. 1979), rev'd, 617 F.2d 781 (D.C. Cir. 1980).
(2240)	Privacy Act access, (b)(5), (b)(7)(A), FOIA/PA interface	Ryan v. DOJ, 595 F.2d 954 (4th Cir. 1979).
(2241)	(b)(2), (b)(7)(E), attorney's fees	Sabalos v. Regan, Civil No. 81-0089A (E.D. Va. June 15, 1981), attorney's fees denied, 520 F. Supp. 1069 (E.D. Va. 1981).
(2242)	(b)(5), (b)(7)(A), (b)(7)(C), exhaustion of administrative remedies, Vaughn index	Safecard Servs., Inc. v. SEC, Civil No. 84-3073 (D.D.C. Apr. 21, 1986), Vaughn index ordered (D.D.C. May 19, 1988).
(2243)	(b)(5), deliberative process, leaks, waiver of exemption (unauthorized release)	Safeway Stores, Inc. v. FTC, 428 F. Supp. 346 (D.D.C. 1977).
(2244)	(b)(7)(D), attorney's fees, FOIA as a discovery tool, law enforcement amendments (1986)	Sage v. NLRB, Civil No. 85-0943-W-6 (W.D. Mo. Nov. 4, 1987).
(2245)	Injunction of agency proceeding pending resolution of FOIA claim	St. Elizabeth's Hosp. v. NLRB, 407 F. Supp. 1357 (N.D. Ill. 1976).
(2246)	(a)(1), (a)(1)(D)	St. Elizabeth's Hosp. v. United States, 558 F.2d 8 (Ct. Cl. 1977).
(2247)	(a)(1), (a)(2)(C)	St. Francis Memorial Hosp. v. Weinberger, 413 F. Supp. 323 (N.D. Cal. 1976).

(2248)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), discretionary release	St. Joseph's Hosp. Health Center v. Blue Cross, 489 F. Supp. 1052 (N.D.N.Y. 1979), aff'd mem., 614 F.2d 1290 (2d Cir. 1979), cert. denied, 445 U.S. 962 (1980).
(2249)	(b)(1), E.O. 11652, (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), deliberative process, in camera inspection, Vaughn index	St. Louis Post-Dispatch v. FBI, 447 F. Supp. 31 (D.D.C. 1977).
(2250)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, nexus test	St. Mary's Hosp. v. Califano, 462 F. Supp. 315 (S.D. Fla. 1978), aff'd sub nom. St. Mary's Hosp. v. Harris, 604 F.2d 407 (5th Cir. 1979).
(2251)	Agency	St. Mary's Hosp. v. Philadelphia Professional Standards Review Org., 1 GDS ¶80,186 (E.D. Pa. 1980).
(2252)	Reverse FOIA, agency	St. Michael's Convalescent Hosp. v. California, 643 F.2d 1369 (9th Cir. 1981).
(2253)	Reverse FOIA, (b)(4), agency records, promise of confidentiality	St. Paul's Benevolent Educ. & Missionary Inst. v. United States, 506 F. Supp. 822 (N.D. Ga. 1980), decision on costs, 2 GDS ¶81,247 (N.D. Ga. 1980).
(2254)	(b)(1), E.O. 12065, adequacy of agency affidavit, "mosaic"	Salisbury v. United States, 3 GDS ¶83,099 (D.D.C. 1981), summary judgment granted, 3 GDS ¶83,100 (D.D.C. 1981), in camera inspection ordered, 3 GDS ¶83,101 (D.D.C. 1981), aff'd, 690 F.2d 966 (D.C. Cir. 1982).
(2255)	Vaughn index	Salkin v. Kurtz, Civil No. 79-C-3953 (N.D. Ill. Nov. 14, 1980).
(2256)	(b)(5), judicial records	Sallee v. DOJ, Civil No. 85-3269 (D.D.C. Oct. 17, 1985), dismissed (D.D.C. Sept. 19, 1986).
(2257)	(b)(3), 26 U.S.C. §6103, displacement of FOIA	Sams v. IRS, Civil No. C80-1569A (N.D. Ga. June 22, 1981).
(2258)	Improper withholding	Sandoval v. Commissioner, Civil No. C84-20519-WAI (N.D. Cal. Dec. 5, 1984).
(2259)	(b)(7)(C), (b)(7)(D), reasonably segregable	Sands v. Murphy, Civil No. 78-448-D (D.N.H. June 11, 1979), on motion for summary judgment, 2 GDS ¶82,150 (D.N.H. 1980), aff'd, 633 F.2d 968 (1st Cir. 1980).

(2260)	Agency records, duty to search	Santoro v. Attorney Gen. of the United States, Civil No. 76-1803-GLG (S.D.N.Y. Oct. 8, 1976).
(2261)	Exhaustion of administrative remedies	Satra Belarus, Inc. v. NLRB, 409 F. Supp. 271 (E.D. Wis. 1976).
(2262)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), reasonably segregable	Saunders v. Dogin, Civil No. 75-4109-MML (C.D. Cal. Apr. 28, 1977).
(2263)	Fee waiver, pro se litigant	Savage v. CIA, 826 F.2d 561 (7th Cir. 1987).
(2264)	Reverse FOIA, (b)(4), agency records, promise of confidentiality	Save the Dolphins v. Department of Commerce, 404 F. Supp. 407 (N.D. Cal. 1975).
(2265)	(b)(2), (b)(3), 26 U.S.C. §6103(a), (b)(5), (b)(7), (b)(7)(C), attorney-client privilege, deliberative process, proper party defendant	Savoie v. IRS, 544 F. Supp. 662 (W.D. La. 1982).
(2266)	Privacy Act access, (b)(3), 50 U.S.C. §403, (b)(6)	Schacht v. FBI, Civil No. 77-0269-N (S.D. Cal. June 12, 1979).
(2267)	Exceptional circumstances/due diligence	Schachter v. IRS, 3 GDS ¶82,515 (D.D.C. 1982).
(2268)	(b)(1), E.O. 11652, discovery in FOIA litigation	Schaffer v. Kissinger, 505 F.2d 389 (D.C. Cir. 1974).
(2269)	(b)(7)(A), (b)(7)(D), (b)(7)(F), attorney's fees, disciplinary proceedings, waiver of exemption (failure to assert in litigation)	Schanen v. DOJ, Civil No. A82-504 (D. Alaska May 24, 1984), attorney's fees awarded (D. Alaska May 25, 1984), subsequent decision (D. Alaska Sept. 26, 1984), aff'd, 762 F.2d 805 (9th Cir. 1985), order withdrawn, 773 F.2d 1065 (9th Cir. 1985), order reaff'd as modified & remanded, 798 F.2d 348 (9th Cir. 1986).
(2270)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §402, duty to create a record, in camera affidavit	Schechter v. National Sec. Agency, 2 GDS ¶82,094 (D. Mass. 1981).
(2271)	(b)(3), 42 U.S.C. §1306	Schechter v. Richardson, Civil No. 72-0710 (D.D.C. July 17, 1972).
(2272)	(b)(3), 42 U.S.C. §1306	Schechter v. Weinberger, Civil No. 72-2319 (D.D.C. June 7, 1973), rev'd & remanded, 506 F.2d 1275 (D.C. Cir. 1974).

(2273)	(b)(5), (b)(6), adequacy of agency affidavit, deliberative process	Schell v. HHS, Civil No. G86-119 (W.D. Mich. Oct. 10, 1986), aff'd, 843 F.2d 933 (6th Cir. 1988).
(2274)	Exhaustion of administrative remedies	Scherer v. Balkema, 840 F.2d 437 (7th Cir. 1988).
(2275)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), Vaughn index	Scherer v. Kelley, 584 F.2d 170 (7th Cir. 1978), cert. denied, 440 U.S. 964 (1979).
(2276)	Privacy Act access, (b)(7)(C), (b)(7)(D), assurance of confidentiality	Schiller v. Webster, 3 GDS ¶82, 263 (E.D.N.Y. 1980).
(2277)	(b)(5), attorney-client privilege, attorney work-product privilege, deliberative process, reasonably segregable	Schlefer v. United States, 3 GDS ¶82,294 (D.D.C. 1982), rev'd & remanded, 702 F.2d 233 (D.C. Cir. 1983), dismissed, Civil No. 81-2551 (D.D.C. May 31, 1983).
(2278)	(b)(1), E.O. 12356, (b)(3), 50 U.S.C. §403(d)(3), §403g, in camera affidavit, summary judgment, waiver of exemption	Schlesinger v. CIA, Civil No. 82-1749 (D.D.C. Oct. 5, 1983), summary judgment granted, 591 F. Supp. 60 (D.D.C. 1984).
(2279)	(b)(6)	Schonberger v. National Transp. Safety Bd., 508 F. Supp. 941 (D.D.C. 1980), subsequent decision, 2 GDS ¶81,177 (D.D.C. 1981), aff'd mem., No. 81-1442 (D.C. Cir. Dec. 1, 1981).
(2280)	Adequacy of request, attorney's fees, exhaustion of administrative remedies, jurisdiction	Schott v. EPA, Civil No. C78-639-A (N.D. Ohio June 18, 1979).
(2281)	(b)(3), 38 U.S.C. §3305, (b)(5), deliberative process, incorporation by reference	Schulte v. VA, Civil No. 82-6100-NRC (S.D. Fla. Aug. 25, 1982).
(2282)	(b)(2), summary judgment	Schwaner v. Department of the Air Force, Civil No. 88-0560 (D.D.C. Aug. 1, 1988).
(2283)	(b)(6), (b)(7)(C), (b)(7)(D), Congressional records	Schwartz v. DOJ, 435 F. Supp. 1203 (D.D.C. 1977), summary judgment granted, Civil No. 76-2039 (D.D.C. Feb. 9, 1978), aff'd mem., 595 F.2d 888 (D.C. Cir. 1979).
(2284)	(b)(5)	Schwartz v. IRS, 75-1 U.S. Tax Cas. (CCH) ¶9389 (D.D.C. 1974), motion for clarification granted, 511 F.2d 1303 (D.C. Cir. 1975).

(2285)	(b)(3), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), adequacy of agency affidavit, judicial records, stay pending appeal, transfer of FOIA case, venue, waiver of exemption	Scott v. McCune, 3 GDS ¶83,213 (D.D.C. 1983), vacated & remanded sub nom. In re Scott, 709 F.2d 717 (D.C. Cir. 1983), subsequent decision, Civil No. 82-1879 (D.D.C. Jan. 28, 1985), partial summary judgment granted (D.D.C. June 25, 1985).
(2286)	Privacy Act access, judicial records	Scott v. United States Parole Comm'n, Civil No. C82-1835A (N.D. Ga. Oct. 25, 1983).
(2287)	(b)(5)	Scott Management Co. v. NLRB, 626 F.2d 1327 (6th Cir. 1980).
(2288)	(b)(3), 42 U.S.C. §275, agency records, interaction of (a)(2) & (a)(3)	SDC Dev. Corp. v. Weinberger, Civil No. 75-1799-IH (C.D. Cal. Nov. 11, 1975), aff'd sub nom. SDC Dev. Corp. v. Mathews, 542 F.2d 1116 (9th Cir. 1976).
(2289)	(b)(3), 26 U.S.C. §6103(b)(2), discovery in FOIA litigation, Vaughn index	Seaco Inc. v. IRS, Civil No. 86-4222-MJL (S.D.N.Y. July 21, 1987).
(2290)	In camera inspection	Seafarers Int'l Union v. Baldovin, 508 F.2d 125 (5th Cir. 1975), vacated, 511 F.2d 1161 (5th Cir. 1975).
(2291)	(b)(4), (b)(6)	Sea-Land Serv., Inc. v. Morton, 11 Empl. Prac. Dec. (CCH) ¶10,646 (D.D.C. 1976), subsequent decision, 11 Empl. Prac. Dec. (CCH) ¶10,792 (D.D.C. 1976).
(2292)	FOIA as a discovery tool, injunction of agency proceeding pending resolution of FOIA claim	Sealand Terminal Corp. v. NLRB, 414 F. Supp. 1085 (S.D. Miss. 1976).
(2293)	Dismissal for failure to prosecute	Sealtite Corp. v. GSA Bldg. No. 50, Civil No. 85-C-1231 (E.D. Wis. Jan. 29, 1986).
(2294)	Jurisdiction, proper party defendant	Sealtite Corp. v. Grider, Civil No. 85-C-1300 (E.D. Wis. Mar. 10, 1986).
(2295)	(b)(3), 35 U.S.C. §122, (b)(4), adequacy of request	Sears v. Gottschalk, 357 F. Supp. 1327 (E.D. Va. 1973), aff'd, 502 F.2d 122 (4th Cir. 1974), cert. denied, 422 U.S. 1056 (1975), reh'g denied, 423 U.S. 885 (1975).

(2296)	Reverse FOIA, (b)(3), 18 U.S.C. §1905	Sears, Roebuck & Co. v. Eckerd, 575 F.2d 1197 (7th Cir. 1978), vacated & remanded, 441 U.S. 918 (1979), on remand, 600 F.2d 1237 (7th Cir. 1979).
(2297)	(a)(1)	Sears, Roebuck & Co. v. EEOC, 435 F. Supp. 751 (D.D.C. 1977).
(2298)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §2000e-8(e), 44 U.S.C. §3508(a), (b)(4), (b)(6), (b)(7), burden of proof, de novo review, stay pending appeal	Sears, Roebuck & Co. v. GSA, 384 F. Supp. 996 (D.D.C. 1974), stay dissolved, 509 F.2d 527 (D.C. Cir. 1974), summary judgment granted, 402 F. Supp. 378 (D.D.C. 1975), remanded, 553 F.2d 1378 (D.C. Cir. 1977), cert. denied, 434 U.S. 826 (1977).
(2299)	Jurisdiction	Sears, Roebuck & Co. v. NLRB, 433 F.2d 210 (6th Cir. 1970).
(2300)	(a)(2), (a)(2)(A), (a)(2)(C), (b)(5), (b)(7), attorney work-product privilege, FOIA as a discovery tool, incorporation by reference, waiver of exemption (failure to assert in litigation)	Sears, Roebuck & Co. v. NLRB, 346 F. Supp. 751 (D.D.C. 1972), aff'd mem., 480 F.2d 1195 (D.C. Cir. 1973), aff'd in part, rev'd in part & remanded, 421 U.S. 132 (1975).
(2301)	Injunction of agency proceeding pending resolution of FOIA claim	Sears, Roebuck & Co. v. NLRB, 473 F.2d 91 (D.C. Cir. 1972), cert. denied, 415 U.S. 950 (1974).
(2302)	(b)(5)	Seattle Bldg. & Constr. Trades Council, AFL-CIO v. Henderson, 82 L.R.R.M. 2362 (W.D. Wash. 1973).
(2303)	(b)(4)	Seawell, Dalton, Hughes & Timms v. Export-Import Bank of the United States, Civil No. 84-241-N (E.D. Va. July 27, 1984).
(2304)	FOIA as a discovery tool	Secretary of Labor v. Farino, 490 F.2d 885 (7th Cir. 1973).
(2305)	Agency subpoena	SEC v. Boeing Co., [1975-76 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶95,442 (D.D.C. 1976).
(2306)	(b)(5), (b)(7), attorney work-product privilege, deliberative process, discovery/FOIA interface	SEC v. Geotek, [1974-75 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶95,039 (N.D. Cal. 1975).
(2307)	Agency subpoena	SEC v. Lockheed Aircraft Corp., 404 F. Supp. 651 (D.D.C. 1975).

(2308)	(b)(5), discovery/ FOIA interface	SEC v. National Student Mktg. Corp., [1973-74 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶94,610 (D.D.C. 1974).
(2309)	Agency subpoena	SEC v. Wheeling-Pittsburgh Steel Corp., 482 F. Supp. 555 (W.D. Pa. 1979).
(2310)	(b)(7)(A), (b)(7)(C), (b)(7)(D), attorney's fees, waiver of exemption	Seegull Mfg. Co. v. NLRB, Civil No. 82-1169 (W.D. Tenn. Mar. 28, 1983), aff'd, 735 F.2d 971 (6th Cir. 1984), vacated & replaced, 741 F.2d 882 (6th Cir. 1984).
(2311)	FOIA/PA interface	Seiler v. Department of Transp., Civil No. 73-143-C (W.D. Mo. Mar. 25, 1975).
(2312)	(b)(5), (b)(7)(A), attorney work-product privilege, deliberative process	Seligman & Assocs. v. NLRB, No. 83-1017 (6th Cir. May 30, 1984).
(2313)	(b)(1), (b)(2), (b)(5), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit	Sellar v. FBI, Civil No. 84-1611 (D.D.C. July 22, 1988).
(2314)	(b)(5), (b)(7)(C), (b)(7)(F), attorney work-product privilege	Sellers v. Kelley, Civil No. C75-1458A (N.D. Ga. Dec. 4, 1975), subsequent decision (N.D. Ga. May 14, 1976).
(2315)	Fee waiver	Sellers v. Webster, 2 GDS ¶81,243 (S.D. Ill. 1980).
(2316)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, deliberative process, improper withholding, summary judgment, Vaughn index, waiver of exemption	Senate of P.R. v. DOJ, Civil No. 84-1829 (D.D.C. Apr. 11, 1985), subsequent decision (D.D.C. May 10, 1985), summary judgment granted in part (D.D.C. Feb. 7, 1986), subsequent decision (D.D.C. Mar. 26, 1986), aff'd in part, vacated & remanded in part, 823 F.2d 574 (D.C. Cir. 1987), subsequent order (D.D.C. Aug. 2, 1988).
(2317)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(6), de novo review, Vaughn index	Serbian E. Orthodox Diocese v. CIA, 458 F. Supp. 798 (D.D.C. 1978), summary judgment granted, Civil No. 77-1412 (D.D.C. Oct. 20, 1978).
(2318)	(b)(1), (b)(2), (b)(3), 5 U.S.C. §551, (b)(7)(C), (b)(7)(D), (b)(7)(E), Vaughn index	Serbian E. Orthodox Diocese v. FBI, Civil No. 77-1404 (D.D.C. July 13, 1978).
(2319)	(b)(3), 50 U.S.C. §402	Serbian E. Orthodox Diocese v. National Sec. Agency, Civil No. 78-003 (D.D.C. July 13, 1978).

(2320)	(b)(3)	Serchuk v. Richardson, Civil No. 72-1212 (S.D. Fla. Nov. 28, 1972).
(2321)	(b)(3), 26 U.S.C. §6103, displacement of FOIA	Service Employees Int'l Union v. IRS, 3 GDS ¶83,007 (D.D.C. 1982).
(2322)	(b)(3), 13 U.S.C. §9	Seymour v. Barabba, 559 F.2d 806 (D.C. Cir. 1977).
(2323)	FOIA as a discovery tool	Shakespeare Co. v. United States, 389 F.2d 772 (Ct. Cl. 1968), petition dismissed, 419 F.2d 839 (Ct. Cl. 1969), cert. denied, 400 U.S. 820 (1970).
(2324)	(b)(7)(D), (b)(7)(F)	Shanahan v. Kelley, Civil No. 77-940-PHx-WEC (D. Ariz. June 8, 1978).
(2325)	Attorney's fees, discovery in FOIA litigation, Fed.R. Civ.P. 34, fee waiver, mootness, Vaughn index	Shanmugadhasan v. Arms Control & Disarmament Agency, Civil No. 84-3033 (D.D.C. Aug. 9, 1985).
(2326)	(b)(2), (b)(5), (b)(6), (b)(7)(A), deliberative process, Vaughn index, waiver of exemption, waiver of exemption (unauthorized release)	Shanmugadhasan v. DOJ, Civil No. 84-0079-PAR (C.D. Cal. Feb. 18, 1986).
(2327)	(b)(1)	Shanmugadhasan v. Department of the Navy, Civil No. 83-6849-JMI (C.D. Cal. Sept. 17, 1984), remanded, No. 84-6474 (9th Cir. Dec. 17, 1985)
(2328)	(b)(5), (b)(7)(C), (b)(7)(D), attorney work-product privilege, in camera inspection	Shapiro v. DOJ, 2 GDS ¶81,025 (S.D. Cal. 1980), on in camera inspection, 2 GDS ¶81,086 (S.D. Cal. 1980), aff'd, No. 80-5481 (9th Cir. Dec. 28, 1981).
(2329)	(b)(5), inter- or intra-agency memoranda	Shapiro v. DOJ, Civil No. 85-3044 (D.D.C. Sept. 17, 1986).
(2330)	Privacy Act access, (b)(3), 5 U.S.C. §552a(j)(2), FOIA/PA interface	Shapiro v. DEA, 3 GDS ¶83,123 (W.D. Wis. 1982), aff'd, 721 F.2d 215 (7th Cir. 1983) (consolidated), vacated as moot, 469 U.S. 14 (1984) (consolidated), on remand, 762 F.2d 611 (7th Cir. 1985).
(2331)	(b)(3), 13 U.S.C. §9	Shapiro v. Klutznick, 2 GDS ¶81,143 (D.N.J. 1980), aff'd mem., 636 F.2d 1210 (3d Cir. 1981), rev'd sub nom. Baldrige v. Shapiro, 455 U.S. 345 (1982).

(2332)	Agency	Sharp v. FDIC, Civil No. 75-1428 (D.D.C. Oct. 15, 1975), aff'd, No. 75-2191 (D.C. Cir. June 15, 1976) (unpublished memorandum), mem., 539 F.2d 243 (D.C. Cir. 1976), cert. denied, 429 U.S. 1040 (1977).
(2333)	(b)(8), discovery in FOIA litigation, duty to search, Vaughn index	Sharp v. FDIC, 2 GDS ¶81,107 (L.D.C. 1981).
(2334)	Reverse FOIA, (b)(4), waiver of exemption	Sharyland Water Supply Corp. v. Block, 755 F.2d 397 (5th Cir. 1985), cert. denied, 471 U.S. 1137 (1985).
(2335)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F)	Shaver v. Bell, 433 F. Supp. 438 (N.D. Ga. 1977).
(2336)	Exceptional circumstances/due diligence, fee waiver, Vaughn index	Shaw v. CIA, 3 GDS ¶83,010 (D.D.C. 1982).
(2337)	Fees, fee waiver	Shaw v. CIA, 3 GDS ¶83,008 (D.D.C. 1982), fee waiver denied, 3 GDS ¶83,009 (D.D.C. 1982).
(2338)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), in camera affidavit, in camera inspection, reasonably segregable	Shaw v. CIA, Civil No. 82-0757 (D.D.C. Aug. 26, 1983).
(2339)	(b)(1), E.O. 12356, adequacy of agency affidavit, summary judgment	Shaw v. DOD, Civil No. 82-2411 (D.D.C. Oct. 13, 1983).
(2340)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403(d)(3), §403g, (b)(6), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, adequacy of request, duty to search, exceptional circumstances/due diligence, "mosaic," no record within scope of request, summary judgment	Shaw v. Department of State, 1 GDS ¶80,250 (D.D.C. 1980), summary judgment granted, 559 F. Supp. 1053 (D.D.C. 1983).
(2341)	Duty to search, no record within scope of request	Shaw v. Department of the Treasury, Civil No. 82-2335 (D.D.C. July 27, 1983).

(2342)	(b)(7), (b)(7)(D), duty to search, law enforcement purpose	Shaw v. FBI, Civil No. 82-0756 (D.D.C. Dec. 17, 1982), subsequent decision (D.D.C. Jan. 13, 1983), reconsideration denied (D.D.C. Nov. 9, 1983), rev'd, 749 F.2d 58 (D.C. Cir. 1984).
(2343)	(b)(1), (b)(2), (b)(3), (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), fee waiver, "Glomar" denial	Shaw v. FBI, 604 F. Supp. 342 (D.D.C. 1985) (consolidated), dismissed, Civil No. 82-2108 (D.D.C. Feb. 21, 1986) (consolidated).
(2344)	Duty to search, no record within scope of request	Shaw v. National Sec. Agency, 3 GDS ¶83,196 (D.D.C. 1983).
(2345)	In camera inspection	Shea v. NRC, Civil No. 86-1164 (D.D.C. Feb. 4, 1987).
(2346)	(b)(3), 18 U.S.C. §1905	Shell Oil Co. v. DOE, 477 F. Supp. 413 (D. Del. 1979), aff'd, 631 F.2d 231 (3d Cir. 1980), cert. denied, 450 U.S. 1024 (1981).
(2347)	(b)(7)	Shell Oil Co. v. Udall, Civil No. 67-C-321 (D. Colo. Sept. 18, 1967).
(2348)	Summary judgment	Shelton v. Carlson, Civil No. 83-0764 (D.D.C. Jan. 14, 1985).
(2349)	Exhaustion of administrative remedies, failure to meet time limits	Shelton v. United States, 2 GDS ¶81,074 (W.D. Wash. 1980).
(2350)	Injunction of agency proceeding pending resolution of FOIA claim	Sheraton Inn v. NLRB, 84 L.R.R.M. 2385 (D.D.C. 1973).
(2351)	Privacy Act access, (a)(2)(A), (b)(3), 18 U.S.C. §1905, (b)(4), (b)(5), attorney's fees, exhaustion of administrative remedies, fees	Shermco Indus. v. Secretary of the Air Force, 452 F. Supp. 306 (N.D. Tex. 1978), rev'd, 613 F.2d 1314 (5th Cir. 1980).
(2352)	Transfer of FOIA case	Shewchun v. United States Parole Comm'n, Civil Nos. 86-2113, 86-2489, 86-2694 (D.D.C. Mar. 31, 1987).
(2353)	Proper party defendant	Shouse v. Burris, Civil No. 475-198 (S.D. Ga. Dec. 23, 1975).
(2354)	Jurisdiction	Shull v. United States, 2 GDS ¶82,146 (Ct. Cl. 1982).

(2355)	(b)(7), law enforcement purpose	Shultz v. Hotel & Restaurant Employees, 64 Lab. Cas. (CCH) ¶11,363 (S.D.N.Y. 1970).
(2356)	Discovery in FOIA litigation, duty to search	Shurberg Broadcasting v. FCC, 617 F. Supp. 825 (D.D.C. 1985).
(2357)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), attorney's fees	Shurtleff v. Department of the Treasury, Civil No. 85-1923-T-10 (M.D. Fla. Sept. 8, 1987) attorney's fees denied (M.D. Fla. Dec. 28, 1987).
(2358)	(b)(4), discretionary release	Sidney v. Department of the Interior, Civil No. 80-0302J (D. Utah Jan. 6, 1983).
(2359)	Privacy Act access, (b)(1), (b)(3), (b)(6), summary judgment	Siegel v. CIA, Civil No. C85-1191-SC (N.D. Cal. Nov. 15, 1985).
(2360)	(b)(1), (b)(3), 22 U.S.C. §2778, 50 U.S.C. §403(d)(3), (b)(5), adequacy of agency affidavit, agency records	Siemens Corp. v. DOD, Civil No. 78-0385 (D.D.C. July 10, 1979).
(2361)	(b)(5), deliberative process	Sierra Club v. Morton, 395 F. Supp. 1187 (D.D.C. 1975), aff'd in part, rev'd in part, 581 F.2d 895 (D.C. Cir. 1978), rev'd, 442 U.S. 347 (1979).
(2362)	(b)(1), E.O. 12356, (b)(7), (b)(7)(C), adequacy of agency affidavit, agency, attorney's fees, disciplinary proceedings, exceptional circumstances/due diligence, in camera inspection, law enforcement purpose	Silets v. FBI, 591 F. Supp. 490 (N.D. Ill. 1984).
(2363)	Privacy Act access, (b)(7)(D), assurance of confidentiality	Silverstein v. Law Enforcement Assistance Admin., Civil No. 79-2260-MA (D. Mass. Feb. 10, 1983).
(2364)	(b)(1), E.O. 12356, (b)(3), discovery in FOIA litigation, in camera inspection, leaks, reasonably segregable, summary judgment, waiver of exemption (unauthorized release)	Simmons v. DOJ, Civil No. H-84-1381 (D. Md. Aug. 21, 1985), aff'd, 796 F.2d 709 (4th Cir. 1986).
(2365)	Disciplinary proceedings, jurisdiction	Simon v. Department of Labor, Civil No. 83-3780 (D.D.C. Mar. 21, 1984).

(2366)	Attorney's fees, FOIA as a discovery tool	Simon v. United States, 587 F. Supp. 1029 (D.D.C. 1984).
(2367)	Vaughn index	Simons v. Semrick, Civil No. H-77-1487 (S.D. Tex. Aug. 18, 1978).
(2368)	(b)(5)	Simons-Eastern Co. v. United States, 55 F.R.D. 88 (N.D. Ga. 1972).
(2369)	(b)(6), reasonably segregable	Simpson v. Department of State, Civil No. 79-0674 (D.D.C. June 15, 1979), rev'd sub nom. Simpson v. Vance, 648 F.2d 10 (D.C. Cir. 1980), remanded sua sponte mem., No. 79-1889 (D.C. Cir. Mar. 9, 1981), on remand, 2 GDS ¶81,280 (D.D.C. 1981).
(2370)	(b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality, attorney's fees	Simpson v. FBI, 3 GDS ¶82,404 (D.D.C. 1982).
(2371)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), (b)(6), burden of proof	Sims v. CIA, 479 F. Supp. 84 (D.D.C. 1979), on motion for summary judgment, Civil No. 78-2251 (D.D.C. Nov. 30, 1979), aff'd in part, rev'd in part, 642 F.2d 562 (D.C. Cir. 1980), on remand, 2 GDS ¶82,087 (D.D.C. 1981), rev'd in part & remanded, 709 F.2d 95 (D.C. Cir. 1983), reh'g en banc denied, Nos. 82-1945, 82-1961 (D.C. Cir. Aug. 17, 1983), motion to stay mandate denied (D.C. Cir. Sept. 6, 1983), aff'd in part, rev'd in part, 471 U.S. 159 (1985), remanded mem. (D.C. Cir. Aug. 20, 1985), dismissed mem. (D.D.C. Aug. 22, 1985).
(2372)	(b)(3), 5 U.S.C. §552a(j)(2), FOIA/PA interface	Sims v. DOJ, Civil No. 84-2048 (C.D. Ill. May 25, 1984).
(2373)	Transfer of FOIA case	Sims v. DOJ, Civil No. 86-0231 (D.D.C. Apr. 22, 1986).
(2374)	Adequacy of agency affidavit, discovery in FOIA litigation, no record within scope of request	Sinclair v. INS, 1 GDS ¶80,273 (D.D.C. 1980).
(2375)	Attorney's fees	Sira v. Department of the Air Force, No. 78-1853 (9th Cir. Feb. 22, 1980) (unpublished memorandum), mem., 618 F.2d 117 (9th Cir. 1980).

(2376)	(b)(1), E.O. 12065, (b)(3), 50 U.S.C. §403, adequacy of agency affidavit, "Glomar" denial, leaks	Sirota v. CIA, 3 GDS ¶83,261 (S.D.N.Y. 1981).
(2377)	(b)(3), 26 U.S.C. §6103, (b)(7)(A), displacement of FOIA	Sizemore v. IRS, 2 GDS ¶82,095 (N.D. Tex. 1980).
(2378)	(b)(4)	Skaggs v. United States, 3 GDS ¶82,287 (S.D. Ind. 1980).
(2379)	(a)(2)(A), (b)(5), deliberative process, incorporation by reference	Skelton v. United States Postal Serv., 2 GDS ¶82,104 (N.D. Tex. 1981), aff'd, 678 F.2d 35 (5th Cir. 1982).
(2380)	Proper party defendant	Skolnick v. Campbell, 454 F.2d 531 (7th Cir. 1971).
(2381)	Jurisdiction	Skolnick v. Kerner, 435 F.2d 694 (7th Cir. 1970).
(2382)	Jurisdiction	Skolnick v. Parsons, 397 F.2d 523 (7th Cir. 1968).
(2383)	(b)(5), agency records, attorney-client privilege, attorney work-product privilege, deliberative process	Slack v. FTC, 1980-81 Trade Cas. (CCH) ¶63,722 (D. Mass. 1980).
(2384)	(a)(2)(C), (b)(2), (b)(7), interaction of (a)(2) & (a)(3), law enforcement purpose	Sladek v. Bensinger, 605 F.2d 899 (5th Cir. 1979), reh'g denied, 618 F.2d 781 (5th Cir. 1980).
(2385)	(b)(5), deliberative process, in camera inspection, reasonably segregable	Slesin v. Administrator, OSHA, 644 F. Supp. 366 (S.D.N.Y. 1986).
(2386)	(b)(3), 26 U.S.C. §6103	Slotnick v. IRS, No. 77-1341 (1st Cir. Dec. 20, 1977).
(2387)	(b)(7)(C), (b)(7)(D), assurance of confidentiality, law enforcement amendments (1986)	Sluby v. DOJ, Civil No. 86-1503 (D.D.C. Apr. 30, 1987).
(2388)	Privacy Act access, FOIA/PA interface	Smiertka v. Department of the Treasury, 447 F. Supp. 221 (D.D.C. 1978), remanded on procedural grounds, 604 F.2d 698 (D.C. Cir. 1979).

(2389)	Adequacy of agency affidavit, attorney's fees, no record within scope of request	Smith v. CIA, 2 GDS ¶81,242 (D.D.C. 1981), on motion for attorney's fees, 2 GDS ¶81,278 (D.D.C. 1981).
(2390)	Duty to search	Smith v. DOJ, 2 GDS ¶82,060 (D.D.C. 1981).
(2391)	(b)(1), E.O. 12065, (b)(3), 8 U.S.C. §1202(f), (b)(7)(D), assurance of confidentiality, attorney's fees, FOIA/PA interface	Smith v. DOJ, Civil No. 81-813 (N.D.N.Y. Dec. 13, 1983), attorney's fees awarded (N.D.N.Y. Jan. 24, 1984).
(2392)	Attorney's fees, exhaustion of administrative remedies, mootness	Smith v. DOJ, Civil No. 84-3294 (D. Kan. Jan. 28, 1986).
(2393)	Jurisdiction	Smith v. DOJ, Civil No. 85-3075 (D.D.C. Sept. 30, 1985).
(2394)	Privacy Act access, (b)(5), (b)(7)(C), (b)(7)(E), attorney-client privilege, attorney work-product privilege, deliberative process, reasonably segregable, waiver of exemption	Smith v. DOJ, Civil No. 86-6162 (E.D. Pa. Sept. 2, 1987).
(2395)	Duty to search	Smith v. Department of State, 3 GDS ¶82,282 (D.D.C. 1982).
(2396)	(b)(7)(C), (b)(7)(D)	Smith v. FBI, 2 GDS ¶81,283 (D.D.C. 1981).
(2397)	Exhaustion of administrative remedies	Smith v. Fenton, 424 F. Supp. 792 (E.D. Ill. 1976).
(2398)	(b)(2), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), deliberative process, judicial records, Vaughn index	Smith v. Flaherty, 465 F. Supp. 815 (M.D. Pa. 1978).
(2399)	Agency	Smith v. International Criminal Police Org., 2 GDS ¶82,219 (D.D.C. 1982).
(2400)	Privacy Act access, exhaustion of administrative remedies	Smith v. Secretary of the Army, 2 GDS ¶81,059 (M.D. Ala. 1979).
(2401)	Exhaustion of administrative remedies	Smith v. Switzer, 73-2 U.S. Tax Cas. (CCH) ¶9490 (W.D. Pa. 1973).

(2402)	(b)(2), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality, duty to search, law enforcement purpose	Smith v. United States Customs Serv., 2 GDS ¶81,284 (D.D.C. 1981), subsequent decision, 3 GDS ¶82,550 (D.D.C. 1982), on motion for summary judgment, 3 GDS ¶82,551 (D.D.C. 1982).
(2403)	(b)(3), 22 U.S.C. §1461	Smith v. United States Information Agency, Civil No. C76-483S (W.D. Wash. Sept. 12, 1978).
(2404)	Fee waiver	Sneed v. Bresson, 1 GDS ¶79,143 (W.D.N.C. 1979), aff'd, No. 79-1800 (4th Cir. Aug. 4, 1980).
(2405)	(b)(6), (b)(7), (b)(7)(C), FOIA/PA interface, law enforcement purpose	Snider v. Mossinghoff, Civil No. 82-2903 (D.D.C. Sept. 14, 1983).
(2406)	Attorney's fees	Solomon v. IRS, 1 GDS ¶79,193 (D.D.C. 1979).
(2407)	Reverse FOIA, (b)(4), (b)(6), promise of confidentiality	Sonderegger v. Department of the Interior, 424 F. Supp. 847 (D. Idaho 1976).
(2408)	(b)(5), attorney's fees, deliberative process, in camera inspection, inter- or intra-agency memoranda, reasonably segregable	Sorenson v. USDA, Civil No. 83-4143 (D. Idaho Mar. 11, 1985), attorney's fees denied (D. Idaho May 21, 1985).
(2409)	(b)(5), (b)(7)(A), attorney-client privilege, attorney work-product privilege, proper party defendant	Sosa-Zacarias v. Nelson, Civil Nos. 82-6739, 82-6772, 82-6877 (C.D. Cal. Nov. 23, 1983).
(2410)	(b)(4), (b)(5), agency, equitable discretion	Soucie v. David, 448 F.2d 1067 (D.C. Cir. 1971).
(2411)	(b)(1), E.O. 12356, (b)(5), (b)(7), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, deliberative process, duty to search, fee waiver, fee waiver (Reform Act), law enforcement purpose	Southam News v. INS, 674 F. Supp. 881 (D.D.C. 1987).
(2412)	(b)(7)(A), FOIA as a discovery tool, proper party defendant	Southern Baptist Hosp. v. EEOC, Civil No. 80-3972 (E.D. La. Dec. 22, 1980), on motion for summary judgment, 2 GDS ¶82,196 (E.D. La. 1982).

(2413)	(b)(7)(A), proper party defendant	Southern Imperial Coating Corp. v. EEOC, Civil No. 80-4582 (E.D. La. Nov. 13, 1981).
(2414)	(b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), attorney's fees	Southern Plastics, Inc. v. NLRB, Civil No. 78-0124 (W.D. La. Mar. 22, 1978).
(2415)	(b)(6)	Southern Utah Wilderness Alliance v. Hodel, 680 F. Supp. 37 (D.D.C. 1988).
(2416)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §1306	South Hills Health Sys. v. Bowen, Civil No. 86-178 (W.D. Pa. Aug. 6, 1987).
(2417)	(b)(4), promise of confidentiality	Southwest Fla. Winter Vegetable Growers Ass'n v. Miller, 3 GDS ¶82,269 (D.D.C. 1980).
(2418)	Injunction of agency proceeding pending resolution of FOIA claim	Southwest Motor Freight, Inc. v. NLRB, 411 F. Supp. 1019 (E.D. Tenn. 1976).
(2419)	(b)(4), (b)(5), (b)(7)(D), in camera inspection, summary judgment	Spanish Int'l Communications Corp. v. FCC, Civil No. 84-3766 (D.D.C. May 1, 1986), summary judgment granted (D.D.C. June 6, 1986).
(2420)	Exhaustion of administrative remedies, statute of limitations	Spannaus v. DOJ, 643 F. Supp. 698 (D.D.C. 1986), aff'd, 824 F.2d 52 (D.C. Cir. 1987).
(2421)	(b)(7)(A), adequacy of agency affidavit, law enforcement amendments (1986), summary judgment	Spannaus v. DOJ, Civil No. 85-841A (E.D. Va. Feb. 24, 1986), aff'd, 813 F.2d 1285 (4th Cir. 1987).
(2422)	In camera inspection	In re Special Sept. 1978 Grand Jury, 640 F.2d 49 (7th Cir. 1980).
(2423)	Exceptional circumstances/due diligence, proper party defendant	Spectator Publishing Co. v. CIA, Civil No. 78-170S-WCC (S.D.N.Y. Mar. 12, 1979).
(2424)	Privacy Act access, adequacy of request, FOIA/PA interface, no record within scope of request	Spence v. IRS, Civil No. 85-1076-HB (D.N.M. Mar. 27, 1986).
(2425)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Sperry Univac Div. v. Baldrige, 3 GDS ¶83,265 (E.D. Va. 1982), appeal dismissed, No. 82-1723 (4th Cir. Nov. 22, 1982).
(2426)	FOIA as a discovery tool	Spitz v. DOJ, Civil No. 85-3030 (D. Idaho June 26, 1985).

(2427)	Venue	Sprentz v. FBI, 3 GDS ¶82,271 (D. Conn. 1980).
(2428)	In camera inspection	Spulak v. Commissioner, Civil No. 84-0-812 (D. Neb. July 19, 1985).
(2429)	Summary judgment	Stafne v. Frank, No. 80-3007 (9th Cir. Jan. 11, 1982).
(2430)	Summary judgment	Stang v. IRS, Civil No. 85-0872-HLH (C.D. Cal. Sept. 3, 1986).
(2431)	Privacy Act access, attorney's fees	Starrick v. Webster, Civil No. H84-409 (N.D. Ind. Mar. 20, 1986).
(2432)	Agency records	Stassi v. DOJ, Civil No. 78-0532 (D.D.C. Mar. 30, 1979).
(2433)	(b)(7)(C), (b)(7)(D)	Stassi v. DOJ, Civil No. 78-0534 (D.D.C. Mar. 30, 1979).
(2434)	Summary judgment	Stassi v. DOJ, Civil No. 78-0535 (D.D.C. Mar. 30, 1979).
(2435)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(7)(C), (b)(7)(D), (b)(7)(F), duty to disclose	Stassi v. DOJ, Civil No. 78-0536 (D.D.C. Apr. 12, 1979).
(2436)	No record within scope of request	Stassi v. DOJ, Civil No. 78-0967 (D.D.C. Dec. 27, 1978).
(2437)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), agency records	Stassi v. Department of the Treasury, Civil No. 78-533 (D.D.C. Mar. 30, 1979).
(2438)	(b)(6), (b)(7)(C)	State Farm Fire & Casualty Co. v. DOJ, Civil No. 86-3242 (C.D. Ill. Feb. 12, 1987), magistrate's report adopted (C.D. Ill. Apr. 16, 1987).
(2439)	(b)(3), 26 U.S.C. §6103, (b)(6), (b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, law enforcement purpose	Stauss v. IRS, 516 F. Supp. 1218 (D.D.C. 1981).
(2440)	(b)(4), (b)(7)	Steadman Sec. Corp. v. SEC, [1973-74 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶93,735 (D.D.C. 1973).
(2441)	(b)(3), 42 U.S.C. §2000e-5(b), §2000e-8(e), (b)(5), deliberative process, mootness	Stebbins v. Insurance Co. of N. Am., 3 GDS ¶83,079 (D.D.C. 1983), motion to vacate denied, Civil No. 82-1915 (D.D.C. Mar. 2, 1983).

(2442)	Adequacy of request, agency	Stebbins v. National R.R. Passenger Corp., 3 GDS ¶82,258 (D.D.C. 1982), aff'd, 3 GDS ¶82,302 (D.C. Cir. 1982) (consolidated).
(2443)	Agency, improper withholding, jurisdiction	Stebbins v. National R.R. Passenger Corp., 2 GDS ¶82,074 (D.D.C. 1981), motion for reconsideration denied, 2 GDS ¶82,233 (D.D.C. 1982), aff'd, 3 GDS ¶82,302 (D.C. Cir. 1982) (consolidated).
(2444)	Agency	Stebbins v. National R.R. Passenger Corp., 3 GDS ¶82,439 (D.D.C. 1982), Vaughn index ordered, 3 GDS ¶82,510 (D.D.C. 1982).
(2445)	Exhaustion of administrative remedies	Stebbins v. Nationwide Mut. Ins. Co., 757 F.2d 364 (D.C. Cir. 1985).
(2446)	Exhaustion of administrative remedies, FOIA as a discovery tool, jurisdiction	In re Steele, 799 F.2d 461 (9th Cir. 1986).
(2447)	Attorney's fees, Vaughn index	Steenland v. CIA, Civil No. 76-548 (W.D.N.Y. Oct. 13, 1978), attorney's fees denied, 555 F. Supp. 907 (W.D.N.Y. 1983), reconsideration denied (W.D.N.Y. Nov. 1, 1983).
(2448)	(b)(7)(C), (b)(7)(D), (b)(7)(E), reasonably segregable	Stegmeier v. Regan, 3 GDS ¶83,178 (D.D.C. 1983).
(2449)	(b)(3), Fed.R.Crim.P. 6(e), in camera inspection, waiver of exemption (unauthorized release)	Stegmeier v. Webster, Civil No. C83-43C (W.D. Wash. July 16, 1984).
(2450)	(b)(1), E.O. 11652, E.O. 12065, (b)(7)(C), (b)(7)(D), attorney's fees, de novo review, discretionary release, in camera affidavit, in camera inspection, mootness, waiver of exemption	Stein v. DOJ, Civil No. 77-C-954 (N.D. Ill. Mar. 28, 1979), subsequent decision (N.D. Ill. Mar. 24, 1980), aff'd in part, rev'd in part, 662 F.2d 1245 (7th Cir. 1981).
(2451)	(b)(7)(A), FOIA as a discovery tool, Vaughn index	Steinberg v. IRS, 463 F. Supp. 1272 (S.D. Fla. 1979).
(2452)	(b)(7), (b)(7)(A), law enforcement purpose	Steininger v. EEOC, Civil No. 84-C-1604 (E.D. Wis. May 30, 1986).
(2453)	(b)(5), attorney-client privilege, deliberative process, venue	Stemmer v. Department of the Army, Civil No. 75-2617 (E.D. Pa. Apr. 28, 1976), aff'd, No. 76-1851 (3d Cir. Feb. 17, 1977).

(2454)	(b)(3), 26 U.S.C. §6103(e)(7), (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(E), deliberative process, displacement of FOIA, proper party defendant, waiver of exemption (failure to assert in litigation)	Stephens v. IRS, Civil No. 82-C-0421 (N.D. Ill. Jan. 27, 1984), summary judgment granted (N.D. Ill. Apr. 20, 1984).
(2455)	(b)(3), 26 U.S.C. §6103, (b)(7)(A), (b)(7)(C), adequacy of agency affidavit, in camera inspection, proper party defendant, reasonably segregable	Stephenson v. IRS, Civil No. C78-1071A (N.D. Ga. June 27, 1979), rev'd, 629 F.2d 1140 (5th Cir. 1980), on remand (N.D. Ga. Sept. 17, 1981).
(2456)	(b)(4), (b)(5), deliberative process, incorporation by reference	Sterling Drug, Inc. v. FTC, 450 F.2d 698 (D.C. Cir. 1971).
(2457)	(b)(5), adequacy of agency affidavit, attorney-client privilege, attorney work-product privilege, deliberative process, exhaustion of administrative remedies, in camera inspection, reasonably segregable	Sterling Drug, Inc. v. Harris, 488 F. Supp. 1019 (S.D.N.Y. 1980).
(2458)	Duty to search, exceptional circumstances/due diligence, exhaustion of administrative remedies, failure to meet time limits	Stern v. DOJ, 29 Fed. R. Serv. 2d 1062 (D. Mass. 1980).
(2459)	(b)(6), (b)(7), (b)(7)(C), law enforcement purpose	Stern v. FBI, 3 GDS ¶83,202 (D.D.C. 1983), aff'd in part & rev'd in part, 737 F.2d 84 (D.C. Cir. 1984).
(2460)	(b)(2), (b)(5), (b)(7), deliberative process, in camera inspection	Stern v. Richardson, 367 F. Supp. 1316 (D.D.C. 1973).
(2461)	(b)(6), (b)(7), (b)(7)(C), law enforcement purpose	Stern v. SBA, 516 F. Supp. 145 (D.D.C. 1980).
(2462)	(b)(2), (b)(7)(A), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, duty to search	Stewart v. CIA, 2 GDS ¶81,302 (D.D.C. 1981).

(2463)	(b)(7)(C), (b)(7)(D), duty to search	Stewart v. FBI, 2 GDS ¶81,219 (D.D.C. 1981).
(2464)	(b)(4)	Stewart v. United States Customs Serv., 2 GDS ¶81,140 (D.D.C. 1981).
(2465)	Vaughn index	Stewart v. United States Parole Comm'n, 3 GDS ¶83,259 (D. Mass. 1981).
(2466)	(b)(3), 19 U.S.C. §1677f, (b)(4), exceptional circumstances/due diligence	Stewart-Warner Corp. v. United States Customs Serv., 2 GDS ¶81,020 (D.D.C. 1979), on motion for summary judgment, 2 GDS ¶81, 279 (D.D.C. 1981).
(2467)	(b)(5), (b)(6), deliberative process, summary judgment	Steyermark v. Von Raab, 682 F. Supp. 788 (D. Del. 1988).
(2468)	(b)(3), (b)(7)(A), (b)(7)(C), (b)(7)(D), fee waiver, FOIA as a discovery tool, jurisdiction, mootness, Vaughn index	Stimac v. DOJ, Civil No. 84-0031 (D.D.C. Oct. 25, 1984), partial summary judgment granted, 620 F. Supp. 212 (D.D.C. 1985), fee waiver denied (D.D.C. Dec. 18, 1985) (consolidated).
(2469)	Fee waiver, jurisdiction	Stimac v. DOJ, Civil No. 84-0227 (D.D.C. Oct. 25, 1984), fee waiver denied (D.D.C. Dec. 18, 1985) (consolidated).
(2470)	Fee waiver, jurisdiction	Stimac v. DOJ, Civil No. 84-0228 (D.D.C. Oct. 25, 1984), fee waiver denied (D.D.C. Dec. 18, 1985) (consolidated).
(2471)	Fee waiver, jurisdiction	Stimac v. DOJ, Civil No. 84-0255 (D.D.C. Oct. 25, 1984), fee waiver denied (D.D.C. Dec. 18, 1985) (consolidated).
(2472)	Fee waiver	Stimac v. DOJ, Civil No. 84-3351 (D.D.C. Dec. 18, 1985) (consolidated).
(2473)	Exhaustion of administrative remedies, jurisdiction	Stimac v. DOJ, Civil No. 84-3652 (D.D.C. Sept. 9, 1986).
(2474)	Vaughn index	Stimac v. Department of the Treasury, Civil No. 84-3506 (D.D.C. Dec. 5, 1984), summary judgment granted (D.D.C. Feb. 20, 1986).
(2475)	Privacy Act access, (b)(3), 5 U.S.C. §552a(j)(2), FOIA/PA interface	Stimac v. Department of the Treasury, 586 F. Supp. 34 (N.D. Ill. 1984).

(2476)	Privacy Act access, (b)(3), 5 U.S.C. §552a(j)(2), FOIA/PA interface	Stimac v. FBI, 577 F. Supp. 923 (N.D. Ill. 1984).
(2477)	Res judicata, summary judgment	Stimac v. Treasury Dep't, Civil No. 87-C-4005 (N.D. Ill. Jan. 14, 1988).
(2478)	(b)(3), 26 U.S.C. §6103(e)(7), (b)(7)(D)	Stine v. IRS, 3 GDS ¶82,549 (W.D. La. 1982).
(2479)	(b)(7)(D)	Stivers v. DOJ, Civil No. C85-2340-WHO (N.D. Cal. Aug. 20, 1986).
(2480)	Duty to search	Stoecklin v. IRS, Civil No. 84-186-Oc-14 (M.D. Fla. Sept. 26, 1985), reconsideration denied (M.D. Fla. Nov. 29, 1985).
(2481)	(a)(2)(C), (b)(2), (b)(5), deliberative process	Stokes v. Hodgson, 347 F. Supp. 1371 (N.D. Ga. 1972), aff'd sub nom. Stokes v. Brennan, 476 F.2d 699 (5th Cir. 1973).
(2482)	(b)(6), (b)(7)(C), (b)(7)(D)	Stokwitz v. Naval Investigative Serv., Civil No. 85-2532-GT (S.D. Cal. Sept. 10, 1986).
(2483)	(b)(4)	Stone v. Export-Import Bank of the United States, Civil No. 74-129 (N.D. Fla. Apr. 17, 1975), aff'd, 552 F.2d 132 (5th Cir. 1977), cert. denied, 434 U.S. 1012 (1978).
(2484)	(b)(7)(C), discovery in FOIA litigation	Stone v. FBI, Civil No. 87-1346 (D.D.C. Jan. 19, 1988).
(2485)	(b)(1), E.O. 12065, adequacy of agency affidavit, burden of proof, in camera inspection	Stoner v. FBI, 2 GDS ¶81,366 (N.D. Ga. 1979), subsequent decision, 2 GDS ¶81,367 (N.D. Ga. 1980).
(2486)	Privacy Act access, adequacy of agency affidavit	Strang v. Arms Control & Disarmament Agency, Civil No. 86-1057 (D.D.C. Dec. 16, 1986).
(2487)	(b)(7)(C), "Glomar" denial	Strassman v. DOJ, 792 F.2d 1267 (4th Cir. 1986).
(2488)	(b)(3), 42 U.S.C. §1306	Stretch v. Weinberger, 359 F. Supp. 702 (D.N.J. 1973), aff'd, 495 F.2d 639 (3d Cir. 1974).
(2489)	(a)(1), publication	Strickland v. Flue-Cured Tobacco Cooperative Stabilization Corp., 643 F. Supp. 310 (D.S.C. 1986).
(2490)	(b)(7)(A), (b)(7)(C), (b)(7)(D)	Stroock, Stroock & Lavan v. NLRB, Civil No. 79-6728-LBS (S.D.N.Y. Jan. 21, 1981).

(2491)	Summary judgment	Stroup v. United States, Civil No. 86-C-2300 (N.D. Ill. Sept. 3, 1986).
(2492)	(b)(1), E.O. 12065, (b)(2), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, law enforcement amendments (1986), law enforcement purpose, summary judgment, Vaughn index	Struth v. FBI, 673 F. Supp. 949 (E.D. Wis. 1987).
(2493)	(b)(2), (b)(5), attorney work-product privilege	Sturgeon v. Department of the Treasury, Civil No. 77-1961 (D.D.C. Jan. 30, 1979).
(2494)	(a)(1), (a)(2)	Sturm v. James, 684 F. Supp. 1218 (S.D.N.Y. 1988).
(2495)	(b)(1), (b)(3), in camera affidavit	Suciu v. CIA, Civil No. 84-0649 (D.D.C. Jan. 7, 1985).
(2496)	(b)(7)(C), FOIA/PA interface	Sullivan v. VA, 617 F. Supp. 258 (D.D.C. 1985).
(2497)	(b)(1), E.O. 12356, (b)(7), (b)(7)(C), failure to meet time limits, in camera inspection, law enforcement purpose	Summers v. DOJ, Civil No. 86-0546 (D.D.C. Sept. 29, 1986), summary judgment granted (D.D.C. May 14, 1987).
(2498)	(b)(1), (b)(7)(C), (b)(7)(D), law enforcement amendments (1986), summary judgment	Summers v. Department of State, Civil No. 86-3230 (D.D.C. Apr. 11, 1988).
(2499)	Reverse FOIA, (b)(4), (b)(9)	Superior Oil Co. v. FERC, 563 F.2d 191 (5th Cir. 1977).
(2500)	Duty to search, summary judgment	Surdam v. HHS, Civil No. 82-4200-LTL-Kx (C.D. Cal. July 7, 1983).
(2501)	(b)(3), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E)	Sweeney v. United States Marshals Serv., Civil No. 82-1036A (E.D. Va. May 4, 1983).
(2502)	(b)(5), attorney work-product privilege	Swift v. IRS, 37 A.F.T.R. 2d 76-525 (N.D. Ga. 1975).
(2503)	(b)(1), E.O. 12356, (b)(3), 50 U.S.C. §403(d)(3), summary judgment	Swike v. United States, Civil No. H-83-662 (N.D. Ind. Feb. 6, 1986).
(2504)	(a)(2)(A), (b)(5), (b)(6), deliberative process	Swisher v. Department of the Air Force, 495 F. Supp. 337 (W.D. Mo. 1980), aff'd, 660 F.2d 369 (8th Cir. 1981).

(2505)	Reverse FOIA, (b)(4), (b)(7)(B)	Syntex Corp. v. Califano, Civil No. 76-2193 (D.D.C. Jan. 24, 1979).
(2506)	(b)(5), deliberative process	Tabcor Sales Clearing, Inc. v. Department of the Treasury, 471 F. Supp. 436 (N.D. Ill. 1979), aff'd mem., No. 79-1901 (7th Cir. July 21, 1981).
(2507)	Attorney's fees	Tackett & Schaffner, Inc. v. GSA, Civil No. 77-C-505 (N.D. Ill. Nov. 6, 1978).
(2508)	(b)(5)	Talbott Constr. Co. v. United States, 49 F.R.D. 68 (E.D. Ky. 1969).
(2509)	(b)(7)(C)	Talnoris v. DOJ, Civil No. C80-1027 (N.D. Ohio Nov. 25, 1981).
(2510)	(b)(6), adequacy of agency affidavit, FOIA as a discovery tool, reasonably segregable, Vaughn index	Tannehill v. Department of the Air Force, Civil No. 87-1335 (D.D.C. Aug. 20, 1987), subsequent decision (D.D.C. Nov. 12, 1987), summary judgment granted (D.D.C. Feb. 5, 1988).
(2511)	(b)(3), 26 U.S.C. §6103, (b)(7)(A), (b)(7)(C), in camera inspection, Vaughn index	Tarnopol v. FBI, 442 F. Supp. 5 (D.D.C. 1977), summary judgment granted, Civil No. 76-1742 (D.D.C. July 27, 1978).
(2512)	Injunction of agency proceeding pending resolution of FOIA claim	Tartan Marine Co. V. NLRB, 446 F. Supp. 1174 (M.D.N.C. 1978).
(2513)	Proper party defendant, jurisdiction	Tate v. Bindseil, 2 GDS ¶82,114 (D.S.C. 1981).
(2514)	(b)(7)(A), (b)(7)(C)	Tate v. IRS, Civil Nos. 79-694-0, 79-1346-0 (D.S.C. Feb. 25, 1980).
(2515)	(b)(2), agency records, improper withholding, interaction of (a)(2) & (a)(3), jurisdiction	Tax Analysts v. DOJ, 643 F. Supp. 740 (D.D.C. 1986), rev'd, 845 F.2d 1060 (D.C. Cir. 1988), reh'g en banc denied, No. 86-5625 (D.C. Cir. July 15, 1988).
(2516)	(a)(2)(B), (b)(3), 26 U.S.C. §6103, §7213, (b)(5), equitable discretion	Tax Analysts & Advocates v. IRS, 362 F. Supp. 1298 (D.D.C. 1973), modified & remanded, 505 F.2d 350 (D.C. Cir. 1974), on remand, 405 F. Supp. 1065 (D.D.C. 1975).

(2517)	(a)(2), (b)(5)	Taxation With Representation Fund v. IRS, 485 F. Supp. 263 (D.D.C. 1980), order on motion for reconsideration, 2 GDS ¶81,028 (D.D.C. 1980), aff'd as modified & remanded, 646 F.2d 666 (D.C. Cir. 1981), consent order on remand sub nom. Tax Analysts v. IRS, 2 GDS ¶81,414 (D.D.C. 1981), superseding order, 49 A.F.T.R. 2d 84-421, 2 GDS ¶82,161 (D.D.C. 1981).
(2518)	(b)(4), equitable discretion, proper party defendant	Tax Reform Research Group v. IRS, 74-1 U.S. Tax Cas. (CCH) ¶9374 (D.D.C. 1974).
(2519)	(b)(3), 26 U.S.C. §6103, §7213, (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), agency records	Tax Reform Research Group v. IRS, 419 F. Supp. 415 (D.D.C. 1976).
(2520)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), venue	Taylor v. Attorney Gen. of the United States, Civil No. 76-C-1916 (N.D. Ill. Mar. 8, 1977).
(2521)	(b)(1), E.O. 12065, proper party defendant	Taylor v. Department of the Army, 2 GDS ¶82,008 (D.D.C. 1981), rev'd & remanded, 684 F.2d 99 (D.C. Cir. 1982).
(2522)	(b)(4)	Taylor v. Department of the Interior, 2 GDS ¶81,216 (D.D.C. 1981), aff'd, 2 GDS ¶82,232 (D.C. Cir. 1982).
(2523)	Agency	Taylor v. Diznoff, 633 F. Supp. 640 (W.D. Pa. 1986).
(2524)	(b)(5)	Taylor v. Huff, Civil No. 85-2992 (D.D.C. Sept. 18, 1986).
(2525)	Jurisdiction	Taylor v. United States Parole Comm'n, Civil No. 84-7148-MMP (N.D. Fla. Jan. 31, 1985).
(2526)	(b)(5), (b)(7)(A)	Taylor Oil Co. v. DOE, 1 GDS ¶80,003 (D.D.C. 1980).
(2527)	Injunction of agency proceeding pending resolution of FOIA claim	Teamsters Local 705 v. NLRB, 82 L.R.R.M. 3014 (D.D.C. 1973).
(2528)	Adequacy of request	Television Wis., Inc. v. NLRB, 410 F. Supp. 999 (W.D. Wis. 1976).
(2529)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), burden of proof	Temple-Eastex, Inc. v. NLRB, 410 F. Supp. 183 (E.D. Tex. 1976).
(2530)	(b)(3), 26 U.S.C. §6103, displacement of FOIA	Templeton v. IRS, 650 F. Supp 202 (N.D. Ind. 1985), aff'd mem., 808 F.2d 838 (7th Cir. 1986).

(2531)	(b)(5)	Tennessean Newspapers, Inc. v. Federal Hous. Admin., 341 F. Supp. 1013 (M.D. Tenn. 1971), rev'd, 464 F.2d 657 (6th Cir. 1972).
(2532)	(b)(7)(C), FOIA/PA interface	Tennessean Newspapers, Inc. v. Levi, 403 F. Supp. 1318 (M.D. Tenn. 1975).
(2533)	Adequacy of request, exhaustion of administrative remedies	Terhune v. Commissioner, Civil No. 86-60458-AA (E.D. Mich. Aug. 11, 1987).
(2534)	(b)(1), (b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E), FOIA/PA interface, in camera inspection	Terkel v. Kelly, Civil No. 76-C-1626 (N.D. Ill. Feb. 8, 1978), aff'd, 599 F.2d 214 (7th Cir. 1979), cert. denied sub nom. Terkel v. Webster, 444 U.S. 1013 (1980).
(2535)	(b)(5), attorney work-product privilege, deliberative process	Texaco, Inc. v. DOE, 2 GDS ¶81,295 (D.D.C. 1981), on in camera inspection, 2 GDS ¶81,296 (D.D.C. 1981).
(2536)	(b)(5), attorney work-product privilege, deliberative process, inter- or intra-agency memoranda	Texas v. ICC, Civil No. A-87-016 (W.D. Tex. Mar. 2, 1988).
(2537)	(b)(3), 26 U.S.C. §6103(b)(2), (b)(5), adequacy of agency affidavit, attorney's fees, deliberative process, duty to search, reasonably segregable	Texas Indep. Producers Legal Action Ass'n v. IRS, 605 F. Supp. 538 (D.D.C. 1984), aff'd in part, rev'd & remanded in part, No. 85-5231 (D.C. Cir. Oct. 10, 1986) (unpublished memorandum), mem., 802 F.2d 1483 (D.C. Cir. 1986), attorney's fees denied, Civil No. 83-1029 (D.D.C. Dec. 18, 1987).
(2538)	(b)(4), (b)(5), deliberative process, promise of confidentiality, reasonably segregable	Texas Instruments, Inc. v. United States Customs Serv., Civil No. 78-2230 (D.D.C. May 17, 1979).
(2539)	(b)(2), (b)(5)	Texas Instruments, Inc. v. United States Customs Serv., 479 F. Supp. 404 (D.D.C. 1979).
(2540)	Attorney's fees, waiver of exemption	Texas Rural Legal Aid v. EPA, Civil No. B-82-84 (S.D. Tex. Aug. 6, 1984).
(2541)	Exhaustion of administrative remedies	Theriault v. Bureau of Prisons, 2 GDS ¶82,163 (W.D. Tenn. 1981).
(2542)	(b)(1), E.O. 11652, (b)(4), (b)(5), deliberative process, de novo review	Theriault v. United States, 503 F.2d 390 (9th Cir. 1974), on remand, 395 F. Supp. 637 (C.D. Cal. 1975).

(2543)	Preliminary injunction	Thermo King Corp. v. NLRB, 83 Lab. Cas. (CCH) ¶10,630 (N.D. Ga. 1978).
(2544)	Attorney's fees	Thomas v. EPA, 554 F. Supp. 418 (W.D.N.Y. 1983).
(2545)	(b)(1), (b)(7)(C), (b)(7)(D)	Thomas v. FBI, Civil No. 80-0710 (D.D.C. Sept. 26, 1980).
(2546)	(a)(2)(A)	Thomas v. FTC, Civil No. 84-C-384E (N.D. Okla. Apr. 18, 1985).
(2547)	Agency	Thomas v. United States, 597 F.2d 656 (8th Cir. 1979).
(2548)	(b)(7)(C), (b)(7)(D)	Thompson v. FBI, No. 80-1593 (8th Cir. Jan. 9, 1981).
(2549)	Adequacy of agency affidavit, Vaughn index	Thorstad v. CIA, 494 F. Supp. 500 (S.D.N.Y. 1979).
(2550)	Reverse FOIA	Thrifty Drugstores, Inc. v. FTC, 40 Ad. L. 2d (P & F) 108 (D.D.C. 1976).
(2551)	(b)(5), inter- or intra-agency memoranda	Thurner Heat Treating Corp. v. NLRB, 839 F.2d 1256 (7th Cir. 1988).
(2552)	(b)(2), (b)(3), 26 U.S.C. §6103(b)(2), (b)(5), attorney-client privilege, reasonably segregable	Tickel v. IRS, Civil No. 1-85-709 (E.D. Tenn. Aug. 22, 1986).
(2553)	(b)(2), publication	Tietze v. Richardson, 342 F. Supp. 610 (S.D. Tex. 1972).
(2554)	Discovery in FOIA litigation	Tigar v. FBI, Civil No. 78-1004 (D.D.C. Apr. 26, 1983).
(2555)	(b)(1), (b)(3), 26 U.S.C. §6103, 50 U.S.C. §403, Fed.R.Crim.P. 6(e), (b)(7)(C), agency records, displacement of FOIA, duty to search, improper withholding, Vaughn index	Tigar & Buffone v. CIA, 2 GDS ¶81,172 (D.D.C. 1981), on motion for summary judgment, Civil No. 80-2382 (D.D.C. Sept. 30, 1981), second Vaughn index ordered sub nom. Tigar & Buffone v. DOJ (D.D.C. Sept. 30, 1983), on motion for reconsideration, 590 F. Supp. 1012 (D.D.C. 1984).
(2556)	Privacy Act access, (b)(5), mootness, prompt disclosure	Tijerina v. Walters, Civil Nos. 84-2346, 84-2347 (D.D.C. Oct. 28, 1985), aff'd, 821 F.2d 789 (D.C. Cir. 1987).
(2557)	(a)(1), (a)(1)(D), (a)(2)(C)	Timber Access Indus. Co. v. United States, 553 F.2d 1250 (Ct. Cl. 1977).

(2558)	(b)(1), E.O. 12065, (b)(3), 8 U.S.C. §1202, 50 U.S.C. §403, (b)(6), (b)(7)(D), proper party defendant	Times Newspapers of Gr. Brit. v. CIA, 539 F. Supp. 678 (S.D.N.Y. 1982), summary judgment granted, Civil No. 80-686-MEL (S.D.N.Y. Feb. 15, 1983).
(2559)	(b)(4)	Timken Co. v. United States Customs Serv., Civil No. 79-1736 (D.D.C. July 5, 1979), subsequent decision, 3 GDS ¶83,234 (D.D.C. 1983).
(2560)	(b)(4)	Timken Co. v. United States Customs Serv., 491 F. Supp. 557 (D.D.C. 1980), aff'd, No. 80-1794 (D.C. Cir. Dec. 2, 1980).
(2561)	(b)(4), (b)(5), (b)(7)(A), deliberative process	Timken Co. v. United States Customs Serv., 531 F. Supp. 194 (D.D.C. 1981), on motion for reconsideration, 531 F. Supp. 200 (D.D.C. 1981).
(2562)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), FOIA as a discovery tool, injunction of agency proceeding pending resolution of FOIA claim	Title Guarantee Co. v. NLRB, 407 F. Supp. 498 (S.D.N.Y. 1975), rev'd & remanded, 534 F.2d 484 (2d Cir. 1976), cert. denied, 429 U.S. 834 (1976).
(2563)	(b)(4), (b)(6)	Tobacco Inst. v. FTC, Civil No. 67-3035 (D.D.C. Apr. 11, 1968).
(2564)	(b)(5), (b)(7), (b)(7)(A), (b)(7)(D), deliberative process	Todd Logistics, Inc. v. Marsh, Civil No. 81-1677 (D.D.C. Nov. 16, 1982).
(2565)	(b)(1),.(b)(5), adequacy of agency affidavit, adequacy of request, Vaughn index	Todd Shipyards Corp. v. DOD, 2 GDS ¶81,041 (D.D.C. 1980), on reconsideration, 2 GDS ¶81,067 (D.D.C. 1981).
(2566)	(b)(5)	Todd Shipyards Corp. v. Department of the Navy, 1 GDS ¶80,004 (D.D.C. 1979).
(2567)	(b)(1), E.O. 12065, agency records, proper party defendant	Toler v. Carter, Civil No. 80-4482-LEW-JRx (C.D. Cal. Feb. 10, 1981), summary judgment granted, 3 GDS ¶82,382 (C.D. Cal. 1982).
(2568)	Attorney's fees, jurisdiction	Tomko v. United States Marshals Serv., Civil No. C86-2848 (N.D. Ohio Nov. 17, 1986).
(2569)	(b)(5), attorney work-product privilege	Torres v. United States Parole Comm'n, Civil No. 86-2949 (D.D.C. Apr. 16, 1987).
(2570)	Jurisdiction	Tracy v. DOJ, Civil No. 75-1052-T (W.D. Okla. Dec. 23, 1975).

(2571)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E), burden of proof, summary judgment	Tranowski v. United States Secret Serv., 2 GDS ¶81,408 (D.D.C. 1980), rev'd & remanded, No. 80-1386 (D.C. Cir. Feb. 19, 1981), on remand, 2 GDS ¶81,410 (D.D.C. 1981).
(2572)	(b)(5), (b)(6), agency records, deliberative process, discovery in FOIA litigation	Trans World Airlines v. National Mediation Bd., 3 GDS ¶82,503 (D.D.C. 1982).
(2573)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Trend Imports Sales, Inc. v. EPA, 3 GDS ¶83,115 (D.D.C. 1983).
(2574)	Attorney's fees, mootness	Triax Scott AFB Venture v. Secretary of the Air Force, Civil No. 85-C-0329J (D. Utah Aug. 26, 1986).
(2575)	(b)(5), attorney work-product privilege	Tri-County Landowners Ass'n v. Department of the Interior, 3 GDS ¶83,207 (D.S.C. 1982).
(2576)	Exhaustion of administrative remedies	Tripati v. DOJ, Civil No. 87-3301-LFO (D.D.C. Apr. 15, 1988).
(2577)	Preliminary injunction	Tri-State Culvert Mfrs., Inc. v. NLRB, 83 Lab. Cas. (CCH) ¶10,606 (N.D. Ga. 1978).
(2578)	(b)(5), attorney work-product privilege	Trohimovich v. IRS, 2 GDS ¶82,139 (W.D. Wash. 1980), aff'd, No. 81-3015 (9th Cir. Sept. 17, 1981).
(2579)	Summary judgment	Trombetta v. NRC, 3 GDS ¶83,211 (E.D. Pa. 1983).
(2580)	(b)(5), attorney work-product privilege	Troxler Hosiery Co. v. United States, Civil No. C80-290-G (M.D. N.C. May 22, 1981).
(2581)	Duty to search	Truitt v. Department of State, Civil No. 83-3592 (D.D.C. Jan. 26, 1988).
(2582)	(b)(7)(A)	Trustees of Boston Univ. v. NLRB, 575 F.2d 301 (1st Cir. 1978), vacated & remanded mem., 445 U.S. 912 (1980).
(2583)	(a)(1)	TRW, Inc. v. FTC, 647 F.2d 942 (9th Cir. 1981).
(2584)	Agency	Trybus v. Alfano, Civil No. 82-C-2696 (N.D. Ill. June 21, 1984).
(2585)	(b)(6), exhaustion of administrative remedies	Tuchinsky v. Selective Serv. Sys., 294 F. Supp. 803 (N.D. Ill. 1969), aff'd, 418 F.2d 155 (7th Cir. 1969).
(2586)	(b)(4), (b)(6), attorney's fees	Tulsa Tribune Co. v. Harris, Civil No. 79-C-525-BT (N.D. Okla. Nov. 12, 1980).

(2587)	Attorney's fees	Turenne v. Department of the Navy, Civil No. 83-486-TUC-RMB (D. Ariz. May 11, 1984).
(2588)	(b)(7)(C), (b)(7)(D), Vaughn index	Turner v. DOJ, Civil No. 75-2180 (D.D.C. July 7, 1977).
(2589)	Dismissal for failure to prosecute	Turner v. Director, Bureau of Alcohol, Tobacco & Firearms, Civil No. 81-0519 (D.D.C. Jan. 29, 1982).
(2590)	Venue	Turner v. Kelly, 411 F. Supp. 1331 (D. Kan. 1976).
(2591)	Privacy Act access, (b)(5), FOIA/PA interface, inter- or intra-agency memoranda, judicial records	Turner v. Ralston, 567 F. Supp. 606 (W.D. Mo. 1983).
(2592)	Duty to search, mootness, no record within scope of request	Turner v. Schweiker, 2 GDS ¶81, 262 (D.D.C. 1981), aff'd, 2 GDS ¶81,311 (D.C. Cir. 1981).
(2593)	(b)(7)(D), assurance of confidentiality, burden of proof	T.V. Tower v. Marshall, 444 F. Supp. 1233 (D.D.C. 1978).
(2594)	(b)(3), 50 U.S.C. app. §2411	Twin Coasts Newspapers, Inc. v. Department of Commerce, Civil No. 78-0975 (D.D.C. Nov. 6, 1979).
(2595)	Proper party defendant	Twin Coasts Newspapers, Inc. v. Department of the Treasury, Civil No. 83-1113 (D.D.C. June 7, 1983), Vaughn index ordered (D.D.C. Jan. 4, 1984).
(2596)	Exhaustion of administrative remedies	Tyler v. Defense Supply Agency, Civil No. 76-452-N (E.D. Va. Mar. 31, 1977).
(2597)	Attorney's fees	Tzaneff v. FBI, Civil No. 79-0333 (D.D.C. July 31, 1979), attorney's fees granted, 1 GDS ¶79,153 (D.D.C. 1979).
(2598)	(b)(7)(C), FOIA/PA interface, waiver of exemption	Ulmer v. Maritime Co. of the Phil., Civil No. 78-79 (E.D. Pa. June 11, 1979).
(2599)	(b)(5), deliberative process, discovery in FOIA litigation, reasonably segregable	Union of Concerned Scientists v. NRC, Civil No. 76-0370 (D.D.C. June 11, 1976), partial summary judgment granted (D.D.C. Feb. 1, 1977).

(2600)	(b)(4), attorney's fees, discretionary release	Union of Concerned Scientists v. NRC, Civil No. 84-2833 (D.D.C. June 6, 1985), attorney's fees granted (D.D.C. Oct. 22, 1985), remanded, 824 F.2d 1219 (D.C. Cir. 1987).
(2601)	Reverse FOIA, (b)(4)	Union Oil Co. v. FPC, 542 F.2d 1036 (9th Cir. 1976).
(2602)	(b)(6), attorney's fees	United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus. v. Department of the Army, Civil No. C85-375-JLQ (E.D. Wash. Nov. 18, 1985), rev'd & remanded, 841 F.2d 1459 (9th Cir. 1988).
(2603)	(b)(5), deliberative process, summary judgment	United Merchants & Mfrs. v. Meese, Civil No. 87-3367-LFO (D.D.C. May 27, 1988).
(2604)	(b)(5)	United Methodist Church v. Smith, Civil No. 82-1117-LTL-JRx (C.D. Cal. Feb. 8, 1983), on in camera inspection (C.D. Cal. Mar. 3, 1983).
(2605)	Adequacy of request, duty to search, mootness	United Press Int'l v. Department of the Air Force, Civil No. 83-3719 (D.D.C. Sept. 14, 1984).
(2606)	Mootness	United Shippers, Inc. v. ICC, No. 79-4806 (9th Cir. June 12, 1981).
(2607)	(b)(6), (b)(7)(C), agency subpoena	United States v. Allis-Chalmers Corp., 498 F. Supp. 1027 (E.D. Wis. 1980).
(2608)	(a)(1), (a)(1)(C), (a)(1)(D), (a)(2)(C), publication	United States v. Articles of Drug, 634 F. Supp. 435 (N.D. Ill. 1986).
(2609)	(b)(5), attorney-client privilege, attorney work-product privilege, discovery/FOIA interface, waiver of exemption (administrative release)	United States v. AT&T Co., Civil No. 74-1698 (D.D.C. Jan. 22, 1980), rev'd, 642 F.2d 1285 (D.C. Cir. 1980).
(2610)	(a)(1)	United States v. Anaconda Co., 445 F. Supp. 486 (D.D.C. 1977).
(2611)	FOIA as a discovery tool, exhaustion of administrative remedies	United States v. Brown, 562 F.2d 1144 (9th Cir. 1977).
(2612)	(b)(7), FOIA as a discovery tool	United States v. Buckley, 586 F.2d 498 (5th Cir. 1978), cert. denied, 440 U.S. 982 (1979).

(2613)	Judicial records	United States v. Charmer Indus., 711 F.2d 1164 (2d Cir. 1983).
(2614)	FOIA as a discovery tool	United States v. DeLorean, Criminal No. 82-910-RMT (C.D. Cal. Aug. 5, 1983), discovery order amended (C.D. Cal. Aug. 11, 1983), discovery order further amended (C.D. Cal. Aug. 12, 1983), vacated sub nom. United States v. United States Dist. Court, 717 F.2d 478 (9th Cir. 1983).
(2615)	(a)(1), (a)(2)(C)	United States v. DeVaughn, 414 F. Supp. 774 (D. Md. 1976), aff'd mem., 556 F.2d 575 (4th Cir. 1977), cert. denied, 434 U.S. 954 (1977), reh'g denied, 434 U.S. 1025 (1978).
(2616)	Agency subpoena	United States v. Exxon Corp., 487 F. Supp. 19 (D.D.C. 1980), aff'd, 628 F.2d 70 (D.C. Cir. 1980), cert. denied, 446 U.S. 964 (1980).
(2617)	Reverse FOIA, (b)(4)	United States v. Exxon Corp., 2 GDS ¶82,057 (D.D.C. 1981).
(2618)	(b)(3), 26 U.S.C. §6103(b)(2), displacement of FOIA, Vaughn index	United States v. First Nat'l Bank, 48 A.F.T.R. 2d 81-6157, 2 GDS ¶82,064 (W.D. Tenn. 1980), summary judgment granted, Civil Nos. 79-1157, 80-1018 (W.D. Tenn. May 7, 1981).
(2619)	Agency subpoena, (b)(7)(A)	United States v. First Nat'l State Bank, 616 F.2d 668 (3d Cir. 1980), cert. denied, 447 U.S. 905 (1980).
(2620)	(b)(6), FOIA/PA interface	United States v. Flood, 462 F. Supp. 99 (D.D.C. 1978).
(2621)	Adequacy of request	United States v. Gavran, 620 F. Supp. 1277 (E.D. Wis. 1985).
(2622)	Reverse FOIA	United States v. Geophysical Corp., 732 F.2d 693 (9th Cir. 1984).
(2623)	(a)(1)	United States v. Goodman, 605 F.2d 870 (5th Cir. 1979).
(2624)	(a)(1)	United States v. Hall, 742 F.2d 1153 (9th Cir. 1984).
(2625)	(a)(2)(C), in camera inspection	United States v. Imbrunone, 379 F. Supp. 256 (E.D. Mich. 1974).
(2626)	(a)(2)(A), (b)(5), (b)(7), attorney work-product privilege	United States v. J.B. Williams Co., 402 F. Supp. 796 (S.D.N.Y. 1975).

(2627)	Agency records	United States v. Lambert, 446 F. Supp. 890 (D. Conn. 1978), aff'd, 601 F.2d 69 (2d Cir. 1979), cert. denied, 444 U.S. 871 (1979).
(2628)	FOIA as a discovery tool	United States v. Layton, 2 GDS ¶81,390 (N.D. Cal. 1981).
(2629)	(a)(1)(D)	United States v. Leichtfuss, 331 F. Supp. 723 (N.D. Ill. 1971).
(2630)	Agency records	United States v. McDonnell Douglas Corp., Criminal No. 79-516 (D.D.C. Apr. 19, 1982).
(2631)	(a)(1)(D)	United States v. Mowat, 582 F.2d 1194 (9th Cir. 1978), cert. denied, 439 U.S. 967 (1978).
(2632)	FOIA as a discovery tool	United States v. Murdock, 548 F.2d 599 (5th Cir. 1977).
(2633)	(a)(1)	United States v. O'Ferrall, 84-2 U.S. Tax Cas. (CCH) ¶9843 (D. Del. 1984).
(2634)	Injunction of agency proceeding pending resolution of FOIA claim	United States v. Texas Energy Petroleum Corp., 719 F.2d 394 (Temp. Emer. Ct. App. 1983).
(2635)	Reverse FOIA, (b)(3), 42 U.S.C. §2000e-8(e), (b)(4), (b)(7)	United States v. Trucking Employers, Inc., 13 Fair Empl. Prac. Cas. (BNA) 376 (D.D.C. 1976).
(2636)	(a)(1)(C)	United States v. Two Hundred Thousand Dollars in United States Currency, 590 F. Supp. 866 (S.D. Fla. 1984).
(2637)	FOIA as a discovery tool	United States v. Wahlin, 384 F. Supp. 43 (W.D. Wis. 1974).
(2638)	Duty to disclose	United States v. Wills, 475 F. Supp. 492 (M.D. Fla. 1979).
(2639)	Privacy Act access, (b)(6), FOIA/PA interface	United States Dep't of HHS v. Federal Labor Relations Auth., 833 F.2d 1129 (4th Cir. 1987).
(2640)	Privacy Act access, (b)(6), FOIA/PA interface	United States Dep't of Navy v. Federal Labor Relations Auth., 840 F.2d 1131 (3d Cir. 1988).
(2641)	Privacy Act access, (b)(6), FOIA/PA interface	United States Dep't of the Air Force v. Federal Labor Relations Auth., 838 F.2d 229 (7th Cir. 1988).
(2642)	(a)(1)(D), publication	United States ex rel. Parco v. Morris, 426 F. Supp. 976 (E.D. Pa. 1977).

(2643)	(b)(1), E.O. 12356, (b)(4), (b)(5), (b)(7), (b)(7)(E), deliberative process, duty to search, in camera affidavit, in camera inspection, law enforcement purpose, "mosaic"	U.S. News & World Report v. Department of the Treasury, Civil No. 84-2303 (D.D.C. Oct. 30, 1985), subsequent decision (D.D.C. Mar. 26, 1986).
(2644)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	United States Reduction Co. v. McGuire, Civil No. 79-C-838 (N.D. Ill. Dec. 10, 1979).
(2645)	(b)(7), (b)(7)(C), (b)(7)(D), assurance of confidentiality, law enforcement purpose	United States Steel Corp. v. Department of Labor, 558 F. Supp. 80 (W.D. Pa. 1983).
(2646)	Reverse FOIA, (b)(4)	United States Steel Corp. v. Schlesinger, 8 Empl. Prac. Dec. (CCH) ¶9717 (E.D. Va. 1974).
(2647)	(b)(1), E.O. 12356, (b)(3), 50 U.S.C. §403(d)(3), adequacy of agency affidavit, summary judgment, Vaughn index, waiver of exemption	United States Student Ass'n v. CIA, 620 F. Supp. 565 (D.D.C. 1985).
(2648)	(b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D)	United Supermarkets, Inc. v. NLRB, 449 F. Supp. 407 (N.D. Tex. 1978).
(2649)	Reverse FOIA, (b)(4), injunction of agency proceeding pending resolution of FOIA claim	United Technologies Corp. v. HHS, 574 F. Supp. 86 (D. Del. 1983).
(2650)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), burden of proof, personal records	United Technologies Corp. v. Marshall, 464 F. Supp. 845 (D. Conn. 1979).
(2651)	Reverse FOIA, (b)(3), 18 U.S.C §1905, (b)(4), (b)(5)	United Technologies Corp. v. Marshall, Civil No. 78-8253-JE (S.D. Fla. Sept. 25, 1978).
(2652)	(b)(5), (b)(7), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, waiver of exemption	United Technologies Corp. v. NLRB, 632 F. Supp. 776 (D. Conn. 1985), aff'd, 777 F.2d 90 (2d Cir. 1985).
(2653)	Injunction of agency proceeding pending resolution of FOIA claim	United Tel. Co. v. FCC, 375 F. Supp. 992 (M.D. Pa. 1974).

(2654)	Vaughn index	UNR Indus. v. DOJ, 2 GDS ¶81,341 (D.D.C. 1981).
(2655)	Attorney's fees	Urban Law Inst. v. Secretary of Defense, Civil No. 76-0530 (D.D.C. Mar. 3, 1978).
(2656)	Reverse FOIA, (b)(4)	Usery v. Whitin Mach. Works, Inc., 412 F. Supp. 1019 (D. Mass. 1976), rev'd & remanded, 554 F.2d 498 (1st Cir. 1977).
(2657)	Reverse FOIA, (b)(4)	USS-OCF-W&M v. Eckerd, Civil No. 76-1933 (D.D.C. Dec. 9, 1976).
(2658)	(b)(3), 26 U.S.C. §6103(a), displacement of FOIA	Utah v. United States, Civil No. NC-80-0079-J (D. Utah May 29, 1981).
(2659)	Privacy Act access, (b)(7)(A), FOIA as a discovery tool, in camera inspection	Utah-Ohio Gas & Oil Co. v. SEC, 1 GDS ¶80,038 (D. Utah 1980).
(2660)	(b)(3), Fed.R.Crim. P. 6(e), agency, judicial records	Valenti v. DOJ, 503 F. Supp. 230 (E.D. La. 1980).
(2661)	(b)(1), E.O. 12356, adequacy of agency affidavit, summary judgment, waiver of exemption	Van Atta v. Defense Intelligence Agency, Civil No. 87-1508-SSH (D.D.C. July 6, 1988).
(2662)	Burden of proof, de novo review, Vaughn index	Van Bourg, Allen, Weinberg & Roger v. NLRB, 656 F.2d 1356 (9th Cir. 1981).
(2663)	(b)(4), (b)(6), mootness, promise of confidentiality	Van Bourg, Allen, Weinberg & Roger v. NLRB, 728 F.2d 1270 (9th Cir. 1984), reh'g en banc denied, No. 83-1722 (9th Cir. Sept. 18, 1984), vacated & remanded (9th Cir. Mar. 26, 1985), amended judgment reinstated, 762 F.2d 831 (9th Cir. 1985).
(2664)	(b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), assurance of confidentiality, inter- or intra-agency memoranda	Van Bourg, Allen, Weinberg & Roger v. NLRB, 751 F.2d 982 (9th Cir. 1985), reh'g en banc denied, No. 82-4719 (9th Cir. May 1, 1985).
(2665)	(b)(2), (b)(5), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality	Vander Pauwert v. FBI, 1 GDS ¶80,088 (D.D.C. 1980), rev'd in part, 2 GDS ¶81,078 (D.D.C. 1981).
(2666)	(b)(7)(A)	Van Maanen v. United States, Civil No. 77-21-J-B (M.D. Fla. Mar. 18, 1980).

(2667)	Adequacy of request, discovery in FOIA litigation	Van Strum v. EPA, 680 F. Supp. 349 (D. Or. 1987).
(2668)	Privacy Act access, (b)(1), E.O. 11652, (b)(5), (b)(7)(C), (b)(7)(D), in camera inspection, proper party defendant	Varona Pacheco v. FBI, 456 F. Supp. 1024 (D.P.R. 1978).
(2669)	(b)(5), inter- or intra-agency memoranda	Vaughn v. DOJ, Civil No. 85-3519 (D.D.C. Mar. 12, 1987).
(2670)	(b)(2), (b)(5), (b)(6), burden of proof, deliberative process, Vaughn index	Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974), on remand, 383 F. Supp. 1049 (D.D.C. 1974), aff'd, 523 F.2d 1136 (D.C. Cir. 1975).
(2671)	(b)(7)(A), (b)(7)(D)	Vegas Village Shopping Corp. v. NLRB, 92 L.R.R.M. 2683 (C.D. Cal. 1976).
(2672)	(b)(4), (b)(5), deliberative process, in camera inspection	Vereinigte Vaubeschlagfabriken Gretsch & Co. v. Department of the Treasury, 435 F. Supp. 1212 (D.D.C. 1977).
(2673)	Attorney's fees	Vermont Low Income Advocacy Council, Inc. v. Dunlop, 71 F.R.D. 343 (D. Vt. 1976), aff'd sub nom. Vermont Low Income Advocacy Council, Inc. v. Usery, 546 F.2d 509 (2d Cir. 1976).
(3674)	(b)(5), deliberative process, FOIA as a discovery tool	Verrazzano Trading Corp. v. United States, 349 F. Supp. 1401 (Cust. Ct. 1972).
(2675)	Privacy Act access, fee waiver, FOIA/PA interface, jurisdiction, no record within scope of request	Vessels v. Bailar, No. 77-1227 (10th Cir. June 29, 1978).
(2676)	Attorney's fees	Veterans Educ. Project v. Secretary, Dep't of the Air Force, 509 F. Supp. 860 (D.D.C. 1981), subsequent decision, 515 F. Supp. 993 (D.D.C. 1981), aff'd mem., 679 F.2d 263 (D.C. Cir. 1982), judgment modified, No. 81-1741 (D.C. Cir. 1982), reh'g en banc denied (D.C. Cir. 1982).
(2677)	(a)(2), (a)(2)(A), (a)(2)(B), (a)(2)(C)	Viacom Int'l, Inc. v. FCC, 672 F.2d 1034 (2d Cir. 1982).

(2678)	Agency, proper party defendant	Viccarone v. Buckley, Civil No. C81-1904 (N.D. Ohio Sept. 30, 1982), appeal dismissed mem., 727 F.2d 1111 (6th Cir. 1984), cert. denied, 469 U.S. 980 (1984).
(2679)	(b)(3), 5 U.S.C. §552a(j)(2), FOIA/PA interface	Viccarone v. DEA, Civil No. 83-C-1021 (N.D. Ill. Nov. 17, 1983), appeal dismissed, No. 84-1093 (7th Cir. Mar. 20, 1984), vacated & remanded, 469 U.S. 1068 (1984), remanded mem., 757 F.2d 1291 (7th Cir. 1985).
(2680)	(b)(6)	Vietnam Veterans Against the War v. Laird, Civil No. 70-2277 (D.D.C. Oct. 15, 1971).
(2681)	Privacy Act access, (b)(3), 50 U.S.C. §403(d)(3), §403g, reasonably segregable	Villanueva v. United States, Civil No. EP-84-CA-76 (W.D. Tex. Mar. 4, 1985), aff'd sub nom. Villanueva v. DOJ, 782 F.2d 528 (5th Cir. 1986).
(2682)	(a)(1)(D), publication	Virgil v. Andrus, 667 F.2d 931 (10th Cir. 1982).
(2683)	(b)(5)	Virginia-Carolina Freight Lines v. United States, 411 F. Supp. 356 (W.D. Va. 1976).
(2684)	(b)(5), deliberative process, duty to search	Virginia Indep. Schools Ass'n v. Commissioner, Civil No. 75-0925 (D.D.C. Mar. 25, 1976).
(2685)	(b)(3), 42 U.S.C. §2167	Virginia Sunshine Alliance v. NRC, 509 F. Supp. 863 (D.D.C. 1981), aff'd, 669 F.2d 788 (D.C. Cir. 1981).
(2686)	Attorney's fees, exhaustion of administrative remedies	Virginia Transformer Corp. v. DOE, 628 F. Supp. 944 (W.D. Va. 1986).
(2687)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Vistron Corp. v. Andrus, 19 Fair Empl. Prac. Cas. (BNA) 698 (E.D. Va. 1977).
(2688)	(b)(1), (b)(3), in camera affidavit, in camera inspection, referral of request to another agency	Vlasic v. CIA, 3 GDS ¶83,229 (D.D.C. 1983), dismissed, Civil No. 82-2294 (D.D.C. July 12, 1983).
(2689)	(b)(5), (b)(6)	Vogel v. Bell, 1 GDS ¶79,185 (D. Ariz. 1979).
(2690)	Privacy Act access, duty to search, proper party defendant, summary judgment	Voinche v. DOJ, Civil No. 87-1181-A (W.D. La. Oct. 7, 1987), aff'd, No. 87-4781 (5th Cir. Feb. 4, 1988), appeal dismissed & cert. denied, 108 S. Ct. 2030 (1988).

(2691)	In camera inspection, summary judgment	Vojta v. DOJ, Civil No. 78-C-311 (N.D. Ill. Oct. 21, 1981).
(2692)	Privacy Act access, attorney's fees	Volz v. DOJ, Civil No. 77-0635-E (W.D. Okla. June 5, 1978), rev'd, 619 F.2d 49 (10th Cir. 1980), cert. denied, 449 U.S. 982 (1980).
(2693)	Privacy Act access, (b)(7), (b)(7)(C), (b)(7)(D), attorney's fees, in camera inspection, law enforcement purpose, reasonably segregable, waiver of exemption	Von Tempske v. HHS, 2 GDS ¶82,091 (W.D. Mo. 1981).
(2694)	(b)(3), 26 U.S.C. §6103(b)(2), §6103(e)(7), (b)(7)(A), displacement of FOIA, law enforcement amendments (1986), summary judgment	Vosburgh v. IRS, Civil No. 87-1179 (D. Kan. Nov. 24, 1987).
(2695)	(b)(3), 26 U.S.C. §6103(b)(2), summary judgment	Voss v. IRS, Civil No. 86-A-1492 (D. Colo. Jan. 27, 1987).
(2696)	Venue	V. Scott Kneese & Howard H. Hubbard Funeral Home v. NLRB, Civil No. H-78-29 (S.D. Tex. Jan. 11, 1978).
(2697)	Privacy Act access, no record within scope of request	Vymetalik v. CIA, Civil No. 83-0182 (D.D.C. July 28, 1983).
(2698)	Summary judgment	Vymetalik v. DOD, Civil No. 83-0550 (D.D.C. Mar. 13, 1984).
(2699)	Summary judgment	Vymetalik v. OPM, Civil No. 83-0548 (D.D.C. July 28, 1983), summary judgment granted (D.D.C. Mar. 13, 1984).
(2700)	No improper withholding	Wagar v. DOJ, 846 F.2d 1040 (6th Cir. 1988), reh'g denied, No. 87-5676 (6th Cir. July 25, 1988).
(2701)	Exhaustion of administrative remedies, fee waiver	Wagner v. DOJ, Civil No. 85-3170 (D.D.C. June 23, 1986), subsequent order (D.D.C. Jan. 13, 1987), summary affirmance granted, No. 86-5477 (D.C. Cir. Mar. 24, 1987).
(2702)	(b)(7)(D), attorney's fees	Walk v. USDA, 2 GDS ¶81,201 (S.D. Iowa 1981).
(2703)	(b)(2), (b)(5), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), reasonably segregable	Walker v. Dogin, Civil No. 81-0176 (M.D. Pa. Feb. 19, 1982).

(2704)	Exhaustion of administrative remedies, fee waiver, proper party defendant	Walker v. IRS, Civil No. 86-0073 (M.D. Pa. June 16, 1986).
(2705)	(a)(1)(D), publication	Walker v. Pierce, 665 F. Supp. 831 (N.D. Cal. 1987).
(2706)	Fee waiver	Walker v. United States Postal Serv., Civil No. 86-8291 (S.D.N.Y. Dec. 16, 1986).
(2707)	(a)(1), (a)(1)(D), proper party defendant, publication	Walsh v. Bowen, Civil No. 3-85-1697 (D. Minn. Feb. 4, 1986).
(2708)	(b)(3), Fed.R.Crim. P. 6(e), (b)(7)(A), judicial records, Vaughn index	Walter, Conston, Shurtman & Gumpel v. DOJ, 1 GDS ¶79,205 (S.D.N.Y. 1979).
(2709)	Attorney's fees	Walters v. TVA, 503 F. Supp. 111 (E.D. Tenn. 1980).
(2710)	(b)(7)(D), FOIA/PA interface, in camera affidavit	Ward v. DOJ, 3 GDS ¶83,175 (D.D.C. 1983).
(2711)	Improper withholding	Wardell v. Department of Labor, 2 GDS ¶82,077 (D.D.C. 1981).
(2712)	Agency records	Wardell v. Naval Surface Weapons Center, Civil No. 80-1209 (D.D.C. July 31, 1980).
(2713)	Agency records	Wardell v. Naval Surface Weapons Center, 2 GDS ¶82,018 (D.D.C. 1981).
(2714)	Dismissal for failure to prosecute	Warden v. FBI, 530 F. Supp. 66 (N.D. Ill. 1981).
(2715)	Exhaustion of administrative remedies	Warner v. Social Sec. Admin., Civil No. 85-2706-K (M) (S.D. Cal. Feb. 28, 1986).
(2716)	Privacy Act access, (b)(5), (b)(6), attorney's fees, deliberative process, FOIA/PA interface, waiver of exemption	Warren v. DOJ, Civil No. 82-2927 (D.D.C. May 31, 1983), attorney's fees awarded (D.D.C. July 29, 1983).
(2717)	Privacy Act access, (b)(5), attorney work-product privilege, deliberative process, FOIA/PA interface, inter- or intra-agency memoranda, res judicata	Warren v. Office of Special Counsel, Civil No. 84-2232 (D.D.C. Apr. 22, 1985), summary judgment denied (D.D.C. Feb. 7, 1986), rev'd sub nom. Martin v. Office of Special Counsel, 819 F.2d 1181 (D.C. Cir. 1987).
(2718)	Judicial records	Warth v. DOJ, 595 F.2d 521 (9th Cir. 1979).

(2719)	Attorney's fees	Washington Area Constr. Indus. Task Force v. Department of Labor, Civil No. 76-2317 (D.D.C. Feb. 28, 1978), supplemental decision (D.D.C. Mar. 23, 1978).
(2720)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §1306, nexus test	Washington Hosp. Center v. Mutual of Omaha, Civil No. 78-2485 (D.D.C. June 25, 1979).
(2721)	(b)(1), E.O. 12356, (b)(5), belated classification, deliberative process, reasonably segregable, Vaughn index, waiver of exemption	Washington Post Co. v. DOD, Civil No. 84-2402 (D.D.C. Apr. 21, 1986), summary judgment granted (D.D.C. Apr. 11, 1988).
(2722)	(b)(1), E.O. 12356, (b)(5), deliberative process, in camera inspection, incorporation by reference, reasonably segregable, Vaughn index	Washington Post Co. v. DOD, Civil No. 84-2949 (D.D.C. Feb. 25, 1987).
(2723)	(b)(1), E.O. 12356, adequacy of request, in camera affidavit, Vaughn index, waiver of exemption (unauthorized release)	Washington Post Co. v. DOD, Civil No. 84-3400 (D.D.C. Apr. 1, 1985), in camera affidavit ordered (D.D.C. Aug. 2, 1985), partial summary judgment granted (D.D.C. Sept. 22, 1986), order appointing special master (D.D.C. Jan. 15, 1988), petition for writ of mandamus denied sub nom. In re: United States DOD, 848 F.2d 232 (D.C. Cir. 1988), on in camera inspection (D.D.C. June 10, 1988), petition for reh'g denied, No. 88-5044 (D.C. Cir. Aug. 31, 1988).
(2724)	(b)(1), E.O. 12356, (b)(5), deliberative process, reasonably segregable, summary judgment, waiver of exemption	Washington Post Co. v. DOD, Civil No. 84-2403 (D.D.C. Apr. 15, 1988).
(2725)	(b)(3), Fed.R.Crim.P. 6(e), (b)(4), (b)(7), (b)(7)(B), (b)(7)(C), law enforcement amendments (1986), law enforcement purpose, promise of confidentiality, summary judgment, waiver of exemption	Washington Post Co. v. DOJ, Civil No. 84-3581 (D.D.C. Sept. 25, 1987) (magistrate's recommendation), adopted (D.D.C. Dec. 15, 1987).

(2726)	(b)(3), 22 U.S.C. §2671, 31 U.S.C. §107, improper withholding	Washington Post Co. v. Department of State, 501 F. Supp. 1152 (D.D.C. 1980), rev'd & remanded, 685 F.2d 698 (D.C. Cir. 1982), reh'g en banc denied, 685 F.2d 706 (D.C. Cir. 1982), cert. granted, 464 U.S. 812 (1983), vacated & remanded, 464 U.S. 979 (1983).
(2727)	(b)(6), de novo review, summary judgment	Washington Post Co. v. Department of State, 1 GDS ¶80,069 (D.D.C. 1980), aff'd, 647 F.2d 197 (D.C. Cir. 1981), rev'd & remanded, 456 U.S. 595 (1982), remanded mem., No. 80-1606 (D.C. Cir. Apr. 22, 1983), on remand, Civil No. 79-2688 (D.D.C. July 3, 1984), rev'd & remanded, 840 F.2d 26 (D.C. Cir. 1988).
(2728)	Personal records	Washington Post Co. v. Department of State, 632 F. Supp. 607 (D.D.C. 1986).
(2729)	(b)(5), deliberative process, incorporation by reference, waiver of exemption	Washington Post Co. v. Department of the Air Force, 617 F. Supp. 602 (D.D.C. 1985).
(2730)	Fee waiver	Washington Post Co. v. Department of the Army, Civil No. 85-3659 (D.D.C. Oct. 14, 1986).
(2731)	(b)(4), (b)(6), discovery/FOIA interface, summary judgment, waiver of exemption (failure to assert in litigation)	Washington Post Co. v. HHS, 2 GDS ¶81,047 (D.D.C. 1980), rev'd & remanded, 690 F.2d 252 (D.C. Cir. 1982), summary judgment granted, 603 F. Supp. 235 (D.D.C. 1985), rev'd & remanded, 795 F.2d 205 (D.C. Cir. 1986), summary judgment granted, Civil No. 80-1681 (D.D.C. Nov. 20, 1987), motion for reconsideration denied (D.D.C. Jan. 14, 1988).
(2732)	(a)(2)(A), (b)(4), (b)(5), (b)(6), agency, deliberative process, promise of confidentiality	Washington Research Project, Inc. v. HEW, 366 F. Supp. 929 (D.D.C. 1973), aff'd in part, rev'd in part & remanded, 504 F.2d 238 (D.C. Cir. 1974), cert. denied, 421 U.S. 963 (1975).
(2733)	Agency records, jurisdiction	Waters v. IRS, Civil No. 85-2031 (D.D.C. Nov. 26, 1985).
(2734)	Privacy Act access, agency records, duty to create a record, exhaustion of administrative remedies	Waters v. Panama Canal Comm'n, Civil No. 85-2029 (D.D.C. Nov. 26, 1985).

(2735)	(b)(2), (b)(3), 26 U.S.C. §6103(a), (b)(6), displacement of FOIA	Watkins v. Commissioner, Civil No. C81-0091-J (D. Utah Mar. 29, 1982).
(2736)	(b)(3), 26 U.S.C. §6103, displacement of FOIA	Watson v. IRS, 538 F. Supp. 817 (S.D. Tex. 1982).
(2737)	Fee waiver, proper party defendant	Watts v. Civiletti, 3 GDS ¶83,185 (M.D. La. 1980).
(2738)	(b)(5), (b)(7)(A), (b)(7)(C), attorney work-product privilege, inter- or intra-agency memoranda	Wayland v. NLRB, 2 GDS ¶81,119 (M.D. Tenn. 1981).
(2739)	(b)(5), (b)(7)(A), (b)(7)(B), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, assurance of confidentiality, attorney's fees, attorney work-product privilege, deliberative process, in camera inspection, incorporation by reference	Wayland v. NLRB, 627 F. Supp. 1473 (M.D. Tenn. 1986), subsequent decision, Civil No. 3-85-0553 (M.D. Tenn. Apr. 1, 1986), attorney's fees denied (M.D. Tenn. May 19, 1986).
(2740)	(b)(6), FOIA/PA interface	Weahkee v. Norton, 621 F.2d 1080 (10th Cir. 1980).
(2741)	Agency subpoena	Wearly v. FTC, 462 F. Supp. 589 (D.N.J. 1978), rev'd, 616 F.2d 662 (3d Cir. 1980), cert. denied, 449 U.S. 882 (1980).
(2742)	Attorney's fees	Weaver v. DOJ, Civil No. 85-992-C2 (E.D. Mo. Jan. 14, 1987).
(2743)	(b)(4), mootness	Webb v. HHS, 2 GDS ¶81,357 (D.D.C. 1981), aff'd, 696 F.2d 101 (D.C. Cir. 1982).
(2744)	(a)(4)(C), attorney's fees, de novo review, summary judgment, venue	Weber v. Coney, 642 F.2d 91 (5th Cir. 1981).
(2745)	(b)(5), deliberative process, discovery/ FOIA interface, equitable discretion, FOIA as a discovery tool, inter- or intra-agency memoranda	Weber Aircraft Corp. v. United States, 688 F.2d 638 (9th Cir. 1982), reh'g denied, No. 80-5744 (9th Cir. Dec. 3, 1982), rev'd, 465 U.S. 792 (1984).

(2746)	(b)(1), E.O. 12065, (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, in camera inspection, publication, waiver of exemption	Weberman v. FBI, 2 GDS ¶82,068 (S.D.N.Y. 1981).
(2747)	(b)(1), E.O. 12065, (b)(3), 18 U.S.C. §798, 50 U.S.C. §402, §403(d)(3), adequacy of agency affidavit, "Glomar" denial, in camera affidavit, proper party defendant	Weberman v. National Sec. Agency, 490 F. Supp. 9 (S.D.N.Y. 1980), rev'd & remanded mem., 646 F.2d 563 (2d Cir. 1980), on remand, 507 F. Supp. 117 (S.D.N.Y. 1981), summary judgment granted, 2 GDS ¶82,067 (S.D.N.Y. 1981), aff'd, 668 F.2d 676 (2d Cir. 1982).
(2748)	(b)(2), (b)(7), exhaustion of administrative remedies	Weberman v. United States Secret Serv., Civil No. 79-0779 (S.D.N.Y. Jan. 15, 1980).
(2749)	(b)(2), (b)(3), Fed. R.Crim.P. 6(e), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), exceptional circumstances/due diligence, proper party defendant	Webster v. DOJ, 3 GDS ¶83,195 (D.D.C. 1983).
(2750)	(b)(4), (b)(5), (b)(7), in camera inspection	Wecksler v. Shultz, 324 F. Supp. 1084 (D.D.C. 1971).
(2751)	(b)(1), E.O. 12065, "Glomar" denial	Weinberger v. Catholic Action/ Peace Educ. Project, 454 U.S. 139 (1981).
(2752)	(b)(1), (b)(3), 50 U.S.C. §403, (b)(6), agency records, duty to search, referral of request to another agency	Weisberg v. CIA, Civil No. 77-1997 (D.D.C. Jan. 4, 1979), aff'd, No. 79-1729 (D.C. Cir. May 30, 1980).
(2753)	(b)(1), (b)(7)	Weisberg v. DOJ, 489 F.2d 1195 (D.C. Cir. 1973), cert. denied, 416 U.S. 993 (1974).
(2754)	(b)(7), adequacy of agency affidavit, destruction of records, discovery in FOIA litigation, duty to create a record, duty to search, fee waiver, substantial compliance, summary judgment	Weisberg v. DOJ, Civil No. 75-0226 (D.D.C. July 15, 1975), remanded, 543 F.2d 308 (D.C. Cir. 1976), decision on remand, 438 F. Supp. 492 (D.D.C. 1977), rev'd, 627 F.2d 365 (D.C. Cir. 1980), summary judgment granted (D.D.C. Nov. 18, 1981), aff'd, 705 F.2d 1344 (D.C. Cir. 1983).

(2755)	(b)(1), (b)(3), 17 U.S.C. §1, (b)(4), (b)(7)(C), (b)(7)(D), (b)(7)(E), agency records, attorney's fees, discretionary release, duty to create a record, duty to search, exhaustion of administrative remedies, exceptional circumstances/due diligence, summary judgment, Vaughn index, waiver of exemption	Weisberg v. DOJ, Civil No. 75-1996 (D.D.C. Feb. 9, 1978), aff'd in part, rev'd in part, 631 F.2d 824 (D.C. Cir. 1980), Vaughn index ordered, 1 GDS ¶80,230 (D.D.C. 1980), subsequent decision, 2 GDS ¶82,055 (D.D.C. 1981), reh'g denied, 2 GDS ¶82,102 (D.D.C. 1982), aff'd in part & vacated & remanded in part, 745 F.2d 1476 (D.C. Cir. 1984), reh'g en banc denied, 763 F.2d 1436 (D.C. Cir. 1985), attorney's fees awarded (D.D.C. May 28, 1987), aff'd in part, remanded in part, 848 F.2d 1265 (D.C. Cir. 1988).
(2756)	(b)(1), E.O. 12065, (b)(7)(C), (b)(7)(D), publication	Weisberg v. DOJ, 3 GDS ¶82,335 (D.D.C. 1981), subsequent decision, 3 GDS ¶82,336 (D.D.C. 1981).
(2757)	Adequacy of request, duty to search	Weisberg v. DOJ, Civil No. 86-1547 (D.D.C. Jan. 8, 1987).
(2758)	(b)(3), 50 U.S.C. §403, (b)(5), attorney's fees, reasonably segregable	Weisberg v. GSA, Civil No. 75-1448 (D.D.C. Mar. 10, 1977), subsequent decision (D.D.C. May 12, 1978), aff'd, No. 81-1009 (D.C. Cir. Oct. 9, 1981).
(2759)	(b)(3), 17 U.S.C. §101, adequacy of agency affidavit, attorney's fees, discovery in FOIA litigation	Weisberg v. Webster, Civil Nos. 78-332, 78-420 (D.D.C. July 9, 1982), summary judgment denied, 3 GDS ¶82,528 (D.D.C. 1982), attorney's fees awarded (D.D.C. Apr. 28, 1983), dismissed (D.D.C. Nov. 18, 1983), aff'd & remanded, 749 F.2d 864 (D.C. Cir. 1984), on remand (D.D.C. June 13, 1985), motion for reconsideration denied (D.D.C. Mar. 4, 1986).
(2760)	Attorney's fees	Weiss v. Kelly, Civil No. 75-1481 (D.D.C. Jan. 13, 1978).
(2761)	(b)(1), E.O. 11652, (b)(3), 50 U.S.C. §403(d)(3), (b)(6), (b)(7), in camera inspection, law enforcement purpose	Weissman v. CIA, Civil No. 75-1583 (D.D.C. Mar. 17, 1976), clarified (D.D.C. Apr. 14, 1976), aff'd & remanded, 565 F.2d 692 (D.C. Cir. 1977).
(2762)	(b)(6), (b)(7)(C), (b)(7)(D)	Welch v. DOJ, 1 GDS ¶80,070 (E.D. Va. 1980).
(2763)	(a)(1)(D), (a)(2), publication	Welch v. United States, 750 F.2d 1101 (1st Cir. 1985).
(2764)	(b)(3), 15 U.S.C. §2055(b)(1)	Welder v. Consumer Prod. Safety Comm'n, Civil No. 82-40225 (E.D. Mich. Apr. 13, 1983) (magistrate's report adopted).

(2765)	(b)(5), (b)(7), adequacy of request, deliberative process, in camera inspection	Wellford v. Hardin, 315 F. Supp. 175 (D. Md. 1970), aff'd, 444 F.2d 21 (4th Cir. 1971), on remand, 330 F. Supp. 915 (D. Md. 1971).
(2766)	(b)(7)	Wellford v. Hardin, 315 F. Supp. 768 (D.D.C. 1970).
(2767)	(b)(7), law enforcement purpose	Wellman Indus. v. NLRB, Civil No. 73-0074 (D.S.C. Apr. 13, 1973), aff'd, 490 F.2d 427 (4th Cir. 1974), cert. denied, 419 U.S. 834 (1974).
(2768)	Privacy Act access, FOIA/PA interface, no record within scope of request, Vaughn index	Welsh v. IRS, Civil No. 85-1024-HB (D.N.M. Oct. 21, 1986).
(2769)	Privacy Act access, (b)(3), 5 U.S.C. §552a(j)(2), FOIA/PA interface	Wentz v. DEA, 3 GDS ¶83,122 (W.D. Wis. 1982), aff'd sub nom. Shapiro v. DEA, 721 F.2d 215 (7th Cir. 1983), vacated as moot, 469 U.S. 14 (1984) (consolidated), on remand, 762 F.2d 611 (7th Cir. 1985).
(2770)	Attorney's fees	Werner-Continental, Inc. v. Farkas, 478 F. Supp. 815 (S.D. Ohio 1979), aff'd, No. 80-3061 (6th Cir. June 30, 1981).
(2771)	(b)(3), 26 U.S.C. §6103, (b)(5), deliberative process	West v. IRS, Civil No. 84-1219PA (D. Or. Sept. 10, 1985).
(2772)	Exhaustion of administrative remedies	West v. Koop, Civil No. 85-1494 (D.D.C. July 29, 1985).
(2773)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	Westchester Gen. Hosp., Inc. v. HEW, 434 F. Supp. 435 (M.D. Fla. 1977), dismissed, 464 F. Supp. 236 (M.D. Fla. 1979).
(2774)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §2000e, 44 U.S.C. §3508(a), (b)(4), (b)(6), discretionary release, reasonably segregable	Westinghouse Elec. Corp. v. Brown, 443 F. Supp. 1225 (E.D. Va. 1977).
(2775)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), (b)(6)	Westinghouse Elec. Corp. v. Brown, Civil No. 78-3799-LEW (C.D. Cal. Apr. 13, 1979).

(2776)	(b)(1), (b)(3), 50 U.S.C. §403(d)(3), (b)(4), adequacy of agency affidavit, agency records, in camera inspection, Vaughn index	Westinghouse Elec. Corp. v. CIA, 2 GDS ¶81,329 (D.D.C. 1981).
(2777)	Attorney's fees	Westinghouse Elec. Corp. v. NLRB, 497 F. Supp. 82 (W.D. Pa. 1980).
(2778)	Reverse FOIA, (b)(4), discretionary release	Westinghouse Elec. Corp. v. NRC, 555 F.2d 82 (3d Cir. 1977).
(2779)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, 42 U.S.C. §2000e-8(e), (b)(4)	Westinghouse Elec. Corp. v. Schlesinger, 392 F. Supp. 1246 (E.D. Va. 1974), aff'd, 542 F.2d 1190 (4th Cir. 1976), cert. denied, 431 U.S. 924 (1977).
(2780)	Discovery/FOIA interface	Westvaco v. United States, 75-2 U.S. Tax Cas. (CCH) ¶9537 (Ct. Cl. 1975).
(2781)	Case or controversy	Wham v. United States Postal Serv., Civil No. 77-1490 (D.S.C. Feb. 22, 1978).
(2782)	(a)(1)(D), publication	Whelan v. Brinegar, 538 F.2d 924 (2d Cir. 1976).
(2783)	(a)(1)(D), publication	White v. Bowen, 636 F. Supp. 1235 (S.D.N.Y. 1986).
(2784)	(b)(2), (b)(3), 18 U.S.C. §4208(b)(2), 28 U.S.C. §534, (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, deliberative process, FOIA/PA interface, judicial records, waiver of exemption (failure to assert in litigation)	White v. DOJ, 3 GDS ¶83,127 (D.D.C. 1983).
(2785)	(b)(3), 18 U.S.C. §4208(b), Fed.R.Crim. P. 32, (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), adequacy of agency affidavit, waiver of exemption (failure to assert in litigation)	White v. DOJ, Civil No. 83-2703 (D.D.C. Dec. 4, 1984), partial summary judgment granted, 606 F. Supp. 880 (D.D.C. 1985), partial summary judgment granted (D.D.C. Apr. 23, 1985), summary allowance of attorney's fees denied (D.D.C. June 26, 1985).

(2786)	(b)(2), (b)(3), Fed.R. Crim.P. 6(e), (b)(5), (b)(7)(C), (b)(7)(D), assurance of confidentiality, attorney work-product privilege, deliberative process, reasonably segregable, Vaughn index	White v. DOJ, Civil No. 84-2746 (D.D.C. Feb. 25, 1986).
(2787)	(b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(A), (b)(7)(C), deliberative process, displacement of FOIA, Vaughn index	White v. IRS, 528 F. Supp. 119 (N.D. Ohio 1981), aff'd, 707 F.2d 897 (6th Cir. 1983).
(2788)	Adequacy of request, exhaustion of administrative remedies, failure to meet time limits	White v. Loury, 42 A.F.T.R. 2d 78-5324 (N.D. Ohio 1978).
(2789)	Privacy Act access, waiver of exemption (administrative release)	White v. OPM, 1 GDS ¶80,267 (D.D.C. 1980), aff'd, Nos. 80-2349, 80-2436 (D.C. Cir. June 29, 1981), reh'g denied, 2 GDS ¶81,393 (D.C. Cir. 1981).
(2790)	Jurisdiction, proper party defendant	White v. United States, 1 GDS ¶80,160 (N.D. Ohio 1980).
(2791)	Agency	Wiebusch v. Osage Prod. Credit Ass'n, Civil No. 78-0945-W-1 (W.D. Mo. May 7, 1979).
(2792)	(b)(1), (b)(2), (b)(3), (b)(7)(C), (b)(7)(D), law enforcement amendments (1986), summary judgment	Wiener v. FBI, Civil No. 83-1720-RMT (C.D. Cal. Feb. 29, 1988).
(2793)	Privacy Act access, (b)(2), (b)(3), 5 U.S.C. §552a(j)(2), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), assurance of confidentiality, FOIA/PA interface, "mosaic," reasonably segregable, waiver of exemption	Wightman v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 83-1701-MA (D. Mass. Mar. 12, 1984), aff'd in part & remanded in part, 755 F.2d 979 (1st Cir. 1985), summary judgment granted (D. Mass. July 31, 1985).
(2794)	(b)(2), attorney's fees, disciplinary proceedings	Wilder v. Commissioner, 601 F. Supp. 241 (M.D. Ala. 1984).
(2795)	(b)(2), (b)(3), 26 U.S.C. §6103, (b)(5), attorney-client privilege, Vaughn index	Wilder v. Commissioner, Civil No. 84-H-1168-N (M.D. Ala. Nov. 30, 1984), summary judgment granted, 607 F. Supp. 1013 (M.D. Ala. 1985).

(2796)	(b)(5)	Wiley v. United States Parole Comm'n, Civil No. 85-3724 (D.D.C. Sept. 18, 1986).
(2797)	(b)(5), inter- or intra-agency memoranda, stay pending appeal	Wilkins v. DOJ, Civil No. 85-3484 (D.D.C. Dec. 4, 1985), dismissed (D.D.C. Sept. 17, 1986).
(2798)	(b)(1), E.O. 12356, (b)(2), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, assurance of confidentiality, in camera inspection, law enforcement purpose, reasonably segregable, waiver of exemption	Wilkinson v. FBI, 633 F. Supp. 336 (C.D. Cal. 1986), on in camera inspection, Civil No. 80-1048-AWT (C.D. Cal. June 17, 1987).
(2799)	(a)(2)(A), (b)(3), 26 U.S.C. §6103, burden of proof, duty to create a record, duty to search, in camera inspection, reasonably segregable, summary judgment	Willamette Indus. v. United States, Civil No. 78-0336 (D. Or. Apr. 3, 1979), subsequent decision, 530 F. Supp. 904 (D. Or. 1981), aff'd, 689 F.2d 865 (9th Cir. 1982), cert. denied, 460 U.S. 1052 (1983).
(2800)	(b)(7)(A), in camera inspection, summary judgment	Willard v. IRS, 776 F.2d 100 (4th Cir. 1985).
(2801)	Attorney's fees	Williams v. Andrus, 3 GDS ¶82,511 (W.D. Mich. 1980).
(2802)	No record within scope of request	Williams v. Bureau of the Census, Civil No. 77-0027 (D.D.C. Mar. 3, 1977).
(2803)	No record within scope of request	Williams v. CIA, 2 GDS ¶81,203 (D.D.C. 1981).
(2804)	Adequacy of agency affidavit, burden of proof, no record within scope of request	Williams v. DOJ, 2 GDS ¶81,204 (D.D.C. 1981).
(2805)	(b)(5), (b)(6), attorney work-product privilege, burden of proof, deliberative process, waiver of exemption	Williams v. DOJ, 556 F. Supp. 63 (D.D.C. 1982).

(2806)	(b)(2), (b)(3), Fed.R.Crim.P. 6(e), (b)(5), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F), deliberative process, law enforcement purpose, summary judgment, waiver of exemption	Williams v. DOJ, Civil No. 85-0620 (D.D.C. Nov. 7, 1985), aff'd, No. 85-6154 (D.C. Cir. May 18, 1988).
(2807)	(b)(5), (b)(7)(C), deliberative process	Williams v. Department of Labor, 23 Empl. Prac. Dec. (CCH) ¶30,984 (D.D.C. 1980).
(2808)	(b)(2), (b)(7)(C), (b)(7)(D), (b)(7)(F), duty to search	Williams v. DEA, Civil No. 81-0309 (D.D.C. July 8, 1981), subsequent decision, 3 GDS ¶82,295 (D.D.C. 1982).
(2809)	Duty to search	Williams v. FBI, 2 GDS ¶82,043 (D.D.C. 1981).
(2810)	(b)(1), (b)(2), (b)(7), (b)(7)(C), (b)(7)(D), (b)(7)(E), adequacy of agency affidavit, assurance of confidentiality, Congressional records, law enforcement purpose, nexus test	Williams v. FBI, Civil Nos. N-79-74, N-79-78, N-79-281 (D. Conn. Apr. 13, 1983), magistrate's ruling adopted (D. Conn. May 16, 1983), rev'd & remanded, 730 F.2d 882 (2d Cir. 1984).
(2811)	(b)(7), discovery/ FOIA interface, law enforcement purpose	Williams v. IRS, 345 F. Supp. 591 (D. Del. 1972), aff'd, 479 F.2d 317 (3d Cir. 1973), cert. denied sub nom. Donlon v. IRS, 414 U.S. 1024 (1973).
(2812)	(b)(7)(C), (b)(7)(D), proper party defendant, proper service of process	Williams v. McCreight, 1 GDS ¶80,037 (D.D.C. 1980).
(2813)	FOIA/PA interface	Williams v. United States, Civil No. H-80-249 (D. Conn. Apr. 10, 1984).
(2814)	Attorney's fees	Wilms v. Bowen, Civil No. C85-3331 (N.D. Ohio Dec. 12, 1986) (magistrate's recommendation), adopted (N.D. Ohio Jan. 13, 1987).
(2815)	(b)(7), (b)(7)(C), (b)(7)(D), law enforcement purpose, proper party defendant	Wilson v. Bell, 3 GDS ¶83,025 (S.D. Tex. 1982).

(2816)	(b)(5), adequacy of agency affidavit, attorney work-product privilege, deliberative process, inter- or intra-agency memoranda, reasonably segregable	Wilson v. DOE, Civil No. 84-3163 (D.D.C. Jan. 28, 1985).
(2817)	Duty to search, improper withholding, jurisdiction	Wilson v. United States, Civil No. 83-1385 (D.D.C. May 9, 1984).
(2818)	Summary judgment	Wilson v. United States, Civil No. 83-2015 (C.D. Ill. Mar. 13, 1984).
(2819)	(a)(2)(C), (b)(2), (b)(7), (b)(7)(E), reasonably segregable, summary judgment	Windels, Marx, Davies & Ives v. Department of Commerce, 576 F. Supp. 405 (D.D.C. 1983).
(2820)	(b)(6), equitable discretion	Wine Hobby USA, Inc. v. Bureau of Alcohol, Tobacco & Firearms, 363 F. Supp. 231 (E.D. Pa. 1973), rev'd sub nom. Wine Hobby USA, Inc. v. IRS, 502 F.2d 133 (3d Cir. 1974).
(2821)	Fee waiver	Winslow v. Department of the Army, 3 GDS ¶82,331 (S.D. Fla. 1981).
(2822)	(b)(1), E.O. 12356, (b)(3), 18 U.S.C. §798, 50 U.S.C. §403(d)(3), reasonably segregable, Vaughn index	Winter v. National Sec. Agency/Cent. Sec. Sys., 569 F. Supp. 545 (S.D. Cal. 1983).
(2823)	(b)(3), Fed.R.Crim.P. 6(e), (b)(7)(C), (b)(7)(D), agency records, discovery in FOIA litigation, "mosaic"	Wixom v. Bell, Civil No. 76-1467 (D.D.C. Feb. 5, 1979), protective order granted sub nom. Wixom v. Civiletti, 1 GDS ¶79,201 (D.D.C. 1979), subsequent decision, 1 GDS ¶79,202 (D.D.C. 1979), summary judgment granted, 1 GDS ¶79,203 (D.D.C. 1979).
(2824)	(b)(2), (b)(7), in camera inspection, proper party defendant, Vaughn index	Wogamon v. DEA, Civil No. 77-111-BLG (D. Mont. 1979).
(2825)	Proper party defendant, Vaughn index	Wogamon v. FBI, Civil No. 77-113-BLG (D. Mont. July 2, 1979).
(2826)	Privacy Act access, (b)(3), 26 U.S.C. §6103(e)(6), (b)(7)(A), displacement of FOIA, in camera affidavit	Wohlgemuth v. IRS, 1 GDS ¶80,117 (N.D. Ohio 1980).

(2827)	(b)(7), (b)(7)(D), attorney's fees, in camera inspection	Wojtczak v. DOJ, 548 F. Supp. 143 (E.D. Pa. 1982).
(2828)	(b)(1), E.O. 11652, res judicata	Wolfe v. Froehlke, 358 F. Supp. 1318 (D.D.C. 1973), aff'd, 510 F.2d 654 (D.C. Cir. 1974).
(2829)	Personal records	Wolfe v. HHS, 539 F. Supp. 276 (D.D.C. 1982), aff'd, 711 F.2d 1077 (D.C. Cir. 1983).
(2830)	Attorney's fees	Wolfe v. HHS, Civil No. 80-1753 (D.D.C. Oct. 11, 1983).
(2831)	(b)(5), deliberative process, exhaustion of administrative remedies	Wolfe v. HHS, 630 F. Supp. 546 (D.D.C. 1985), aff'd, 815 F.2d 1527 (D.C. Cir. 1987), vacated & reh'g en banc granted, 815 F.2d 1527 (D.C. Cir. 1987), rev'd, 839 F.2d 768 (D.C. Cir. 1988) (en banc).
(2832)	(b)(3), 26 U.S.C. §6103, (b)(7)(C), displacement of FOIA	Wolfe v. IRS, 1 GDS ¶80,116 (D. Colo. 1980).
(2833)	(b)(5), agency	Wolfe v. Weinberger, 403 F. Supp. 238 (D.D.C. 1975).
(2834)	(b)(1), E.O. 12065, (b)(7)(C), (b)(7)(D), attorney's fees, belated classification, in camera inspection, pro se litigant	Wolfel v. FBI, Civil No. C-1-81-373 (S.D. Ohio Jan. 26, 1982), on in camera inspection (S.D. Ohio Feb. 24, 1982), motion to amend denied (S.D. Ohio Apr. 27, 1982), aff'd sub nom. Wolfel v. United States, 711 F.2d 66 (6th Cir. 1983).
(2835)	Attorney's fees	Wolfson v. DOJ, 1 GDS ¶79,111 (D.D.C. 1979).
(2836)	FOIA/PA interface	Woo v. Reinhardt, 2 GDS ¶82,080 (D.D.C. 1981).
(2837)	(b)(1), E.O. 11652, (b)(3), 50 U.S.C. §403, "Glomar" denial, Vaughn index	Wood v. CIA, Civil No. 75-366-T-K (M.D. Fla. Jan. 6, 1977), aff'd mem., No. 79-2219 (5th Cir. 1980).
(2838)	Fee waiver	Wooden v. Office of Juvenile Justice Assistance, 2 GDS ¶81,123 (D.D.C. 1981).
(2839)	(a)(1)(C), publication	Woods v. Chairman, United States Parole Comm'n, Civil No. 78-1907 (D.D.C. Dec. 20, 1979).
(2840)	(b)(1), (b)(7)(C), (b)(7)(D), attorney's fees	Woodward v. FBI, Civil No. N-81-120 (D. Conn. Feb. 13, 1986).
(2841)	(b)(1), E.O. 11652, (b)(3), 50 U.S.C. §403, "Glomar" denial	Woolbright v. CIA, Civil No. 76-2448-LEW (C.D. Cal. Jan. 12, 1977).

(2842)	(b)(7)(C), (b)(7)(D), (b)(7)(E), assurance of confidentiality, in camera inspection	World Publishing Co. v. DOJ, Civil No. 81-C-601-C (N.D. Okla. July 23, 1982).
(2843)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), de novo review	Worthington Compressors, Inc. v. Costle, 662 F.2d 45 (D.C. Cir. 1981), supplemental decision sub nom. Worthington Compressors, Inc. v. Gorsuch, 668 F.2d 1371 (D.C. Cir. 1981).
(2844)	Privacy Act access, agency, FOIA/PA interface	Wren v. Harris, Civil No. 80-323-C (D.N.M. Apr. 14, 1981), rev'd & remanded, 675 F.2d 1144 (10th Cir. 1982), summary judgment granted (D.N.M. Feb. 11, 1983), aff'd, 744 F.2d 86 (10th Cir. 1984).
(2845)	Exhaustion of administrative remedies, proper party defendant	Wrenn v. United States, Civil No. 84-2934 (D.D.C. Oct. 22, 1985).
(2846)	Attorney's fees	Wright v. Defense Logistics Agency, 3 GDS ¶82,367 (E.D. Pa. 1981), reconsideration denied, 3 GDS ¶82,368 (E.D. Pa. 1982), aff'd mem., 707 F.2d 1398 (3d Cir. 1983), cert. denied, 464 U.S. 817 (1983).
(2847)	Privacy Act access, adequacy of agency affidavit, duty to search	Wright v. DOJ, 2 GDS ¶81,021 (D.D.C. 1980).
(2848)	Mootness	Wright v. DOJ, No. 83-1093 (D.C. Cir. Apr. 11, 1983).
(2849)	Summary judgment	Wright v. Federal Bureau of Prisons, Civil No. 84-3898 (D.D.C. May 6, 1985).
(2850)	Mootness	Wright v. IRS, Civil Nos. 81-1616, 81-1617 (E.D.N.Y. May 11, 1984).
(2851)	(b)(7)(A), summary judgment, Vaughn index	Wright v. OSHA, Civil No. 85-C-7163 (N.D. Ill. June 30, 1986), aff'd in part, vacated in part & remanded, 822 F.2d 642 (7th Cir. 1987).
(2852)	(b)(5), deliberative process	Wu v. Keeney, 384 F. Supp. 1161 (D.D.C. 1974), aff'd mem., 527 F.2d 854 (D.C. Cir. 1975).
(2853)	(b)(5), deliberative process, inter- or intra-agency memoranda	Wu v. National Endowment for the Humanities, 460 F.2d 1030 (5th Cir. 1972), cert. denied, 410 U.S. 926 (1973).

(2854)	(b)(7)(A), (b)(7)(C), (b)(7)(D), FOIA as a discovery tool, jurisdiction	Xidex Corp. v. NLRB, 83 Lab. Cas. (CCH) ¶10,577 (N.D. Cal. 1978).
(2855)	Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4), preliminary injunction	XYZ Corp. v. Consumers Prod. Safety Comm'n, Civil No. 87-94-D-0 (N.D. Miss. Sept. 22, 1987), remanded with instructions to vacate as moot, No. 87-4728 (5th Cir. Jan. 3, 1988).
(2856)	(b)(5), deliberative process, discovery/ FOIA interface	Yamaha Int'l Corp. v. FTC, Civil No. 74-0475 (D.D.C. Dec. 9, 1975).
(2857)	(b)(4)	Yamamoto v. IRS, Civil No. 83-2160 (D.D.C. Nov. 16, 1983).
(2858)	Vaughn index	Yarbrough v. IRS, Civil No. 84-HM-5697-NE (N.D. Ala. Nov. 5, 1984).
(2859)	Privacy Act access	Yarrington v. FBI, Civil No. 80-2599 (E.D. La. 1981), aff'd, No. 81-3104 (5th Cir. Jan. 21, 1982).
(2860)	(b)(7)(C), (b)(7)(D), reasonably segregable	Yarrow v. DOJ, Civil No. 83-2491 (D.D.C. May 29, 1985).
(2861)	(a)(1)(D), publication	Yassini v. Crosland, 618 F.2d 1356 (9th Cir. 1980).
(2862)	(b)(2), (b)(7)(A), (b)(7)(C), (b)(7)(D), duty to create a record, in camera affidavit, reasonably segregable	Yeager v. DEA, 1 GDS ¶80,283 (D.D.C. 1980), aff'd, 678 F.2d 315 (D.C. Cir. 1982).
(2863)	(b)(5), deliberative process	Yoho v. United States, Civil No. 84-0019-W (N.D. W. Va. Apr. 10, 1986).
(2864)	Privacy Act access, (b)(2), (b)(3), 26 U.S.C. §6103(a), §6103(b)(2), §6103(e)(7), (b)(5), (b)(7)(A), (b)(7)(E), adequacy of request, deliberative process, exhaustion of administrative remedies	Yon v. IRS, 671 F. Supp. 1344 (S.D. Fla. 1987).
(2865)	Summary judgment	Young v. Smith, Civil No. 82-3180 (D.D.C. May 24, 1984).
(2866)	(b)(3), 13 U.S.C. §301(g), 15 U.S.C. §176, 22 U.S.C. §3104, 50 U.S.C. app. §2411(c), reasonably segregable	Young Conservative Found. v. Department of Commerce, Civil No. 85-3982 (D.D.C. Mar. 25, 1987).

(2867)	(b)(6), (b)(7)(C), (b)(7)(D), attorney's fees, "Glomar" denial	Yurky v. FBI, Civil No. 84-2893 (D.D.C. Apr. 18, 1985), summary judgment denied (D.D.C. Aug. 28, 1985), remanded, No. 85-6099 (D.C. Cir. Mar. 27, 1986), attorney's fees denied (D.D.C. Sept. 21, 1987), vacated in part (D.D.C. Sept. 23, 1987).
(2868)	(a)(1)(D), publication	Zaharakis v. Heckler, 744 F.2d 711 (9th Cir. 1984).
(2869)	(b)(5), deliberative process, inter- or intra-agency memoranda	Zaharoff v. Bell, 1 GDS ¶79,225 (N.D. Cal. 1979).
(2870)	(b)(3), 26 U.S.C. §6103, displacement of FOIA, improper withholding	Zale Corp. v. IRS, 481 F. Supp. 486 (D.D.C. 1979).
(2871)	(b)(2), (b)(7)(E)	Zamnick v. Department of State, 1 GDS ¶79,114 (D.D.C. 1979).
(2872)	(b)(1), (b)(3), 50 U.S.C. §403, (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E)	Zeitlin v. CIA, Civil No. 77-C-255 (W.D. Wis. Aug. 29, 1980), summary judgment granted (W.D. Wis. Mar. 12, 1981).
(2873)	Attorney's fees	Zeldin v. Hoffman, Civil No. 75-1913 (D.D.C. June 25, 1976).
(2874)	Privacy Act access, (b)(5), (b)(7)(A), (b)(7)(C)	Zeller v. United States, 467 F. Supp. 487 (E.D.N.Y. 1979).
(2875)	Adequacy of request, case or controversy, declaratory relief, duty to create a record, duty to search, mootness, summary judgment	Zemansky v. EPA, 767 F.2d 569 (9th Cir. 1985).
(2876)	Attorney's fees	Zentek Corp. v. IRS, 596 F. Supp. 324 (E.D. Mich. 1984).
(2877)	(b)(2), (b)(3), 26 U.S.C. §6103, (b)(5), (b)(7)(C), deliberative process, "mosaic," reasonably segregable, venue	Zorn v. IRS, 2 GDS ¶81,070 (D.D.C. 1981), on motion for summary judgment, 2 GDS ¶82,240 (D.D.C. 1982).
(2878)	(a)(1)(D)	Zurica v. United States Parole Comm'n, 668 F. Supp. 107 (D. Conn. 1986).

OVERVIEW LIST OF SELECTED FOIA DECISIONS

The decisions listed below are suggested as basic reading for those who are new to FOIA work or are in need of a refresher in the field. It is not intended to be a list of leading decisions. Rather, the purpose of the list is to provide a balanced introduction, and only an introduction, to the principal recurring issues in FOIA litigation. It should be remembered that there are numerous unresolved issues under the FOIA and that the interpretations set forth in the various decisions listed below are not in all instances universally accepted.

(b)(1), E.O. 12065, E.O. 12356, (b)(5), deliberative process	Afshar v. Department of State, 702 F.2d 1125 (D.C. Cir. 1983).
(b)(3)	American Jewish Congress v. Kreps, 574 F.2d 624 (D.C. Cir. 1978).
(b)(7)(C), "Glomar" denial	Antonelli v. FBI, 721 F.2d 615 (7th Cir. 1983), cert. denied, 467 U.S. 1210 (1984).
Personal records	Bureau of Nat'l Affairs, Inc. v. DOJ, 742 F.2d 1484 (D.C. Cir. 1984).
(b)(7)(A)	Campbell v. HHS, 682 F.2d 256 (D.C. Cir. 1982).
(b)(3), 50 U.S.C. §403(d)(3)	CIA v. Sims, 471 U.S. 159 (1985).
Reverse FOIA, (b)(3). 18 U.S.C. §1905, (b)(4), discretionary release	Chrysler Corp. v. Brown, 441 U.S. 281 (1979).
Reverse FOIA, (b)(3), 18 U.S.C. §1905, (b)(4)	CNA Fin. Corp. v. Donovan, 830 F.2d 1132 (D.C. Cir. 1987), cert. denied sub nom. CNA Fin. Corp. v. McLaughlin, 108 S. Ct. 1270 (1988).
(b)(5), attorney-client privilege, attorney work-product privilege, deliberative process	Coastal States Gas Corp. v. DOE, 617 F.2d 854 (D.C. Cir. 1980).
(b)(6)	Core v. United States Postal Serv., 730 F.2d 946 (4th Cir. 1984).
(b)(2)	Crooker v. Bureau of Alcohol, Tobacco & Firearms, 670 F.2d 1051 (D.C. Cir. 1981) (en banc).
(b)(7)(A)	Crooker v. Bureau of Alcohol, Tobacco & Firearms, 789 F.2d 64 (D.C. Cir. 1986).
(b)(6)	Department of State v. Washington Post Co., 456 U.S. 595 (1982).
(b)(2), (b)(6), reasonably segregable	Department of the Air Force v. Rose, 425 U.S. 352 (1976).

(b)(7), (b)(7)(C), law enforcement purpose	FBI v. Abramson, 456 U.S. 615 (1982).
(b)(5), commercial privilege	Federal Open Market Comm. v. Merrill, 443 U.S. 340 (1979).
(b)(5), attorney work-product privilege	FTC v. Grolier Inc., 462 U.S. 19 (1983).
Agency, agency records	Forsham v. Harris, 445 U.S. 169 (1980).
(b)(2)	Founding Church of Scientology v. Smith, 721 F.2d 828 (D.C. Cir. 1983).
(b)(3), Fed.R.Crim.P. 6(e), (b)(7)(C)	Fund for Constitutional Gov't v. NARS, 656 F.2d 856 (D.C. Cir. 1981).
(b)(3), 50 U.S.C. §403, "Glomar" denial	Gardels v. CIA, 689 F.2d 1100 (D.C. Cir. 1982).
Agency records, reverse FOIA	General Elec. Co. v. NRC, 750 F.2d 1394 (7th Cir. 1985).
(b)(1), Congressional records, duty to search	Goland v. CIA, 607 F.2d 339 (D.C. Cir. 1978), vacated in part & reh'g denied, 607 F.2d 367 (D.C. Cir. 1979), cert. denied, 445 U.S. 927 (1980).
(b)(1), E.O. 12356, deference to agency judgment	Goldberg v. Department of State, 818 F.2d 71 (D.C. Cir. 1987), cert. denied, 108 S. Ct. 1075 (1988).
Improper withholding	GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375 (1980).
(b)(3), 50 U.S.C. §403, adequacy of agency affidavit, "mosaic," summary judgment	Halperin v. CIA, 629 F.2d 144 (D.C. Cir. 1980).
Equitable discretion	Halperin v. Department of State, 565 F.2d 699 (D.C. Cir. 1977), cert. denied, 434 U.S. 1046 (1978).
(b)(6)	Heights Community Congress v. VA, 732 F.2d 526 (6th Cir.), cert. denied, 469 U.S. 1034 (1984).
In camera inspection	Ingle v. DOJ, 698 F.2d 259 (6th Cir. 1983).
(b)(7)(D)	Irons v. FBI, 811 F.2d 681 (1st Cir. 1987).
(b)(7)(D), assurance of confidentiality, Vaughn index	Keys v. DOJ, 830 F.2d 337 (D.C. Cir. 1987).
Agency, improper withholding, personal records	Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136 (1980).

Waiver of exemption (unauthorized release)	Laborers' Int'l Union v. DOJ, 578 F. Supp. 52 (D.D.C. 1983), aff'd, 772 F.2d 919 (D.C. Cir. 1984).
(b)(1), E.O. 11652, (b)(2), (b)(7), (b)(7)(C), (b)(7)(D), belated classification, law enforcement purpose	Lesar v. DOJ, 455 F. Supp. 921 (D.D.C. 1978), aff'd, 636 F.2d 472 (D.C. Cir. 1980).
(b)(5), attorney work-product privilege	Martin v. Office of Special Counsel, 819 F.2d 1181 (D.C. Cir. 1987).
Fee waiver	McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282 (9th Cir. 1987).
(b)(5), deliberative process, reasonably segregable	Montrose Chem. Corp. v. Train, 491 F.2d 63 (D.C. Cir. 1974).
(b)(7)(A)	NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214 (1978).
(a)(2)(A), (b)(5), deliberative process	NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975).
(b)(4)	National Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974).
Fee waiver	National Treasury Employees Union v. Griffin, 811 F.2d 644 (D.C. Cir. 1983).
(b)(2)	National Treasury Employees Union v. United States Customs Serv., 802 F.2d 525 (D.C. Cir. 1986).
(b)(4)	9 to 5 Org. for Women Office Workers v. Board of Governors of the Fed. Reserve Sys., 721 F.2d 1 (1st Cir. 1983).
(b)(5), Congressional records	Paisley v. CIA, 712 F.2d 686 (D.C. Cir. 1983), motion to intervene granted, reh'g granted & vacated in part, 724 F.2d 201 (D.C. Cir. 1984).
Injunction against improper agency practices, jurisdiction	Payne Enters. v. United States, 837 F.2d 486 (D.C. Cir. 1988).
(b)(7), law enforcement purpose	Pratt v. Webster, 673 F.2d 408 (D.C. Cir. 1982).
(a)(2)(A), (b)(5)	Renegotiation Bd. v. Grumman Aircraft Eng'g Corp., 421 U.S. 168 (1975).
(b)(6)	Ripskis v. HUD, 746 F.2d 1 (D.C. Cir. 1984).

(b)(5), deliberative process	Russell v. Department of the Air Force, 682 F.2d 1045 (D.C. Cir. 1982).
(b)(5), agency, waiver of exemption (failure to assert in litigation)	Ryan v. DOJ, 617 F.2d 781 (D.C. Cir. 1980).
Waiver of exemption (failure to assert in litigation)	Schanen v. DOJ, 762 F.2d 805 (9th Cir.), order withdrawn, 773 F.2d 1065 (9th Cir. 1985), order reaff'd as modified & remanded, 798 F.2d 348 (9th Cir. 1986) (as amended).
(b)(5), deliberative process	Schell v. HHS, 843 F.2d 933 (6th Cir. 1988).
(b)(3), Fed.R.Crim.P. 6(e), (b)(5), attorney work-product privilege, deliberative process	Senate of Puerto Rico v. DOJ, 823 F.2d 574 (D.C. Cir. 1987).
(b)(7)(D)	Shaw v. FBI, 749 F.2d 58 (D.C. Cir. 1984).
(b)(5), deliberative process, incorporation by reference	Skelton v. United States Postal Serv., 678 F.2d 35 (5th Cir. 1982).
Agency, equitable discretion	Soucie v. David, 448 F.2d 1067 (D.C. Cir. 1971).
Statute of limitations	Spannaus v. DOJ, 813 F.2d 1285 (D.C. Cir. 1987).
(b)(6), law enforcement purpose	Stern v. FBI, 737 F.2d 84 (D.C. Cir. 1984).
Exhaustion of administrative remedies	Tuchinsky v. Selective Serv. Sys., 418 F.2d 155 (7th Cir. 1969).
FOIA as a discovery tool	United States v. United States Dist. Court, 717 F.2d 478 (9th Cir. 1983).
Burden of proof, Vaughn index	Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).
(b)(5), FOIA as a discovery tool	Weber Aircraft Corp. v. United States, 465 U.S. 792 (1984).
Attorney's fees	Weisberg v. DOJ, 848 F.2d 1265 (D.C. Cir. 1988).
Reasonably segregable	Wightman v. Bureau of Alcohol, Tobacco & Firearms, 755 F.2d 979 (1st Cir. 1985).
Agency records	Wolfe v. HHS, 711 F.2d 1077 (D.C. Cir. 1983).
(b)(5), deliberative process	Wolfe v. HHS, 839 F.2d 768 (D.C. Cir. 1988) (en banc).

PRIVACY ACT CASES

Routine use	Aaron v. IRS, Civil No. 79-838-DWW (C.D. Cal. Dec. 29, 1980), aff'd, No. 79-3498 (9th Cir. Mar. 19, 1981).
Amendment of records, request for access	Abramsky v. Consumer Prod. Safety Comm'n, 478 F. Supp. 1040 (S.D.N.Y. 1979).
FOIA/PA interface	Adams v. FBI, Civil No. 78-0849 (D.D.C. Oct. 31, 1978).
Order of a court of competent jurisdiction	Adams v. United States Lines, Civil No. 80-0952 (E.D. La. Mar. 16, 1981).
Jurisdiction	Akutowicz v. Department of State, Civil No. H-86-518 (PCD) (D. Conn. Dec. 15, 1987).
Adverse effects, civil damages, exercise of First Amendment rights, records, system of records	Albright v. United States, Civil No. 78-0397 (D.D.C. Feb. 14, 1979), rev'd & remanded, 631 F.2d 915 (D.C. Cir. 1980), on remand, 558 F. Supp. 260 (D.D.C. 1982), aff'd, 732 F.2d 181 (D.C. Cir. 1984).
Social Security numbers	Alcaraz v. Block, 746 F.2d 593 (9th Cir. 1984).
Adverse effects, civil damages, collection of information from subject, exemption (k)(2)	Alexander v. IRS, Civil No. 86-0414-LFO (D.D.C. June 30, 1987).
Exemption (j)(2)	Alexander v. United States, 787 F.2d 1349 (9th Cir. 1986).
Exemption (j)(1)	Alford v. CIA, 610 F.2d 348 (5th Cir. 1980), cert. denied, 449 U.S. 854 (1980), reh'g denied, 449 U.S. 1027 (1980).
Amendment of records, failure to exhaust administrative remedies	Allen v. Henifin, 2 GDS ¶81,056 (D.D.C. 1980).
Amendment of records, failure to exhaust administrative remedies	Allen v. Naval Research Laboratory, 2 GDS ¶82,144 (D.D.C. 1982).
Adequacy of complaint, failure to exhaust administrative remedies	Alman v. United States, Civil No. 81-444-Orl-11 (M.D. Fla. Feb. 6, 1984), aff'd mem., No. 84-3233 (11th Cir. Dec. 26, 1984).
FOIA/PA interface, mailing lists	American Fed'n of Gov't Employees v. Federal Labor Relations Auth., 786 F.2d 554 (2d Cir. 1986), reh'g en banc denied, No. 85-4144 (2d Cir. June 4, 1986).

Records	American Fed'n of Gov't Employees v. NASA, 482 F. Supp. 281 (S.D. Tex. 1980).
Exercise of First Amendment rights	American Fed'n of Gov't Employees v. Schlesinger, 443 F. Supp. 431 (D.D.C. 1978).
Adequacy of complaint, civil damages, improper disclosure	American Fed'n of Gov't Employees v. VA, 1 GDS ¶80,135 (D.D.C. 1980), on motion for summary judgment, 2 GDS ¶81,159 (D.D.C. 1981).
Amendment of records, exemption (j)(2)	Anderson v. DOJ, Civil No. 87-5959 (E.D. Pa. May 16, 1988).
Attorney's fees, exemptions (j)(2), (k)(2), records	Anderson v. Department of the Treasury, Civil No. 76-1404 (D.D.C. July 19, 1977), attorney's fees awarded (D.D.C. Nov. 16, 1977), vacated & remanded, 648 F.2d 1 (D.C. Cir. 1979), supplemental opinion sub nom. National Treasury Employees Union v. Department of the Treasury, 656 F.2d 848 (D.C. Cir. 1981).
Amendment of records, exemption (j)(2), FOIA/PA interface	Anderson v. Federal Bureau of Prisons, Civil No. 85-2028 (D.D.C. Feb. 10, 1986).
FOIA/PA interface	Anderson v. Federal Bureau of Prisons, Civil No. 85-2596 (D.D.C. Feb. 7, 1986).
Exemption (j)(2), FOIA/PA interface	Anderson v. Huff, 3 GDS ¶83,124 (D. Minn. 1982).
Adverse effects, attorney's fees, civil damages, FOIA/PA interface, improper disclosure, no injunction against disclosure, proper party defendant, routine use, standing	Andrews v. VA, 613 F. Supp. 1404 (D. Wyo. 1985), rev'd, 838 F.2d 418 (10th Cir. 1988), petition for cert. filed, 56 U.S.L.W. 3769 (U.S. Apr. 26, 1988) (No. 87-1769).
Exemption (j)(1)	Anthony v. CIA, 1 GDS ¶79,196 (E.D. Va. 1979).
FOIA/PA interface	Antonelli v. FBI, 536 F. Supp. 568 (N.D. Ill. 1982), stay granted, 553 F. Supp. 19 (N.D. Ill. 1982), subsequent decision, Civil No. 79-C-1432 (N.D. Ill. Sept. 14, 1982), rev'd on other grounds, 721 F.2d 615 (7th Cir. 1983), cert. denied, 467 U.S. 1210 (1984).
Exemption (j)(2), FOIA/PA interface	Antonelli v. Mullen, Civil No. 83-C-1001-S (W.D. Wis. June 27, 1984).

Routine use	Ash v. United States, Civil No. 77-434-Orl-R (M.D. Fla. 1979), aff'd, 608 F.2d 178 (5th Cir. 1979), cert. denied, 445 U.S. 965 (1980).
Civil damages, improper disclosure	Askew v. United States, 680 F.2d 1206 (8th Cir. 1982).
Exercise of First Amendment rights, individual (definition)	Attorney Gen. of the United States v. Irish N. Aid Comm., Civil No. 77-708-CSH (S.D.N.Y. Oct. 7, 1977).
Order of a court of competent jurisdiction	Avirgan v. Hull, Misc. No. 88-0112 (Bankr. D.C. May 2, 1988).
Adequacy of complaint, exemption (k)(2), FOIA/PA interface	Ayers v. IRS, Civil No. 84-472-TUC-ACM (D. Ariz. June 30, 1985).
Adverse effects, routine use	Bagwell v. Brannon, No. 82-8711 (11th Cir. Feb. 22, 1984).
Amendment of records, system of records	Baker v. Department of the Navy, 814 F.2d 1381 (9th Cir. 1987), cert. denied, 108 S. Ct. 450 (1987).
System of records	Balk v. International Communications Agency, Civil No. 81-0896 (D.D.C. May 7, 1982), aff'd sub nom. Balk v. Shirley, No. 82-1561 (D.C. Cir. Mar. 9, 1983) (unpublished memorandum), mem., 3 GDS ¶83,284 (D.C. Cir. 1983), cert. denied, 464 U.S. 821 (1983).
Amendment of records	Bambulas v. Chief, United States Marshal, Civil No. 77-3229 (D. Kan. Jan. 3, 1979).
Attorney's fees	Barrett v. Bureau of Customs, 482 F. Supp. 779 (E.D. La. 1980), aff'd, 651 F.2d 1087 (5th Cir. 1981), cert. denied, 455 U.S. 950 (1982).
Attorney's fees, compiled in reasonable anticipation of civil litigation, system of records	Barrett v. United States Customs Serv., Civil No. 77-3033 (E.D. La. Feb. 22, 1979) (consolidated).
Proper party defendant	Bartel v. Burdick, 3 GDS ¶83,216 (D.D.C. 1983).
FOIA/PA interface, improper disclosure	Bartel v. FAA, 3 GDS ¶83,003 (D.D.C. 1982), vacated & remanded, 725 F.2d 1403 (D.C. Cir. 1984), reh'g en banc denied, No. 82-2473 (D.C. Cir. Mar. 23, 1984).
Civil damages, improper disclosure, inaccurate records	Bartel v. United States, 664 F. Supp. 669 (E.D.N.Y. 1987).

FOIA/PA interface, system of records	Basdekas v. NRC, Civil No. 78-0465 (D.D.C. Dec. 20, 1978).
Amendment of records	Bashaw v. Department of the Treasury, 468 F. Supp. 1195 (E.D. Wis. 1979).
Mootness	Bazelow v. Civil Serv. Dep't, 1 GDS ¶79,134 (S.D.N.Y. 1979).
Adequacy of complaint	Beaty v. Bureau of Prisons, Civil No. 84-8148-FL (E.D. Mich. Nov. 15, 1984).
Failure to exhaust administrative remedies	Beaver v. VA, Civil No. 1-82-477 (E.D. Tenn. Apr. 6, 1983).
Civil damages, improper disclosure	Beeny v. United States Navy, 2 GDS ¶81,305 (C.D. Cal. 1980).
Amendment of records, attorney's fees, civil damages	Bell v. Federal Energy Admin., Civil No. 176-188 (S.D. Ga. Feb. 4, 1982).
Civil damages, intra-agency disclosure, notice requirement	Beller v. Middendorf, 632 F.2d 788 (9th Cir. 1980), cert. denied sub nom. Beller v. Lehman, 452 U.S. 905 (1981).
Failure to exhaust administrative remedies, request for access (medical records)	Benny v. Federal Bureau of Prisons, Civil No. 86-0112 (D.D.C. June 30, 1986).
Attorney's fees, civil damages, mootness	Benoist v. United States, No. 87-1028 (8th Cir. Nov. 4, 1987).
Exemption (k)(5), promise of confidentiality, security investigation	Benson v. United States, Civil No. 80-15-MC (D. Mass. June 12, 1980).
Civil damages	Bentson v. Commissioner, Civil No. 83-048 (D. Ariz. Sept. 14, 1984).
Statute of limitations	Bergman v. United States, 751 F.2d 314 (10th Cir. 1984), cert. denied, 474 U.S. 945 (1985).
Res judicata	Bergman v. United States, Civil No. 85-1888 (D.D.C. Nov. 20, 1985), aff'd, No. 86-5065 (D.C. Cir. June 8, 1987).
Adequacy of complaint, amendment of records, system of records	Bernson v. ICC, 625 F. Supp. 10 (D. Mass. 1984).
Res judicata	Bernson v. ICC, 625 F. Supp. 13 (D. Mass. 1985), motion for reconsideration denied, 635 F. Supp. 369 (D. Mass. 1986).
Notice requirement	Billman v. Commissioner, 847 F.2d 887 (D.C. Cir. 1988).

Exemptions (j)(2), (k)(2)	Binion v. DOJ, 2 GDS ¶82,148 (D. Nev. 1981), rev'd, 695 F.2d 1189 (9th Cir. 1983).
Agency, proper party defendant	B.J.R.L. v. Utah, 655 F. Supp. 692 (D. Utah 1987).
Request for access	Black v. CIA, Civil No. 83-3246 (D.D.C. Dec. 30, 1983), motion for reconsideration granted (D.D.C. Jan. 16, 1984).
Records	Blair v. United States Forest Serv., Civil No. A85-039 (D. Alaska Sept. 24, 1985), summary judgment granted (D. Alaska Mar. 6, 1986), appeal dismissed, No. 85-4220 (9th Cir. Apr. 1, 1986).
Civil damages, failure to exhaust administrative remedies, improper disclosure, system of records	Blanton v. DOJ, Civil No. 82-0452 (D.D.C. Feb. 17, 1984).
Amendment of records	Blevins v. Plummer, Civil No. C75-4336-F (C.D. Cal. Oct. 28, 1976), aff'd, 613 F.2d 767 (9th Cir. 1980).
Amendment of records	Boles v. VA, Civil No. C84-1175-G (M.D.N.C. Feb. 27, 1986).
Request for access	Boniface v. DOJ, Civil No. 86-0141 (D.D.C. June 13, 1986).
FOIA/PA interface	Boniface v. Meese, Civil No. 85-1971 (D.D.C. Dec. 13, 1985), summary affirmance granted, No. 85-5125 (D.C. Cir. June 12, 1986).
Exemption (j)(2)	Borom v. United States Parole Comm'n, Civil No. 5-86-183 (D. Minn. Dec. 2, 1986).
Adverse effects, civil damages, improper disclosure, inaccurate records, records	Borrell v. International Communications Agency, 3 GDS ¶83,021 (D.D.C. 1981), remanded, 682 F.2d 981 (D.C. Cir. 1982), summary judgment granted, 3 GDS ¶83,023 (D.D.C. 1982), cert. denied, 466 U.S. 974 (1984).
Failure to exhaust administrative remedies, mootness	Bosse v. Levi, Civil No. 75-1373 (D.D.C. Jan. 26, 1976).
Agency	Bowens v. Flowers Funeral Serv., Civil No. 87-C-6481 (N.D. Ill. July 29, 1987).

Adverse effects, civil damages, maintenance of records, records, statute of limitations, system of records	Bowyer v. Department of the Air Force, Civil No. 5-85-0033 (N.D. Ind. Sept. 11, 1985), amended (N.D. Ind. Sept. 23, 1985), on reconsideration (N.D. Ind. Dec. 23, 1985), rev'd & remanded, 804 F.2d 428 (7th Cir. 1986), motion to dismiss granted (N.D. Ind. Aug. 18, 1987), motion to amend denied (N.D. Ind. Mar. 9, 1988).
Attorney's fees	Boyd v. Bureau of Prisons, Civil No. 84-2418-GA (W.D. Tenn. May 23, 1985) (magistrate's report).
Exercise of First Amendment rights, records, system of records	Boyd v. Secretary of the Navy, 709 F.2d 684 (11th Cir. 1983), cert. denied, 464 U.S. 1043 (1984).
Civil damages, intra-agency disclosure, routine use	Britt v. Naval Investigative Serv., Civil No. 86-0889 (E.D. Pa. July 21, 1988).
Social Security numbers	Brookens v. United States, Civil No. 78-929 (D.D.C. Nov. 6, 1978), aff'd, 627 F.2d 494 (D.C. Cir. 1980).
Adverse effects, amendment of records, civil damages, intra-agency disclosure	Brooks v. Grinstead, 3 GDS ¶83,054 (E.D. Pa. 1982).
Failure to exhaust administrative remedies	Brown v. FBI, Civil No. 87-C-9982 (N.D. Ill. July 25, 1988).
Adverse effects, civil damages, collection of information from subject, mootness	Brown v. United States, Civil No. 85-0267 (D. Haw. Nov. 13, 1986).
Proper party defendant	Brown-Bey v. United States, 720 F.2d 467 (7th Cir. 1983).
Adverse effects, civil damages, improper disclosure, order of a court of competent jurisdiction, proper party defendant	Bruce v. United States, 621 F.2d 914 (8th Cir. 1980).
Amendment of records	Brumley v. Department of Labor, Civil No. LR-C-87-437 (E.D. Ark. June 15, 1988).
Exercise of First Amendment rights, jurisdiction, system of records	Bryan v. Department of the Air Force, Civil No. 85-4096 (D.D.C. Mar. 31, 1986).
Exemption (j)(2)	Burks v. DOJ, Civil No. 83-189 (N.D.N.Y. Aug. 9, 1985).
Routine use	Burley v. DEA, 443 F. Supp. 619 (M.D. Tenn. 1977).
Agency, agency records	Burns v. DOJ, Civil No. 85-226-TUC-ACM (D. Ariz. June 26, 1985).

Exemption (j)(2), FOIA/PA interface, system of records, waiver of exemption	Burroughs v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 83-C-1095 (N.D. Ill. Jan. 18, 1984) (consolidated).
Civil damages, improper disclosure, routine use	Calhoun v. Wells, 3 GDS ¶83,272 (D.S.C. 1980), subsequent decision, 3 GDS ¶83,273 (D.S.C. 1980).
Civil damages, improper disclosure, proper party defendant, system of records	Campbell v. VA, 2 GDS ¶82,076 (S.D. Iowa 1981).
Civil damages, proper party defendant, routine use, system of records	Carin v. United States, 1 GDS ¶80,193 (D.D.C. 1980).
Frivolous complaint, res judicata	Carter v. Orr, Civil No. 81-155-E (W.D. Okla. Apr. 29, 1981).
Frivolous complaint, res judicata	Carter v. United States, 83 F.R.D. 116 (E.D. Mo. 1979), dismissed, No. 79-1655 (8th Cir. May 7, 1980).
Amendment of records, civil damages, exemption (k)(5), inaccurate records, promise of confidentiality, security investigation	Castle v. Civil Serv. Comm'n, Civil No. 77-1544 (D.D.C. Jan. 23, 1979).
Maintenance of records	Castrey v. McMurray, 3 GDS ¶83,283 (D.D.C. 1983).
Maintenance of only essential information	Caulfield v. Board of Educ., 583 F.2d 605 (2d Cir. 1978).
Individual (definition), no injunction against disclosure	Cell Assocs., Inc. v. National Insts. of Health, 579 F.2d 1155 (9th Cir. 1978).
Agency	Chambers v. Division of Probation, Admin. Office of the United States Courts, Civil No. 87-0163 (D.D.C. Apr. 8, 1987).
Social Security numbers	Chambers v. Klein, 419 F. Supp. 569 (D.N.J. 1976), aff'd mem., 564 F.2d 89 (3d Cir. 1977).
Individual (definition), notice requirement, statute of limitations	Chance v. IRS, 1 GDS ¶80,206 (D. Idaho 1980).
Adverse effects, attorney's fees, civil damages, maintenance of records, notice requirement, records	Chapman v. NASA, 3 GDS ¶82,505 (S.D. Tex. 1981), aff'd in part, rev'd in part & remanded, 682 F.2d 526 (5th Cir. 1982), on remand, Civil No. H-78-1539 (S.D. Tex. 1983), aff'd, 736 F.2d 238 (5th Cir. 1984).
FOIA/PA interface	Cheek v. IRS, 703 F.2d 271 (7th Cir. 1983).

Exhaustion of administrative remedies, FOIA/PA interface	Cheney v. Graham, Civil No. 86-C-197C (W.D. Wis. Apr. 21, 1986), dismissed sub nom. Cheney v. DOJ (W.D. Wis. Apr. 6, 1987).
Adequacy of complaint, civil damages, maintenance of only essential information, proper party defendant	Chocallo v. Bureau of Hearings & Appeals, Social Sec. Admin., 548 F. Supp. 1349 (E.D. Pa. 1982), aff'd mem., 716 F.2d 889 (3d Cir. 1983), cert. denied on other grounds, 464 U.S. 983 (1983).
Order of a court of competent jurisdiction	Christy v. United States, 68 F.R.D. 375 (N.D. Tex. 1975).
Adverse effects, civil damages, notice requirement, system of records	Church v. United States, 2 GDS ¶81,350 (D. Md. 1980).
Failure to exhaust under Privacy Act not bar to Fifth Amendment	Churchwell v. United States, 414 F. Supp. 499 (D.S.D. 1976), aff'd, 545 F.2d 59 (8th Cir. 1976).
Amendment of records, attorney's fees, exercise of First Amendment rights, FOIA/PA interface, system of records	Clarkson v. IRS, 678 F.2d 1368 (11th Cir. 1982), summary judgment granted, Civil No. C79-642A (N.D. Ga. Dec. 27, 1984), aff'd, 811 F.2d 1396 (11th Cir. 1987).
Order of a court of competent jurisdiction	Clavir v. United States, 84 F.R.D. 612 (S.D.N.Y. 1979).
Exercise of First Amendment rights	Cloud v. Heckler, 3 GDS ¶83,230 (W.D. Ark. 1983).
Order of a court of competent jurisdiction	Clymer v. Grzegorek, 515 F. Supp. 938 (E.D. Va. 1981).
Adverse effects, civil damages, FOIA/PA interface, res judicata, system of records	Cochran v. United States, Civil No. 483-216 (S.D. Ga. July 2, 1984), aff'd, 770 F.2d 949 (11th Cir. 1985).
Exemption from access provision, exemptions (d)(1), (j)(1), (k)(2), FOIA/PA interface	Cohen v. Bell, Civil No. 77-3449-MML (C.D. Cal. June 4, 1980), aff'd sub nom. Cohen v. Smith, No. 81-5365 (9th Cir. Mar. 25, 1983) (unpublished memorandum), mem., 705 F.2d 467 (9th Cir. 1983), cert. denied, 464 U.S. 939 (1983).
No injunction against disclosure, records, system of records	Cohen v. Department of Labor, 3 GDS ¶83,157 (D. Mass. 1983).
Exemption (k)(2), proper party defendant	Comer v. IRS, Civil No. 85-10503-BC (E.D. Mich. June 19, 1986), aff'd, No. 86-1627 (6th Cir. Oct. 19, 1987) (unpublished memorandum), mem., 831 F.2d 294 (6th Cir. 1987).
Amendment of records, civil damages, inaccurate records	Conklin v. United States, Civil No. 83-C-587 (D. Colo. Feb. 26, 1985).

Jurisdiction	Conklin v. United States, Civil No. 85-C-1278 (D. Colo. Nov. 22, 1985).
Adverse effects, civil damages, exhaustion of administrative remedies, maintenance of records, system of records	Connelly v. Comptroller of the Currency, 673 F. Supp. 1419 (S.D. Tex. 1987).
Duty to search	Conner v. CIA, Civil No. 84-3625 (D.D.C. Jan. 31, 1986), appeal dismissed, No. 86-5221 (D.C. Cir. Jan. 23, 1987).
Agency records, amendment of records, failure to exhaust administrative remedies	Connor v. United States, Civil No. C75-0431-LB (W.D. Ky. Mar. 8, 1977), partial summary judgment granted, 1 GDS ¶79,224 (W.D. Ky. 1979), aff'd, 1 GDS ¶80,208 (6th Cir. 1980).
Exemption (j)(2), FOIA/PA interface	Cooper v. DOJ, 578 F. Supp. 546 (D.D.C. 1983).
Attorney's fees, civil damages, intra-agency disclosure, notice requirement, records, routine use, system of records	Covert v. Herrington, 663 F. Supp. 577 (E.D. Wash. 1987), subsequent decision, 667 F. Supp. 730 (E.D. Wash. 1987).
Civil damages, request for access	Crichton v. Community Servs. Admin., 567 F. Supp. 322 (S.D.N.Y. 1983).
Mootness	Crisafi v. Bell, 1 GDS ¶79,187 (M.D. Pa. 1979).
FOIA/PA interface	Crooker v. Bureau of Alcohol, Tobacco & Firearms, 577 F. Supp. 1213 (D.D.C. 1983), appeal dismissed, No. 83-2203 (D.C. Cir. Feb. 21, 1984) (consolidated).
Maintenance of only essential information	Crooker v. DOJ, Civil No. B-79-498 (D. Conn. Mar. 6, 1980).
Exemption (j)(2), failure to exhaust administrative remedies	Crooker v. DOJ, Civil No. 86-2333 (D.D.C. Oct. 2, 1987), summary affirmance granted, No. 87-5372 (D.C. Cir. Apr. 8, 1988).
Attorney's fees, failure to exhaust administrative remedies, FOIA/PA interface	Crooker v. Federal Bureau of Prisons, 579 F. Supp. 309 (D.D.C. 1984).
Failure to exhaust administrative remedies	Crooker v. United States Marshals Serv., 577 F. Supp. 1217 (D.D.C. 1983), appeal dismissed, No. 83-2203 (D.C. Cir. Feb. 21, 1984) (consolidated).
Compiled in reasonable anticipation of civil litigation, FOIA/PA interface	Crooker v. United States Marshals Serv., Civil No. 85-2599 (D.D.C. Dec. 16, 1985).

FOIA/PA interface, res judicata	Crooker v. United States Marshals Serv., 641 F. Supp. 1141 (D.D.C. 1986).
FOIA/PA interface	Crooker v. United States Parole Comm'n, 730 F.2d 1 (1st Cir. 1984), cert. granted, vacated & remanded, 469 U.S. 926 (1984), on remand, 760 F.2d 1 (1st Cir. 1985), attorney's fees awarded, 776 F.2d 366 (1st Cir. 1985).
FOIA/PA interface, request for access, system of records	Cuccaro v. Secretary of Labor, 562 F. Supp. 724 (W.D. Pa. 1983), aff'd, 770 F.2d 355 (3d Cir. 1985).
Exemption (k)(2)	Culver v. IRS, Civil Nos. C85-242, C85-243 (N.D. Iowa June 5, 1986).
Amendment of records, jurisdiction	Daigneau v. United States, Civil No. 88-54-D (D.N.H. July 8, 1988).
Adequacy of request, intra-agency disclosure	Daly-Murphy v. Winston, 820 F.2d 1470 (9th Cir. 1987), amended, 837 F.2d 348 (9th Cir. 1988).
FOIA/PA interface, individual (definition), request for access	Daniels v. FCC, Civil No. 77-5011 (D.S.D. Mar. 15, 1978).
Civil damages	Daniels v. St. Louis VA Regional Office, 561 F. Supp. 250 (E.D. Mo. 1983).
Unlawful destruction of records	Dankese v. Defense Logistics Agency, 693 F.2d 13 (1st Cir. 1982).
Agency	Davis v. Boston Edison Co., Civil No. 83-1114-Z (D. Mass. Jan. 21, 1985).
Statute of limitations	Davis v. Gross, No. 83-5223 (6th Cir. May 10, 1984).
Civil damages, improper disclosure, no injunction against disclosure, proper party defendant	Davis v. HUD, 2 GDS ¶81,306 (N.D. Ill. 1979).
Adequacy of complaint	DeBold v. Stimson, 735 F.2d 1037 (7th Cir. 1984).
Order of a court of competent jurisdiction	DeLong Corp. v. United States, 48 A.F.T.R. 2d 81-5548 (Ct. Cl. 1981).
Agency, agency records	Dennie v. University of Pittsburgh School of Medicine, 589 F. Supp. 348 (D.V.I. 1984), aff'd mem., 770 F.2d 1068 (3d Cir. 1985), cert. denied, 474 U.S. 849 (1985).
FOIA/PA interface, records, request for access	DePlanche v. Califano, 549 F. Supp. 685 (W.D. Mich. 1982).

Amendment of records, exemption (k)(2), proper party defendant	DeSha v. Secretary of the Navy, 3 GDS ¶82,496 (C.D. Cal. 1982), aff'd, No. 82-5386 (9th Cir. Dec. 17, 1985) (unpublished memorandum), mem., 780 F.2d 1025 (9th Cir. 1985).
Agency	Desmyther v. Division of Probation, Admin. Office of the United States Courts, Civil No. 87-400SSH (D.D.C. July 10, 1987).
Exemption (k)(5), promise of confidentiality, proper party defendant	Diamond v. FBI, 532 F. Supp. 216 (S.D.N.Y. 1981), aff'd, 707 F.2d 75 (2d Cir. 1983), cert. denied on other grounds, 465 U.S. 1004 (1984).
Adverse effects, civil damages, failure to exhaust administrative remedies, inaccurate records	Dickson v. OPM, Civil No. 83-3503 (D.D.C. Aug. 20, 1985), aff'd in part, rev'd in part, 828 F.2d 32 (D.C. Cir. 1987).
Exhaustion of administrative remedies, jurisdiction, statute of limitations	Diliberti v. United States, 817 F.2d 1259 (7th Cir. 1987).
Mailing lists	Disabled Officer's Ass'n v. Rumsfeld, 428 F. Supp. 454 (D.D.C. 1977), aff'd mem. sub nom. Disabled Officer's Ass'n v. Brown, 574 F.2d 636 (D.C. Cir. 1978).
Amendment of records, attorney's fees, civil damages	Doe v. Baker, Civil No. R-83-3775 (D. Md. July 31, 1985), summary judgment granted (D. Md. Feb. 27, 1986), attorney's fees awarded (D. Md. May 9, 1986), subsequent decision (D. Md. June 9, 1986), rev'd & remanded, No. 86-3711 (4th Cir. June 23, 1987) (unpublished memorandum), mem., 822 F.2d 55 (4th Cir. 1987).
Amendment of records, civil damages, exemption (k)(5), inaccurate records, jurisdiction, promise of confidentiality, security investigation	Doe v. Civil Serv. Comm'n, 483 F. Supp. 539 (S.D.N.Y. 1980).
No injunction against disclosure, order of a court of competent jurisdiction, routine use	Doe v. DiGenova, 779 F.2d 74 (D.C. Cir. 1985), summary judgment granted, 642 F. Supp. 624 (D.D.C. 1986), aff'd sub nom. Doe v. Stephens, 851 F.2d 1457 (D.C. Cir. 1988).
Civil damages, improper disclosure	Doe v. GSA, 544 F. Supp. 530 (D. Md. 1982).
Adequacy of complaint, agency, routine use	Doe v. Naval Air Station, 768 F.2d 1229 (11th Cir. 1985).
Adverse effects	Doe v. Rostker, 89 F.R.D. 158 (N.D. Cal. 1981).

Social Security numbers	Doe v. Sharp, 491 F. Supp. 346 (D. Mass. 1980).
Amendment of records, civil damages, inaccurate records, maintenance of records	Doe v. United States, Civil No. 83-0951 (D.D.C. July 6, 1984), rev'd & remanded, 781 F.2d 907 (D.C. Cir. 1986), reh'g en banc granted, 786 F.2d 1203 (D.C. Cir. 1986), aff'd, 821 F.2d 694 (D.C. Cir. 1987).
Civil damages, improper disclosure, records	Donohoe v. Watt, 3 GDS ¶82,475 (D.D.C. 1982), aff'd mem., No. 82-2229 (D.C. Cir. July 8, 1983).
FOIA/PA interface	Donohue v. DOJ, Civil No. 84-3451 (D.D.C. May 16, 1986), subsequent decision (D.D.C. June 25, 1987), summary judgment granted on other grounds (D.D.C. Dec. 23, 1987), decision on costs (D.D.C. Mar. 7, 1988).
Amendment of records, failure to exhaust administrative remedies	Dorl v. Levi, Civil No. 75-2077 (D.N.J. Mar. 8, 1977).
Attorney's fees, frivolous complaint	Dorset v. IRS, Civil No. G-83-449 (W.D. Mich. May 7, 1984).
Civil damages, maintenance of records	Dowd v. IRS, Civil Nos. 82-828, 83-1229 (N.D.N.Y. Apr. 22, 1985), aff'd, 776 F.2d 1083 (2d Cir. 1985).
Civil damages, improper disclosure	Doyle v. Behan, 670 F.2d 535 (5th Cir. 1982).
Social Security numbers	Doyle v. Wilson, 529 F. Supp. 1343 (D. Del. 1982).
Individual (definition)	Dresser Indus. v. United States, 596 F.2d 1231 (5th Cir. 1979), cert. denied, 444 U.S. 1044 (1980).
Proper party defendant, request for access	Duckett v. Huff, Civil No. 85-1686 (M.D. Pa. Nov. 25, 1986).
Exemption (j)(2), FOIA/PA interface	Duffin v. Carlson, Civil No. 78-1775 (D.D.C. Jan. 29, 1979), aff'd, 636 F.2d 709 (D.C. Cir. 1980).
Civil damages	Dye v. Bureau of Prisons, Civil Nos. 84-2287-GA, 84-2284-GA (W.D. Tenn. Oct. 29, 1984).
Jurisdiction	Dyrda v. Commissioner, Civil No. 85-0-41 (D. Neb. Oct. 28, 1985).
Pro se litigant	Easter v. FBI, 2 GDS ¶81,195 (D.D.C. 1981).
Adverse effects, civil damages, inaccurate records	Edison v. Department of the Army, 3 GDS ¶82,299 (N.D. Ga. 1980), aff'd, 672 F.2d 840 (11th Cir. 1982).

Adequacy of complaint	Edwards v. Baker, Civil No. 83-2642 (D.D.C. July 16, 1986).
Court records sealed, order of a court of competent jurisdiction	Ego v. Dole, Civil No. 83-0782 (D.D.C. Aug. 26, 1983).
Agency	Ehm v. National R.R. Passenger Corp., Civil No. SA-81-CA-406 (W.D. Tex. May 4, 1983), aff'd, 732 F.2d 1250 (5th Cir. 1984), cert. denied, 469 U.S. 982 (1984).
Duty to search, failure to exhaust administrative remedies	Elmquist v. CIA, Civil No. 82-0047 (D.D.C. Oct. 17, 1985), summary affirmance granted, No. 86-5626 (D.C. Cir. July 13, 1987).
Failure to exhaust administrative remedies, res judicata	Ely v. Bureau of Prisons, Civil No. 84-2482 (D.D.C. Apr. 16, 1985), subsequent opinion (D.D.C. Sept. 26, 1985), reconsideration granted (D.D.C. Oct. 9, 1985), dismissed (D.D.C. Mar. 27, 1986), aff'd, No. 86-5227 (D.C. Cir. June 30, 1987) (unpublished memorandum), mem., 821 F.2d 821 (D.C. Cir. 1987).
Adequacy of complaint	Ely v. Bureau of Prisons, Civil No. 86-0701 (D.D.C. July 9, 1986).
Res judicata	Ely v. Carlson, Civil No. 84-3502 (D.D.C. July 19, 1985).
Adverse effects, civil damages, proper party defendant, routine use	Ely v. DOJ, 610 F. Supp. 942 (N.D. Ill. 1985), aff'd mem., 792 F.2d 142 (7th Cir. 1986).
Adequacy of complaint, duty to search, proper party defendant	Ely v. Holmes, Civil No. 84-3501 (D.D.C. July 31, 1985), summary affirmance granted, No. 85-5877 (D.C. Cir. Mar. 4, 1986).
Amendment of records, exercise of First Amendment rights, jurisdiction	England v. Commissioner, 798 F.2d 350 (9th Cir. 1986).
Amendment of records, statute of limitations	Englerius v. VA, 837 F.2d 895 (9th Cir. 1988).
Amendment of records, civil damages, exhaustion of administrative remedies, statute of limitations	Ertell v. Department of the Army, 626 F. Supp. 903 (C.D. Ill. 1986).
Attorney's fees	Evans v. Commissioner, Civil No. G-83-31-5 (W.D. Mich. Mar. 28, 1986).

Attorney's fees, exemption (j)(2), FOIA/PA interface	Exner v. FBI, Civil No. 76-89-S (S.D. Cal. Apr. 20, 1976), remanded, 542 F.2d 1121 (9th Cir. 1976), decision on remand (S.D. Cal. 1977), on motion for attorney's fees, 443 F. Supp. 1349 (S.D. Cal. 1978), aff'd, 612 F.2d 1202 (9th Cir. 1980).
Adverse effects, civil damages, FOIA/PA interface, improper disclosure, maintenance of records, system of records	Fagot v. FDIC, 584 F. Supp. 1168 (D.P.R. 1984), aff'd, No. 84-1523 (1st Cir. Mar. 27, 1985) (unpublished memorandum), mem., 760 F.2d 252 (1st Cir. 1985).
Exemption from access provision	Farese v. DOJ, Civil No. 83-0938 (D.D.C. July 2, 1986).
FOIA/PA interface	Farese v. DOJ, Civil No. 84-6179-JAG (S.D. Fla. July 12, 1984).
Exemption (k)(2)	Fausto v. Watt, 3 GDS ¶83,217 (4th Cir. 1983) (unpublished memorandum), mem., 711 F.2d 1050 (4th Cir. 1983).
Civil damages, improper disclosure, records	FDIC v. Dye, 642 F.2d 833 (5th Cir. 1981).
Amendment of records, civil damages, exemption (j)(2), inaccurate records	Fendler v. United States Bureau of Prisons, No. 86-2467 (9th Cir. May 11, 1988).
Amendment of records, exemption (j)(2)	Fendler v. United States Parole Comm'n, Civil No. C83-3805-TEH (N.D. Cal. Sept. 23, 1983), modified (N.D. Cal. Nov. 10, 1983), subsequent order (N.D. Cal. Jan. 30, 1984), summary judgment granted (N.D. Cal. July 6, 1984), aff'd in part, rev'd in part & remanded, 774 F.2d 975 (9th Cir. 1985).
Amendment of records, exemption (j)(2)	Fernandez v. FBI, Civil No. 87-1461 (D.D.C. May 26, 1988).
Collection of information from subject, maintenance of only essential information, notice requirement	Field v. Brown, 610 F.2d 981 (D.C. Cir. 1979), cert. denied, 446 U.S. 939 (1980).
Attorney's fees, civil damages, injunction against disclosure	Field v. Schlesinger, Civil No. 74-1590 (D.D.C. June 17, 1977).
Adverse effects, civil damages, maintenance of records, notice requirement, order of a court of competent jurisdiction, routine use	Fields v. Leuver, Civil No. 83-0967 (D.D.C. Sept. 22, 1983).
Request for access	Finnegan v. CIA, Civil No. 83-0814 (D.D.C. Sept. 27, 1983).

Amendment of records, civil damages, inaccurate records, proper party defendant, statute of limitations, system of records	Fiorella v. HEW, 2 GDS ¶81,363 (W.D. Wash. 1981).
Civil damages	Fiorentino v. United States, 607 F.2d 963 (Ct. Cl. 1979), cert. denied, 444 U.S. 1083 (1980).
Attorney's fees, civil damages, improper disclosure, intra-agency disclosure, records, system of records	Fitzpatrick v. IRS, 1 GDS ¶80,232 (N.D. Ga. 1980), aff'd in part, rev'd in part & remanded, 665 F.2d 327 (11th Cir. 1982).
Civil damages, FOIA/PA interface, statute of limitations	Florance v. Orr, Civil No. 80-3269 (D.D.C. June 9, 1981).
FOIA/PA interface, individual (definition), injunction against disclosure, jurisdiction	Florida Medical Ass'n v. HEW, 454 F. Supp. 326 (M.D. Fla. 1978), vacated & remanded, 601 F.2d 199 (5th Cir. 1979), subsequent decision, 479 F. Supp. 1291 (M.D. Fla. 1979).
Adequacy of complaint, proper party defendant	Flowers v. IRS, Civil No. 84-1218-LE (D. Or. Feb. 7, 1985).
Jurisdiction	Foss v. Commissioner, No. 85-2543 (9th Cir. Aug. 21, 1986).
Amendment of records, exemption (j)(2), FOIA/PA interface	Frank v. DOJ, 480 F. Supp. 596 (D.D.C. 1979).
Amendment of records	Frank v. United States, Civil No. 84-306-PHX-CAM (D. Ariz. June 4, 1985).
Exemption (j)(2)	Fratus v. United States Attorney, Civil No. 78-833-WMH (S.D. Fla. Mar. 29, 1979).
Civil remedies, failure to exhaust administrative remedies	Freude v. McSteen, Civil Nos. 4-85-882, 4-85-1063 (D. Minn. Oct. 23, 1985), aff'd mem., Nos. 86-5009, 86-5010 (8th Cir. Mar. 5, 1986).
Agency records	Frey v. HHS, 106 F.R.D. 32 (E.D.N.Y. 1985).
Civil damages, improper disclosure, individual (definition), proper party defendant	Friedlander v. United States Postal Serv., Civil No. 84-0773 (D.D.C. Oct. 16, 1984).
Exemption (j)(2), FOIA/PA interface	Gaffney v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 84-1403 (D.D.C. May 13, 1985), appeal dismissed, No. 85-5770 (D.C. Cir. May 6, 1986).

FOIA/PA interface	Galaski v. Commissioner, Civil No. C84-20667-WAI (N.D. Cal. Jan. 25, 1985).
Mootness, request for access	Gale v. DOJ, Civil No. 79-2571 (D.D.C. Sept. 26, 1979), vacated & remanded, 628 F.2d 224 (D.C. Cir. 1980).
Exemption (k)(5), security investigation	Gallagher v. FBI, 1 GDS ¶79,136 (D.D.C. 1979).
Agency, civil damages, exercise of First Amendment rights, maintenance of records, proper party defendant	Gang v. Civil Serv. Comm'n, Civil No. 76-1263 (D.D.C. May 16, 1977).
Attorney's fees, civil damages, failure to grant access (medical records), FOIA/PA interface	Gedden v. United States Postal Serv., 2 GDS ¶81,369 (S.D. Iowa 1980).
Failure to exhaust administrative remedies	Germane v. Heckler, 804 F.2d 366 (7th Cir. 1986).
Failure to exhaust administrative remedies, request for access	Gibbs v. Rauch, Civil No. 77-59 (E.D. Ky. Feb. 9, 1978).
Notice requirement, standing	Glasgold v. Secretary of HHS, 558 F. Supp. 129 (E.D.N.Y. 1982).
Attorney's fees, exercise of First Amendment rights, FOIA/PA interface, jurisdiction	Gogert v. IRS, No. 86-1674 (9th Cir. Apr. 7, 1987).
Civil damages, improper disclosure, system of records	Golliher v. United States Postal Serv., 3 GDS ¶83,114 (N.D. Ohio 1982).
Civil damages, proper party defendant	Gonzalez v. Leonard, 497 F. Supp. 1058 (D. Conn. 1980).
Attorney's fees, civil damages, FOIA/PA interface	Gordon v. NASA, 582 F. Supp. 274 (D.D.C. 1984), aff'd mem., 750 F.2d 1093 (D.C. Cir. 1984), cert. denied, 472 U.S. 1010 (1985).
Civil damages, improper disclosure, request for access, routine use	Gorod v. IRS, 43 A.F.T.R. 2d 79-678 (D. Mass. 1979).
Civil remedies	Gott v. Walters, 756 F.2d 902 (D.C. Cir. 1985).
Compiled in reasonable anticipation of civil litigation	Government Accountability Project v. Office of the Special Counsel, Civil No. 87-0235-JHP (D.D.C. Feb. 22, 1988).
Request for access, system of records	Grachow v. United States Customs Serv., 504 F. Supp. 632 (D.D.C. 1980).

Order of a court of competent jurisdiction	In re Grand Jury Subpoenas Issued to United States Postal Serv., 535 F. Supp. 31 (E.D. Tenn. 1981).
Order of a court of competent jurisdiction	Granton v. HHS, Civil No. 83-C-3538 (N.D. Ill. Feb. 27, 1984).
Social Security numbers	Greater Cleveland Welfare Rights Org. v. Bauer, 462 F. Supp. 1313 (N.D. Ohio 1978).
Amendment of records	Green v. IRS, 556 F. Supp. 79 (N.D. Ind. 1982), aff'd, No. 83-1107 (7th Cir. Apr. 3, 1984) (unpublished memorandum), mem., 734 F.2d 18 (7th Cir. 1984).
Social Security numbers	Green v. Philbrook, 427 F. Supp. 834 (D. Vt. 1977), rev'd, 576 F.2d 440 (2d Cir. 1978).
Exemption (j)(2)	Greene v. Huff, Civil No. 86-0345 (D.D.C. Oct. 10, 1986).
Civil damages, improper disclosure, records	Greene v. VA, Civil No. C76-461-S (M.D.N.C. July 3, 1978).
Failure to exhaust administrative remedies	Greenspun v. Attorney Gen. of the United States, Civil No. 84-3427 (D.D.C. June 17, 1985), partial summary judgment granted (D.D.C. Aug. 26, 1985), partial summary judgment granted (D.D.C. Mar. 3, 1986).
Agency records	Greenspun v. Commissioner, Civil No. 84-3426 (D.D.C. June 26, 1985), renewed motion for summary judgment granted, 622 F. Supp. 551 (D.D.C. 1985).
Exemption (j)(2), FOIA/PA interface	Greentree v. DEA, 2 GDS ¶81,224 (D.D.C. 1981), rev'd & remanded, 674 F.2d 74 (D.C. Cir. 1982) (consolidated).
Exemption (j)(2), FOIA/PA interface	Greentree v. United States Customs Serv., 515 F. Supp. 1145 (D.D.C. 1981), rev'd & remanded, 674 F.2d 74 (D.C. Cir. 1982) (consolidated).
Intra-agency disclosure	Grogan v. IRS, 3 GDS ¶82,384 (E.D. Va. 1981), aff'd, 3 GDS ¶82,385 (4th Cir. 1982).
Civil damages	Guernieri v. Weinberger, Civil No. 86-0530 (D.D.C. Sept. 22, 1987).
Exemption (j)(2), FOIA/PA interface	Guerra v. Bell, Civil No. 78-1509 (D.D.C. Mar. 23, 1979).
Adverse effects, amendment of records, civil damages, inaccurate records	Hacopian v. Marshall, 2 GDS ¶81,312 (C.D. Cal. 1980).

Amendment of records, res judicata	Hacopian v. Secretary of Labor, No. 81-5465 (9th Cir. Mar. 9, 1983).
Civil damages, improper withholding	Hager v. United States, Civil No. C86-3555 (N.D. Ohio Oct. 20, 1987).
Jurisdiction	Halus v. Department of the Army, Civil No. 87-4133 (E.D. Pa. May 16, 1988).
Amendment of records	Hamilton v. IRS, Civil No. 86-4146 (D. Idaho Dec. 1, 1986), aff'd, No. 87-3520 (9th Cir. Dec. 23, 1987), reh'g denied (9th Cir. Jan. 27, 1988).
No injunction against disclosure, system of records	Hanley v. DOJ, 623 F.2d 1138 (6th Cir. 1980).
No injunction against disclosure, standing	Harbolt v. DOJ, Civil No. A-84-CA-280 (W.D. Tex. Apr. 29, 1985), dismissed (W.D. Tex. Nov. 4, 1985).
Amendment of records, exhaustion of administrative remedies	Harper v. Kobelinski, Civil No. 76-1460 (D.D.C. June 23, 1977), rev'd, 589 F.2d 721 (D.C. Cir. 1978).
Adverse effects, civil damages, improper disclosure, notice requirement, system of records	Harper v. United States, 423 F. Supp. 192 (D.S.C. 1976).
No injunction against disclosure, notice requirement, routine use	Hastings v. Judicial Conference of the United States, 593 F. Supp. 1371 (D.D.C. 1984), aff'd, 770 F.2d 1093 (D.C. Cir. 1985).
Exemption (j)(2), mootness, request for access (medical records)	Hawkins v. Hadden, Civil No. 81-F-2104 (D. Colo. Mar. 16, 1982).
Duty to search	Heckman v. Executive Branch, United States Fed. Gov't, Civil No. 86-132 (E.D.N.Y. Jan. 29, 1987), aff'd, No. 87-6039 (2d Cir. June 26, 1987).
Exemptions (j)(2), (k)(2), FOIA/PA interface	Heinzl v. INS, 3 GDS ¶83,121 (N.D. Cal. 1981).
Exemption (j)(2)	Hensley v. DEA, 3 GDS ¶82,342 (S.D. Ohio 1980) (magistrate's report adopted).
Civil remedies	Henson v. United States Army, Civil No. 76-45-C5 (D. Kan. Mar. 16, 1977).
Res judicata	Heritage Hills Fellowship v. Plouff, 555 F. Supp. 1290 (E.D. Mich. 1983), aff'd sub nom. Heritage Hills Fellowship v. United States, No. 83-1103 (6th Cir. June 27, 1984) (unpublished memorandum), mem., 738 F.2d 439 (6th Cir. 1984).

Civil damages, compiled in reasonable anticipation of civil litigation, exemption (k)(5), inaccurate records, intra-agency disclosure, promise of confidentiality	Hernandez v. Alexander, 671 F.2d 402 (10th Cir. 1982).
Adverse effects, amendment of records, civil damages, failure to exhaust administrative remedies, inaccurate records, proper party defendant	Hewitt v. Grabicki, 596 F. Supp. 297 (E.D. Wash. 1984), aff'd, 794 F.2d 1373 (9th Cir. 1986).
Exemption (j)(1), FOIA/PA interface	Higgs v. CIA, Civil No. 76-0884 (D.D.C. Jan. 13, 1977), subsequent decision (D.D.C. Mar. 7, 1977).
Adverse effects, civil damages, failure to exhaust administrative remedies, inaccurate records	Hill v. Department of the Air Force, Civil No. 85-1485-JB (D.N.M. Sept. 4, 1987), aff'd on other grounds, No. 86-2418 (10th Cir. Mar. 30, 1988).
Agency records, civil damages, duty to search, failure to exhaust administrative remedies, inaccurate records, proper party defendant, system of records	Hill v. United States Air Force, Civil No. 84-1952 (D.D.C. Feb. 11, 1985), subsequent decision (D.D.C. May 24, 1985), summary judgment granted (D.D.C. June 26, 1985), motion for reconsideration denied (D.D.C. May 16, 1986), aff'd, 795 F.2d 1067 (D.C. Cir. 1986).
Civil remedies, exercise of First Amendment rights	Hobson v. Wilson, 737 F.2d 1 (D.C. Cir. 1984).
Adverse effects, civil damages, FOIA/PA interface, improper disclosure	Hollis v. Department of the Army, Civil No. 85-3218 (D.D.C. July 2, 1986).
Amendment of records	Holmberg v. United States, Civil No. 85-2052 (D.D.C. Dec. 10, 1985).
Jurisdiction	Holmes v. CIA, Civil No. 84-0146-C (N.D. W. Va. Mar. 26, 1985).
Standing	Hotel & Restaurant Employees & Bartenders Int'l Union v. Department of Labor, Civil No. C-1-77-386 (S.D. Ohio Nov. 4, 1977).
Civil damages, no injunction against disclosure, notice requirement, records	Houston v. Department of the Treasury, 494 F. Supp. 24 (D.D.C. 1979).
Attorney's fees, civil damages, proper party defendant	Houston v. Prado, Civil No. SA-84-401 (W.D. Tex. June 4, 1984), summary judgment recommended sub nom. Houston v. DOJ (W.D. Tex. Aug. 14, 1985) (magistrate's report).

Order of a court of competent jurisdiction	Howard v. Bolger, Civil No. 80-1002 (D.D.C. Nov. 26, 1980).
Adverse effects, civil damages, FOIA/PA interface, improper disclosure, intra-agency disclosure, no injunction against disclosure, routine use, system of records	Howard v. Marsh, 596 F. Supp. 1107 (E.D. Mo. 1984), rev'd, 785 F.2d 645 (8th Cir. 1986), on remand, 654 F. Supp. 853 (E.D. Mo. 1986).
Adverse effects, civil damages, collection of information from subject, failure to exhaust administrative remedies, inaccurate records, system of records	Hubbard v. Administrator, EPA, Civil No. 83-0564 (D.D.C. Dec. 20, 1984), aff'd, 809 F.2d 1 (D.C. Cir. 1986).
Amendment of records	Hudgins v. IRS, Civil No. 83-3490 (D.D.C. Sept. 20, 1985), aff'd mem., 764 F.2d 926 (D.C. Cir. 1985).
Adequacy of complaint, civil damages	Huene v. United States, 80-1 U.S. Tax Cas. (CCH) ¶9444 (E.D. Cal. 1980).
Exemptions (j)(2), (k)(2), failure to exhaust administrative remedies	Hughes v. IRS, Civil No. 86-CV-217 (N.D.N.Y. Feb. 18, 1988).
Civil damages, failure to grant access, proper party defendant	Human Eng'g Inst. v. Abbott, 40 A.F.T.R. 2d 77-5978 (N.D. Ohio 1977).
Statute of limitations	Ingraham v. United States Postal Serv., No. 86-3142 (4th Cir. Apr. 1, 1987), reh'g denied (4th Cir. June 12, 1987).
Exemption (k)(2), FOIA/PA interface, maintenance of records	Irons v. Levi, 451 F. Supp. 751 (D. Mass. 1978), rev'd sub nom. Irons v. Bell, 596 F.2d 468 (1st Cir. 1979), on remand sub nom. Irons v. Civiletti, Civil No. 76-963-S (D. Mass. Jan. 21, 1980).
Civil remedies	Irvin v. United States, 16 Empl. Prac. Dec. (CCH) ¶8221 (N.D. Ga. 1978).
Civil damages, exercise of First Amendment rights, maintenance of records	Jabara v. Kelley, 476 F. Supp. 561 (E.D. Mich. 1979), vacated & remanded sub nom. Jabara v. Webster, 691 F.2d 272 (6th Cir. 1982), reh'g denied sub nom. Jabara v. Gray, 3 GDS ¶83,177 (6th Cir. 1982), cert. denied, 464 U.S. 863 (1983).
Civil damages, improper disclosure	Jackson v. VA, 503 F. Supp. 653 (N.D. Ill. 1980).

FOIA/PA interface	Jafari v. Department of the Navy, 3 GDS ¶83,250 (E.D. Va. 1983), aff'd, 728 F.2d 247 (4th Cir. 1984).
Jurisdiction	Jaffess v. Secretary, HEW, 393 F. Supp. 626 (S.D.N.Y. 1975).
Proper party defendant	Jarrell v. Tisch, 656 F. Supp. 237 (D.D.C. 1987).
Statute of limitations	Jarrell v. United States Postal Serv., Civil No. 83-2939 (D.D.C. Jan. 18, 1984), vacated & remanded, 753 F.2d 1088 (D.C. Cir. 1985).
Civil damages, improper disclosure	Jenkins v. Cannon, 79-2 U.S. Tax Cas. (CCH) ¶9422 (D. Del. 1979).
Civil damages, request for access (medical records)	Jenkins v. Robinson, Civil No. 80-2344-WCC (S.D.N.Y. Nov. 7, 1980).
Civil damages, improper disclosure, system of records	Johnson v. Department of the Air Force, 526 F. Supp. 679 (W.D. Okla. 1980).
Adverse effects, attorney's fees, civil damages, collection of information from subject	Johnson v. IRS, Civil No. SA-77-CA-5 (W.D. Tex. Jan. 15, 1979), subsequent decision, 2 GDS ¶81,370 (W.D. Tex. 1981), rev'd & remanded sub nom. Johnson v. Department of the Treasury, 700 F.2d 971 (5th Cir. 1983).
Request for access	Jonak v. CIA, 3 GDS ¶82,474 (E.D. Va. 1980), aff'd, 3 GDS ¶82,516 (4th Cir. 1982).
Court records sealed, maintenance of only essential information, maintenance of records	Jones v. Department of the Treasury, Civil No. 82-2420 (D.D.C. Oct. 18, 1983), aff'd, No. 83-2185 (D.C. Cir. Oct. 3, 1984).
Exemption (k)(2)	Jones v. IRS, Civil No. 85-0-736 (D. Neb. Mar. 3, 1986).
Civil damages, notice requirement	Jones v. Merit Sys. Protection Bd., Civil Nos. 85-0-49, 85-0-722 (D. Neb. Sept. 5, 1986), aff'd sub nom. Jones v. Farm Credit Admin., No. 86-2243 (8th Cir. Apr. 13, 1987), reh'g denied (8th Cir. May 12, 1987).
Jurisdiction	Jones v. NRC, 654 F. Supp. 130 (D.D.C. 1987).
Amendment of records, attorney's fees, civil damages	Juhring v. United States Postal Serv., Civil No. 80-0604 (D.N.J. Mar. 25, 1983), vacated & remanded, No. 83-5413 (3d Cir. May 30, 1984), on remand (D.N.J. Nov. 26, 1984).

Mootness	Jurgins v. Department of the Navy, Civil No. 83-1227 (D.D.C. Jan. 20, 1984), aff'd, No. 84-5115 (D.C. Cir. Nov. 30, 1984).
Mootness	Jurgins v. Department of the Navy, Civil No. 85-3542 (D.D.C. Mar. 25, 1986), dismissed as moot (D.D.C. Apr. 29, 1986).
FOIA/PA interface, records, request for access, system of records	Kalmin v. Department of the Navy, 605 F. Supp. 1492 (D.D.C. 1985).
Failure to exhaust administrative remedies	Kaminski v. Civil Serv. Comm'n, Civil No. 75-0458 (W.D.N.Y. June 29, 1977).
Improper disclosure	Kassel v. VA, 682 F. Supp. 646 (D.N.H. 1988).
Attorney's fees, mootness	Kaun v. IRS, Civil No. 84-C-1433 (E.D. Wis. Sept. 25, 1987).
Failure to exhaust administrative remedies, request for access (medical records)	Kele v. DOJ, Civil No. 86-0796 (TFH/PJA) (D.D.C. June 10, 1988).
Amendment of records, attorney's fees	Kennedy v. Andrus, 459 F. Supp. 240 (D.D.C. 1978), aff'd mem., 612 F.2d 586 (D.C. Cir. 1980).
Adequacy of complaint, adverse effects, civil damages, exemption (j)(2), proper party defendant, routine use	Kimberlin v. DOJ, 605 F. Supp. 79 (N.D. Ill. 1985), aff'd, 788 F.2d 434 (7th Cir. 1986), cert. denied, 478 U.S. 1009 (1986).
Exemptions (j)(2), (k)(2), FOIA/PA interface	Kimberlin v. United States Customs Serv., Civil No. IP-82-1505-C (S.D. Ind. July 22, 1983).
Civil damages, improper disclosure, records	King v. Califano, 471 F. Supp. 180 (D.D.C. 1979).
Amendment of records, civil damages	Klarl v. Department of the Navy, Civil No. 84-432-ORL-18 (M.D. Fla. June 19, 1985), aff'd mem., No. 85-3561 (11th Cir. Mar. 12, 1986).
Duty to search	Kleinbart v. Secretary, HEW, 1 GDS ¶80,062 (D.D.C. 1980).
Attorney's fees, civil damages, improper disclosure	Koch v. United States, Civil No. 78-273T (W.D. Wash. Dec. 30, 1980).
Adequacy of complaint, proper party defendant	Kotmair v. IRS, 47 A.F.T.R. 2d 81-985, 2 GDS ¶81,122 (D. Md. 1981).
Exemption (j)(2), FOIA/PA interface	Kowalski v. FBI, Civil No. 84-5035 (S.D. Ill. Oct. 9, 1984).

Adverse effects, civil damages, FOIA/PA interface, improper disclosure, order of a court of competent jurisdiction, routine use	Krohn v. DOJ, Civil No. 78-1536 (D.D.C. Mar. 19, 1984), vacated (D.D.C. Nov. 29, 1984).
Civil damages, improper disclosure, intra-agency disclosure, maintenance of records, records, system of records	Krowitz v. USDA, 641 F. Supp. 1536 (W.D. Mich. 1986).
Amendment of records	Kudrna v. Webster, Civil No. 79-3421 (S.D.N.Y. Dec. 4, 1979).
Amendment of records	Kuzma v. United States Postal Serv., Civil No. 85-104E (W.D.N.Y. May 22, 1986).
Order of a court of competent jurisdiction	LaBuguen v. Bolger, Civil No. 82-C-6803 (N.D. Ill. Sept. 21, 1983).
Failure to exhaust administrative remedies	Lacklen v. Hampton, Civil No. 75-0580 (D.D.C. Dec. 22, 1976).
Duty to search	Landes v. Shultz, Civil No. 86-0220 (E.D. Pa. Sept. 25, 1986), aff'd, No. 86-1647 (3d Cir. Feb. 4, 1987).
Civil damages, failure to exhaust administrative remedies, mootness	Landes v. Walters, Civil No. 86-2115-SSH (D.D.C. Aug. 4, 1987).
Adverse effects, civil damages, improper disclosure, order of a court of competent jurisdiction, res judicata	Laningham v. United States Navy, Civil No. 83-3238 (D.D.C. Sept. 25, 1984), summary judgment granted (D.D.C. Jan. 7, 1985), aff'd, 813 F.2d 1236 (D.C. Cir. 1987).
Obtaining records under false pretenses	Lapin v. Taylor, 475 F. Supp. 446 (D. Haw. 1979).
Exemptions (k)(1), (j)(1), (j)(2), FOIA/PA interface	Laroque v. DOJ, Civil No. 86-2677 (D.D.C. Mar. 16, 1988), on renewed motion for summary judgment (D.D.C. July 12, 1988).
Individual (definition), jurisdiction	Larouche v. Kelley, Civil No. 75-6010 (S.D.N.Y. Feb. 15, 1977).
Exemption (k)(5), promise of confidentiality, security investigation	Larry v. Lawler, 605 F.2d 954 (7th Cir. 1978).
Amendment of records, failure to exhaust administrative remedies	Larsen v. Hoffman, 444 F. Supp. 245 (D.D.C. 1977).
Amendment of records, civil damages, maintenance of records, statute of limitations	Lawrence v. Dole, Civil No. 83-2876 (D.D.C. Oct. 30, 1985), subsequent decision (D.D.C. Dec. 12, 1985).

Order of a court of competent jurisdiction	Laxalt v. McClatchy, Misc. No. 86-0051 (D.D.C. Mar. 12, 1987).
Notice requirement, order of a court of competent jurisdiction, Privacy Act as a discovery tool	Laxalt v. McClatchy, Misc. No. 86-0140 (D.D.C. June 17, 1986), vacated & remanded, 809 F.2d 885 (D.C. Cir. 1987).
Amendment of records	Lee v. Department of Labor, 2 GDS ¶81,335 (E.D. Va. 1981).
Order of a court of competent jurisdiction	Lee v. United States, Civil No. 84-0023 (D.D.C. Mar. 13, 1984).
Amendment of records, exhaustion of administrative remedies, jurisdiction	Leib v. VA, 2 GDS ¶82,209 (D.D.C. 1982), summary judgment granted, 546 F. Supp. 758 (D.D.C. 1982).
Statute of limitations	Lepkowski v. Department of the Treasury, No. 85-5867 (D.C. Cir. Nov. 14, 1986).
Adverse effects, attorney's fees, civil damages, improper disclosure, routine use	Leverette v. Federal Law Enforcement Training Center, Civil No. 280-136 (S.D. Ga. July 6, 1982).
Court records sealed, order of a court of competent jurisdiction	Lewis v. Bolger, Civil No. 82-2670 (D.D.C. Aug. 31, 1983).
Amendment of records, exhaustion of administrative remedies	Liguori v. Alexander, 495 F. Supp. 641 (S.D.N.Y. 1980).
Failure to exhaust administrative remedies	Lilienthal v. Parks, 574 F. Supp. 14 (E.D. Ark. 1983).
Amendment of records	Linne v. Heckler, Civil Nos. 84-1972, 84-2465 (D.D.C. Dec. 19, 1984), aff'd sub nom. Linne v. HHS, Nos. 85-5370, 85-5371 (D.C. Cir. Apr. 23, 1986).
Amendment of records, statute of limitations	Lipsman v. Anderson, Civil No. 84-9176 (S.D.N.Y. Dec. 13, 1985).
Attorney's fees, mootness	Lloyd v. DOJ, Civil No. C83-1790A (N.D. Ga. July 31, 1984).
Amendment of records, attorney's fees, exemption (k)(2), failure to exhaust administrative remedies	Lobosco v. IRS, Civil No. 77-1464 (E.D.N.Y. Nov. 29, 1977), summary judgment denied, 42 A.F.T.R. 2d 78-5630 (E.D.N.Y. 1978), on motion for attorney's fees, 2 GDS ¶81,207 (E.D.N.Y. 1981).
Routine use	Local 2047, Am. Fed'n of Gov't Employees v. Defense Gen. Supply Center, 423 F. Supp. 481 (E.D. Va. 1976), aff'd, 573 F.2d 184 (4th Cir. 1978).

Exemption (k)(5), FOIA/PA interface, promise of confidentiality, security investigation	Londrigan v. FBI, Civil No. 78-1360 (D.D.C. Jan. 30, 1979), rev'd & remanded, 670 F.2d 1164 (D.C. Cir. 1981), on remand (D.D.C. Nov. 18, 1982), rev'd & remanded, 722 F.2d 840 (D.C. Cir. 1983).
Amendment of records, exemption (j)(2)	Lopez Pacheco v. FBI, 470 F. Supp. 1091 (D.P.R. 1979), attorney's fees denied, Civil No. 76-83 (D.P.R. Jan. 10, 1980).
Exemption (k)(5), notice requirement, security investigation	Lorenz v. NRC, 516 F. Supp. 1151 (D. Colo. 1981).
Jurisdiction	Love v. IRS, 46 A.F.T.R. 2d 80-5034, 2 GDS ¶82,098 (N.D. Ga. 1980).
Attorney's fees	Lovell v. Alderete, 630 F.2d 428 (5th Cir. 1980).
Civil damages, mootness	Lovell v. DOJ, Civil No. 83-0273 (D.D.C. Jan. 17, 1984), dismissed, 589 F. Supp. 150 (D.D.C. 1984).
Adequacy of complaint, intra-agency disclosure, maintenance of records	Lukos v. IRS, No. 86-1100 (6th Cir. Feb. 12, 1987).
Exemption (k)(2), FOIA/PA interface	Luther v. IRS, Civil No. 5-86-130 (D. Minn. June 8, 1987) (magistrate's recommendation), adopted (D. Minn. Aug. 11, 1987).
Civil damages, inaccurate records, intra-agency disclosure	Lydia R. v. United States Army, Civil No. 78-069 (D.S.C. Feb. 28, 1979).
Exemption (j)(2), FOIA/PA interface	Lykins v. Rose, 3 GDS ¶82,522 (D.D.C. 1982), aff'd in part, rev'd & remanded on other grounds sub nom. Lykins v. DOJ, 725 F.2d 1455 (D.C. Cir. 1984), on remand sub nom. Lykins v. Rose, 608 F. Supp. 693 (D.D.C. 1984).
Exemption (j)(2)	Lynas v. DOJ, Civil No. 84-2387 (D.D.C. Nov. 2, 1984), motion for reconsideration denied (D.D.C. Jan. 25, 1985), summary judgment granted (D.D.C. Mar. 4, 1985).
Amendment of records, exemptions (j)(2), (k)(2), system of records	Lynch v. IRS, Civil No. 77-1219 (D.D.C. May 10, 1978).
FOIA/PA interface, Privacy Act as a discovery tool	Lynch v. United States Parole Comm'n, 768 F.2d 491 (2d Cir. 1985).
Adverse effects, amendment of records, civil damages	Lyon v. United States, 94 F.R.D. 69 (W.D. Okla. 1982).

Civil damages, inaccurate records, proper party defendant, records	Machen v. United States Army, Civil No. 78-0582 (D.D.C. May 11, 1979).
Exercise of First Amendment rights	MacPherson v. IRS, 803 F.2d 479 (9th Cir. 1986).
Adequacy of complaint, adverse effects, amendment of records, civil damages, exhaustion of administrative remedies, jurisdiction, maintenance of records, mootness, records, system of records	Mahar v. National Park Serv., Civil No. C83-316-H (D. Mont. Jan. 22, 1985) (case transferred to D.D.C.), summary judgment granted, Civil No. 86-0398 (D.D.C. Dec. 23, 1987).
Exemption (j)(2)	Maher v. United States Parole Comm'n, 2 GDS ¶81,348 (W.D. Tex. 1980).
Agency, civil damages, exercise of First Amendment rights, intra-agency disclosure, maintenance of records	Marcotte v. Secretary of Defense, 618 F. Supp. 756 (D. Kan. 1985).
Agency	Marshall v. Park Place Hosp., 3 GDS ¶83,088 (D.D.C. 1983).
Exemption (j)(2), FOIA/PA interface	Martin v. FBI, Civil Nos. 83-C-123, 83-C-1620, 83-C-1846 (N.D. Ill. Sept. 30, 1983).
Attorney's fees, civil damages, improper disclosure	Martin v. Lauer, 3 GDS ¶82,252 (D.D.C. 1982), rev'd & remanded, 686 F.2d 24 (D.C. Cir. 1982), on motion for attorney's fees, 562 F. Supp. 503 (D.D.C. 1983), remanded, 740 F.2d 36 (D.C. Cir. 1984).
Compiled in reasonable anticipation of civil litigation, FOIA/PA interface	Martin v. Office of Special Counsel, 819 F.2d 1181 (D.C. Cir. 1987).
Exemptions (j)(1), (j)(2), FOIA/PA interface	Martinez v. FBI, Civil No. 82-1547 (D.D.C. Oct. 28, 1983), subsequent decision (D.D.C. Nov. 9, 1983).
Amendment of records, maintenance of records, proper party defendant, records, request for access	Mason v. Hoffman, Civil No. 76-182-A (E.D. Va. Mar. 30, 1977) (consolidated), aff'd sub nom. Mason v. Callaway, 554 F.2d 129 (4th Cir. 1977) (consolidated), cert. denied, 434 U.S. 877 (1977), reh'g denied, 434 U.S. 935 (1977).
Failure to exhaust administrative remedies, proper party defendant	Matusavage v. United States, Civil No. 85-7385 (E.D. Pa. Mar. 31, 1986).

Exemption (k)(7), FOIA/PA interface	May v. Department of the Air Force, Civil No. S84-0340R (S.D. Miss. Dec. 7, 1984), rev'd & remanded, 777 F.2d 1012 (5th Cir. 1985), reh'g & reh'g en banc denied, 800 F.2d 1402 (5th Cir. 1986), on remand (S.D. Miss. Mar. 31, 1987), dismissed (S.D. Miss. Aug. 11, 1987).
Duty to search	McAllister v. Department of the Army, Civil No. 86-1692 (M.D. Pa. Jan. 22, 1988).
Social Security numbers	McElrath v. Califano, Civil No. 77-C-3194 (N.D. Ill. May 23, 1978), aff'd, 615 F.2d 434 (7th Cir. 1980).
Exemption (j)(2)	McKean v. DEA, Civil No. 81-425-T-10 (M.D. Fla. May 25, 1983).
FOIA/PA interface	McNeal v. DOJ, Civil No. 6-70-890 (E.D. Mich. Nov. 8, 1976).
Adequacy of complaint, standing	McTaggart v. United States, 570 F. Supp. 547 (E.D. Mich. 1983).
FOIA/PA interface, proper party defendant	Meier v. DOJ, Civil No. 78-3124-AAH-Sx (C.D. Cal. June 25, 1979).
Jurisdiction	Meisch v. United States Army, 435 F. Supp. 341 (E.D. Mo. 1977), aff'd mem., 566 F.2d 1178 (8th Cir. 1977).
Attorney's fees, request for access	Meisler v. DOJ, Civil No. 75-0417 (W.D.N.Y. Feb. 24, 1977).
Failure to exhaust administrative remedies	Mellett v. FDIC, Civil No. 4-85-1362 (D. Minn. Apr. 1, 1986).
Adverse effects, civil damages, collection of information from subject	Merola v. Department of the Treasury, Civil No. 83-3323 (D.D.C. Oct. 24, 1986).
Exemption (k)(5), jurisdiction, promise of confidentiality, records, security investigation	Mervin v. Bonfanti, 410 F. Supp. 1205 (D.D.C. 1976).
Amendment of records	Mervin v. FTC, Civil No. 76-0686 (D.D.C. Dec. 1, 1976), aff'd, 591 F.2d 821 (D.C. Cir. 1978).
Amendment of records, exhaustion of administrative remedies, individual (definition), records	Metadure Corp. v. United States, 490 F. Supp. 1368 (S.D.N.Y. 1980).
Failure to exhaust administrative remedies	Metadure Corp. v. United States, 569 F. Supp. 1496 (E.D.N.Y. 1983).

Improper disclosure, system of records	Michalas v. Reinhardt, 22 Fair Empl. Prac. Cas. (BNA) 469 (D.D.C. 1979).
Amendment of records, maintenance of records	Miller v. Department of the Treasury, Civil Nos. 82-3434, 82-3435 (D.D.C. Sept. 6, 1983).
Exemption (k)(5), FOIA/PA interface, security investigation	Miller v. United States, 630 F. Supp. 347 (E.D.N.Y. 1986).
Civil damages, exemption (j)(2), failure to exhaust administrative remedies, FOIA/PA interface, waiver of exemption (administrative action)	Miller v. Webster, 483 F. Supp. 883 (N.D. Ill. 1979), aff'd in part, rev'd in part sub nom. Miller v. Bell, 661 F.2d 623 (7th Cir. 1981), cert. denied sub nom. Miller v. Webster, 456 U.S. 960 (1982), subsequent decision, Civil No. 77-C-3331 (N.D. Ill. Oct. 27, 1983), summary judgment granted (N.D. Ill. Feb. 29, 1984), remanded, No. 84-2074 (7th Cir. Dec. 10, 1984), summary judgment denied sub nom. Miller v. Director of the FBI (N.D. Ill. Oct. 7, 1987), summary judgment granted on other grounds sub nom. Miller v. Sessions (N.D. Ill. Mar. 21, 1988), reconsideration denied (N.D. Ill. May 2, 1988).
FOIA/PA interface, request for access	Mills v. McCreight, 1 GDS ¶79,151 (D.D.C. 1979).
FOIA/PA interface, mootness	Minor v. EEOC, Civil No. 81-2988-H (W.D. Tenn. Dec. 22, 1983) (magistrate's report adopted), vacated & remanded, No. 84-5162 (6th Cir. Sept. 20, 1984) (unpublished memorandum), mem., 745 F.2d 57 (6th Cir. 1984), on remand (W.D. Tenn. Mar. 18, 1985), dismissed (W.D. Tenn. Sept. 16, 1986) (magistrate's report adopted).
Exemptions (j)(2), (k)(2)	Mizell v. FBI, 2 GDS ¶81,336 (D.D.C. 1981).
Civil damages, FOIA/PA interface	Moessmer v. CIA, Civil No. 86-948C(1) (E.D. Mo. Feb. 19, 1987).
Civil damages, inaccurate records	Molerio v. FBI, 749 F.2d 815 (D.C. Cir. 1984).
Civil damages, duty to search, mootness	Moore v. CIA, Civil No. 88-494 (GEB) (D.N.J. May 13, 1988).
Notice requirement, order of a court of competent jurisdiction	Moore v. United States Postal Serv., 609 F. Supp. 681 (E.D.N.Y. 1985).
Exemption (j)(2)	Moran v. DEA, Civil No. 78-2831-JLK (S.D. Fla. July 3, 1979).

Amendment of records	Morderosian v. United States Air Force, Civil No. 83-1389 (D.D.C. June 21, 1985).
Amendment of records, civil damages, inaccurate records	Moskiewicz v. USDA, 791 F.2d 561 (7th Cir. 1986).
Order of a court of competent jurisdiction	Murray v. United States, Civil No. 84-2364 (D. Kan. Feb. 21, 1986).
Exemption (k)(2), FOIA/PA interface, proper party defendant, system of records	Nader v. ICC, Civil No. 82-1037 (D.D.C. Nov. 23, 1983).
Exercise of First Amendment rights, failure to exhaust administrative remedies	Nagel v. HEW, 725 F.2d 1438 (D.C. Cir. 1984).
Civil damages, inaccurate records, maintenance of only essential information, maintenance of records, statute of limitations	National Treasury Employees Union v. IRS, 601 F. Supp. 1268 (D.D.C. 1985).
FOIA/PA interface, maintenance of records, system of records	Nelson v. EEOC, Civil No. 83-C-983 (E.D. Wis. Feb. 14, 1984).
Exemption (k)(5), FOIA/PA interface, promise of confidentiality, proper party defendant, security investigation, waiver of exemption	Nemetz v. Department of the Treasury, 446 F. Supp. 102 (N.D. Ill. 1978).
Order of a court of competent jurisdiction, request for access (medical records)	Newman v. United States, 3 GDS ¶82,348 (D.D.C. 1982), subsequent decision, Civil No. 81-2480 (D.D.C. Sept. 13, 1982).
System of records	Nichols v. Mears, Civil No. S-76-633-PCW (E.D. Cal. Mar. 27, 1979).
Proper party defendant	Nowik v. IRS, Civil No. 84-5503-DT (E.D. Mich. Oct. 10, 1985).
Exemption (j)(2), FOIA/PA interface	Nunez v. DEA, 497 F. Supp. 209 (S.D.N.Y. 1980).
Request for access	Nurse v. CIA, 3 GDS ¶83,059 (D.D.C. 1981).
Adverse effects, civil damages, exemption (j)(2), improper disclosure, intra-agency disclosure	Nutter v. VA, Civil No. 84-2392 (D.D.C. July 9, 1985).
Exemption (k)(6)	Oatley v. United States, 3 GDS ¶83,274 (D.D.C. 1983).

Jurisdiction	O'Connor v. United States, 669 F. Supp. 317 (D. Nev. 1987).
Exemption (k)(2), failure to exhaust administrative remedies, proper party defendant	Offord v. Egger, Civil No. S-85-0006-EJG (E.D. Cal. Oct. 18, 1985.
Individual (definition)	OKC Corp. v. Williams, 461 F. Supp. 540 (N.D. Tex. 1978), aff'd, 614 F.2d 58 (5th Cir. 1980), partial summary judgment granted, 489 F. Supp. 576 (N.D. Tex. 1980), reh'g denied, 617 F.2d 1207 (5th Cir. 1980), cert. denied, 449 U.S. 952 (1980).
Failure to exhaust administrative remedies	Okken v. HHS, Civil No. C86-0065 (N.D. Iowa Dec. 12, 1986).
Civil damages, improper disclosure, records, system of records	Olberding v. DOD, 2 GDS ¶82,004 (S.D. Iowa 1980), dismissed, 564 F. Supp. 907 (S.D. Iowa 1982), aff'd, 709 F.2d 621 (8th Cir. 1983).
Exemption (j)(2), mootness	Oldham v. United States, Civil No. 86-0-42 (D. Neb. Nov. 25, 1986), subsequent order (D. Neb. May 4, 1987), motion for reconsideration denied (D. Neb. June 2, 1987), on notice of appeal (D. Neb. June 9, 1987).
Request for access	Oquendo v. Webster, Civil No. 78-5287-CES (S.D.N.Y. Apr. 23, 1979).
Duty to search, exemption (k)(2)	Osborne v. Department of State, Civil No. 84-1848 (D.D.C. Jan. 23, 1985).
Adequacy of complaint, failure to exhaust administrative remedies	Osokow v. OPM, Civil No. 83-7925-JMI-Mc (C.D. Cal. Nov. 28, 1984).
Civil damages, FOIA/PA interface, improper disclosure, jurisdiction, proper party defendant	Owens v. Merit Sys. Protection Bd., Civil No. 3-83-0449-R (N.D. Tex. Sept. 14, 1983).
Attorney's fees, exemption (j)(2)	Owens v. United States Attorney Gen., 2 GDS ¶81,259 (D.D.C. 1981), on motion for attorney's fees, 2 GLS ¶82,090 (D.D.C. 1981).
FOIA/PA interface	Packer v. United States Postal Serv., Civil No. 86-1479(RO) (S.D.N.Y. Dec. 10, 1986).
Jurisdiction	Paige v. IRS, Civil No. IP-85-64-C (S.D. Ind. Jan. 13, 1986).
Exemption (k)(5), FOIA/PA interface	Painter v. FBI, Civil No. C78-682A (N.D. Ga. Mar. 29, 1979), rev'd & remanded, 615 F.2d 689 (5th Cir. 1980).

Exemption (j)(2)	Parente v. United States Parole Comm'n, Civil No. 86-2970 (D.D.C. Aug. 19, 1987).
Attorney's fees, duty to search, exemption from access provision, proper party defendant, records	Parkinson v. Commissioner, No. 87-3219 (6th Cir. Feb. 17, 1988) (unpublished memorandum), mem., 840 F.2d 17 (6th Cir. 1988).
Adverse effects, civil damages, improper disclosure, intra-agency disclosure, no injunction against disclosure, proper party defendant, routine use, standing	Parks v. IRS, 618 F.2d 677 (10th Cir. 1980).
Adequacy of complaint, FOIA/PA interface, jurisdiction, no injunction against disclosure	Patriarca v. FBI, 639 F. Supp. 1193 (D.R.I. 1986).
Attorney's fees, exhaustion of administrative remedies, failure to grant access	Patterson v. Bureau of Prisons, 1 GDS ¶79,141 (W.D. Okla. 1979).
Exemptions (k)(5), (k)(6), FOIA/PA interface, promise of confidentiality, security investigation	Patton v. FBI, 626 F. Supp. 445 (M.D. Pa. 1985), motion for reconsideration denied, Civil No. 84-0481 (M.D. Pa. June 5, 1985), aff'd, No. 85-5298 (3d Cir. Jan. 22, 1986) (unpublished memorandum), mem., 782 F.2d 1030 (3d Cir. 1986).
Failure to exhaust administrative remedies	Pearce v. United States, Civil No. 83-1854 (D.D.C. Jan. 24, 1985).
Exemption (j)(2), FOIA/PA interface	Pearson v. DEA, Civil No. 84-2740 (D.D.C. Jan. 31, 1986).
Amendment of records, improper disclosure	Pellerin v. VA, 790 F.2d 1553 (11th Cir. 1986).
Amendment of records, attorney's fees, civil damages, inaccurate records	Perkins v. DOJ, Civil No. 80-14 (E.D. Ky. June 15, 1983), attorney's fees awarded (E.D. Ky. Nov. 10, 1983).
Amendment of records, exemptions (j)(2), (k)(2), FOIA/PA interface	Perkins v. IRS, Civil No. 86-71551-DT (E.D. Mich. Dec. 16, 1986).
Adverse effects, civil damages, inaccurate records	Perry v. Block, 684 F.2d 121 (D.C. Cir. 1982).
Adverse effects, civil damages, improper disclosure, inaccurate records, routine use, statute of limitations	Perry v. FBI, 2 GDS ¶81,342 (N.D. Ill. 1980), subsequent decision, Civil No. 77-C-2466 (N.D. Ill. Nov. 18, 1981), aff'd, 759 F.2d 1271 (7th Cir. 1985).

Order of a court of competent jurisdiction	Perry v. State Farm Fire & Casualty Co., 734 F.2d 1441 (11th Cir. 1984).
Proper party defendant	Peterson v. Mack, Civil Nos. 84-1385-RE, 85-15-RE (D. Or. May 23, 1985).
Proper party defendant	Petrus v. Bowen, 833 F.2d 581 (5th Cir. 1987).
Agency	Polchowski v. Gorris, 714 F.2d 749 (7th Cir. 1983).
Civil damages, exercise of First Amendment rights, exhaustion of administrative remedies, improper disclosure, statute of limitations	Pope v. Bond, 641 F. Supp. 489 (D.D.C. 1986).
Exemption (j)(2), FOIA/PA interface	Porter v. DOJ, 551 F. Supp. 595 (E.D. Pa. 1982), rev'd & remanded, 717 F.2d 787 (3d Cir. 1983), vacated as moot, 469 U.S. 14 (1984) (consolidated).
Amendment of records, exemption (j)(2)	Powell v. DOJ, 851 F.2d 394 (D.C. Cir. 1988).
Res judicata	Prothman v. IRS, No. 84-1339 (8th Cir. May 7, 1984).
Exemption (j)(2), FOIA/PA interface	Provenzano v. DOJ, 3 GDS ¶83,125 (D.N.J. 1982), rev'd & remanded, 717 F.2d 799 (3d Cir. 1983), reh'g en banc denied, 722 F.2d 36 (3d Cir. 1983), vacated as moot, 469 U.S. 14 (1984) (consolidated), vacated & remanded mem., 755 F.2d 922 (3d Cir. 1985).
FOIA/PA interface, injunction against disclosure	Providence Journal Co. v. FBI, 460 F. Supp. 762 (D.R.I. 1978), subsequent decision, 460 F. Supp. 778 (D.R.I. 1978), stay pending appeal granted, 595 F.2d 889 (1st Cir. 1979), rev'd on other grounds, 602 F.2d 1010 (1st Cir. 1979), cert. denied, 444 U.S. 1071 (1980).
Adverse effects, attorney's fees, civil damages	Prows v. DOJ, Civil No. 87-1657-LFO (D.D.C. Jan. 22, 1988).
Amendment of records, failure to exhaust administrative remedies	Pruett v. Levi, Civil No. 76-99-NA (M.D. Tenn. Jan. 4, 1978), aff'd, 622 F.2d 256 (6th Cir. 1980).
Civil damages, inaccurate records, statute of limitations	Quarry v. DOJ, 3 GDS ¶82,407 (D.D.C. 1982).

Amendment of records, request for access, routine use	Quilico v. United States Navy, Civil No. 80-C-3568 (N.D. Ill. Sept. 2, 1983).
Exemption (j)(2), FOIA/PA interface	Rachel v. DOJ, Civil Nos. 83-C-0434, 83-C-1420 (N.D. Ill. Aug. 1, 1983).
Adverse effects, attorney's fees, civil damages, exercise of First Amendment rights	Radford v. Social Sec. Admin., Civil No. 81-4099 (D. Kan. July 11, 1985).
Exemption (k)(2), FOIA/PA interface, system of records	Rakosi v. IRS, 2 GDS ¶81,271 (D. Ariz. 1981).
Failure to exhaust administrative remedies	Rassa (JBR) v. United States, Civil No. M-84-3701 (D. Md. Sept. 3, 1985).
FOIA/PA interface, individual (definition)	Raven v. Panama Canal Co./Canal Zone Gov't, Civil No. 77-0051-B (D.C.Z. Jan. 19, 1978), aff'd, 583 F.2d 169 (5th Cir. 1978), cert. denied, 440 U.S. 980 (1979).
Request for access	Ray v. DOJ, 558 F. Supp. 226 (D.D.C. 1982), motion to amend granted, 3 GDS ¶82,526 (D.D.C. 1982), aff'd mem., 720 F.2d 216 (D.C. Cir. 1983).
Attorney's fees	Rector v. Commissioner, Civil No. A84-564 (D. Alaska Feb. 12, 1986), appeal dismissed on procedural grounds, No. 86-3764 (9th Cir. Apr. 7, 1987).
Attorney's fees, civil damages	Rector v. United States, Civil No. A84-585 (D. Alaska Oct. 15, 1985).
Exemption (k)(2)	Rector v. United States, Civil No. A85-002 (D. Alaska Mar. 26, 1986).
Maintenance of records, request for access	Reeves v. DOJ, Civil No. 78-0329 (D. Haw. Aug. 30, 1978), motion for partial reconsideration denied, 3 GDS ¶82,395 (D. Haw. 1981).
Duty to search	Reichstein v. United States, Civil No. 80-2567 (D.D.C. May 6, 1981).
Duty to search	Reichstein v. United States, Civil No. 80-2568 (D.D.C. May 1, 1981).
Maintenance of records	Reinier v. Department of Labor, Civil No. C-2-83-2251 (S.D. Ohio June 23, 1986), aff'd, No. 86-3741 (6th Cir. May 12, 1987) (unpublished memorandum), mem., 817 F.2d 757 (6th Cir. 1987).

Exemption (j)(2)	Restrepo v. DOJ, Civil No. 5-86-294 (D. Minn. June 4, 1987) (magistrate's report), dismissed (D. Minn. June 23, 1987).
Adverse effects, amendment of records, civil damages, collection of information from subject, exercise of First Amendment rights, improper disclosure, inaccurate records, intra-agency disclosure, maintenance of only essential information, maintenance of records, records, system of records	Reuber v. United States, Civil No. 81-1857 (D.D.C. Oct. 27, 1982), partial summary judgment denied (D.D.C. Aug. 15, 1983), partial summary judgment granted (D.D.C. Apr. 13, 1984), subsequent decision (D.D.C. Sept. 7, 1984), remanded in part, 750 F.2d 1039 (D.C. Cir. 1984), on remand (D.D.C. Dec. 20, 1985), aff'd in part, remanded in part, 829 F.2d 133 (D.C. Cir. 1987).
Agency, amendment of records, civil damages, exemption (j)(2), failure to exhaust administrative remedies, FOIA/PA interface, improper disclosure, jurisdiction, statute of limitations	Reyes v. Supervisor of DEA, 647 F. Supp. 1509 (D.P.R. 1986), aff'd in part, vacated in part & remanded, 834 F.2d 1093 (1st Cir. 1987).
Civil damages, failure to exhaust administrative remedies, intra-agency disclosure, routine use, statute of limitations, system of records	Richards v. Lehman, Civil No. 82-2076-CHH (C.D. Cal. Dec. 15, 1983), dismissed in part & aff'd in part mem., 740 F.2d 975 (9th Cir. 1984).
Attorney's fees, mootness	Richards v. Lehman, Civil No. 83-6230-HLH-Gx (C.D. Cal. May 17, 1984).
Individual (definition)	Roberts v. FBI, Civil No. 78-8059-CF (S.D. Fla. Nov. 14, 1978).
Civil damages, improper disclosure, proper party defendant, records	Robinson v. Department of Educ., Civil No. 87-2554 (E.D. Pa. Jan. 21, 1988), summary judgment granted (E.D. Pa. Mar. 8, 1988).
Adverse effects, amendment of records, civil damages, inaccurate records	Rodgers v. Department of the Army, 676 F. Supp. 858 (N.D. Ill. 1988).
Amendment of records, failure to exhaust administrative remedies	Rodgers v. Marsh, Civil No. 85-C-579 (N.D. Ill. Oct. 4, 1985).
Amendment of records	Rogers v. Department of Labor, 607 F. Supp. 697 (N.D. Cal. 1985).
Statute of limitations	Rose v. United States, Civil No. C86-0828-SAW (N.D. Cal. Nov. 6, 1986).
Civil damages, maintenance of records, statute of limitations	Rosen v. Walters, 719 F.2d 1422 (9th Cir. 1983).

Exemption (j)(2), FOIA/PA interface	Rosenberg v. Meese, 622 F. Supp. 1451 (S.D.N.Y. 1985).
Civil damages, failure to exhaust administrative remedies	Ross v. United States Postal Serv., 556 F. Supp. 729 (N.D. Ala. 1983).
Adverse effects, civil damages, improper disclosure	Roszel v. Department of the Treasury, Civil No. 79-472-T-K (M.D. Fla. Mar. 25, 1981).
FOIA/PA interface	Rotondo v. FBI, Civil No. C-2-84-2004 (S.D. Ohio Aug. 29, 1985), vacated & remanded mem., 791 F.2d 935 (6th Cir. 1986).
Amendment of records, proper party defendant	Rowan v. United States Postal Serv., Civil No. 82-C-6550 (N.D. Ill. May 2, 1984).
Adequacy of complaint, amendment of records, records, routine use	Rowe v. Department of the Air Force, Civil No. 3-77-220 (E.D. Tenn. Feb. 21, 1978), summary judgment granted (E.D. Tenn. Mar. 22, 1978) (magistrate's report adopted).
Civil damages, proper party defendant	Rowe v. Tennessee, 431 F. Supp. 1257 (E.D. Tenn. 1977), vacated on other grounds, 609 F.2d 259 (6th Cir. 1979).
Amendment of records, civil damages, inaccurate records, statute of limitations	R.R. v. Department of the Army, 482 F. Supp. 770 (D.D.C. 1980).
Exercise of First Amendment rights, exhaustion of administrative remedies, improper disclosure	Rudder v. United States, Civil No. 85-1969-SSH (D.D.C. Oct. 20, 1987).
Order of a court of competent jurisdiction	Rustin v. United States, Civil No. 82-2829 (D.D.C. July 12, 1983).
Civil damages, exemption from civil remedies provision, exemption (j)(2), FOIA/PA interface, improper disclosure	Ryan v. DOJ, 595 F.2d 954 (4th Cir. 1979).
Agency	Ryans v. New Jersey Comm'n for the Blind & Visually Impaired, 542 F. Supp. 841 (D.N.J. 1982).
Agency, individual (definition)	St. Michael's Convalescent Hosp. v. California, 643 F.2d 1369 (9th Cir. 1981).
System of records	Sanchez v. United States, 3 GDS ¶83,116 (S.D. Tex. 1982).
Civil remedies	Sauls v. EEOC, 24 Empl. Prac. Dec. (CCH) ¶31,313 (S.D.N.Y. 1979).

Notice requirement	Saunders v. Schweiker, 508 F. Supp. 305 (W.D.N.Y. 1981).
Amendment of records, civil damages, improper disclosure, system of records	Savarese v. HEW, 479 F. Supp. 304 (N.D. Ga. 1979), aff'd mem. sub nom. Savarese v. Harris, 620 F.2d 298 (5th Cir. 1980), cert. denied, 449 U.S. 1078 (1981).
Exemption (k)(2), FOIA/PA interface, security investigation	Schacht v. FBI, Civil No. 77-0269-N (S.D. Cal. June 12, 1979).
Jurisdiction	Schandl v. Heye, Civil No. 86-6219 (S.D. Fla. Sept. 30, 1986).
Exemption (k)(2)	Schiller v. Webster, 3 GDS ¶82,263 (E.D.N.Y. 1980).
Order of a court of competent jurisdiction	Schmid v. Frosch, 1 GDS ¶80,274 (D.D.C. 1980).
Civil damages, improper disclosure	Schowengerdt v. General Dynamics Corp., 823 F.2d 1328 (9th Cir. 1987).
Agency, jurisdiction, routine use	Schuenemeyer v. United States, Civil No. SA-85-773 (W.D. Tex. Mar. 31, 1988).
Amendment of records, exhaustion of administrative remedies	Schuler v. United States, Civil No. 77-2187 (D.D.C. June 22, 1978), aff'd, 617 F.2d 605 (D.C. Cir. 1979).
Civil damages, inaccurate records	Schwartz v. FBI, 3 GDS ¶82,283 (E.D.N.Y. 1982).
Request for access	Scott v. United States Parole Comm'n, Civil No. C82-1835A (N.D. Ga. Oct. 25, 1983).
Civil damages, improper disclosure	Scullion v. VA, No. 87-2405 (7th Cir. June 22, 1988).
Routine use	SEC v. Dimensional Entertainment Corp., 518 F. Supp. 773 (S.D.N.Y. 1981).
Order of a court of competent jurisdiction	Segar v. Bell, Civil No. 77-0081 (D.D.C. July 28, 1978).
Jurisdiction, request for access	Seibert v. IRS, Civil No. 81-H-1957-S (N.D. Ala. Apr. 9, 1982), aff'd mem., No. 82-7194 (11th Cir. Apr. 15, 1983).
FOIA/PA interface, request for access (medical records), system of records	Seiler v. Department of Transp., Civil No. 73-143-C (W.D. Mo. Mar. 25, 1975).

Amendment of records, exemption (j)(2), FOIA/PA interface	Shapiro v. DEA, 3 GDS ¶83,123 (W.D. Wis. 1982), aff'd, 721 F.2d 215 (7th Cir. 1983) (consolidated), vacated as moot, 469 U.S. 14 (1984) (consolidated), on remand, 762 F.2d 611 (7th Cir. 1985).
Adverse effects, civil damages, collection of information from subject, improper disclosure, routine use	Shaw v. Department of the Interior, Civil No. R-84-382-BRT (D. Nev. Feb. 7, 1986), summary judgment granted (D. Nev. Apr. 15, 1986).
Attorney's fees, individual (definition), records, request for access	Shermco Indus. v. Secretary of the Air Force, 452 F. Supp. 306 (N.D. Tex. 1978), rev'd on other grounds, 613 F.2d 1314 (5th Cir. 1980).
Agency	Shields v. Shetler, 682 F. Supp. 1172 (D. Colo. 1988), subsequent opinion, Civil No. 87-C-1757 (D. Colo. May 13, 1988).
Individual (definition)	Sidney v. Department of the Interior, Civil No. 80-0302J (D. Utah Jan. 6, 1983).
Exemption (j)(1), intra-agency disclosure	Siegel v. CIA, Civil No. C85-1191-SC (N.D. Cal. Nov. 15, 1985).
Exemption (k)(2), jurisdiction	Silverstein v. Law Enforcement Assistance Admin., Civil No. 79-2260-MA (D. Mass. Feb. 10, 1983).
Exemption (j)(2), FOIA/PA interface	Sims v. DOJ, Civil No. 84-2048 (C.D. Ill. May 25, 1984).
Statute of limitations	Singer v. OPM, Civil No. 83-1095 (D.N.J. Mar. 8, 1984).
Res judicata	Singer v. OPM, Civil No. 85-0617 (D.N.J. May 30, 1985).
Compiled in reasonable anticipation of civil litigation, FOIA/PA interface, proper party defendant, system of records	Smiertka v. Department of the Treasury, 447 F. Supp. 221 (D.D.C. 1978), remanded on procedural grounds, 604 F.2d 698 (D.C. Cir. 1979).
Adverse effects, attorney's fees, civil damages, improper disclosure, records, routine use	Smigelsky v. United States, Civil No. 79-110-RE (D. Or. Apr. 14, 1982), summary judgment granted in part sub nom. Smigelsky v. United States Postal Serv. (D. Or. Oct. 1, 1982), attorney's fees awarded (D. Or. Jan. 11, 1983), costs awarded (D. Or. Feb. 23, 1983).
Amendment of records, exemption (j)(2), FOIA/PA interface	Smith v. DOJ, Civil No. 81-813 (N.D.N.Y. Dec. 13, 1983), attorney's fees awarded (N.D.N.Y. Jan. 24, 1984).

Compiled in reasonable anticipation of civil litigation	Smith v. DOJ, Civil No. 86-6162 (E.D. Pa. Sept. 2, 1987).
Proper party defendant	Smith v. Fackrell, Civil No. 87-1174 (D. Idaho Dec. 17, 1987).
FOIA/PA interface	Smith v. Flaherty, 465 F. Supp. 815 (M.D. Pa. 1978).
Failure to exhaust administrative remedies, request for access (medical records)	Smith v. Secretary of the Army, 2 GDS ¶81,059 (M.D. Ala. 1979).
Civil damages, FOIA/PA interface, maintenance of records	Smith v. United States, 817 F.2d 86 (10th Cir. 1987).
FOIA/PA interface, system of records	Snider v. Mossinghoff, Civil No. 82-2903 (D.D.C. Sept. 14, 1983).
Exercise of First Amendment rights, failure to exhaust administrative remedies, individual (definition), jurisdiction, injunction against disclosure	Socialist Workers Party v. Attorney Gen. of the United States, 642 F. Supp. 1357 (S.D.N.Y. 1986), injunction ordered, 666 F. Supp. 621 (S.D.N.Y. 1987).
Civil damages, improper disclosure	South v. FBI, 508 F. Supp. 1104 (N.D. Ill. 1981), motion to dismiss granted, Civil No. 79-C-1551 (N.D. Ill. 1981).
Mootness, request for access	Spatz v. HEW, Civil No. 78-C-5084 (N.D. Ill. July 20, 1979).
Adverse effects, civil damages, exemption (k)(2), FOIA/PA interface	Spence v. IRS, Civil No. 85-1076-HB (D.N.M. Mar. 27, 1986).
Agency, agency records	Standley v. DOJ, 835 F.2d 216 (9th Cir. 1987).
Attorney's fees	Starrick v. Webster, Civil No. H84-409 (N.D. Ind. Mar. 20, 1986).
Exemption (j)(2)	Stewart v. CIA, 2 GDS ¶81,302 (D.D.C. 1981).
Order of a court of competent jurisdiction, routine use	Stiles v. Atlanta Gas Light Co., 453 F. Supp. 798 (N.D. Ga. 1978).
Exemption (j)(2), FOIA/PA interface	Stimac v. Department of the Treasury, 586 F. Supp. 34 (N.D. Ill. 1984).
Exemption (j)(2), FOIA/PA interface	Stimac v. FBI, 577 F. Supp. 923 (N.D. Ill. 1984).
Individual (definition)	Stone v. Export-Import Bank of the United States, 552 F.2d 132 (5th Cir. 1977).

Adverse effects, amendment of records, civil damages, exhaustion of administrative remedies, inaccurate records, promise of confidentiality	Strang v. Arms Control & Disarmament Agency, Civil No. 86-1057 (D.D.C. Dec. 16, 1986).
Civil damages, FOIA/PA interface	Sullivan v. VA, 617 F. Supp. 258 (D.D.C. 1985).
Exemption (k)(5), promise of confidentiality, security investigation	Swann v. DOJ, Civil No. 78-1368-WE-Px (C.D. Cal. Nov. 1, 1978).
Amendment of records, attorney's fees, exercise of First Amendment rights, request for access (medical records)	Sweatt v. United States Navy, 2 GDS ¶81,038 (D.D.C. 1980), aff'd, 683 F.2d 420 (D.C. Cir. 1982).
Amendment of records, statute of limitations	Tannehill v. Department of the Air Force, Civil No. 87-M-1395 (D. Colo. May 23, 1988), reconsideration denied (D. Colo. June 17, 1988).
Exercise of First Amendment rights, jurisdiction	Tate v. Bindseil, 2 GDS ¶82,114 (D.S.C. 1981).
Adverse effects, agency records, civil damages, jurisdiction, maintenance of records, proper party defendant, system of records	Taylor v. Califano, Civil No. 77-A-439 (D. Colo. Oct. 10, 1978).
Civil damages, intra-agency disclosure, routine use	Taylor v. Orr, Civil No. 83-0389 (D.D.C. Dec. 5, 1983).
FOIA/PA interface	Tennessean Newspapers, Inc. v. Levi, 403 F. Supp. 1318 (M.D. Tenn. 1975).
Exemption (k)(5), FOIA/PA interface	Terkel v. Kelly, Civil No. 76-C-1626 (N.D. Ill. Feb. 8, 1978), aff'd, 599 F.2d 214 (7th Cir. 1979), cert. denied sub nom. Terkel v. Webster, 444 U.S. 1013 (1980).
Civil damages, improper disclosure, system of records	Thomas v. DOE, Civil No. 81-463-C (D.N.M. Mar. 11, 1982), aff'd, 719 F.2d 342 (10th Cir. 1983).
Agency, civil damages, improper disclosure, system of records	Thomas v. Department of the Navy, Civil No. C81-0654-L(A) (W.D. Ky. Nov. 4, 1982), aff'd, No. 83-5010 (6th Cir. Mar. 28, 1984) (unpublished memorandum), mem., 732 F.2d 156 (6th Cir. 1984).
Exemption from access provision	Thomas v. IRS, Civil No. 84-C-1434 (E.D. Wis. Apr. 30, 1985).

Adverse effects, amendment of records, civil damages, maintenance of records, notice requirement	Thompson v. Department of Transp., 547 F. Supp. 274 (S.D. Fla. 1982).
Attorney's fees, mootness, request for access	Thurston v. United States, 810 F.2d 438 (4th Cir. 1987).
Adverse effects, civil damages, exemption (j)(2), improper disclosure, routine use, statute of limitations	Tijerina v. Walters, Civil Nos. 84-2346, 84-2347 (D.D.C. Oct. 28, 1985), rev'd, 821 F.2d 789 (D.C. Cir. 1987).
Attorney's fees, jurisdiction	Tomko v. United States Marshals Serv., Civil No. C86-2848 (N.D. Ohio Nov. 17, 1986).
Civil damages, maintenance of records	Townsend v. Carter, 476 F. Supp. 1070 (N.D. Tex. 1979).
Amendment of records	Trinidad v. Civil Serv. Comm'n, 2 GDS ¶81,322 (N.D. Ill. 1980).
Failure to exhaust administrative remedies	Tripati v. DOJ, Civil No. 87-3301-LFO (D.D.C. Apr. 15, 1988).
Civil damages, improper disclosure, proper party defendant	Trombetta v. NRC, 3 GDS ¶83,211 (E.D. Pa. 1983).
Notice requirement, proper party defendant	Truxal v. Casey, 2 GDS ¶81,391 (S.D. Ohio 1981).
Adverse effects, civil damages, inaccurate records, jurisdiction	Tuesburg v. HUD, 652 F. Supp. 1044 (E.D. Mo. 1987).
Adverse effects, civil damages, maintenance of records	Tufts v. Department of the Air Force, Civil No. 80-1891 (D. Kan. Mar. 21, 1985), aff'd, 793 F.2d 259 (10th Cir. 1986).
Amendment of records	Turner v. Department of the Army, 447 F. Supp. 1207 (D.D.C. 1978), aff'd mem., 593 F.2d 1372 (D.C. Cir. 1979).
Exemption (j)(2), FOIA/PA interface	Turner v. Ralston, 567 F. Supp. 606 (W.D. Mo. 1983).
FOIA/PA interface, improper disclosure	Ulmer v. Maritime Co. of the Phil., Civil No. 78-79 (E.D. Pa. June 11, 1979).
Notice requirement	United States v. Amon, 2 GDS ¶81,208 (10th Cir. 1981).
Notice requirement, routine use	United States v. Annunziato, 643 F.2d 676 (9th Cir. 1981).
Notice requirement	United States v. Bell, 734 F.2d 1315 (8th Cir. 1984).

Notice requirement	United States v. Bressler, 772 F.2d 287 (7th Cir. 1985).
FOIA/PA interface, order of a court of competent jurisdiction	United States v. Brown, 562 F.2d 1144 (9th Cir. 1977).
Adequacy of complaint	United States v. Carter Family Trust, 602 F. Supp. 82 (N.D. Ind. 1985).
Routine use	United States v. Collins, 596 F.2d 166 (6th Cir. 1979).
Notice requirement, standing	United States v. Fain, 78-2 U.S. Tax Cas. (CCH) ¶9540 (M.D.N.C. 1978).
Court records sealed, FOIA/PA interface	United States v. Flood, 462 F. Supp. 99 (D.D.C. 1978).
Agency, individual (definition)	United States v. Haynes, 620 F. Supp. 474 (M.D. Tenn. 1985).
Notice requirement	United States v. Irvin, 48 A.F.T.R. 2d 81-6059, 2 GDS ¶82,003 (W.D. Wash. 1981).
Agency, routine use	United States v. Miller, 643 F.2d 713 (10th Cir. 1981).
Privacy Act as a discovery tool	United States v. Murdock, 548 F.2d 599 (5th Cir. 1977).
Notice requirement	United States v. O'Ferrall, 84-2 U.S. Tax Cas. (CCH) ¶9843 (D. Del. 1984).
Adequacy of complaint, notice requirement	United States v. Wilber, 696 F.2d 79 (8th Cir. 1982).
Agency, frivolous complaint, individual (definition), obtaining records under false pretenses, records, system of records	Unt v. Aerospace Corp., 765 F.2d 1440 (9th Cir. 1985).
Adverse effects, civil damages, notice requirement	Usher v. Secretary of HHS, 721 F.2d 854 (1st Cir. 1983).
Exemption (k)(2), individual (definition)	Utah-Ohio Gas & Oil Co. v. SEC, 1 GDS ¶80,038 (D. Utah 1980).
Amendment of records, exemption (j)(2)	Varona Pacheco v. FBI, 456 F. Supp. 1024 (D.P.R. 1978).
Amendment of records, exhaustion of administrative remedies, FOIA/PA interface	Vessels v. Bailar, No. 77-1227 (10th Cir. June 29, 1978).

Exemption (j)(2), FOIA/PA interface	Viccarone v. DEA, Civil No. 83-C-1021 (N.D. Ill. Nov. 17, 1983), appeal dismissed, No. 84-1093 (7th Cir. Mar. 20, 1984), vacated & remanded, 469 U.S. 1068 (1984), remanded mem., 757 F.2d 1291 (7th Cir. 1985).
Exemptions (k)(5), (k)(6), security investigation	Villaneuva v. United States, Civil No. EP-84-CA-76 (W.D. Tex. Mar. 4, 1985), aff'd sub nom. Villaneuva v. DOJ, 782 F.2d 528 (5th Cir. 1986).
Exemption (k)(5), promise of confidentiality, security investigation	Voelker v. FBI, 638 F. Supp. 571 (E.D. Mo. 1986).
Individual (definition), records, request for access	Voelker v. IRS, 489 F. Supp. 40 (E.D. Mo. 1980), rev'd & remanded, 646 F.2d 332 (8th Cir. 1981).
Duty to search, proper party defendant	Voinche v. DOJ, Civil No. 87-1181-A (W.D. La. Oct. 7, 1987), aff'd, No. 87-4781 (5th Cir. Feb. 4, 1988), appeal dismissed & cert. denied, 108 S. Ct. 2030 (1988).
Attorney's fees, exemption (k)(5), promise of confidentiality	Volz v. DOJ, Civil No. 77-0635-E (W.D. Okla. June 5, 1978), rev'd, 619 F.2d 49 (10th Cir. 1980), cert. denied, 449 U.S. 982 (1980).
Amendment of records, attorney's fees, exemption (j)(2)	Von Tempske v. HHS, 2 GDS ¶82,091 (W.D. Mo. 1981).
Request for access (medical records)	Vymetalik v. CIA, Civil No. 83-0182 (D.D.C. July 28, 1983).
Amendment of records, exemptions (j)(2), (k)(2), (k)(5), security investigation	Vymetalik v. FBI, Civil No. 82-3495 (D.D.C. Apr. 21, 1983), summary judgment denied (D.D.C. July 28, 1983), renewed motion for summary judgment granted (D.D.C. Aug. 7, 1984), vacated & remanded, 785 F.2d 1090 (D.C. Cir. 1986), summary judgment granted (D.D.C. Jan. 30, 1987).
Request for access	Vymetalik v. OPM, Civil No. 83-0548 (D.D.C. July 28, 1983), summary judgment granted (D.D.C. Mar. 13, 1984).
Attorney's fees, civil damages, records, system of records, unlawful destruction of records	Waldrop v. Department of the Air Force, 3 GDS ¶83,016 (S.D. Ill. 1981), remanded on attorney's fees, 688 F.2d 36 (7th Cir. 1982).
Exemption (k)(2)	Ward v. Commissioner, Civil No. 84-658-ORL-19 (M.D. Fla. Sept. 30, 1986).

Amendment of records, civil damages, exemption (j)(2), inaccurate records	Ward v. DOJ, 3 GDS ¶83,098 (D.D.C. 1982).
Exemption (j)(2)	Ward v. DOJ, 3 GDS ¶83,175 (D.D.C. 1983).
Exemption (k)(5), FOIA/PA interface, promise of confidentiality, system of records	Warren v. DOJ, Civil No. 82-2927 (D.D.C. May 31, 1983), attorney's fees awarded (D.D.C. July 29, 1983).
Compiled in reasonable anticipation of civil litigation, exemption (k)(2), FOIA/PA interface, promise of confidentiality, res judicata	Warren v. Office of Special Counsel, Civil No. 84-2232 (D.D.C. Apr. 22, 1985), summary judgment denied (D.D.C. Feb. 7, 1986), rev'd sub nom. Martin v. Office of Special Counsel, 819 F.2d 1181 (D.C. Cir. 1987).
Jurisdiction	Waters v. IRS, Civil No. 85-2031 (D.D.C. Nov. 26, 1985).
Civil damages, collection of information from subject	Waters v. Meese, 684 F. Supp. 712 (D.D.C. 1988).
Notice requirement	Waters v. Panama Canal Comm'n, Civil No. 85-2029 (D.D.C. Nov. 26, 1985).
Agency	Wayland v. Lowell Inst. for Sav., Civil No. 80-2287-MC (D. Mass. Feb. 12, 1982).
FOIA/PA interface, order of a court of competent jurisdiction	Weahkee v. Norton, 621 F.2d 1080 (10th Cir. 1980).
Statute of limitations	Webb v. IRS, Civil No. 83-0599 (E.D. Pa. Apr. 27, 1984).
Request for access, system of records	Webber v. United States, Civil No. 78-1473-R(S) (C.D. Cal. Mar. 29, 1979).
Amendment of records	Weber v. Department of the Air Force, Civil No. C-3-78-146 (S.D. Ohio Mar. 19, 1979).
Amendment of records	Weimer v. United States, Civil No. 81-0910 (D.D.C. Nov. 29, 1982).
Adverse effects, civil damages, exemption (k)(2), FOIA/PA interface	Welsh v. IRS, Civil No. 85-1024-HB (D.N.M. Oct. 21, 1986).
Amendment of records, exemption (j)(2), individual (definition), waiver of exemption	Wentz v. DOJ, Civil No. 82-C-893-S (W.D. Wis. May 31, 1983), aff'd, 772 F.2d 335 (7th Cir. 1985), cert. denied, 475 U.S. 1086 (1986).

Amendment of records, exemption (j)(2), FOIA/PA interface	Wentz v. DEA, 3 GDS ¶83,122 (W.D. Wis. 1982), aff'd sub nom. Shapiro v. DEA, 721 F.2d 215 (7th Cir. 1983), vacated as moot, 469 U.S. 14 (1984) (consolidated), on remand, 762 F.2d 611 (7th Cir. 1985).
Res judicata	Wham v. United States, 458 F. Supp. 147 (D.S.C. 1978).
Jurisdiction	Wham v. United States Postal Serv., Civil No. 77-1490 (D.S.C. Feb. 22, 1978).
Amendment of records, records	White v. Civil Serv. Comm'n, Civil No. 77-0274 (D.D.C. Dec. 7, 1977), aff'd, 589 F.2d 713 (D.C. Cir. 1978), cert. denied sub nom. White v. OPM, 444 U.S. 830 (1979).
Exemption (k)(5), promise of confidentiality, waiver of exemption	White v. OPM, 1 GDS ¶80,267 (D.D.C. 1980), aff'd, Nos. 80-2349, 80-2436 (D.C. Cir. June 29, 1981), reh'g denied, 2 GDS ¶81,393 (D.C. Cir. 1981).
Amendment of records, civil damages, inaccurate records, maintenance of only essential information, maintenance of records, mootness	White v. OPM, Civil No. 80-0932 (D.D.C. Oct. 16, 1980), remanded, No. 81-1017 (D.C. Cir. Mar. 30, 1982), summary judgment granted (D.D.C. July 13, 1984), aff'd, 787 F.2d 660 (D.C. Cir. 1986), cert. denied, 479 U.S. 885 (1986).
Civil damages, maintenance of records	White v. OPM, 664 F. Supp. 1 (D.D.C. 1986), summary affirmance granted, 840 F.2d 85 (D.C. Cir. 1988).
Civil damages, improper disclosure	White v. United States Parole Comm'n, Civil No. 85-0217 (D.D.C. Dec. 2, 1985).
Court records sealed, order of a court of competent jurisdiction	White House Vigil for the ERA Comm. v. Watt, Civil No. 83-1243 (D.D.C. Oct. 14, 1983).
Routine use	Whitmire v. VA, 661 F. Supp. 720 (W.D. Wash. 1986).
Civil damages, improper disclosure	Whitson v. Department of the Army, Civil No. SA-86-1173 (W.D. Tex. Feb. 25, 1988).
Court records sealed, exemption (j)(2), FOIA/PA interface	Wightman v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 83-1071-MA (D. Mass. Mar. 12, 1984), aff'd in part & remanded in part, 755 F.2d 979 (1st Cir. 1985), summary judgment granted (D. Mass. July 31, 1985).
Individual (definition), standing	Wilkinson v. FBI, 99 F.R.D. 148 (C.D. Cal. 1983).
Agency	Williams v. City Bank, 566 F. Supp. 827 (E.D. Mo. 1983).

Statute of limitations	Williams v. FBI, Civil No. 83-4077 (S.D. Ill. Dec. 28, 1983).
Civil damages, FOIA/PA interface, improper disclosure, jurisdiction	Williams v. United States, Civil No. H-80-249 (D. Conn. Apr. 10, 1984).
Amendment of records, exemption (j)(2), exhaustion of administrative remedies, proper party defendant	Wilson v. Bell, 3 GDS ¶83,025 (S.D. Tex. 1982).
Proper party defendant, records	Windsor v. A Fed. Executive Agency, 614 F. Supp. 1255 (M.D. Tenn. 1983).
Agency, civil damages, improper disclosure, maintenance of records, proper party defendant	Windsor v. The Tennessean, 719 F.2d 155 (6th Cir. 1983), reh'g en banc denied, 726 F.2d 277 (6th Cir. 1984), cert. denied, 469 U.S. 826 (1984).
Civil damages, records, system of records	Wingate v. INS, Civil No. 79-C-5068 (N.D. Ill. Apr. 25, 1980).
Adverse effects, amendment of records, civil damages, inaccurate records	Wirth v. Social Sec. Admin., Civil No. JH-85-1060 (D. Md. Jan. 13, 1988).
Civil damages, improper disclosure	Wisdom v. HUD, 713 F.2d 422 (8th Cir. 1983), cert. denied sub nom. Wisdom v. Pierce, 465 U.S. 1021 (1984).
Amendment of records, exemption (k)(2)	Wohlgemuth v. IRS, 1 GDS ¶80,117 (N.D. Ohio 1980).
Social Security numbers	Wolman v. United States, 501 F. Supp. 310 (D.D.C. 1980), remanded mem., 675 F.2d 1341 (D.C. Cir. 1982), on remand, 542 F. Supp. 84 (D.D.C. 1982).
FOIA/PA interface	Woo v. Reinhardt, 2 GDS ¶82,080 (D.D.C. 1981).
Improper disclosure, standing	Word v. United States, 604 F.2d 1127 (8th Cir. 1979), reh'g en banc denied, No. 79-1171 (8th Cir. Oct. 1, 1979).
Agency, civil damages, failure to grant access, FOIA/PA interface, records, system of records	Wren v. Harris, Civil No. 80-323-C (D.N.M. Apr. 14, 1981), rev'd & remanded, 675 F.2d 1144 (10th Cir. 1982), summary judgment granted sub nom. Wren v. Heckler (D.N.M. Feb. 11, 1983), aff'd, 744 F.2d 86 (10th Cir. 1984).
Failure to exhaust administrative remedies, proper party defendant	Wrenn v. United States, Civil No. 84-2934 (D.D.C. Oct. 22, 1985).

Duty to search	Wright v. DOJ, 2 GDS ¶81,021 (D.D.C. 1980).
Exemptions (j)(2), (k)(2), FOIA/PA interface	Yarrington v. FBI, Civil No. 80-2599 (E.D. La. 1981), aff'd, No. 81-3104 (5th Cir. Jan. 21, 1982).
Agency, Social Security numbers	Yeager v. Hackensack Water Co., 615 F. Supp. 1087 (D.N.J. 1985).
Exemptions (j)(2), (k)(2)	Yon v. IRS, 671 F. Supp. 1344 (S.D. Fla. 1987).
Improper disclosure	Young v. Burks, No. 84-1805 (6th Cir. June 2, 1988).
Amendment of records, civil damages, compiled in reasonable anticipation of civil litigation, FOIA/PA interface, individual (definition), jurisdiction, records, request for access	Zeller v. United States, 467 F. Supp. 487 (E.D.N.Y. 1979).
Civil damages, improper disclosure	Zerilli v. Bell, 458 F. Supp. 26 (D.D.C. 1978), aff'd sub nom. Zerilli v. Smith, 656 F.2d 705 (D.C. Cir. 1981).

"REVERSE" FOIA CASES

Acumenics Research & Technology, Inc. v. DOJ, Civil No. 87-0384A (E.D. Va. June 23, 1987), aff'd, 843 F.2d 800 (4th Cir. 1988).

American Scissors Corp. v. GSA, Civil No. 83-1562 (D.D.C. Nov. 15, 1983).

Anderson v. HHS, Civil No. C84-861 (D. Utah Dec. 11, 1985), summary judgment granted (D. Utah Aug. 12, 1986).

Artesian Indus. v. HHS, 646 F. Supp. 1004 (D.D.C. 1986).

Associated Dry Goods Corp. v. EEOC, 419 F. Supp. 814 (E.D. Va. 1976), additional issues decided, 454 F. Supp. 387 (E.D. Va. 1978), aff'd, 607 F.2d 1075 (4th Cir. 1979), rev'd & remanded on other grounds, 449 U.S. 590 (1981).

AT&T Information Sys. v. GSA, 627 F. Supp. 1396 (D.D.C. 1986), rev'd & remanded on procedural grounds, 810 F.2d 1233 (D.C. Cir. 1987).

Babcock v. Butz, Civil No. 75-0205 (D. Vt. Feb. 22, 1977).

Babcock & Wilcox Co. v. Rumsfeld, 70 F.R.D. 595 (N.D. Ohio 1976).

Beech Aircraft Corp. v. Harris, Civil No. 86-0349-W-6 (W.D. Mo. Apr. 4, 1986), motion to amend denied (W.D. Mo. Apr. 8, 1986).

Bethlehem Steel Corp. v. Kreps, Civil No. Y-78-837 (D. Md. Feb. 4, 1980).

Broadview Sav. & Loan Co. v. Federal Home Loan Bank Bd., Civil No. C77-1195 (N.D. Ohio June 13, 1979), remanded to agency (N.D. Ohio July 16, 1979).

Brookwood Medical Center, Inc. v. Califano, 470 F. Supp. 1247 (N.D. Ga. 1979), aff'd, 614 F.2d 1295 (5th Cir. 1980).

Burnside-Ott Aviation Training Center v. United States, 617 F. Supp. 279 (S.D. Fla. 1985).

Burroughs Corp. v. Brown, 501 F. Supp. 375 (E.D. Va. 1980), rev'd & remanded sub nom. Gen. Motors Corp. v. Marshall, 654 F.2d 294 (4th Cir. 1981).

Burroughs Corp. v. Schlesinger, 403 F. Supp. 633 (E.D. Va. 1975).

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Charles River Park "A," Inc. v. HUD, 360 F. Supp. 212 (D.D.C. 1973), rev'd & remanded, 519 F.2d 935 (D.C. Cir. 1975).

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Chrysler Corp. v. Marshall, Civil No. 74-850C(B) (E.D. Mo. Nov. 29, 1978).

Chrysler Corp. v. Schlesinger, 412 F. Supp. 171 (D. Del. 1976), vacated, 565 F.2d 1172 (3d Cir. 1977), rev'd sub nom. Chrysler Corp. v. Brown, 441 U.S. 281 (1979), on remand, 611 F.2d 439 (3d Cir. 1979), remanded to agency, Civil No. 75-159 (D. Del. Jan. 2, 1980).

Clements Wire & Mfg. Co. v. NLRB, 589 F.2d 894 (5th Cir. 1979).

CNA Fin. Corp. v. Donovan, 2 GDS ¶82,107 (D.D.C. 1981), aff'd, 830 F.2d 1132 (D.C. Cir. 1987), cert. denied sub nom. CNA Fin. Corp. v. McLaughlin, 108 S. Ct. 1270 (1988).

CNA Fin. Corp. v. Marshall, 2 GDS ¶81,149 (D.D.C. 1981).

Consumers Union of the United States v. Consumer Prod. Safety Comm'n, 400 F. Supp. 848 (D.D.C. 1975), rev'd & remanded, 561 F.2d 349 (D.C. Cir. 1977), vacated & remanded sub nom. GTE Sylvania, Inc. v. Consumers Union of the United States, 434 U.S. 1030 (1978), on remand, 590 F.2d 1209 (D.C. Cir. 1978), rev'd, 445 U.S. 375 (1980).

Continental Oil Co. v. FPC, 519 F.2d 31 (5th Cir. 1975), cert. denied sub nom. Superior Oil Co. v. FPC, 425 U.S. 971 (1976).

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Exxon Corp. v. Donovan, 2 GDS ¶81,383 (D.D.C. 1981).

Federal Elec. Corp. v. Weinberger, Civil No. 87-1747 (D.D.C. Feb. 29, 1988), summary judgment granted sub nom. Federal Elec. Corp. v. Carlucci, 687 F. Supp. 1 (D.D.C. 1988), stay denied (D.D.C. Apr. 29, 1988).

Florida Medical Ass'n v. HEW, 454 F. Supp. 326 (M.D. Fla. 1978), vacated & remanded, 601 F.2d 199 (5th Cir. 1979), subsequent decision, 479 F. Supp. 1291 (M.D. Fla. 1979).

Fountainhead Group, Inc. v. Consumer Prod. Safety Comm'n, 527 F. Supp. 294 (N.D.N.Y. 1981).

General Dynamics Corp. v. Dunlop, 427 F. Supp. 578 (E.D. Mo. 1976), vacated & remanded sub nom. General Dynamics Corp. v. Marshall, 572 F.2d 1211 (8th Cir. 1978), cert. granted, vacated & remanded, 441 U.S. 919 (1979), on remand, 607 F.2d 234 (8th Cir. 1979).

General Elec. Co. v. NRC, Civil No. 80-2244 (C.D. Ill. Nov. 30, 1983), motion to vacate denied (C.D. Ill. June 26, 1984), aff'd in part, rev'd in part & remanded, 750 F.2d 1394 (7th Cir. 1984).

General Motors Corp. v. Marshall, 1 GDS ¶80,019 (E.D. Va. 1980), rev'd & remanded, 654 F.2d 294 (4th Cir. 1981).

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Guerra v. Guajardo, 466 F. Supp. 1046 (S.D. Tex. 1978), aff'd, 597 F.2d 769 (5th Cir. 1979).

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Hospital Affiliates Int'l, Inc. v. Califano, 1 GDS ¶79,152 (N.D. Ill. 1979).

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Planning Research Corp. v. FPC, 555 F.2d 970 (D.C. Cir. 1977).

Psychiatric Inst. v. Group Hospitalization, No. 78-1645 (D.C. Cir. 1980).

Ricchio v. Carmen, Civil No. 80-0773 (D.D.C. Jan. 25, 1984), summary judgment granted (D.D.C. June 8, 1984), aff'd on other grounds sub nom. Ricchio v. Kline, 773 F.2d 1389 (D.C. Cir. 1985).

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St. Michael's Convalescent Hosp. v. California, 643 F.2d 1369 (9th Cir. 1981).

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THE FREEDOM OF INFORMATION ACT

5 U.S.C. §552

As Amended

§552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that --

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public

interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section --

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo, provided that the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) [Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest

practicable date and expedited in every way.] Repealed. Pub. L. 98-620, Title IV, 402(2), Nov. 8, 1984, 98 Stat. 3335, 3357.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request--

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion

of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (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, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) 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; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) 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.

(2) 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 this section unless the informant's status as an informant has been officially confirmed.

(3) 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 subsection (b)(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 this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include--

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any Executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

* * * * *

Section 1804. Effective Dates [not to be codified].

(a) The amendments made by section 1802 [the modification of Exemption 7 and the addition of the new subsection (c)] shall be effective on the date of enactment of this Act [October 27, 1986], and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

(b)(1) The amendments made by section 1803 [the new fee and fee waiver provisions] shall be effective 180 days after the date of the enactment of this Act [April 25, 1987], except that regulations to implement such amendments shall be promulgated by such 180th day.

(2) The amendments made by section 1803 shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations.

116758

THE PRIVACY ACT OF 1974

5 U.S.C. §552a

§552a. Records maintained on individuals

(a) Definitions

For purposes of this section--

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13; and

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) Conditions of disclosure

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction;

(12) to a consumer reporting agency in accordance with section 3711(f) of Title 31.

(c) Accounting of Certain Disclosures

Each agency, with respect to each system of records under its control shall--

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of--

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to records

Each agency that maintains a system of records shall--

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and--

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either--

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons

of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency requirements

Each agency that maintains a system of records shall--

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual--

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include--

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) Agency rules

In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall--

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil remedies

Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of--

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of legal guardians

For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal penalties

Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully

discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is--

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is--

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such

material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(1)(1) Archival records

Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of Title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject

to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) Government contractors

(1) When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of Title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing lists

An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Report on new systems

Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(p) Annual report

The President shall annually submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report--

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding year;

(2) describing the exercise of individual rights of access and amendment under this section during such year;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(q) Effect of other laws

(1) No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

The following sections were originally part of the Privacy Act but were not codified:

Sec. 6 The Office of Management and Budget shall--

(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of Title 5, United States Code, as added by section 3 of this Act; and

(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies.

Sec. 7 (a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to--

(A) any disclosure which is required by Federal statute, or

(B) any disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

THE GOVERNMENT IN THE SUNSHINE ACT

5 U.S.C. §552b

§552b. Open meetings

(a) For purposes of this section--

(1) the term "agency" means any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term "member" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to--

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) disclose information 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;

(9) disclose information the premature disclosure of which would--

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action.

except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d)(1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information

concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: Provided, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the

change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time

provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h)(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under

this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of Title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

FEDERAL ADVISORY COMMITTEE ACT

5 U.S.C. app.

§1. Short title

This Act may be cited as the "Federal Advisory Committee Act."

§2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that--

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

§3. Definitions

For the purpose of this Act--

(1) The term "Director" means the Director of the Office of Management and Budget.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is--

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551(1) of Title 5.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

§4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by--

(1) the Central Intelligence Agency; or

(2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

§5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall--

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

§6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

§7. Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency

cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

(a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Director shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine--

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether it should be abolished.

The Director may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection.

(c) The Director shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Director, after study and consultation with the Director of the Office of Personnel Management, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that--

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of Title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code; for persons employed intermittently in the Government service; and

(C) such members--

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the

meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. §794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of Title 5, United States Code; by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such Title 5),

may be provided services pursuant to section 3102 of such Title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent--

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Director shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

§8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall--

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of Title 5, with respect to such reports, records, and other papers.

§9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy

(a) No advisory committee shall be established unless such establishment is--

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed witn (1) the Director, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

§10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of Title 5, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of Title 5. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of Title 5.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

§11. Availability of transcripts; "agency proceeding"

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of Title 5.

§12. Fiscal and administrative provisions; record-keeping; audit; agency support services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

§13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to section 552 of Title 5, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

§14. Termination of advisory committees; renewal; continuation

(a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless--

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless--

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

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JUSTICE DEPARTMENT GUIDE TO THE FREEDOM OF INFORMATION ACT

The "Justice Department Guide to the Freedom of Information Act" is an overview of the FOIA's exemptions, its law enforcement record exclusions, and its most important procedural aspects. Prepared by the attorney and paralegal staff of the Office of Information and Privacy, it is updated and expanded each year. Any inquiry about the points addressed below, or regarding matters of FOIA administration or interpretation, should be made through the Office of Information and Privacy's FOIA Counselor Service, at (202/FTS) 633-3642 (633-FOIA).

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I. INTRODUCTION

The Freedom of Information Act, 5 U.S.C. §552, as amended by the Freedom of Information Reform Act of 1986, §§1801-1804 of Pub. L. No. 99-570, 100 Stat. 3207, 3207-48 (1986), generally provides that any person has a right, enforceable in court, of access to federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

Enacted in 1966, the FOIA established for the first time an effective statutory right of access to government information. The principle underlying the FOIA, however, is inherent in the democratic ideal: "The basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978).

Yet achieving an informed citizenry is a goal often counterpoised against other vital societal aims. Indeed, society's interest in an open government can conflict with other important interests of the general public--such as the public's interests in the effective and efficient operations of government; in the responsible governmental use of limited fiscal resources; and in the preservation of the confidentiality of sensitive personal, commercial, and governmental information. Though tensions among these competing interests are characteristic of a democratic society, their resolution lies in providing a workable formula which encompasses, balances, and appropriately protects all interests, while placing emphasis on fully responsible disclosure. See S. Rep. No. 813, 89th Cong., 1st Sess. 3 (1965). It is this task of accommodating opposing concerns, with disclosure as the primary objective, that the FOIA seeks to accomplish.

The FOIA evolved after a decade of debate among agency officials, legislators and "public interest" group representatives. It revised the public disclosure section of the Administrative Procedure Act, 5 U.S.C. §1002 (1964 ed.), which generally had been recognized as falling far short of its disclosure goals and had come to be looked upon by some as more a withholding statute than a disclosure statute. See S. Rep. No. 813, 89th Cong., 1st Sess. 5 (1965).

By contrast, under the thrust and structure of the FOIA, virtually every record possessed by a federal agency must be made available to the public in one form or another, unless it is specifically exempt from disclosure or specially excluded from the FOIA's coverage in the first place. The nine exemptions of the FOIA ordinarily provide the only bases for nondisclosure, see 5 U.S.C. §552(d), and are discretionary, not mandatory. See Chrysler Corp. v. Brown, 441 U.S. 281, 293 (1979); see also FOIA Update, Summer 1985, at 3 ("OIP Guidance: Discretionary Disclosure and Exemption 4"). Aggrieved record requesters are given a relatively speedy remedy in the United States district courts, where judges determine the propriety of agency withholding de novo and agencies bear the burden of sustaining their nondisclosure actions. See 5 U.S.C. §552(a)(4)(B)-(C); see also FOIA Update, Spring 1985, at 6.

The FOIA contains six subsections, the first of which establishes two categories of information which must automatically be disclosed. Subsection (a)(1) of the FOIA requires publication in the Federal Register of information such as descriptions of agency organization, functions, procedures, substantive rules and statements of general policy. This requirement provides automatic public access to important basic information regarding the transaction of agency business. See, e.g., NI Indus., Inc. v. United States, 841 F.2d 1104, 1107 (Fed. Cir. 1988); Bright v. INS, 837 F.2d 1330, 1331 (5th Cir. 1988).

Subsection (a)(2) requires that materials such as final opinions rendered in the adjudication of cases, specific policy statements and certain administrative staff manuals routinely be made available for public inspection. See, e.g., Capuano v. National Transp. Safety Bd., 843 F.2d 56, 57-58 (1st Cir. 1988). Additionally, such materials are required to be indexed to facilitate that public inspection. Public access to such information serves to prevent the development of agency "secret law" known to agency personnel but not to members of the public who deal with agencies. Cf. Vietnam Veterans of America v. Department of the Navy, Civil No. 86-0357, slip op. at 5 (D.D.C. Sept. 6, 1988) (opinions in which Judge Advocates General of Army and Navy have authority only to dispense legal advice--rendered in subject areas for which those offices do not have authority to act on behalf of agency--found not to be "authoritative pronouncements" and held not required to be published or made available to public).

The courts have held that the purpose of the publication requirement of subsection (a)(1) and the availability requirement of subsection (a)(2) is to provide public notice and guidance. See, e.g., Welch v. United States, 750 F.2d 1101, 1111 (1st Cir. 1985). Failure to comply with the requirements of either of these subsections can result in invalidation of related agency action, see, e.g., NI Indus., Inc. v. United States, 841 F.2d at 1108; D & W Food Centers, Inc. v. Block, 786 F.2d 751, 757-58 (6th Cir. 1986); Anderson v. Butz, 550 F.2d 459, 462-63 (9th Cir. 1977), unless the complaining party had actual and timely notice of the unpublished agency policy, see, e.g., Bright v. INS, 837 F.2d at 1331; Mada-Luna v. Fitzpatrick, 813 F.2d 1006, 1018 (9th Cir. 1987); see also United States v. $200,000 in United States

Currency, 590 F. Supp. 866, 874-75 (S.D. Fla. 1984) (published regulations adequately apprised individuals of obligation to use unpublished reporting form) (alternative holding), or unless he is unable to show that he was adversely affected by the lack of publication, see, e.g., Nguyen v. United States, 824 F.2d 697, 702 (9th Cir. 1987); Coos-Curry Elec. Coop., Inc. v. Jura, 821 F.2d 1341, 1347 (9th Cir. 1987). However, unpublished interpretive guidelines which were available for copying and inspection in an agency program manual have been held not to violate subsection (a)(1). See McKenzie v. Bowen, 787 F.2d 1216, 1222-23 (8th Cir. 1986); see also Capuano v. National Transp. Safety Bd., 843 F.2d at 57-58; Sturm v. James, 684 F. Supp. 1218, 1223 n.6 (S.D.N.Y. 1988).

Under subsection (a)(3)--by far the most commonly utilized portion of the FOIA--all records not covered by subsections (a)(1) or (a)(2), see Hardy v. Bureau of Alcohol, Tobacco & Firearms, 631 F.2d 653, 657 (9th Cir. 1980); Walsh v. Bowen, Civil No. 3-85-1697, slip op. at 6 (D. Minn. Feb. 4, 1986), or exempted from mandatory disclosure under subsection (b), or excluded under subsection (c), are subject to disclosure upon an agency's receipt of a specific and proper access request from any person. (See discussions of the procedural aspects of subsection (a)(3), including fees and fee waivers, and the exemptions of subsection (b), infra.)

Subsection (c) of the Act, added as a part of the Freedom of Information Reform Act of 1986, establishes three special categories of law enforcement-related records which have been totally excluded from the coverage of the FOIA in order to protect against unique types of harm. See generally Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 18 (Dec. 1987) [hereinafter Attorney General's Memorandum]. The extraordinary protection now embodied in subsection (c) permits an agency to respond to a request for such records as if the records in fact did not exist. (See discussion of the operation of these special new provisions under Exclusions, infra.)

Subsection (d) makes clear that the FOIA was not intended to authorize any new withholding of information, including from Congress. While individual Members of Congress have merely the rights of access guaranteed to "any person" under subsection (a)(3), Congress as a body (or through its committees and subcommittees) cannot be denied access to information on the grounds of FOIA exemptions. See FOIA Update, Winter 1984, at 3-4 ("OIP Guidance: Congressional Access Under FOIA") (citing, e.g., H.R. Rep. No. 1497, 89th Cong., 2d Sess. 11-12 (1966)); see also 5 U.S.C. §552a(b)(9) (counterpart provision of the Privacy Act of 1974).

Subsection (e) requires an annual report to Congress from each federal agency regarding its FOIA operations and an annual report from the Attorney General regarding FOIA litigation and the Department of Justice's efforts (through the Office of Information and Privacy) to encourage agency compliance with the FOIA. Subsection (f) defines the term "agency" so as to subject the records of nearly all Executive Branch entities to the FOIA. (See discussion of the term "agency" under Procedural Requirements, infra.)

As originally enacted in 1966, the FOIA contained, in the views of many, various weaknesses which detracted from its ideal operation. In response, the courts fashioned certain procedural devices, such as the requirement of a "Vaughn index"--a detailed index of withheld documents and the justification for their exemption, first established in Vaughn v. Rosen, 484 F.2d 820, 827 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974)--and the

requirement that agencies release segregable nonexempt portions of a partially exempt record, first established in EPA v. Mink, 410 U.S. 73, 91 (1973).

In an effort to extend further the FOIA's disclosure requirements, and also as a reaction to the abuses of the Watergate era, the FOIA was substantially amended in 1974. The 1974 FOIA amendments considerably narrowed the overall scope of the FOIA's law enforcement and national security exemptions and broadened many of the FOIA's procedural provisions, such as those relating to fees, time limits, segregability, and in camera inspection of withheld information by the courts.

In 1976, Congress again limited what could be withheld as exempt from disclosure under the FOIA, this time by narrowing its incorporation of the disclosure prohibitions of other statutes. (See discussion of Exemption 3, infra.) A technical change was made in 1978 to update the FOIA's provision for administrative disciplinary proceedings, see 5 U.S.C. §552(a)(4)(F), and in 1984 Congress repealed the expedited court-review provision previously contained in 5 U.S.C. §552(a)(4)(D), see Federal Courts Improvement Act of 1984, Pub. L. No. 98-620, §402, 98 Stat. 3335, 3357 (1984) (codified at 28 U.S.C. §1657); see also FOIA Update, Spring 1985, at 6.

In 1981, after several years of administrative experience with the FOIA, as amended, congressional hearings demonstrated that the FOIA was in need of both substantive and procedural reform. See generally Freedom of Information Act: Hearings on S. 587, S. 1235, S. 1247, S. 1730, and S. 1751 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 97th Cong., 1st Sess. (1981) (two volumes). Consequently, new FOIA amendments were advanced through the legislative process with the aim of strengthening the FOIA's nondisclosure provisions and improving many of its procedural provisions. See FOIA Update, Fall 1984, at 1; FOIA Update, Summer 1984, at 1, 4; FOIA Update, Winter 1984, at 1, 6; FOIA Update, Summer 1983, at 1-2; FOIA Update, Spring 1983, at 1; FOIA Update, June 1982, at 1-2; FOIA Update, March 1982, at 1-2; FOIA Update, Dec. 1981, at 1-2. Through mid-1986, though, these FOIA reform efforts continued to be stalled. See FOIA Update, Spring 1986, at 1.

However, near the end of 1986, in a relatively sudden development, Congress passed major FOIA reform legislation as part of the Anti-Drug Abuse Act of 1986. Signed into law on October 27, 1986, the Freedom of Information Reform Act, Pub. L. No. 99-570, §§1801-1804, 100 Stat. 3207, 3207-48 (1986), amended the FOIA to provide broader exemption protection for law enforcement information, plus special law enforcement record exclusions, and it also created a new fee and fee waiver structure. See FOIA Update, Fall 1986, at 1-2; see also id. at 3-6 (setting out the statute in its amended form, interlineated to show the exact changes made). While all of the law enforcement provisions of the 1986 FOIA amendments became effective immediately, the revised fee and fee waiver provisions were made effective only after the expiration of a 180-day implementation period, on April 25, 1987, with implementing regulations required to be in place for their full effectiveness. See FOIA Update, Winter/Spring 1987, at 1-2. The Department of Justice and other federal agencies have taken a number of steps to implement all provisions of the 1986 FOIA amendments. See id.; FOIA Update, Summer 1988, at 1-14; FOIA Update, Winter 1988, at 2; see also Attorney General's Memorandum.

In sum, the FOIA is a vital, continuously developing mechanism which, with necessary refinements to accommodate society's

conflicting interests in an open yet smoothly functioning government, can truly enhance our democratic way of life.

II. PROCEDURAL REQUIREMENTS

The Freedom of Information Act applies only to "records" maintained by "agencies" within the Executive Branch of the federal government, including the Executive Office of the President and independent regulatory agencies. 5 U.S.C. §552(f). Not included are records maintained by state governments, see, e.g., Davidson v. Georgia, 622 F.2d 895, 897 (5th Cir. 1980); see also Gillard v. Marshals Serv., Civil No. 87-0689, slip op. at 1-2 (D.D.C. May 11, 1987) (District of Columbia government records not covered), by municipal corporations, see, e.g., Rankel v. Town of Greensburgh, 117 F.R.D. 50, 54 (S.D.N.Y. 1987), by the courts, see, e.g., Warth v. Department of Justice, 595 F.2d 521, 523 (9th Cir. 1979); Chambers v. Division of Probation, Civil No. 87-0163, slip op. at 2 (D.D.C. Apr. 8, 1987) (Division of Probation, Administrative Office of the United States Courts, not covered), by Congress, see, e.g., Goland v. CIA, 607 F.2d 339, 348 (D.C. Cir. 1978), cert. denied, 445 U.S. 927 (1980), or by private citizens, see, e.g., Kurz-Kasch v. Department of Defense, 113 F.R.D. 147, 148 (S.D. Ohio 1986). In general, the FOIA does not apply to entities that "are neither chartered by the federal government [n]or controlled by it." H.R. Rep. No. 1380, 93d Cong., 2d Sess. 14 (1974). See, e.g., Forsham v. Harris, 445 U.S. 169, 179-80 (1980) (private grantee of federal agency not subject to FOIA); Public Citizen Health Research Group v. HEW, 668 F.2d 537, 543-44 (D.C. Cir. 1981) (medical peer review committees not "agencies" under FOIA); Irwin Memorial Blood Bank v. American Nat'l Red Cross, 640 F.2d 1051, 1057 (9th Cir. 1979) (American Red Cross not an "agency" under FOIA); Illinois Inst. for Continuing Legal Educ. v. Department of Labor, 545 F. Supp. 1229, 1232-33 (N.D. Ill. 1982) (presidential transition team not "agency" under FOIA).

Additionally, the personal staff of the President and units within the Executive Office of the President whose sole function is to advise and assist the President are not intended to fall within the definition of "agency." S. Rep. No. 1200, 93d Cong., 2d Sess. 15 (1974) (conf. rep.). See, e.g., Rushforth v. Council of Economic Advisors, 762 F.2d 1038, 1042-43 (D.C. Cir. 1985) (Council of Economic Advisors held not "agency" under FOIA); National Sec. Archive v. Executive Office of the President, 688 F. Supp. 29, 31 (D.D.C. 1988) (Office of the Counsel to President not "agency" under FOIA) (appeal pending). But see also Bevis v. NSC, Civil No. 85-2933, slip op. at 1 (D.D.C. May 30, 1986) (NSC held to be full FOIA "agency"), remanded for clarification, No. 86-5359 (D.C. Cir. July 14, 1986). Such entities whose functions are not limited to advising and assisting the President are "agencies" under the FOIA. See Soucie v. David, 448 F.2d 1067, 1075 (D.C. Cir. 1971); see also Ryan v. Department of Justice, 617 F.2d 781, 784-89 (D.C. Cir. 1980).

As for the definition of "agency records," a comprehensive discussion of relevant factors and precedents can be found in the D.C. Circuit's decision in Wolfe v. HHS, 711 F.2d 1077, 1079-82 (D.C. Cir. 1983), in which transition team records, physically maintained within the "four walls" of the agency, were held not to be "agency records" under the FOIA. See also, e.g., Tax Analysts v. Department of Justice, 845 F.2d 1060, 1067-69 (D.C. Cir. 1988) (federal district court tax case opinions maintained by Justice Department's Tax Division held to be "agency records"), reh'g en banc denied, No. 86-5625 (D.C. Cir. July 15, 1988); Hercules, Inc. v. Marsh, 838 F.2d 1027, 1029 (4th Cir. 1988) (army ammunition plant telephone directory prepared by contractor

at government expense, bearing "property of the U.S." legend, held to be "agency record"); General Elec. Co. v. NRC, 750 F.2d 1394, 1400-01 (7th Cir. 1984) (agency "use" of internal report submitted in connection with licensing proceedings resulted in finding report to be an "agency record"); Lewisburg Prison Project, Inc. v. Federal Bureau of Prisons, Civil No. 86-1339, slip op. at 4-5 (M.D. Pa. Dec. 16, 1986) (training videotape provided by contractor not "agency record"); Marzen v. HHS, 632 F. Supp. 785, 801 (N.D. Ill. 1985) (records created outside federal government which the "agency in question obtained without legal authority" held not "agency records"), aff'd on other grounds, 825 F.2d 1410 (7th Cir. 1987); Waters v. Panama Canal Comm'n, Civil No. 85-2029, slip op. at 5-6 (D.D.C. Nov. 26, 1985) (Internal Revenue Code held not an "agency record"); Center for Nat'l Sec. Studies v. CIA, 577 F. Supp. 584, 586-90 (D.D.C. 1983) (agency report, prepared "at the direct request of Congress" with intent that it remain secret and transferred to agency with congressionally imposed "conditions" of secrecy, held not to be "agency record").

For a detailed discussion of how certain records maintained by agency employees may qualify as "personal" rather than "agency" records, see Bureau of Nat'l Affairs, Inc. v. Department of Justice, 742 F.2d 1484, 1488-96 (D.C. Cir. 1984) (appointment calendars and telephone message slips of agency officials held not to be "agency records"); see also, e.g., Washington Post Co. v. Department of State, 632 F. Supp. 607, 616 (D.D.C. 1986) (logs compiled by Secretary of State's staff--without his knowledge--held to be "agency records"); American Fed'n of Gov't Employees v. Department of Commerce, 632 F. Supp. 1272, 1277 (D.D.C. 1986) (employee logs created voluntarily to facilitate work held not to be "agency records" even though containing substantive information), remanded on other grounds, No. 86-5390 (D.C. Cir. Dec. 9, 1987); Miranda Manor v. HHS, Civil No. 85-C-10015, slip op. at 5-7 (N.D. Ill. Apr. 7, 1986) (personal notes of agency surveyors held not to be "agency records"); Kalmin v. Department of the Navy, 605 F. Supp. 1492, 1494-95 (D.D.C. 1985) (uncirculated personal notes maintained at residence or in office desk drawer held to be personal property, not "agency records"); British Airports Auth. v. Civil Aeronautics Bd., 531 F. Supp. 408, 416 (D.D.C. 1982) (employee notes maintained in personal file and retained at employee's discretion held not to be "agency records"); Porter County Chapter of the Izaak Walton League of Am. v. Atomic Energy Comm'n, 380 F. Supp. 630, 633 (N.D. Ind. 1974) (handwritten notes within personal files held not to be "agency records"); FOIA Update, Fall 1984, at 3-4 ("OIP Guidance: 'Agency Records' vs. 'Personal Records'").

Each federal agency is required to publish in the Federal Register its procedural regulations governing access to its records under the FOIA. 5 U.S.C. §552(a)(3) and (a)(4)(A). See, e.g., 28 C.F.R. Part 16, Subpart A (1987) (Department of Justice FOIA regulations); 52 Fed. Reg. 33,229 (Sept. 2, 1987) (to be codified at 28 C.F.R. §16.10) (revision of Department of Justice FOIA fee regulation). These regulations must inform the public of where and how to address requests; of what types of records are maintained by the agency; of its schedule of fees for search and duplication; of its fee waiver criteria; and of its administrative appeal procedures. Although an agency may occasionally waive some aspect of its published procedures for reasons of public interest, speed or simplicity, no special requirement may be imposed on a requester beyond those prescribed in the agency's regulations. See Zemansky v. EPA, 767 F.2d 569, 574 (9th Cir. 1985).

A FOIA request can be made by "any person," as defined in 5 U.S.C. §551(2), which encompasses individuals (including foreign

citizens), partnerships, corporations, associations and foreign, state or local governments. See generally Doherty v. Department of Justice, 596 F. Supp. 423, 427 n.4 (S.D.N.Y. 1984) (reviewing legislative history), aff'd on other grounds, 775 F.2d 49 (2d Cir. 1985). See, e.g., Constangy, Brooks & Smith v. NLRB, 851 F.2d 839, 840 n.2 (6th Cir. 1988) (recognizing standing of attorney to request production of documents on behalf of client). As a rather academic point, it should be noted that the statute specifically excludes federal agencies from the definition of a "person." See FOIA Update, Winter 1985, at 7.

The only apparent exception of any significance to this broad "any person" standard is for those who flout the law, such as a fugitive from justice. See Doyle v. Department of Justice, 494 F. Supp. 842, 843 (D.D.C. 1980) (fugitive not entitled to enforcement of the FOIA's access provisions because he cannot expect judicial aid in obtaining government records when he has fled the jurisdiction of the courts), aff'd, 668 F.2d 1365 (D.C. Cir. 1981), cert. denied, 455 U.S. 1002 (1982). This is true also where the FOIA plaintiff is an agent acting on behalf of a fugitive. See Javelin Int'l, Ltd. v. Department of Justice, 2 GDS ¶82,141, at 82,479 (D.D.C. 1981). But see O'Rourke v. Department of Justice, 684 F. Supp. 716, 718 (D.D.C. 1988) (convicted criminal, a fugitive from his home country undergoing U.S. deportation proceedings, held to qualify as "any person" for purpose of making FOIA request); Doherty v. Department of Justice, 596 F. Supp. at 424-29 (same).

FOIA requests can be made for any reason, with no showing of relevancy, required. It has been observed that the purpose for which records are sought is "irrelevant." Reporters Comm. for Freedom of the Press v. Department of Justice, 816 F.2d 730, 742 (D.C. Cir. 1987), cert. granted, 108 S. Ct. 1467 (1988). Consistent with that, persons seeking information under the FOIA do not have to state a reason. See FOIA Update, Summer 1985, at 5. But cf. Morrison-Knudson Co. v. Department of the Army, 595 F. Supp. 352, 356 (D.D.C. 1984) ("[T]he use of FOIA to unsettle well established procedures governed by a comprehensive regulatory scheme must . . . be viewed not only 'with caution' but with concern."), aff'd mem., 762 F.2d 138 (D.C. Cir. 1985).

By the same token, as the Supreme Court has stated, a FOIA requester's basic rights to access "are neither increased nor decreased" by virtue of having a greater interest in the records than that of an average member of the general public. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 143 n.10 (1975). See also United States v. United States Dist. Court, Central Dist. of Cal., 717 F.2d 478, 480 (9th Cir. 1983) (FOIA does not expand scope of criminal discovery permitted under Rule 16 of Federal Rules of Criminal Procedure); Stimac v. Department of Justice, 620 F. Supp. 212, 213 (D.D.C. 1985) ("Brady v. Maryland . . . provides no authority for releasing material under FOIA."). However, such considerations do logically have a bearing on certain procedural areas of the FOIA--such as expedited treatment, waiver or reduction of fees, discretionary release, and the award of attorney's fees and costs to a successful FOIA plaintiff--where it is appropriate to examine a requester's need or purpose in seeking records. See, e.g., FOIA Update, Summer 1983, at 3 ("OIP Guidance: When to Expedite FOIA Requests"). And, as the Supreme Court observed this past year, a requester's identity can be significant: "The fact that no one need show a particular need for information in order to qualify for disclosure under the FOIA does not mean that in no situation whatever will there be valid reasons for treating a claim of privilege under Exemption 5 differently as to one class of those who make requests than as to other cases." Department of Justice v. Julian, 108 S. Ct. 1606, 1614 (1988).

The FOIA specifies only two requirements for access requests: that they "reasonably describe" the records sought, 5 U.S.C. §552(a)(3)(A), and that they be made in accordance with agencies' published procedural regulations, see 5 U.S.C. §552(a)(3)(B). The legislative history of the 1974 FOIA amendments indicates that a description of a requested record is sufficient if it enables a professional agency employee familiar with the subject area to locate the record with a "reasonable amount of effort." H.R. Rep. No. 876, 93d Cong., 2d Sess. 6 (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 6271. See also, e.g., Brumley v. Department of Labor, 767 F.2d 444, 445 (8th Cir. 1985); Goland v. CIA, 607 F.2d 339, 353 (D.C. Cir. 1978), vacated in part & reh'g denied, 607 F.2d 367 (D.C. Cir. 1979), cert. denied, 445 U.S. 927 (1980); Marks v. Department of Justice, 578 F.2d 261, 263 (9th Cir. 1978); American Fed'n of Gov't Employees v. Department of Commerce, 632 F. Supp. at 1278 ("[D]efendant's rejection of such an audacious demand [to search a multitude of files in each of 356 offices] as too broad was not merely justified; it would have been an improvident expenditure of agency time to have indulged it.").

For example, in Devine v. Marsh, 2 GDS ¶82,022, at 82,186 (E.D. Va. 1981), a FOIA request was held invalid on the grounds that it required an agency's FOIA staff either to have "clairvoyant capabilities" to discover the requester's needs or to spend "countless numbers of personnel hours seeking needles in bureaucratic haystacks." However, "the agency must be careful not to read the request so strictly that the requester is denied information the agency well knows exists in its files, albeit in a different form from that anticipated by the requester." Hemenway v. Hughes, 601 F. Supp. 1002, 1005 (D.D.C. 1985). See also Ferri v. Bell, 645 F.2d 1213, 1220 (3d Cir. 1981); FOIA Update, Summer 1983, at 5.

Conversely, the fact that a FOIA request is overly broad or "burdensome" does not, in and of itself, entitle an agency to deny that request on the ground that it does not "reasonably describe" records. See FOIA Update, Summer 1983, at 5. The key factor is the ability of an agency's staff to reasonably ascertain exactly which records are being requested. See Yeager v. DEA, 678 F.2d 315, 322, 326 (D.C. Cir. 1982) (holding valid a request encompassing over 1,000,000 computerized records: "The linchpin inquiry is whether the agency is able to determine 'precisely what records [are] being requested.'") (quoting legislative history). But cf. American Fed'n of Gov't Employees v. Department of Commerce, 632 F. Supp. at 1278 (request found to be lacking sufficient specificity to permit location of requested documents with reasonable amount of effort). See also, e.g., Nolen v. Rumsfeld, 535 F.2d 890, 891-92 (5th Cir. 1976) (FOIA does not compel agencies to locate missing records), cert. denied, 429 U.S. 1104 (1977).

Agencies do not have to organize or reorganize file systems in order to respond to particular FOIA requests, Church of Scientology v. IRS, 792 F.2d 146, 150-51 (D.C. Cir. 1986); see also, e.g., Neff v. IRS, Civil No. 85-816-Civ, slip op. at 8 (S.D. Fla. Nov. 24, 1986); Auchterlonie v. Hodel, Civil No. 83-C-6724, slip op. at 13 (N.D. Ill. May 7, 1984), nor are they required to write new computer programs to search for data not already compiled for agency purposes, see Clark v. Department of the Treasury, Civil No. 84-1873, slip op. at 2-3 (E.D. Pa. Jan. 24, 1986), or to edit computerized files so as to effectively create new records, Long v. IRS, 825 F.2d 225, 230 (9th Cir. 1987), cert. granted, judgment vacated & remanded on other grounds, 108 S. Ct. 2839 (1988). The adequacy of an agency's search under the FOIA is to be determined by a test of "reasonableness" which may vary from case to case. Meeropol v. Meese, 790 F.2d 942, 956 (D.C. Cir. 1986)

("[A] search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request."). See also Zemansky v. EPA, 767 F.2d at 571-73; Weisberg v. Department of Justice, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

Although "a person need not title a request for government records a 'FOIA request,'" Newman v. Legal Serv. Corp., 628 F. Supp. 535, 543 (D.D.C. 1986), requests should be made in full observance of an agency's procedural regulations. See Church of Scientology v. IRS, 792 F.2d at 150 (requesters must follow "the statutory command that requests be made in accordance with published rules"). However, a first-party access request which cites only the Privacy Act of 1974, 5 U.S.C. §552a, should be processed under both that statute and the FOIA. See FOIA Update, Winter 1986, at 6. Until a request is properly received by an agency (and, further, by the proper component of that agency), there is no obligation on the agency to search, to meet time deadlines or to release documents. See Brumley v. Department of Labor, 767 F.2d at 445. Requests not filed in accordance with published regulations are not deemed to have been received until such time as they are identified as proper FOIA requests by agency personnel. See, e.g., Lykins v. Department of Justice, 3 GDS ¶83,092, at 83,637 (D.D.C. 1983).

For example, the Department of Justice regulation requiring either a promise to pay fees (above a minimum amount) or a determination to waive all fees before the request is deemed received has been specifically upheld. See, e.g., Irons v. FBI, 571 F. Supp. 1241, 1243 (D. Mass. 1983). Moreover, if a requester fails to pay properly assessed search and/or duplication fees, despite his prior commitment to pay such an amount, an agency may refuse to process subsequent requests until that outstanding balance is fully paid by the requester. See Crooker v. Secret Serv., 577 F. Supp. 1218, 1219-20 (D.D.C. 1983); FOIA Update, Spring 1986, at 2; see also 5 U.S.C. §552(a)(4)(A)(v).

For its part, an agency in receipt of a proper FOIA request is required to inform the requester of its decision to grant or deny access to the requested records within ten working days. 5 U.S.C. §552(a)(6)(A)(i). Agencies are not required to actually release records within the ten days, but access to records should be granted promptly thereafter. 5 U.S.C. §552(a)(6)(C). See Larson v. IRS, Civil No. 85-3076, slip op. at 2-3 (D.D.C. Dec. 11, 1985) (the FOIA "does not require that the person requesting records be informed of the agency's decision within ten days, it only demands that the government make [and mail] its decision within that time."). (For the procedures pertaining to the assessment of fees, see the discussion in Fees and Fee Waivers, infra.)

The FOIA provides for extensions of such time limits for specific situations: (1) the need to search for and collect records from separate offices; (2) the need to examine a voluminous amount of records required by the request; and (3) the need to consult with another agency or agency component. 5 U.S.C. §552(a)(6)(B). Determinations of administrative appeals are required to be made within twenty working days. 5 U.S.C. §552(a)(6)(A)(ii).

The agency, not the requester, has the right to choose the format of disclosure, so long as the agency chooses reasonably. See Dismukes v. Department of the Interior, 603 F. Supp. 760, 761-63 (D.D.C. 1984) (providing requested data in microfiche format, rather than "9 track, 1600 bpi, DOS or unlabeled, IBM Compatible formats, with file dumps and file layouts," found to be proper). Although it is well established "that computer-stored

records, whether stored in the central processing unit, on magnetic tape or in some other form, are still records for the purposes of the FOIA," Yeager v. DEA, 678 F.2d at 321, it also has been held that the FOIA "in no way contemplates that agencies, in providing information to the public, should invest in the most sophisticated and expensive form of technology." Martin & Merrell, Inc. v. Customs Serv., 657 F. Supp. 733, 734 (S.D. Fla. 1986) ("computer terminals for public reference" not required).

The Act requires that "any reasonably segregable portion of a record" must be released after appropriate application of the nine exemptions. 5 U.S.C. §552(b) (last sentence). However, where nonexempt material is so "inextricably intertwined" that disclosure of it would "leave only essentially meaningless words and phrases," Neufeld v. IRS, 646 F.2d 661, 663 (D.C. Cir. 1981); Local 3, Int'l Bhd. of Elec. Workers v. NLRB, 845 F.2d 1177, 1179 (2d Cir. 1988), or where the editing required for partial disclosure would be so extensive as to effectively result in the creation of new records, Long v. IRS, 825 F.2d at 230, the entire record can be withheld. See also Yeager v. DEA, 678 F.2d at 322 n.16 (appropriate to consider "intelligibility" of document and burden imposed by editing and segregation of nonexempt matters).

In cases involving a large amount of records or an unreasonably high-cost "line-by-line" review, agencies may perhaps withhold small segments of nonexempt facts "if the proportion of nonexempt factual material is relatively small and is so interspersed with exempt material that separation by the agency and policing by the courts would impose an inordinate burden." Lead Indus. Ass'n v. OSHA, 610 F.2d 70, 86 (2d Cir. 1979); see also Neufeld v. IRS, 646 F.2d at 666 (segregation not required where it "would impose significant costs on the agency and produce an edited document of little informational value"); Doherty v. Department of Justice, 775 F.2d at 53 ("The fact that there may be some nonexempt matter in documents which are predominantly exempt does not require the district court to undertake the burdensome task of analyzing approximately 300 pages of documents, line-by-line."); Journal of Commerce v. Department of the Treasury, Civil No. 86-1075, slip op. at 16 (D.D.C. Mar. 30, 1988) (segregation "neither useful, feasible nor desirable" where it would compel agency "to pour through [literally millions of pages of documents] to segregate nonexempt material [and] would impose an immense administrative burden . . . that would in the end produce little in the way of useful nonexempt material"). But see also Wightman v. Bureau of Alcohol, Tobacco & Firearms, 755 F.2d 979, 983 (1st Cir. 1985) ("detailed process of segregation" held not unreasonable for request involving 36 document pages).

All notifications to requesters of denials of initial requests and appeals should contain certain specific information. While certainly "[t]here is no requirement that administrative responses to FOIA requests contain the same documentation necessary in litigation," Crooker v. CIA, Civil No. 83-1426, slip op. at 3 (D.D.C. Sept. 28, 1984); see also FOIA Update, Summer 1986, at 6; Safecard Servs., Inc. v. SEC, Civil No. 84-3073, slip op. at 4-5 (D.D.C. Apr. 21, 1986) (requester has no right to Vaughn index during administrative process), a decision to deny an initial request must inform the requester of the reasons for denial, of the right to appeal and of the name and title of each person responsible for the denial. 5 U.S.C. §552(a)(6)(A)(i); 5 U.S.C. §552(a)(6)(C). For a discussion of the significance of apprising a requester of his right to administratively appeal a denial, see FOIA Update, Fall 1985, at 6. See also Hudgins v. IRS, 620 F. Supp. 19, 20-21 (D.D.C. 1985) (suggesting that appellate rights should be given even where request was interpreted by agency as not reasonably describing records), aff'd mem., 808 F.2d 137

(D.C. Cir. 1987). But see also FOIA Update, Summer 1984, at 2 (appeal statements not required for "no records" responses). An administrative appeal decision upholding a denial must inform the requester of the reasons for denial, of the requester's right to judicial review in the federal courts and of the name and title of each person responsible for the appeal denial. 5 U.S.C. §552(a)(6)(A)(ii); 5 U.S.C. §552(a)(6)(C).

Notifications to requesters should also contain other pertinent information, such as when and where records will be made available; what fees, if any, must be paid prior to the granting of access; what records are or are not responsive to the request; the date of receipt of the request/appeal; and the nature of the request/appeal and, where appropriate, the agency's interpretation of it. Where an agency employs a particular "cut-off" date for including records as responsive to requests, it should give notice to requesters through a published regulation to that effect. Accord McGehee v. CIA, 697 F.2d 1095, 1105 (D.C. Cir.), vacated on other grounds on panel reh'g, reh'g en banc denied, 711 F.2d 1076 (D.C. Cir. 1983). See also FOIA Update, Fall 1983, at 14. As this letter of notification is potentially the initial basis for the agency's position in the event of litigation, it should be as comprehensive as reasonably possible.

An agency's failure to comply with the time limits for either the initial request or the administrative appeal may be treated as a constructive exhaustion of administrative remedies and a requester may immediately seek judicial review. 5 U.S.C. §552(a)(6)(C). See, e.g., Spannaus v. Department of Justice, 824 F.2d 52, 58 (D.C. Cir. 1987). See also Information Acquisition Corp. v. Department of Justice, 444 F. Supp. 458, 462 (D.D.C. 1978); FOIA Update, Jan. 1983, at 6. For a review of the litigation aspects of exhaustion of administrative remedies, see the discussion under "Litigation Considerations," infra. However, if an agency can show that its failure to meet the statutory time limits resulted from "exceptional circumstances" and that it is applying "due diligence" in processing the request, the agency may be allowed additional time to complete its processing. 5 U.S.C. §552(a)(6)(C). In this connection, the need to process an extremely large volume of requests has been held to constitute "exceptional circumstances," and the commitment of large amounts of resources to process requests on a first-come, first-served basis has been held to constitute "due diligence" under this subsection. See Open America v. Watergate Special Prosecution Force, 547 F.2d 605, 615-16 (D.C. Cir. 1976); see also Caifano v. Wampler, 588 F. Supp. 1392, 1394-95 (N.D. Ill. 1984) (agency directed to "continue to work diligently and expeditiously in a good faith manner to respond to plaintiff's requests").

Finally, several miscellaneous characteristics of the FOIA should also be noted. First, it applies only to records, not to tangible, evidentiary objects. See Nichols v. United States, 325 F. Supp. 130, 135-36 (D. Kan. 1971) (archival exhibits consisting of guns, bullets and clothing), aff'd, 460 F.2d 671 (10th Cir.), cert. denied, 409 U.S. 966 (1972). Furthermore, agencies are not required to create records in order to respond to FOIA requests. See, e.g., NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 162 (1975); Long v. IRS, 825 F.2d at 229-30 (agency not obligated to restructure records for release); Yeager v. DEA, 678 F.2d at 321-23 (same); see also FOIA Update, Winter 1984, at 5. Nor are agencies required to answer questions disguised as FOIA requests. See, e.g., Zemansky v. EPA, 767 F.2d at 574; DiViao v. Kelley, 571 F.2d 538, 542-43 (10th Cir. 1978); Hudgins v. IRS, 620 F. Supp. at 21 ("FOIA creates only a right of access to records, not a right to personal services."). It likewise is well recognized that the FOIA does not permit limited disclosure; it "speaks in terms of disclosure and nondisclosure. It does not recognize

degrees of disclosure, such as permitting viewing, but not copying, of documents." Julian v. Department of Justice, 806 F.2d 1411, 1419 n.7 (9th Cir. 1986), aff'd, 108 S. Ct. 1606 (1988); Berry v. Department of Justice, 733 F.2d 1343, 1355 n.19 (9th Cir. 1984). See also Seawell, Dalton, Hughes & Timms v. Export-Import Bank of the United States, Civil No. 84-241-N, slip op. at 2 (E.D. Va. July 27, 1984) (no "middle ground between disclosure and nondisclosure"); Burke Energy Corp. v. Department of Energy, 583 F. Supp. 507, 512 (D. Kan. 1984). Requesters cannot require agencies to make automatic releases of records as they are created. See, e.g., Mandel Grunfeld & Herrick v. Customs Service, 709 F.2d 41, 43 (11th Cir. 1983); see also FOIA Update, Spring 1985, at 6. Also, there is no damage remedy available to FOIA requesters for nondisclosure. See, e.g., Lufkin v. Director, Executive Office for United States Attorneys, Civil No. 85-1959, slip op. at 1 (D.D.C. Mar. 10, 1987); Daniels v. St. Louis VA Regional Office, 561 F. Supp. 250, 252 (E.D. Mo. 1983); King v. Califano, 471 F. Supp. 180, 182 (D.D.C. 1979). Lastly, agencies are not required to seek the return of records wrongfully removed from their possession, Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136, 151-55 (1980), or to seek the delivery of records held by private entities, Forsham v. Harris, 445 U.S. at 182-86.

III. EXEMPTION 1

Exemption 1 of the FOIA, 5 U.S.C. §552(b)(1), protects from disclosure national security information concerning the national defense or foreign policy, provided that it has been properly classified in accordance with the substantive and procedural requirements of an executive order. The applicable executive order currently in effect is Exec. Order No. 12,356, 3 C.F.R. p. 166 (1982 Comp.), which replaced predecessor Exec. Order No. 12,065 on August 1, 1982. (The salient features of Exec. Order No. 12,356 are discussed below. See also FOIA Update, June 1982, at 6-7.)

In order to appreciate the evolution of Exemption 1, it is necessary to review briefly the early decisions construing it and its legislative history. In 1973, the Supreme Court in EPA v. Mink, 410 U.S. 73, 84 (1973), held that records classified under proper procedures were exempt from disclosure per se, without any further judicial review, thereby obviating the need for in camera review of information withheld under this exemption. Responding in large part to the thrust of that decision, Congress amended the FOIA in 1974 to provide expressly for de novo review by the courts and for in camera review of documents, including classified documents, where appropriate. See 5 U.S.C. §552(a)(4)(B). In so doing, Congress apparently sought to ensure that national security records are properly classified by agencies and that reviewing courts remain cognizant of their authority to verify the correctness of agency classification determinations. See H.R. Rep. No. 12471, 93d Cong., 2d Sess. 127-28, reprinted in 1974 U.S. Code Cong. & Admin. News 6267.

Numerous litigants thereafter challenged the sufficiency of agency affidavits in Exemption 1 cases, requesting in camera review by the courts and hoping to obtain disclosure of challenged documents. Nevertheless, courts initially upheld agency classification decisions in reliance upon agency affidavits, as a matter of routine, in the absence of evidence of bad faith on the part of an agency. See, e.g., Weissman v. CIA, 565 F.2d 692, 698 (D.C. Cir. 1977). In Ray v. Turner, 587 F.2d 1187 (D.C. Cir. 1978), however, the District of Columbia Circuit Court of Appeals departed somewhat from such routine reliance on agency affidavits, prescribing in camera review to facilitate full de novo

determinations of Exemption 1 claims, even where there was no showing of bad faith on the part of the agency. See id. at 1194-95. Ray did, however, recognize that the courts should "first 'accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record.'" Id. at 1194 (quoting legislative history).

In Halperin v. CIA, 629 F.2d 144 (D.C. Cir. 1980), the D.C. Circuit further refined the appropriate standard for judicial review of national security claims under Exemption 1 (or under Exemption 3, in conjunction with certain national security protection statutes), finding that summary judgment is entirely proper if an agency's affidavits are reasonably specific and there is no evidence of bad faith. See id. at 148. Rather than conduct a detailed inquiry, the court deferred to the expert opinion of the agency, noting that judges "lack the expertise necessary to second-guess such agency opinions in the typical national security FOIA case." Id. This review standard was reaffirmed in Military Audit Project v. Casey, 656 F.2d 724, 738 (D.C. Cir. 1981), where the D.C. Circuit emphasized the deference due an agency's classification judgment. See also, e.g., King v. Department of Justice, 830 F.2d 210, 217 (D.C. Cir. 1987) ("the court owes substantial weight to detailed agency explanations in the national security context"); American Friends Serv. Comm. v. Department of Defense, 831 F.2d 441, 444 (3d Cir. 1987); Goldberg v. Department of State, 818 F.2d 71, 79-80 (D.C. Cir. 1987); Abbotts v. NRC, 766 F.2d 604, 606 & n.3 (D.C. Cir. 1985); Miller v. Casey, 730 F.2d 773, 776 (D.C. Cir. 1984); Salisbury v. United States, 690 F.2d 966, 970 (D.C. Cir. 1982); Gardels v. CIA, 689 F.2d 1100, 1105 (D.C. Cir. 1982); Phillippi v. CIA, 655 F.2d 1325, 1332 (D.C. Cir. 1981); Branch v. FBI, Civil No. 86-1463, slip op. at 5 (D.D.C. Aug. 30, 1988) (court not in position to second-guess agency's determination of need for continuing classification); Washington Post Co. v. Department of Defense, Civil No. 84-2402, slip op. at 14 (D.D.C. Apr. 21, 1986); United States Student Ass'n v. CIA, 620 F. Supp. 565, 569 (D.D.C. 1985); cf. Department of the Navy v. Egan, 108 S. Ct. 818, 825 (1988) (deference to agency expertise in granting of security clearances).

Indeed, if an agency affidavit passes muster under this standard, in camera review may be inappropriate because substantial weight must be accorded that affidavit. See, e.g., Doherty v. Department of Justice, 775 F.2d 49, 53 (2d Cir. 1985) ("the court should restrain its discretion to order in camera review"); Hayden v. NSA, 608 F.2d 1381, 1387 (D.C. Cir. 1979), cert. denied, 446 U.S. 937 (1980); Cox v. Department of State, Civil No. 85-3628, slip op. at 8 (D.D.C. June 16, 1987) (motion for in camera inspection denied due to sufficiency of agency affidavit); King v. Department of Justice, 586 F. Supp. 286, 290 (D.D.C. 1983) (in camera review last resort). But see also Allen v. CIA, 636 F.2d 1287, 1291 (D.C. Cir. 1980); Moore v. FBI, Civil No. 83-1541, slip op. at 7 (D.D.C. Mar. 9, 1984) (in camera review particularly appropriate where only small volume of documents involved and government makes proffer), aff'd mem., 762 F.2d 138 (D.C. Cir. 1985); Della v. FBI, Civil No. C-82-1052R, slip op. at 2 (W.D. Wash. June 15, 1983). (For a further discussion of in camera inspection, see Litigation Considerations, infra.)

In this same vein, the Seventh Circuit Court of Appeals in Stein v. Department of Justice, 662 F.2d 1245 (7th Cir. 1981), analyzed the legislative history of the 1974 FOIA Amendments and went so far as to conclude that "Congress did not intend that the courts would make a true de novo review of classified documents, that is, a fresh determination of the legitimacy of each classified document." Id. at 1253. It is also noteworthy that the only classification decision to find agency "bad faith," McGehee

v. CIA, 697 F.2d 1095, 1113 (D.C. Cir. 1983), which initially held that certain CIA procedural shortcomings amounted to "bad faith" on the part of the agency, was subsequently vacated on panel rehearing. McGehee v. CIA, 711 F.2d 1076, 1077 (D.C. Cir. 1983). Cf. Washington Post Co. v. Department of Defense, Civil No. 84-2949, slip op. at 9 (D.D.C. Feb. 25, 1987) (addition of a second classification category at time of litigation "does not create an inference of 'bad faith' concerning the processing of plaintiff's request or otherwise implicating the affiant's credibility").

As is shown by these decisions, courts are usually reluctant to substitute their judgment in place of the agency's expertise or its "unique insights," especially in the national security context. See, e.g., Miller v. Department of State, 779 F.2d 1378, 1387 (8th Cir. 1985); Taylor v. Department of the Army, 684 F.2d 99, 109 (D.C. Cir. 1982) (classification affidavits entitled to "the utmost deference") (reversing district court disclosure order). See also Washington Post Co. v. Department of Defense, Civil No. 84-2949, slip op. at 13-14 (court need not agree with government's evaluation of harm; court's task is to determine whether agency judgment is "plausible, reasonable, and exercised in good faith"); Rudich v. FBI, Civil No. N-80-447, slip op. at 3-4 (D. Conn. Aug. 5, 1986) (court need not agree with agency so long as agency can indicate reasonable harm to national security); Keys v. Department of Justice, Civil No. 85-2588, slip op. at 5 (D.D.C. May 12, 1986) ("the Court cannot second-guess the Department's national security expertise"), aff'd, 830 F.2d 337 (D.C. Cir. 1987); McTigue v. Department of Justice, Civil No. 84-3583, slip op. at 9 (D.D.C. Dec. 3, 1985) ("A classification officer, who is unassociated with the creation and initial classification of Exemption One material, but who is designated by the Executive agency as the authority on all material, should not be second-guessed by either this court . . . or by the creator of the document."), aff'd mem., No. 86-5224 (D.C. Cir. Jan. 29, 1987); Marrera v. Department of Justice, 622 F. Supp. 51, 53 (D.D.C. 1985) (affidavits given "substantial weight" even where agency states that it can neither confirm nor deny the existence of responsive information); Marks v. Casey, 3 GDS ¶82,525, at 83,319 (D.D.C. 1982) (quoting Military Audit Project v. Casey, 656 F.2d at 738); cf. King v. Department of Justice, 830 F.2d at 226 (where executive order presumed declassification of information over 20 years old and agency merely indicated procedural compliance with order, trial court erred in deferring to agency's judgment that information more than 35 years old remained sensitive). While the standard of judicial review is often expressed in different ways, courts have generally deferred to agency expertise in national security cases. See, e.g., Doherty v. Department of Justice, 775 F.2d at 52; Miller v. Casey, 730 F.2d at 776; Schlesinger v. CIA, 591 F. Supp. 60, 67 (D.D.C. 1984); cf. Washington Post Co. v. Department of State, 840 F.2d 26, 42 (D.C. Cir. 1988) (Bork, J., dissenting) (deference given to agency opinion regarding foreign policy in Exemption 1 area "should provide persuasive reason to accord 'substantial weight' to [agency's] assessment of potential harm" based on foreign politics in Exemption 6 matter).

Courts have demonstrated this general deference to agency expertise by according little or no weight to opinions of persons other than the agency classification authority when reviewing the propriety of agency classification. See, e.g., Gardels v. CIA, 689 F.2d at 1106 n.5 (opinion of former CIA agent rejected); Van Atta v. Defense Intelligence Agency, Civil No. 87-1508, slip op. at 2-4 (D.D.C. July 6, 1988) (rejecting opinion of requester who claimed that willingness of foreign diplomat to discuss issue indicated no expectation of confidentiality); Washington Post Co. v. Department of Defense, Civil No. 84-2949, slip op. at 14 (re-

jecting opinion of U.S. Senator who read document in official capacity as member of Committee on Foreign Relations); Liechty v. CIA, Civil No. 79-2064, slip op. at 6 (D.D.C. Apr. 16, 1981) (rejecting former CIA agent's opinion and allegation of bad faith); see also Goldberg v. Department of State, 818 F.2d at 79-80 (D.C. Cir. 1987) (classification officer's determination accepted even though over 100 ambassadors did not initially classify information); cf. Alyeska Pipeline Serv. Co. v. EPA, ___ F.2d ___, ___ (D.C. Cir. Sept. 13, 1988) (no "special deference to agency beyond Exemption 1 context").

Prior to 1986, no appellate court had ever upheld, on the substantive merits of the case, a decision to reject an agency's classification claim. In Holy Spirit Ass'n v. CIA, 636 F.2d 838, 845 (D.C. Cir. 1980), the D.C. Circuit let stand, but on entirely procedural grounds, a district court determination that the CIA's affidavits were general and conclusory and that its Exemption 1 claims had to be rejected as "overly broad." Moreover, that portion of the D.C. Circuit's decision was subsequently vacated by the Supreme Court. See CIA v. Holy Spirit Ass'n, 455 U.S. 997 (1982); see also FOIA Update, March 1982, at 5. More recently, in an unprecedented and extraordinarily complex case, Powell v. Department of Justice, Civil No. C-82-0326, slip op. at 16 (N.D. Cal. Mar. 27, 1985), the district court ordered the disclosure of classified records belatedly determined by it to be within the scope of the request and therefore not addressed in the agency's classification affidavits. See also Powell v. Department of Justice, 584 F. Supp. 1508, 1517-18, 1530-31 (N.D. Cal. 1984). The government never had the opportunity to obtain appellate review of the merits of this adverse decision because the records were disclosed after stays pending appeal were denied, successively, by the district court, the Ninth Circuit Court of Appeals, and even by the Supreme Court. See Powell v. Department of Justice, Civil No. C-82-0326, slip op. at 4-6 (N.D. Cal. June 14, 1985), stay denied, No. 85-1918 (9th Cir. July 18, 1985), stay denied, No. A-84 (U.S. July 31, 1985) (Rehnquist, J., Circuit Justice) (undocketed order). In addition, the district court ordered the disclosure of certain other segments of classified information because it was "convinced [that] disclosure of this information poses no threat to national security." Powell v. Department of Justice, Civil No. C-82-0326, slip op. at 8 (N.D. Cal. Mar. 27, 1985). The district court did, however, grant a stay of this aspect of its disclosure order so the government could take an appeal. Powell v. Department of Justice, Civil No. C-82-0326, slip op. at 6 (N.D. Cal. June 14, 1985). Ultimately, the case was settled with the government being permitted to withhold this classified information.

But in 1986, the Second Circuit Court of Appeals upheld a district court disclosure order in Donovan v. FBI, 806 F.2d 55 (2d Cir. 1986). The district court in Donovan found that the affidavit submitted by the FBI inadequately described the withheld documents and was unconvincing as to any potential harm which would result from disclosure. See Donovan v. FBI, 625 F. Supp. 808, 811 (S.D.N.Y. 1986). This, coupled with in camera inspection of the documents by the district court, led the court of appeals to conclude that "it would be inappropriate . . . to give more deference to the FBI's characterization of the information than did the trial court." 806 F.2d at 60. The case was subsequently settled, however, and the plaintiff withdrew his request for the classified records ordered disclosed in exchange for the government's agreement not to seek to vacate the Second Circuit's opinion in the Supreme Court. The precedential value of the Second Circuit's decision is thus quite questionable in light of the extraordinary procedural and factual nature of the case.

Also of note in this regard is Fitzgibbon v. CIA, 578 F. Supp. 704, 709 (D.D.C. 1983), motion for reconsideration granted in part, Civil No. 79-0956 (D.D.C. July 5, 1984), in which the district court required in camera affidavits on all records, most of which were classified, "not because the agencies' good faith had been controverted, but 'in order that the Court may be able to monitor the agencies' determinations'"; ultimately, the district court did order some classified information disclosed. However, the D.C. Circuit, on appeal, remanded the case for submission of briefs in light of the Supreme Court's decision in CIA v. Sims, 471 U.S. 159 (1985). Fitzgibbon v. CIA, No. 84-5632 (D.C. Cir. Mar. 13, 1986) (memorandum order).

Two relatively recent D.C. Circuit decisions, each of which reversed a district court disclosure order, have strongly reaffirmed the deference that is due an agency's classification judgment. In Abbotts v. NRC, 766 F.2d at 607-08, the D.C. Circuit overturned a lower court conclusion that the existence of information in the public domain similar to the information at issue warranted the disclosure of that classified information. Emphasizing that the least "bit" of classified information deserves protection, it observed that the "district court's finding . . . reveals a basic misunderstanding of the information withheld," and that the "district court did not give the required 'substantial weight' to the [agency's] uncontradicted affidavits." 766 F.2d at 607 & n.3. Similarly, in Peterzell v. Department of State, No. 84-5805, slip op. at 2 (D.C. Cir. Apr. 2, 1985) (unpublished memorandum), mem., 759 F.2d 960 (D.C. Cir. 1985), the D.C. Circuit vacated a district court determination that public statements by senior executive and legislative branch officials constituted sufficient official acknowledgment of "covert action" by the government against Nicaragua to warrant release of the sensitive documents at issue, specifically chastised the lower court for "refusing to consider in camera the confidential declaration and confidential memorandum of law offered by the government," and remanded the case for a more careful consideration of the government's classification judgment. On remand, the district court found that the "Government's general acknowledgment of covert activities . . . is insufficient to require release" of its records. Peterzell v. Department of State, Civil No. 82-2853, slip op. at 3 (D.D.C. Sept. 20, 1985).

There are numerous instances in which courts have permitted agencies to submit explanatory in camera affidavits in order to protect certain national security information which could not be discussed in a public affidavit. See, e.g., Simmons v. Department of Justice, 796 F.2d 709, 711 (4th Cir. 1986); Ingle v. Department of Justice, 698 F.2d 259, 264 (6th Cir. 1983) (in camera review should be secondary to testimony or affidavits); Salisbury v. United States, 690 F.2d at 973 n.3; Stein v. Department of Justice, 662 F.2d at 1255-56; Hayden v. NSA, 608 F.2d at 1385; Phillippi v. CIA, 546 F.2d 1009, 1013 (D.C. Cir. 1976); Dow, Jones & Co. v. FBI, Civil No. 85-0097, slip op. at 2-3 (D.D.C. Mar. 8, 1988); Bonner v. FBI, Civil No. 86-2249, slip op. at 1 (D.D.C. Feb. 9, 1987). Recent cases in the Second Circuit leave somewhat unresolved the issue of whether courts of appeals should examine in camera submissions in order to determine whether lower courts have abused their discretion. Compare Weberman v. NSA, 668 F.2d 676, 678 (2d Cir. 1982) (court of appeals examined in camera submission in affirming lower court order) with Donovan v. FBI, 806 F.2d at 60 (court of appeals relied entirely on lower court's examination of in camera submission). It is entirely clear, though, that agencies taking such a special step are under a duty to "create as complete a public record as is possible" before so doing. Phillippi v. CIA, 546 F.2d at 1013. Accord Simmons v. Department of Justice, 796 F.2d at 710; Washington Post Co. v. Department of Defense, Civil No. 84-2402, slip op. at

9 (D.D.C. Apr. 11, 1988) (public Vaughn index certainly not required where it would itself disclose classified information).

In this regard, it is now well settled that counsel for plaintiffs are not entitled to participate in such in camera proceedings. See Salisbury v. United States, 690 F.2d at 973 n.3; Weberman v. NSA, 668 F.2d at 678 (2d Cir. 1982); Hayden v. NSA, 608 F.2d at 1385-86; Martin v. Department of Justice, Civil No. 83-2674, slip op. at 1 (W.D. Pa. June 5, 1986) (agency required to release unclassified portions of transcript of in camera testimony), aff'd mem., 800 F.2d 1135 (3d Cir. 1986); Physicians for Social Responsibility v. Department of Justice, Civil No. 85-0169, slip op. at 3-4 (D.D.C. Aug. 23, 1985); ACLU v. Department of Justice, 548 F. Supp. 219, 223 (D.D.C. 1982); see also Ellsberg v. Mitchell, 709 F.2d 51, 61 (D.C. Cir. 1983) (plaintiff's counsel not permitted to participate in in camera review of documents arguably covered by state secrets privilege); Pollard v. FBI, 705 F.2d 1151, 1154 (9th Cir. 1983) (no reversible error where court not only reviewed affidavit and documents in camera but also received authenticating testimony ex parte); cf. Arieff v. Department of the Navy, 712 F.2d 1462, 1470-71 & n.2 (D.C. Cir. 1983) (no participation by plaintiff's counsel permitted even where information withheld was personal privacy information). But cf. Lederle Laboratories v. HHS, Civil No. 88-0249, slip op. at 2-3 (D.D.C. May 2, 1988) (restrictive protective order granted in Exemption 4 case permitting counsel for requester to review contested business information).

However, one court recently took the unprecedented step of appointing a special master to review and categorize a large volume of classified records. See Washington Post Co. v. Department of Defense, Civil No. 84-3400, slip op. at 2 (D.D.C. Jan. 15, 1988), petition for mandamus denied sub nom. In re Department of Defense, 848 F.2d 232 (D.C. Cir. 1988), reh'g en banc denied, No. 88-5044 (D.C. Cir. Aug. 31, 1988). On the other hand, in a decision which highlights some of the difficulties of Exemption 1 litigation practice, the Fourth Circuit Court of Appeals recently issued a writ of mandamus which required that court personnel who would have access to classified materials submitted in camera in an Exemption 1 case obtain security clearances prior to the submission of any such materials to the court. In re Department of Justice, ___ F.2d ___, ___ (4th Cir. Apr. 8, 1988).

Agencies have in other cases been compelled to submit in camera affidavits where disclosure in a public affidavit would vitiate the very protection afforded by Exemption 1. Such a procedure is sometimes employed where even the confirmation or denial of the existence of records at issue would pose a threat to the national security. See Phillippi v. CIA, 546 F.2d at 1013. (The request in Phillippi was for documents pertaining to the Glomar Explorer submarine-retrieval ship; consequently, the "neither confirm nor deny" response has come to be known as a "Glomar" denial, or as "Glomarization.") See, e.g., Miller v. Casey, 730 F.2d at 776 (request for any record reflecting any attempt by western countries to overthrow Albanian government); Gardels v. CIA, 689 F.2d at 1105 (request for any record revealing any covert CIA connection with University of California); Peterzell v. CIA, Civil No. 85-2685, slip op. at 2 (D.D.C. July 11, 1986) (request for records describing CIA covert paramilitary operations in Nicaragua); Marrera v. Department of Justice, 622 F. Supp. at 53-54 (request for any record which would reveal whether requester was target of surveillance pursuant to Foreign Intelligence Surveillance Act); Kapsa v. CIA, Civil No. C-2-78-1062, slip op. at 7-8 (S.D. Ohio Mar. 6, 1985) (request for any record revealing any covert CIA connection with Ohio State University). See also FOIA Update, Spring 1983, at 5.

Several courts also have had occasion to consider whether agencies have a duty to disclose classified information which has purportedly found its way into the public domain. As a general rule, Exemption 1 claims should not be affected by allegations that classified information has been leaked to the press or otherwise made available to members of the public. Courts have carefully recognized the distinction between a bona fide declassification action or official release and unsubstantiated speculation lacking official confirmation, holding that classified information is not considered to be in the public domain unless it has been the subject of an official disclosure. See, e.g., Simmons v. Department of Justice, 796 F.2d at 712 (there had been no "widespread dissemination" of information in question); Abbotts v. NRC, 766 F.2d at 607-08; Afshar v. Department of State, 702 F.2d 1125, 1130 (D.C. Cir. 1983); Salisbury v. United States, 690 F.2d at 971; Stein v. Department of Justice, 662 F.2d at 1259; Military Audit Project v. Casey, 656 F.2d at 744; Phillippi v. CIA, 655 F.2d at 1332; Hayden v. NSA, 608 F.2d at 1388-89; Alfred A. Knopf, Inc. v. Colby, 509 F.2d 1362, 1370 (4th Cir.), cert. denied, 421 U.S. 992 (1975); Van Atta v. Defense Intelligence Agency, slip op. at 5-6 (disclosure of information to foreign government during diplomatic negotiations held not "public disclosure"); Hudson River Sloop Clearwater, Inc. v. Department of the Navy, 659 F. Supp. 674, 684 (E.D.N.Y. 1987); Peterzell v. CIA, slip op. at 4; Washington Post Co. v. Department of Defense, Civil No. 84-2402, slip op. at 20; United States Student Ass'n v. CIA, 620 F. Supp. at 571; Peterzell v. Department of State, slip op. at 3; accord Medina-Hincapie v. Department of State, 700 F.2d 737, 741 n.20 (D.C. Cir. 1983) (in context of records protected under Exemption 3); see also Martinez v. FBI, Civil No. 82-1547, slip op. at 5-6 (D.D.C. Nov. 9, 1983) (CIA's refusal to censor book by former employee containing certain "factual" statements does not require disclosure of any CIA data which would confirm such "facts").

Indeed, in Schlesinger v. CIA, 591 F. Supp. at 66, the court went so far as to hold that 180,000 pages of CIA records pertaining to Guatemala were properly classified despite the fact that the public domain contained significant information and speculation about CIA involvement in the 1954 coup in Guatemala: "CIA clearance of books and articles, books written by former CIA officials, and general discussions in Congressional publications do not constitute official disclosures." (Emphasis in original.) Cf. McGehee v. Casey, 718 F.2d 1137, 1141 & n.9 (D.C. Cir. 1983) (non-FOIA decision holding that CIA cannot reasonably bear burden of conducting exhaustive search to prove that particular items of classified information have never been published). More recently, one court has gone so far as to hold that documents were properly classified even though disclosed "involuntarily as a result of [a] tragic accident such as an aborted rescue mission [in Iran], or used in evidence to prosecute espionage." Washington Post Co. v. Department of Defense, Civil No. 84-3400, slip op. at 3 (D.D.C. Sept. 22, 1986).

A rather obvious point--but one still not accepted by some requesters--is that classified information will not be released under the FOIA even to a requester of "unquestioned loyalty." Levine v. Department of Justice, Civil No. 83-1685, slip op. at 6 (D.D.C. Mar. 30, 1984) (regardless of requester's loyalty, release of documents to him could "open the door to secondary disclosure to others"). See also Miller v. Casey, 730 F.2d at 778 (agency decision to deny historical research access not reviewable by courts).

Another point to remember under Exemption 1 is the requirement that agencies segregate and release nonexempt information, unless the segregated information would have no meaning. See,

e.g., Doherty v. Department of Justice, 775 F.2d 49, 53 (2d Cir. 1985); Paisley v. CIA, 712 F.2d 686, 700 (D.C. Cir. 1983); Hayden v. NSA, 608 F.2d at 1388; Founding Church of Scientology v. Bell, 603 F.2d 945, 950-51 (D.C. Cir. 1979); American Friends Serv. Comm. v. Department of Defense, Civil No. 83-4916, slip op. at 11-12 (E.D. Pa. Aug. 4, 1988) (agency not required to create new type of record composed of nonexempt information); McTigue v. Department of Justice, slip op. at 14; Washington Post Co. v. Department of Defense, Civil No. 84-3400, slip op. at 4 (D.D.C. Aug. 2, 1985); Silets v. FBI, 591 F. Supp. 490, 496 (N.D. Ill. 1984); Dames & Moore v. Department of the Treasury, 544 F. Supp. 94, 96 (C.D. Cal. 1982). The duty to release information that is reasonably segregable applies in cases involving classified information as well as cases involving non-classified information. See, e.g., Branch v. FBI, 658 F. Supp. 204, 210 (D.D.C. 1987) (criticizing language in FBI affidavit regarding segregation).

The course of future litigation of Exemption 1 claims will depend considerably on precedents established under Exec. Order No. 12,356. On August 1, 1982, when Exec. Order No. 12,356 replaced Exec. Order No. 12,065, many government records had already been reviewed and marked pursuant to the superseded executive order. The appropriate executive order to be applied, with accompanying procedural and substantive standards, depends upon when the responsible agency official took the final classification action on the record in question. See King v. Department of Justice, 830 F.2d at 215-17; Miller v. Department of State, 779 F.2d at 1388; Lesar v. Department of Justice, 636 F.2d 472, 480 (D.C. Cir. 1980); Hoch v. CIA, 593 F. Supp. 675, 679-80 (D.D.C. 1984). But see also Powell v. Department o. Justice, Civil No. C-82-0326, slip op. at 3 (N.D. Cal. June 14, 1985) (upon court-ordered re-review of classification, agency "cannot now hide behind the classification system in effect at the time the agency first analyzed the documents"). In early decisions under Exec. Order No. 12,356, the most controversial aspect of Exec. Order No. 12,065--Section 3-303's balancing of the public's interest in disclosure against the government's need for national security secrecy--was found to have been mooted by the issuance of the current executive order, which does not contain a balancing provision. See Afshar v. Department of State, 702 F.2d at 1137; Republic of New Afrika v. FBI, 656 F. Supp. 7, 14 (D.D.C. 1985); see also Keys v. Department of Justice, slip op. at 5 ("The public interest is not [now] a concern to be balanced in applying this exemption."); King v. Department of Justice, 830 F.2d at 216; cf. Halkin v. Helms, 690 F.2d 977, 994 n.65 (D.C. Cir. 1982) (state secrets privilege case).

Executive Order No. 12,356 recognizes both the right of the public to be informed about activities of its government and the need to protect national security information from unauthorized or untimely disclosure. Accordingly, information may not be classified unless "its disclosure reasonably could be expected to cause damage to the national security." Exec. Order No. 12,356, §1.1(a)(3). As to the degree of certainty necessary to demonstrate the contemplated damage under this standard, see, e.g., Gardels v. CIA, 689 F.2d at 1106 (accepting likelihood that release would jeopardize intelligence sources or methods because this is "necessarily a region for forecasts in which [the agency's] informed judgment as to potential future harm should be respected"); Halperin v. CIA, 629 F.2d at 149 (agency statement of threatened harm must always be speculative to some extent; to require an actual showing of harm would be judicial "over-stepping"); Hoch v. CIA, 593 F. Supp. at 683-84 (relying on Gardels and Halperin); cf. Snepp v. United States, 444 U.S. 507, 513 n.8 (1980) ("The problem is to ensure, in advance, and by proper [CIA prepublication review] procedures, that information detrimental to the national interest is not published.").

This standard is elaborated upon in §1.3 of the order, which specifies several types of information that may be considered for classification. Executive Order No. 12,356 establishes as bases for classification several widely recognized classifiable categories: foreign government information, see, e.g., Southam News v. INS, 674 F. Supp. 881, 884 (D.D.C. 1987); Shaw v. Department of State, 559 F. Supp. 1053, 1063 (D.D.C. 1983), intelligence sources or methods, see, e.g., Laroque v. Department of Justice, Civil No. 86-2677, slip op. at 5 (D.D.C. Mar. 16, 1988) (intelligence methods and unacknowledged field operations in foreign countries); Allen v. Department of Defense, 658 F. Supp. 15, 19-21 (D.D.C. 1986) (including deceased, potential and unwitting intelligence sources); Shaw v. CIA, Civil No. 82-0757, slip op. at 2 (D.D.C. Aug. 26, 1983), foreign relations or foreign activities, see, e.g., Van Atta v. Defense Intelligence Agency, slip op. at 4 (information compiled at request of foreign government for purpose of negotiations); American Jewish Congress v. Department of the Treasury, 549 F. Supp. 1270, 1276-79 (D.D.C. 1982), aff'd mem., 713 F.2d 864 (D.C. Cir.), cert. denied, 464 U.S. 895 (1983); McTigue v. Department of Justice, slip op. at 13, and military plans, weapons, or operations, see, e.g., Taylor v. Department of the Army, 684 F.2d at 109; Washington Post Co. v. Department of Defense, Civil No. 84-2403, slip op. at 3 (D.D.C. Apr. 15, 1988) (foreign military information); Hudson River Sloop Clearwater, Inc. v. Department of the Navy, 659 F. Supp. at 679 (NEPA/FOIA case); Washington Post Co. v. Department of Defense, Civil No. 84-2402, slip op. at 16. Executive Order No. 12,356 also includes as classifiable any information which concerns the "vulnerabilities or capabilities of systems, installations, projects, or plans," "cryptology," and "scientific, technological, or economic matters" relating to national security. Id. at §1.3. Cf. U.S. News & World Report v. Department of the Treasury, Civil No. 84-2303, slip op. at 9 (D.D.C. Mar. 26, 1986) (classified information regarding armoring of President's limousines). In those instances in which there is "reasonable doubt" about the need to classify information, or to classify information at a higher level, Executive Order No. 12,356 permits classification pending a final determination within 30 days. Id. at §1.1(c).

Another important provision of Executive Order No. 12,356 is that "information shall be classified as long as required by national security considerations" and time frames no longer trigger automatic declassification. Id. at §1.4(a); Branch v. FBI, Civil No. 86-1643, slip op. at 5 n.4 (D.D.C. Aug. 30, 1988) ("Executive Order 12,356 does not create a presumption favoring disclosure of documents once they reach a certain age."). However, the passage of time from the origination of the information to the classification review might cause a court to question the national security damage that could result from disclosure. See King v. Department of Justice, 830 F.2d at 226 (documents more than 35 years old); Fitzgibbon v. CIA, 578 F. Supp. at 720 (documents more than 25 years old); see also Silets v. FBI, 591 F. Supp. at 496 (documents over 20 years old regarding Jimmy Hoffa); Powell v. Department of Justice, 584 F. Supp. at 1517 (fact that information is 22 to 35 years old and concerns "highly publicized treason and sedition case which has been closed for over twenty years" requires government to "address the significance of the age of the information"); cf. CIA v. Sims, 471 U.S. at 177 (Exemption 3 case upholding protection for documents over 20 years old the disclosure of which would reveal the identities of intelligence sources, including deceased, potential and unwitting sources). But see also Afshar v. Department of State, 702 F.2d at 1138 n.18 (change in circumstances does not require review of original classification); Branch v. FBI, 658 F. Supp. 204, 207 (D.D.C. 1987) (upholding classification of documents over 20 years old); Allen v. Department of Defense, 658 F. Supp. at 21 ("entirely inappropriate for this court to establish a limit on

the protection . . . based upon the lapse of time"); Summers v. Department of Justice, Civil No. 86-0546, slip op. at 4 (D.D.C. May 14, 1987) ("passage of time alone will not call for the disclosure of intelligence sources"); Keys v. Department of Justice, slip op. at 5 ("the passage of time [over 30 years] has not removed the justifications for classification"); McTigue v. Department of Justice, slip op. at 12 (documents concerning 1976 coup in Argentina can still have national security implications); Katz v. Webster, Civil No. 82-CIV-1092, slip op. at 12 (S.D.N.Y. May 20, 1985) (20- to 30-year-old information regarding organizations that may be defunct and sources who may be dead does not lose presumption of damage to national security).

In addition, the order prohibits any automatic declassification because of "unofficial publication or inadvertent or unauthorized disclosure" of classified information. Exec. Order No. 12,356 at §1.3(d). See, e.g., Simmons v. Department of Justice, 796 F.2d at 712 (possible disclosure of classified documents by FBI agent was not in official capacity, hence did not require automatic declassification). In fact, declassified and disclosed information may be reclassified if the information is classifiable and "may reasonably be recovered." Exec. Order No. 12,356 at §1.6(c). Moreover, information may be "classified or reclassified" after it has been requested under the FOIA in accordance with criteria established by §1.6(d) of Executive Order No. 12,356. See Miller v. Department of State, 779 F.2d at 1388 (16-year delay between origination and classification of documents "insufficient to justify disclosure"); Lesar v. Department of Justice, 636 F.2d at 484-85 (belated classification may be appropriate); Conservative Caucus v. Department of State, slip op. at 16-17 (omissions and other procedural defects corrected during review not fatal); Green v. Defense Intelligence Agency, Civil No. 82-101, slip op. at 7 (D. Vt. Sept. 28, 1984) ("substantial compliance" with procedural requirements sufficient); Lieverman v. Department of Justice, 597 F. Supp. 84, 87-88 (E.D. Pa. 1984) (belated classification and failure to show national security reason for underlying investigation does not preclude classification); Dames & Moore v. Department of the Treasury, 544 F. Supp. at 97-98; LaRouche v. Kelley, 522 F. Supp. 425, 435 (S.D.N.Y. 1981) (classified information can be compiled in non-national security investigation); cf. American Library Ass'n v. NSA, 631 F. Supp. 416, 422 (D.D.C. 1986) (no First Amendment right to access to documents classified subsequent to their inadvertent public disclosure), aff'd on other grounds, 818 F.2d 81 (D.C. Cir. 1987). But see Shanmugadhasan v. Department of the Navy, No. 84-6474 (9th Cir. Dec. 17, 1985) (remanding for in camera inspection due to belated classification and generalized affidavit).

Two additional considerations which Executive Order No. 12,356 addresses have already been recognized by the courts. First, the "Glomar" denial, discussed supra, is incorporated in §3.4(f)(1) of Executive Order No. 12,356: "[A]n agency shall refuse to confirm or deny the existence or nonexistence of requested information whenever . . . its existence or nonexistence is itself classifiable under this Order." See, e.g., Miller v. Casey, 730 F.2d at 776; Hudson River Sloop Clearwater, Inc. v. Department of the Navy, 659 F. Supp. at 683 (fact of presence of nuclear weapons aboard particular naval ships is classified in itself); Marrera v. Department of Justice, 622 F. Supp. at 53 (abstract fact of whether named individual is subject of Foreign Intelligence Surveillance Act wiretap held classified in itself). Second, the "mosaic" approach--the concept that apparently harmless pieces of information, when assembled together, could reveal a damaging picture--is recognized in the very definition of classifiable information: "Information . . . shall be classified when . . . its unauthorized disclosure, either by itself or in

the context of other information, reasonably could be expected to cause damage to the national security." Exec. Order No. 12,356 at §1.3(b). This approach was presaged by the D.C. Circuit in Halperin v. CIA, 629 F.2d at 150 ("each individual piece of intelligence information, much like a piece of a jigsaw puzzle, may aid in piecing together other bits of information even when the individual piece is not of obvious importance in itself"), and it was further endorsed by the D.C. Circuit in Salisbury v. United States, 690 F.2d at 971, where that court explicitly acknowledged the "mosaic-like nature of intelligence gathering." Accord CIA v. Sims, 471 U.S. at 178 (Exemption 3); American Friends Serv. Comm. v. Department of Defense, 831 F.2d at 444-45 (recognizing "compilation" theory); Taylor v. Department of the Army, 684 F.2d at 105 (upholding classification of compilation of information on army combat units). See also Allen v. Department of Defense, 658 F. Supp. at 20. The D.C. Circuit in Abbotts v. NRC reaffirmed that even if there is other information that if released "would pose a greater threat to the national security," Exemption 1 "'bars the government from prying loose even the smallest bit of information that is properly classified.'" 766 F.2d at 608 (quoting Afshar v. Department of State, 702 F.2d at 1130).

As a final matter, agencies should be aware of the new "(c)(3) exclusion," 5 U.S.C. §552(c)(3), which was enacted by the Freedom of Information Reform Act of 1986, §§1801-1804 of Pub. L. No. 99-570, 100 Stat. 3207, 3207-48 (1986). This special record exclusion applies to certain especially sensitive records maintained by the Federal Bureau of Investigation which pertain to foreign intelligence, counterintelligence or international terrorism matters. Where the existence of such records is itself a classified fact, the FBI may, so long as the existence of the records remains classified, treat the records as not subject to the requirements of the FOIA. (See discussion under Exclusions, infra.)

IV. EXEMPTION 2

Exemption 2 of the FOIA exempts from mandatory disclosure records "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. §552(b)(2). The courts have interpreted the exemption to encompass two distinct categories of information: (a) internal matters of a relatively trivial nature, so-called "low 2" information, and (b) more substantial internal matters the disclosure of which would allow circumvention of a statute or agency regulation, so-called "high 2" information.

There has long existed some confusion concerning the intended coverage of both aspects of Exemption 2. Case law on the subject has been inconsistent, reflecting the dissimilar manner in which the House and Senate Reports addressed Exemption 2 when the FOIA was enacted. The Senate Report stated:

> Exemption No. 2 relates only to the internal personnel rules and practices of an agency. Examples of these may be rules as to personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and the like.

S. Rep. No. 813, 89th Cong., 1st Sess. 8 (1965). The House Report provided a more expansive interpretation of Exemption 2's coverage, stating that it was intended to include

> [o]perating rules, guidelines, and manuals of procedure for Government investigators or examiners [which] would be exempt from disclosure, but [that] this exemption would not cover all "matters of internal management" such as employee relations and working conditions and routine administrative procedures which are withheld under present law.

H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10 (1966).

These two statements contain an evident conflict in their treatment of the first category of information encompassed by this exemption--routine internal matters. The Supreme Court confronted this conflict in Department of the Air Force v. Rose, 425 U.S. 352 (1976), a case in which a requester sought to obtain case summaries of Air Force Academy ethics hearings, and it found the Senate Report to be more authoritative, at least with regard to the coverage intended for routine internal matters. See id. at 366-67. In Rose, the Supreme Court construed Exemption 2's somewhat ambiguous language as protecting internal agency matters so routine or trivial that they could not be "subject to . . . a genuine and significant public interest." Id. at 369. The Supreme Court also declared that Exemption 2 was intended to relieve agencies of the burden of assembling and providing access to "matter in which the public could not reasonably be expected to have an interest." Id. at 369-70 (footnote omitted). Yet the Court also implied that the policy enunciated by the House Report might permit an agency to withhold matters of some public interest where necessary to prevent potential circumvention of laws or agency regulations. See id. at 364.

It is quite evident from the legislative history and Rose that, with respect to its "low 2" aspect, Exemption 2 is the only exemption in the FOIA having a conceptual underpinning totally unrelated to any harm caused by disclosure per se. See Department of the Air Force v. Rose, 425 U.S. at 369-70. Rather, such an application of the exemption is based upon the unique rationyale that the very task of processing and releasing certain data would be an administrative burden unjustified by any genuine public benefit. See FOIA Update, Winter 1984, at 10 ("FOIA Counselor: The Unique Protection of Exemption 2"); see, e.g., Martin v. Lauer, 686 F.2d 24, 34 (D.C. Cir. 1982) (Exemption 2 "serves to relieve the agency from the administrative burden of processing FOIA requests when internal matters are not likely to be the subject of public interest."); Schwaner v. Department of the Air Force, Civil No. 88-0560, slip op. at 8 (D.D.C. Aug. 1, 1988) (court may consider administrative burden imposed on agency for internal matters "not likely to be the subject of public interest"); White v. Department of Justice, Civil No. 84-2746, slip op. at 6 (D.D.C. Feb. 25, 1986) (same). But see Army Times Publishing Co. v. Department of the Army, 684 F. Supp. 720, 723 (D.D.C. 1988).

Although cases subsequent to Rose demonstrated that a great deal of uncertainty existed as to the extent of coverage provided by this first aspect of Exemption 2, it now seems to be well established that routine internal personnel matters are properly included within its protection. See, e.g., FBI Agents Ass'n v. FBI, 3 GDS ¶83,058, at 83,566-67 (D.D.C. 1983) (protecting information relating to performance ratings, recognition and awards, leave practices, transfers, travel expenses and allowances); National Treasury Employees Union v. Department of the Treasury, 487 F. Supp. 1321, 1324 (D.D.C. 1980) (protecting bargaining history and IRS interpretation of labor contract provisions). However, personnel matters of greater general public interest are not so protected. See, e.g., Vaughn v. Rosen, 523 F.2d 1136,

1140-43 (D.C. Cir. 1975) (evaluations of how effectively agency policies were being implemented); Phoenix Newspapers, Inc. v. FBI, Civil No. 86-1199, slip op. at 16, 18 (D. Ariz. July 9, 1987) (agency response to MSPB appeal and administrative inquiry memorandum concerning death of FBI agent), motion to vacate denied (D. Ariz. Dec. 22, 1987); FBI Agents Ass'n v. FBI, 3 GDS at 83,566-67 (standards of conduct, grievance procedures, EEO procedures); Ferris v. IRS, 2 GDS ¶82,084, at 82,363 (D.D.C. 1981) (SES performance objectives).

A particularly interesting issue regarding the coverage of "low 2" is its unique application to far more mundane, yet pervasive, administrative records. In a case whose Exemption 2 holding now appears completely undermined, Jordan v. Department of Justice, 591 F.2d 753, 767 (D.C. Cir. 1978) (en banc), the full D.C. Circuit ordered the local U.S. Attorney's Office's prosecutorial guidelines released on the ground that the documents did not fit the narrowly read exemption for "personnel" rules. Subsequently, in Allen v. CIA, 636 F.2d 1287 (D.C. Cir. 1980), the D.C. Circuit ordered the release of such trivial internal information as filing and routing instructions, based upon the conclusion that Congress intended Exemption 2 protection for agency personnel records only, not for "trivial matters unrelated to personnel." Id. at 1290 & n.21 (emphasis in original). The court deciding Allen chose to perceive no conflict with several of its own post-Jordan opinions which had upheld withholding some items of information pursuant to Exemption 2 that clearly were not related to personnel matters. See, e.g., Lesar v. Department of Justice, 636 F.2d 472, 485 (D.C. Cir. 1980) (informant symbol numbers held protectible under Exemption 2); Cox v. Department of Justice, 601 F.2d 1, 4 (D.C. Cir. 1979) (per curiam) (sensitive portions of Marshals Service manual held protectible under Exemption 2).

One year after Allen, though, the full D.C. Circuit Court of Appeals in Crooker v. Bureau of Alcohol, Tobacco & Firearms, 670 F.2d 1051 (D.C. Cir. 1981) (en banc), revisited the issue involved in Jordan and adopted a distinctly broader view of Exemption 2, specifically with regard to its law enforcement aspect. Then, with its decision in Founding Church of Scientology v. Smith, 721 F.2d 828 (D.C. Cir. 1983), the D.C. Circuit finally made it clear that Exemption 2 allows the withholding of a great variety of internal rules, procedures and guidelines, effectively overruling Allen. In Founding Church of Scientology, the Justice Department pointedly admitted that it had withheld routine administrative notations "indistinguishable from the filing and routing instructions that were held unprotected under FOIA Exemption 2 in Allen," but it urged that Allen be abandoned in light of its discerned conflict with Crooker and Lesar. 721 F.2d at 829. Recognizing this conflict, and concluding that Crooker in fact "repudiated the narrow construction of exemption 2 that [had been] adopted in Jordan," the D.C. Circuit in Founding Church did exactly what was urged, expressly holding that Allen "no longer represents the law of this circuit." Id. at 830. Instead, it suggested an expanded test to include such routine material:

> First, the material withheld should fall within the terms of the statutory language as a personnel rule or internal practice of the agency. Then, if the material relates to trivial administrative matters of no genuine public interest, exemption would be automatic under the statute. If withholding frustrates legitimate public interest, however, the material should be released unless the government can show that disclosure would risk circumvention of lawful agency regulation.

Id. at 830 n.4 (citations omitted). Consequently, agencies are now free to consider withholding a wide range of administrative information under Exemption 2, regardless of whether it is personnel-related, based upon the unique rationale that the very process of releasing such data would be an unwarranted administrative burden.

Trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings may properly be withheld under "low 2." See, e.g., Lesar v. Department of Justice, 636 F.2d at 485-86 (informant codes held "a matter of internal significance in which the public has no substantial interest [and which] bear no relation to the substantive contents of the records released") (footnote omitted); Scherer v. Kelley, 584 F.2d 170, 175-76 (7th Cir. 1978), cert. denied, 440 U.S. 964 (1979); Nix v. United States, 572 F.2d 998, 1005 (4th Cir. 1978); Maroscia v. Levi, 569 F.2d 1000, 1001-02 (7th Cir. 1977) (markings used to maintain control of investigation properly withheld); Branch v. FBI, 658 F. Supp. 204, 208 (D.D.C. 1987) ("There is no question that [source symbol and file numbers are] trivial and may be withheld as a matter of law under Exemption 2."). In some instances, however, it can be less burdensome to release such information. See Fonda v. CIA, 434 F. Supp. 498, 503 (D.D.C. 1977) (where administrative burden is minimal and it would be easier to release material, policy underlying Exemption 2 does not permit withholding); FOIA Update, Winter 1984, at 11 (advising agencies to invoke exemption only where doing so truly avoids burden).

More significantly, though, Exemption 2 also has been held to justify the withholding of more extensive and substantive portions of administrative records, even entire documents. See, e.g., Nix v. United States, 572 F.2d at 1005 (cover letters matters of merely internal significance); Schwaner v. Department of the Air Force, slip op. at 11 (personnel list); Cox v. Department of Justice, Civil No. 87-0158, slip op. at 3 (D.D.C. Nov. 17, 1987) (investigation code name, supervising unit, details of property and funding withheld as internal matters of no genuine public interest); Dickie v. Department of the Treasury, Civil No. 86-0649, slip op. at 3 (D.D.C. Mar. 31, 1987) (case-reporting procedures withheld as trivial, routine data of no public significance); Heller v. Marshals Serv., 655 F. Supp. 1088, 1092 (D.D.C. 1987) (brief and personal intra-agency memorandum); Martinez v. FBI, Civil No. 82-1547, slip op. at 10-11 (D.D.C. Dec. 19, 1985) (43 pages of postal inspector caseload management and timekeeping records); Berkosky v. Department of Labor, Civil No. 82-6464, slip op. at 2 (C.D. Cal. May 2, 1984) (routing slip and complaint time log); Ferri v. Department of Justice, 573 F. Supp. 852, 862 (W.D. Pa. 1983) (two entire documents dealing with an internal administrative matter); Associated Press v. Department of Justice, Civil No. 82-803, slip op. at 44 (D.N.J. Dec. 6, 1982) (entire "closing form"); National Treasury Employees Union v. Department of the Treasury, 487 F. Supp. at 1324 (internal discussion of collective bargaining matters); Stassi v. Department of the Treasury, Civil No. 78-533, slip op. at 11 (D.D.C. Mar. 30, 1979) (records concerning man-hours and dollars spent on investigation). As a matter of policy, agencies should concentrate their attention on potential Exemption 2 withholdings of this latter variety. See FOIA Update, Winter 1984, at 11.

The courts have recently and more frequently addressed one specific type of administrative record: personnel lists. Although the personal privacy protection of Exemption 6 is generally unavailable to protect the names and office numbers or duty stations of federal employees, inasmuch as there is no viable privacy interest in such information, see FOIA Update, Sept.

1982, at 3, agencies that desire protection for their lists of employees may use the "low 2" aspect of Exemption 2 to shield themselves from the administrative burden of FOIA processing. Two criteria must be met to apply the protection of "low 2" to personnel lists: (1) the list must have been created for purely internal administrative or "housekeeping" purposes, see Founding Church of Scientology v. Smith, 721 F.2d at 830 n.4, and (2) there must have been no demonstrated legitimate public interest in such a list, id. See FOIA Update, Summer 1986, at 3-4 ("FOIA Counselor: Protecting Federal Personnel Lists").

Where the requester has appeared able to put a requested personnel list to publicly beneficial use, however, that list has been ordered disclosed. This past year, the Department of Defense policy of withholding these lists under Exemption 2 led to two decisions addressing this issue, in which different results were reached. In the first case, the court ordered a computerized personnel list released to a widely distributed and highly regarded military newspaper which sought the list to solicit new subscriptions. Army Times Publishing Co. v. Department of the Army, 684 F. Supp. at 721. It ruled that the list was neither an internal rule nor practice, id. at 722-23, and held that the fact "[t]hat [plaintiff's] motive is commercial in nature does not detract significantly from the service that release of the requested records would provide to the public, particularly here where plaintiff is a newspaper," id. at 724. However, in the second case, an insurance salesman was denied access to a list of junior enlisted personnel at Bolling Air Force Base. Schwaner v. Department of the Air Force, slip op. at 11. The court in Schwaner implicitly rejected the conclusion reached in Army Times regarding the exemption's threshold and held that, as the Air Force maintained the list "exclusively for supporting and facilitating its internal personnel activities," the records were indeed "purely internal" and "of no general public interest." Id. at 3-4. It concluded that "the government should not be put to the cumulating expense of processing the requests of merchants, nor should FOIA be interpreted as requiring this intrusion of the privacy of government employees," id. at 6, particularly where there exists no "clear, unique connection between the purpose of the requester and the interests of the persons whose names and addresses are being sought," id. at 7. Significantly, the court distinguished Army Times on the ground that the military newspaper's "integral relationship" with the Army better served the public's interest than would Schwaner's commercial enterprise. Id. Thus, it now appears that, except in the case of some special requester whose use of a personnel list would engender some public benefit, agencies can withhold such personnel lists under Exemption 2. See also Schwaner v. Department of the Air Force, slip op. at 8 (permitting selective disclosure based in part on identity of requester).

Agencies need to be especially mindful of the fact that the special protection of "low 2" simply is not available for any information in which there is "a genuine and significant public interest." Department of the Air Force v. Rose, 425 U.S. at 369. A useful illustration of how this "public interest" delineation is drawn can be found in FBI Agents Ass'n v. FBI, 3 GDS at 83,565-66, in which large portions of an FBI administrative manual were ruled properly withholdable on a "burden" theory under Exemption 2, but other portions (because of a discerned "public interest" in them) were not. In making such delineations now for a wider category of administrative records in the wake of Founding Church, agencies should be careful to heed the D.C. Circuit's admonition in that case that "a reasonably low threshold should be maintained for determining when withheld administrative material relates to significant public interests." 721 F.2d at 830-

31 n.4; see, e.g., Army Times Publishing Co. v. Department of the Army, 684 F. Supp. at 723.

A number of courts have focused precisely upon the lack of any "legitimate public interest" when applying this aspect of the exemption to clearly internal material. See, e.g., Martin v. Lauer, 686 F.2d at 34 (Exemption 2 "designed to screen out illegitimate public inquiries into the functioning of an agency"); Lesar v. Department of Justice, 636 F.2d at 485-86 (public has "no legitimate interest" in FBI's mechanism for internal control of informant identities); Struth v. FBI, 673 F. Supp. 949, 959 (E.D. Wis. 1987) (plaintiff offered no evidence of public interest in source symbol or source file numbers); White v. Department of Justice, slip op. at 6 ("Exemption 2 is designed . . . to screen out illegitimate public inquiries into the functioning of an agency."); Fiumara v. Higgins, 572 F. Supp. 1093, 1102 (D.N.H. 1983) (plaintiff failed to show legitimate public or private interest in disclosure of agency's law enforcement computer system information); Texas Instruments, Inc. v. Customs Serv., 479 F. Supp. 404, 406-07 (D.D.C. 1979) (internal access or report numbers of no value to plaintiff). See also Chong v. DEA, Civil No. 85-3726, slip op. at 11 (D.D.C. Mar. 14, 1988) (public has no "substantive interest" in source symbol numbers) (motion for reconsideration pending); Heller v. Marshals Serv., 655 F. Supp. at 1092. But cf. Tax Analysts v. Department of Justice, 845 F.2d at 1064 n.8 (finding Exemption 2 inapplicable, without discussion, because of "public's obvious interest" in agency copies of court opinions).

The second category of information protectible under Exemption 2--internal matters of a more substantial nature the disclosure of which would allow the circumvention of a statute or agency regulation--has generated considerable controversy. In Department of the Air Force v. Rose the Supreme Court specifically left open the question of whether such records fall within the coverage of Exemption 2. See 425 U.S. at 364. Many of the cases first developed this aspect of the exemption in the context of law enforcement manuals containing sensitive staff instructions. For example, the position adopted by the Eighth Circuit on this subject is that Exemption 2 does not relate to such matters, but that 5 U.S.C. §552(a)(2)(C), a procedural FOIA subsection which arguably excludes law enforcement manuals from the automatic disclosure provisions of the FOIA, bars disclosure of manuals whose release to the public would significantly impede the enforcement process. See Cox v. Levi, 592 F.2d 460, 462-63 (8th Cir. 1979); Cox v. Department of Justice, 576 F.2d 1302, 1306-09 (8th Cir. 1978). Although tacitly approving the Eighth Circuit's argument, the Fifth and Sixth Circuits have an alternative rationale for withholding law enforcement manuals: Disclosure would allow persons "simultaneously to violate the law and to avoid detection" by impeding law enforcement efforts. Hawkes v. IRS, 467 F.2d 787, 795 (6th Cir. 1972); Sladek v. Bensinger, 605 F.2d 899, 902 (5th Cir. 1979).

The majority of the courts in other circuits, however, have placed greater weight on the House Report in this respect and accordingly have held that Exemption 2 is applicable to a wide range of internal administrative and personnel matters, including law enforcement manuals, to the extent that disclosure would risk circumvention of an agency regulation or statute or impede the effectiveness of an agency's law enforcement activities. See, e.g., Hardy v. Bureau of Alcohol, Tobacco & Firearms, 631 F.2d 653, 656 (9th Cir. 1980); Caplan v. Bureau of Alcohol, Tobacco & Firearms, 587 F.2d 544, 547 (2d Cir. 1978); Wilder v. IRS, 607 F. Supp. 1013, 1015 (M.D. Ala. 1985); Ferri v. Bell, Civil No. 78-841, slip op. at 7-9 (M.D. Pa. Dec. 15, 1983); Fiumara v. Higgins, 572 F. Supp. at 1102. See also Watkins v. IRS, Civil No.

C81-0091J, slip op. at 1 (D. Utah Mar. 29, 1982) (criteria for taking administrative or judicial enforcement actions found protectible).

The D.C. Circuit adopted the majority approach on this issue when the full court addressed the issue in Crooker v. Bureau of Alcohol, Tobacco & Firearms, a case involving a surveillance manual. Although not explicitly overruling the holding in Jordan v. Department of Justice that guidelines for the exercise of prosecutorial discretion were not properly withholdable, see 591 F.2d at 771, the en banc decision in Crooker specifically rejected the rationale of Jordan that Exemption 2 did not protect law enforcement manuals or other documents whose disclosure would risk circumvention of law or agency regulation. See 670 F.2d at 1074.

Crooker fashioned a two-part test for determining which sensitive materials are exempt from mandatory disclosure under Exemption 2. This test requires both that a requested document be "predominantly internal" and that its disclosure "significantly risks circumvention of agency regulations or statutes." 670 F.2d at 1073-74. Of course, whether there is any public interest in disclosure is entirely irrelevant under this "circumvention" prong. See Kaganove v. EPA, ___ F.2d ___, ___ (7th Cir. Sept. 1, 1988); Institute for Policy Studies v. Department of the Air Force, 676 F. Supp. 3, 5 (D.D.C. 1987).

In the years since Crooker, a growing body of cases has expressly applied both parts of this test, providing some guidance as to the kinds of information that will qualify for protection under those standards. See, e.g., National Treasury Employees Union v. Customs Serv., 802 F.2d 525, 528 (D.C. Cir. 1986); Institute for Policy Studies v. Department of the Air Force, 676 F. Supp. at 5; Wilder v. IRS, 607 F. Supp. at 1015; Windels, Marx, Davies & Ives v. Department of Commerce, 576 F. Supp. 405, 411-13 (D.D.C. 1983). Other circuits have followed similar tests, all containing an element similar to the "risk of circumvention" critical to the Crooker analysis. See, e.g., Dirksen v. HHS, 803 F.2d 1456, 1458 (9th Cir. 1986) (citing Hardy v. Bureau of Alcohol, Tobacco & Firearms, 631 F.2d at 657); Caplan v. Bureau of Alcohol, Tobacco & Firearms, 587 F.2d at 547; Irons v. FBI, Civil No. 82-1143-G, slip op. at 2 (D. Mass. Mar. 31, 1986), rev'd & remanded on other grounds, 811 F.2d 681 (1st Cir. 1987); Feldmeyer v. Department of Justice, Civil No. 82-C-1601, slip op. at 4 (E.D. Wis. Aug. 16, 1983).

With respect to the first part of the Crooker test, it is fairly easy in practice to meet Exemption 2's requirement that the materials be "predominantly internal." Although the standard appeared difficult to define, particularly in view of the implication in the majority opinion in Crooker that prosecutorial guidelines do not meet this requirement, see 670 F.2d at 1075, subsequent decisions have strongly suggested otherwise. For example, the standard of "predominant" internality has been held not to exclude from protection even a document distributed to 170C state, federal and foreign agencies when the dissemination was necessary for maximum law enforcement effectiveness and access to the general public was stringently denied. See Shanmugadhasan v. Department of Justice, Civil No. 84-0079-PAR, slip op. at 31-34 (C.D. Cal. Feb. 18, 1986) (portions of DEA periodical discussing drug enforcement techniques and exchange of information held protectible). See also Kaganove v. EPA, ___ F.2d at ___ (EPA, like any employer, "reasonably would expect" an applicant rating plan to be internal); National Treasury Employees Union v. Customs Serv., 802 F.2d at 531 (appointment of individual members of the lower federal bureaucracy is primarily question of internal significance for agencies involved);

Institute for Policy Studies v. Department of the Air Force, 676 F. Supp. at 5 ("[I]t is difficult to conceive of a document that is more 'predominantly internal' than a guide by which agency personnel classify documents."). Specific guidance on what constitutes an "internal" document may be found in Cox v. Department of Justice, which held protectible information which

> does not purport to regulate activities among members of the public. Nor does it set standards to be followed by agency personnel in deciding whether to proceed against or to take action affecting members of the public. Differently stated, the unreleased information is not "secret law," the primary target of [the FOIA's] disclosure provisions.

601 F.2d at 5.

Courts have uniformly held that a wide variety of information pertaining to law enforcement investigations can be regarded as "internal," including:

(1) general guidelines for conducting investigations, see, e.g., Goldsborough v. IRS, Civil No. 81-1939, slip op. at 15-16 (D. Md. May 10, 1984) (protecting law enforcement manual setting out guidelines to be used in criminal investigation); Berkosky v. Department of Labor, slip op. at 3 (holding that guidance for proper conduct of a "503" investigation is designed solely to instruct investigators and does not "regulate the public");

(2) guidelines concerning when to pursue an investigation, see, e.g., Wilder v. IRS, 601 F. Supp. 241, 242-43 (M.D. Ala. 1984) (agreement between state and federal agencies concerning when to exchange information relevant to potential violations of tax laws held "predominantly internal" because it did not interpret substantive law, but instead governed exchange of information);

(3) guidelines for identifying law violators, see, e.g., Fund for a Conservative Majority v. Federal Election Comm'n, Civil No. 84-1342, slip op. at 4 (D.D.C. Feb. 26, 1985) (audit criteria not "secret law" because they merely observe public behavior for illegal activity and do not define illegal activity); Windels, Marx, Davies & Ives v. Department of Commerce, 576 F. Supp. at 412 (computer program protected under Exemptions 2 and 7(E) because it merely instructs computer how to detect possible law violations, rather than modifies or regulates public behavior); Zorn v. IRS, 2 GDS ¶82,240, at 82,664 (D.D.C. 1982) (guidelines for identifying tax protester churches held not "secret law");

(4) a study of agency practices and problems pertaining to undercover agents, see Cox v. FBI, Civil No. 83-3552, slip op. at 1 (D.D.C. May 31, 1984) (holding that report concerning undercover agents had no effect on public and contained no "secret law"), appeal dismissed, No. 84-5364 (D.C. Cir. Feb. 28, 1985); and

(5) an unclassified manual, restricted to use by Air Force personnel and government contractors to determine what information pertaining to a particular project should be classified, Institute for Policy Studies v. Department of the Air Force, 676 F. Supp. at 4.

On the other hand, one court has gone so far as to state that if there is a charge that an underlying investigation has been conducted illegally, material which normally would be of merely internal significance may possess a countervailing public

interest and so Exemption 2 may not be applicable. See Wilkinson v. FBI, 633 F. Supp. 336, 342 (C.D. Cal. 1986). See also Kaganove v. EPA, ___ F.2d at ___ (suggesting that document may not meet Crooker test if its purpose were not "legitimate"); Oatley v. United States, 3 GDS ¶83,274, at 84,065 (D.D.C. 1983) (holding that civil service testing materials satisfy the two-part Crooker test, but leaving open the possibility that the information would not be considered predominantly internal if grounds existed to suspect bias on the basis of race or sex in the materials, as there then would be a legitimate public interest in its disclosure).

More case law exists on what constitutes circumvention of statutes or agency regulations, because in many instances the "internality" of the documents is simply assumed. Records that would reveal the nature and extent of a particular investigation repeatedly have been held protectible on this basis. See, e.g., Webster v. Department of Justice, 3 GDS ¶83,195, at 83,876 (D.D.C. 1983) (release of G-DEP and NADDIS index numbers might severely hamper DEA's enforcement and investigatory activities); Ferri v. Bell, slip op. at 9, 11 (disclosure of charge-out cards for electronic surveillance devices would impede the FBI's law enforcement effectiveness; however, purchase records of electronic surveillance equipment must be released because FBI has not demonstrated that release would similarly frustrate its effectiveness); White v. Department of Justice, 3 GDS ¶83,127, at 83,740 n.6 (D.D.C. 1983) (release of Bureau of Prisons memorandum regarding telephone surveillance might risk circumvention of agency regulations).

As to a matter of increasing significance, the nondisclosure of computer codes used by law enforcement agencies that might provide the sophisticated requester with access to information concerning agency investigations stored in a computer system also has been upheld on this basis. See, e.g., Dirksen v. HHS, 803 F.2d at 1459 (instructions for computer coding protected); Wightman v. Bureau of Alcohol, Tobacco & Firearms, 755 F.2d 979, 982 (1st Cir. 1985) (computer codes protected as "material relating solely to the internal practices of the BATF"); Laroque v. Department of Justice, Civil No. 86-2677, slip op. at 2 (D.D.C. July 12, 1988) (computer systems ID numbers and entry station numbers); Bennett v. Department of Justice, Civil No. 86-0891, slip op. at 1 (D.D.C. Oct. 28, 1986) (computer code); Rizzo v. Department of Justice, Civil No. 84-2091, slip op. at 3-4 (D.D.C. Feb. 25, 1985) (teletype routing codes); Fiumara v. Higgins, 572 F. Supp. at 1102 (disclosure of access codes to the Treasury Enforcement Communications System "might enable outsiders to circumvent agency functions"). See also Windels, Marx, Davies & Ives v. Department of Commerce, 576 F. Supp. at 412 (computer program withheld under Exemptions 2 and 7(E)); Kiraly v. FBI, 3 GDS ¶82,465, at 83,135 (N.D. Ohio 1982) (computer codes withheld under a combination of Exemptions 2 and 7(E)), aff'd, 728 F.2d 273 (6th Cir. 1984). Exemption 2 may also be applied to testing materials. See Patton v. FBI, 626 F. Supp. 445, 447 (M.D. Pa. 1985) (testing materials withheld under Privacy Act Exemption (k)(6) and FOIA Exemption 2 because release would impair effectiveness of system and give future applicants unfair advantage), aff'd mem., 782 F.2d 1030 (3d Cir. 1986); Oatley v. United States, 3 GDS at 84,065 (civil service testing materials satisfy the two-part Crooker test); see also Kaganove v. EPA, ___ F.2d at ___ (disclosure of applicant rating plan would render it ineffectual and allow future applicants to "embellish" job qualifications); National Treasury Employees Union v. Customs Serv., 802 F.2d at 528-29 (disclosure of hiring plan would give unfair advantage to some future applicants).

Release of various other categories of information also has been found likely to result in such circumvention:

(1) information which would reveal the identities of informants, see, e.g., Lesar v. Department of Justice, 636 F.2d at 486 (informant codes); Struth v. FBI, 673 F. Supp. at 959 (informant file numbers and codes); Wilkinson v. FBI, 633 F. Supp. at 341-42 (informant codes); Rizzo v. FBI, Civil No. 83-1924, slip op. at 3 (D.D.C. Feb. 10, 1984) (source symbols); Malizia v. Department of Justice, 519 F. Supp. 338, 344 (S.D.N.Y. 1981) (source numbers and identifying information);

(2) information which would reveal the identities of undercover agents, see Cox v. FBI, slip op. at 2 (report concerning the FBI's undercover agent program protected because of potential for discovering identities of agents);

(3) sensitive administrative notations in law enforcement files, see, e.g., Founding Church of Scientology v. Smith, 721 F.2d at 831 (protecting sensitive instructions regarding administrative handling of document); Meeropol v. Smith, Civil No. 75-1121, slip op. at 47-48 (D.D.C. Feb. 29, 1984) (release of handling and dissemination instructions could jeopardize the means by which FBI has transmitted certain sensitive intelligence information), aff'd in part, remanded in part sub nom. Meeropol v. Meese, 790 F.2d 942 (D.C. Cir. 1986);

(4) security techniques used in prisons, see, e.g., Cox v. Department of Justice, 601 F.2d at 4-5 (weapon, handcuff and transportation security procedures); Crooker v. Federal Bureau of Prisons, Civil No. 86-0510, slip op. at 3-4 (D.D.C. Feb. 27, 1987) (general prison post orders, handcuff procedures, security and arming of officers, and alarm procedures); Cox v. Bureau of Prisons, Civil No. 83-1032, slip op. at 1 (D.D.C. July 19, 1983) (release of Central Inmate Monitoring Manual would create significant risk of circumvention of agency regulations designed to safeguard security of inmates), appeal dismissed, No. 83-1859 (D.C. Cir. Oct. 20, 1983);

(5) agency audit guidelines, see, e.g., Dirksen v. HHS, 803 F.2d at 1458-59 (internal audit procedures protected in order to prevent risk of circumvention of agency Medicare reimbursement regulations); Windels, Marx, Davies & Ives v. Department of Commerce, 576 F. Supp. at 412-13 (computer program containing anti-dumping detection criteria properly withheld); and

(6) an agency's unclassified manual detailing the categories of information that are classified and their corresponding classification levels, Institute for Policy Studies v. Department of the Air Force, 676 F. Supp. at 5. One court, in a somewhat confusing opinion, has held that where there is significant public interest in the procedures used by the FBI in an investigation, codes which identify law enforcement techniques may not be withheld under Exemption 2 and instead must meet the threshold requirement of compilation for law enforcement purposes for protection under Exemption 7(E). See Wilkinson v. FBI, 633 F. Supp. at 342 & n.13.

Exemption 2 may be applied to prevent the potential circumvention of laws or agency regulations under a "mosaic" theory: Information which would not by itself reveal sensitive law enforcement information can nonetheless be protected to prevent damage that could be caused by the assembly of different pieces of similar information by one requester. This situation arose in three relatively recent cases involving requests for "Discriminant Function Scores"--scores used by the IRS to select returns for examination. Although the IRS concedes that release of any

one individual's tax score would not disclose how tax returns are selected for audit, it takes the position that the routine release of such scores would enable the sophisticated requester to discern, in the aggregate, the audit criteria, thus facilitating circumvention of the tax laws. All three courts accepted this rationale as an appropriate basis for affording protection under Exemption 2. See Burns v. IRS, Civil No. 85-1027 (D. Ariz. Oct. 16, 1985), dismissed on procedural grounds, No. 85-2833 (9th Cir. Sept. 12, 1986); Ray v. Customs Serv., Civil No. 83-1476, slip op. at 8-9 (D.D.C. Jan. 28, 1985); Wilder v. IRS, 607 F. Supp. at 1015. Accord Institute for Policy Studies v. Department of the Air Force, 676 F. Supp. at 5 (classification guidelines could reveal which parts of sensitive communications system are most sensitive and enable foreign intelligence services to gather related unclassified records and seek out system's vulnerabilities); see also Halperin v. CIA, 629 F.2d 144, 150 (D.C. Cir. 1980) ("mosaic" analysis in Exemptions 1 and 3 context).

Exemption 2 also applies to records whose release risks circumvention of a statute or regulation which does not relate to investigatory functions and which is thus more "civil" than "law enforcement" in nature. In the seminal case in this area, the National Treasury Employees Union sought documents known as "crediting plans," records used to evaluate the credentials of federal job applicants. The Customs Service successfully argued that disclosure of the plans would make it difficult to evaluate the applicants because they could easily exaggerate or even fabricate their qualifications, such falsifications would go undetected because the government lacked the resources necessary to verify each application, and unscrupulous future applicants could thereby gain an unfair competitive advantage. National Treasury Employees Union v. Customs Serv., 802 F.2d at 528-29. The D.C. Circuit approved the withholding of such criteria under an interpretation of Crooker which focused directly on its second requirement and held that the potential for circumvention of the selection program, as well as the statutory and regulatory mandates to enforce applicable civil service laws, was sufficient to bring the information at issue within the protection of Exemption 2. See id. at 529-31. The agency demonstrated "circumvention" by showing that disclosure would either render the documents obsolete for their intended purpose, make the plan's criteria "operationally useless" or compromise the utility of the selection program. Id. at 530-31. This approach has been expressly followed by the Seventh Circuit in Kaganove v. EPA to withhold from an unsuccessful job applicant the agency's merit promotion rating plan, on the basis that disclosure of the plan "would frustrate the document's objective [and] render it ineffectual" for the very reasons noted in National Treasury Employees Union. Kaganove v. EPA, ___ F.2d at ___. See also Dirksen v. HHS, 803 F.2d at 1459 (guidelines for processing Medicare claims properly withheld where disclosure could allow applicants to alter their claims to fit them into certain categories and the guidelines would thus "lose the utility they were intended to provide").

It is also quite noteworthy that the Seventh Circuit in Kaganove v. EPA, the Ninth Circuit in Dirksen v. HHS, and the D.C. Circuit in National Treasury Employees Union v. Customs Serv., reached this result even in the absence of any particular agency regulation or statute to be circumvented. See Kaganove v. EPA, ___ F.2d at ___; Dirksen v. HHS, 803 F.2d at 1458-59; National Treasury Employees Union, 802 F.2d at 529-31. Thus, it now appears that the second aspect of the Crooker test might properly be satisfied by a showing that disclosure would impair certain operations of an agency undertaken merely under agency "standards" or under the very general authority of a statutory or regulatory scheme. See also, e.g., Knight v. Department of

Defense, Civil No. 87-0480, slip op. at 4 (D.D.C. Feb. 11, 1988) (Defense Department memo detailing specific inventory audit guidelines held protectible because disclosure "would reveal DoD rationale and strategy" for audit and would "create a significant risk that this information would be used by interested parties to frustrate ongoing or future audits."); Boyce v. Department of the Navy, Civil No. 86-2211, slip op. at 2 (C.D. Cal. Feb. 17, 1987) (withholding routine hearing transcript proper under Exemption 2 where disclosure would circumvent terms of mere contractual agreement entered into under labor-relations statutory scheme).

Finally, with the enactment of the Freedom of Information Reform Act of 1986, many of the materials heretofore protectible only under the Crooker analysis of Exemption 2 now may also be protectible under Exemption 7(E). See Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 16-17 & n.32 (Dec. 1987); Kaganove v. EPA, ___ F.2d at ___. While Exemption 2 must still be used if any information fails to meet Exemption 7's "law enforcement" threshold, Exemption 2's history and judicial interpretations should be helpful in applying the new Exemption 7(E). (See discussion of Exemption 7(E), infra.)

V. EXEMPTION 3

Exemption 3 of the FOIA incorporates the disclosure prohibitions that are contained in various other federal statutes. As originally enacted in 1966, Exemption 3 protected information "specifically exempted from disclosure by statute." 5 U.S.C. §552(b)(3) (1970). The Supreme Court interpreted this language as evincing a congressional intent to allow statutes which permitted the withholding of confidential information, and which were enacted prior to the FOIA, to remain unaffected by the disclosure mandate of the FOIA. In so reading the exemption, the Court held that a withholding provision in the Federal Aviation Act which delegated almost unlimited discretion to agency officials to withhold specific documents in the "interest of the public" was incorporated within Exemption 3. FAA v. Robertson, 422 U.S. 255, 265 (1975). Fearing that this interpretation would allow agencies to evade the Act's disclosure intent, Congress in effect overruled Robertson by amending Exemption 3 in 1976.

Exemption 3, as amended, now allows the withholding of information prohibited from disclosure by another statute only if that statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. §552(b)(3), as amended (emphasis added). A statute thus falls within the exemption's coverage if it satisfies any one of its disjunctive requirements. See American Jewish Congress v. Kreps, 574 F.2d 624, 628 (D.C. Cir. 1978); see also Long v. IRS, 742 F.2d 1173, 1178 (9th Cir. 1984); Irons & Sears v. Dann, 606 F.2d 1215, 1220 (D.C. Cir. 1979), cert. denied, 444 U.S. 1075 (1980). Of course, an agency must also establish that the records in question fall within the protective ambit of the exempting statute. See, e.g., Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1284 (D.C. Cir. 1983); Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d 856, 868 (D.C. Cir. 1981); Goland v. CIA, 607 F.2d 339, 350 (D.C. Cir. 1978), cert. denied, 445 U.S. 927 (1980).

Exemption 3 is generally triggered only by federal statutes. See, e.g., Washington Post Co. v. HHS, 690 F.2d 252, 273 (D.C. Cir. 1982) (Tamm, J., dissenting) (disclosure prohibitions found in executive orders or regulations do not trigger Exemption 3).

Moreover, in Reporters Comm. for Freedom of the Press v. Department of Justice, 816 F.2d 730, 734-36 (D.C. Cir.), modified on other grounds, 831 F.2d 1124 (D.C. Cir. 1987), the D.C. Circuit Court of Appeals indicated that it would not look to the legislative history of a statute at issue to support the proposition that it was intended to fall within Exemption 3's ambit. Rather, any congressional purpose to exempt matters from disclosure must be found "in the actual words of the statute (or at least in the legislative history of the FOIA)," id. at 735 (emphasis added). Previously, however, the D.C. Circuit had found legislative history probative on the issue of whether an enactment was intended to serve as a withholding statute within the meaning of Exemption 3. See Public Citizen Health Research Group v. FDA, 704 F.2d at 1284. Note also in this context that the legislative history of a newly enacted Exemption 3 statute should be considered in determining whether it is applicable to matters that are already pending. See Long v. IRS, 742 F.2d at 1183-84.

Federal rules of procedure, which are promulgated by the Supreme Court, generally do not qualify under Exemption 3. See Founding Church of Scientology v. Bell, 603 F.2d 945, 952 (D.C. Cir. 1979) (Rule 26(c) of the Federal Rules of Civil Procedure governing issuance of protective orders held not a statute under Exemption 3). However, when a rule of procedure is subsequently modified and thereby specifically enacted into law by Congress, it may qualify under the exemption. For example, in Berry v. Department of Justice, 612 F. Supp. 45, 49 (D. Ariz. 1985), it was held that Rule 32 of the Federal Rules of Criminal Procedure, which governs the disclosure of presentence reports, is a "statute" for the purposes of Exemption 3 as it was affirmatively enacted into law by Congress in 1975. Similarly, Rule 6(e) of the Federal Rules of Criminal Procedure, which regulates disclosure of matters occurring before a grand jury, has been held to satisfy the "statute" requirement of Exemption 3 because it was specially amended by Congress in 1977. Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d at 867.

It is well established that "Rule 6(e) embodies a broad sweeping policy of preserving the secrecy of grand jury material regardless of the substance in which the material is contained." Iglesias v. CIA, 525 F. Supp. 547, 566 (D.D.C. 1981). However, defining the parameters of Rule 6(e) protection is not always a simple task and has been the subject of much litigation. In Fund for Constitutional Gov't, the D.C. Circuit stated that the scope of the secrecy afforded grand jury material "is necessarily broad" and, consequently, "it encompasses not only the direct revelation of grand jury transcripts but also the disclosure of information which would reveal the 'identities of witnesses or jurors, the substance of the testimony, the strategy or direction of the investigation, the deliberations or questions of the jurors, and the like.'" 656 F.2d at 869 (quoting SEC v. Dresser Indus., Inc., 628 F.2d 1368, 1382 (D.C. Cir.), cert. denied, 449 U.S. 993 (1980)).

But in a recent decision elaborating upon the scope of Rule 6(e), the D.C. Circuit emphasized that neither the fact that information was obtained pursuant to a grand jury subpoena nor the fact that the information was submitted to the grand jury is sufficient, in and of itself, to warrant the conclusion that disclosure is necessarily prohibited. Senate of Puerto Rico v. Department of Justice, 823 F.2d 574, 582 (D.C. Cir. 1987); see also John Doe Corp. v. John Doe Agency, 850 F.2d 105, 109 (2d Cir. 1988) ("A document that is otherwise available to the public does not become confidential simply because it is before a grand jury."). Rather, an agency must establish a nexus between the release of that information and "revelation of a protected aspect of the grand jury's investigation." Senate of Puerto v. Depart-

ment of Justice, 823 F.2d at 584; see also Karu v. Department of Justice, Civil No. 86-771, slip op. at 4-5 (D.D.C. Dec. 1, 1987) (holding that such nexus was established: "[W]ere this information to be released the very substance of the grand jury proceedings would be discernible.").

Only a few cases apart from Fund for Constitutional Gov't--which held that Rule 6(e)'s absolute ban on disclosure falls within subpart (A), see 656 F.2d at 867-68--have concerned statutes that absolutely prohibit agency disclosure of specific material in satisfaction of subpart (A) of Exemption 3. While not actually distinguishing between the two subparts, the Supreme Court's decision in Baldrige v. Shapiro, 455 U.S. 345 (1982), is another such example. In that case, the Supreme Court held that the Census Act--specifically, 13 U.S.C. §§8(b) and 9(a)--is an Exemption 3 statute because it requires that certain data be withheld in such a manner as to leave the Census Bureau with no discretion whatsoever. See id. at 355. See also Young Conservative Found. v. Department of Commerce, Civil No. 85-3982, slip op. at 10-11 (D.D.C. Mar. 25, 1987) (holding International Investment Survey Act of 1976, 22 U.S.C. §3104(c), meets requirements of subpart (A) as it allows no agency discretion regarding disclosure); Mulloy v. Consumer Product Safety Comm'n, Civil No. C-2-85-645, slip op. at 2-4 (S.D. Ohio Aug. 2, 1985), aff'd mem., 798 F.2d 1415 (6th Cir. 1986) (holding 15 U.S.C. §2055(a)(2), a provision of the Consumer Product Safety Act, meets subpart (A) requirements); Carroll v. Department of Justice, Civil No. 76-2038, slip op. at 2-3 (D.D.C. May 26, 1978) (holding Section 2518(8) of Title III of Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §2518(8), which regulates disclosure of contents of wiretap intercepts, meets requirements of Subpart (A)). But cf. Reporters Comm. for Freedom of the Press v. Department of Justice, 816 F.2d at 736 n.9 (holding 28 U.S.C. §534 does not fulfill subpart A's requirement of absolute withholding because statute implies the agency has discretion to withhold records and agency actually exercised such discretion by its inconsistent manner of releasing "rap sheets" to public).

Most Exemption 3 cases involve subpart (B), either explicitly or implicitly. In Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 123 (1980), for example, the Supreme Court held that a provision of the Consumer Product Safety Act, 15 U.S.C. §2055(b)(1), sets forth sufficiently definite mandatory conditions precedent to disclosure for it to fall within the scope of Exemption 3. Similarly, the Supreme Court has held that a provision of the National Security Act of 1947, 50 U.S.C. §403(d)(3), which requires the Director of the CIA to protect "intelligence sources and methods," clearly refers to particular types of matters to be withheld and thus comes within the ambit of subpart (B). See CIA v. Sims, 471 U.S. 159, 167 (1985); see also Mudge Rose Guthrie Alexander & Ferdon v. International Trade Comm'n, 846 F.2d 1527, 1530 (D.C. Cir. 1988) (Section 777 of Tariff Act, governing withholding of "proprietary information," clearly refers to the particular types of information to be withheld); Association of Retired R.R. Workers v. Railroad Retirement Bd., 830 F.2d 331, 334 (D.C. Cir. 1987) (Section 12(d) of Railroad Unemployment Insurance Act, 45 U.S.C. §362(d), clearly refers to particular types of matters to be withheld--information which would reveal employees' identities--thus satisfying subpart (B)); Lessner v. Department of Commerce, 827 F.2d 1333, 1336-37 (9th Cir. 1987) (Section 12(c)(1) of the Export Administration Act, 50 U.S.C. App. §2411(c)(1), governing the disclosure of export licenses and applications, authorizes withholding of sufficiently narrow class of information to satisfy requirements of subpart (B) and thus qualifies as Exemption 3 statute).

Similarly, in Irons & Sears v. Dann, 606 F.2d at 1220, it was held that a portion of the Patent Act, 35 U.S.C. §122, satisfies subpart (B) because it identifies the types of matters--patent applications and information concerning them--intended to be withheld. Furthermore, the portion of the Civil Service Reform Act concerning the confidentiality of certain labor relations training and guidance materials, 5 U.S.C. §7114(b)(4), has qualified as a withholding statute. See Dubin v. Department of the Treasury, 555 F. Supp. 408, 412 (N.D. Ga. 1981), aff'd mem., 697 F.2d 1093 (11th Cir. 1983); National Treasury Employees Union v. Office of Personnel Management, Civil No. 76-0695, slip op. at 4 (D.D.C. July 9, 1979); see also Young Conservative Found. v. Department of Commerce, slip op. at 8 (holding Collection and Publication of Foreign Commerce Act, 13 U.S.C. §301(g), and Export Administration Act of 1979, 50 U.S.C. App. §2411(c), both pertaining to shippers export declarations, qualify as Exemption 3 statutes); American Friends Serv. Comm. v. Department of Defense, Civil No. 83-4916, slip op. at 10 (E.D. Pa. Sept. 25, 1986) (Department of Defense "technical data" statute, 10 U.S.C. § 40c [now redesignated as 10 U.S.C. §130], satisfies subpart B), rev'd on other grounds, 831 F.2d 441 (3d Cir. 1987); Hunt v. Commodity Futures Trading Comm'n, 484 F. Supp. 47, 49 (D.D.C. 1979) (portion of Commodity Exchange Act, 7 U.S.C. §12, satisfies subpart (B)).

Some statutes have been found to satisfy both Exemption 3 subparts. For example, in DeLaurentiis v. Haig, 686 F.2d 192, 194 (3d Cir. 1982), the Third Circuit Court of Appeals held that 8 U.S.C. §1202(f) sufficiently limits the category of information it covers--records pertaining to the issuance or refusal of visas and permits to enter the United States--to qualify as an Exemption 3 statute under subpart (B). Accord Smith v. Department of Justice, Civil No. 81-CV-813, slip op. at 10-11 (N.D.N.Y. Dec. 13, 1983). The D.C. Circuit in Medina-Hincapie v. Department of State, 700 F.2d 737, 741-42 (D.C. Cir. 1983), however, found that §1202(f) satisfies subpart (A) as well as subpart (B).

On the other hand, certain statutes fail to meet the requisites of either Exemption 3 prong. For instance, the D.C. Circuit, in holding that 28 U.S.C. §534 is not an Exemption 3 statute because it does not expressly prohibit the disclosure of "rap sheets," explained that even if §534 met the exemption's threshold requirement, it would not qualify as an Exemption 3 statute as it fails to satisfy either subpart. See Reporters Comm. for Freedom of the Press v. Department of Justice, 816 F.2d at 736 n.9. Similarly, the Copyright Act of 1976, 17 U.S.C. §§101-810, has been held to satisfy neither Exemption 3 subpart because rather than prohibiting disclosure, it specifically permits public inspection of copyrighted documents. See St. Paul's Benevolent Educ. & Missionary Inst. v. United States, 506 F. Supp. 822, 830 (N.D. Ga. 1980); FOIA Update, Fall 1983, at 3-5 ("OIP Guidance: Copyrighted Materials and the FOIA"). See also Public Citizen Health Research Group v. FDA, 704 F.2d at 1286 (Section 360j(h) of Medical Device Amendment of 1976 held not an Exemption 3 statute because it does not specifically prohibit disclosure); Church of Scientology v. Postal Serv., 633 F.2d 1327, 1333 (9th Cir. 1980) (Section 410(c)(6) of Postal Reorganization Act found insufficiently specific to qualify as Exemption 3 statute).

A particularly difficult Exemption 3 issue was finally put to rest by the Supreme Court this past year. In analyzing the applicability of Exemption 3 to the Parole Commission and Reorganization Act, 18 U.S.C. §4208, and Rule 32(c) of the Federal Rules of Criminal Procedure, each of which governs the disclosure of presentence reports, the Supreme Court has now decisively held that they are Exemption 3 statutes in part. Department of Justice v. Julian, 108 S. Ct. 1606, 1611 (1988). The Court found

that they do not permit the withholding of an entire presentence report, but rather only those portions of a presentence report pertaining to a probation officer's sentencing recommendations, certain diagnostic opinions, information obtained upon a promise of confidentiality, and information which, if disclosed, might result in harm to any person, and that "the remaining parts of the reports are not covered by this exemption, and thus must be disclosed unless there is some other exemption which applies to them." Id. at 1612. See also FOIA Update, Spring 1988, at 1-2.

The withholding of tax return information has been approved under three different theories. Most appellate courts which have considered the matter have held either explicitly or implicitly that 26 U.S.C. §6103 of the Internal Revenue Code satisfies subpart (B) of Exemption 3. See, e.g., Grasso v. IRS, 785 F.2d 70, 77 (3d Cir. 1986); Long v. IRS, 742 F.2d at 1179; Ryan v. Bureau of Alcohol, Tobacco & Firearms, 715 F.2d 644, 645 (D.C. Cir. 1983); Currie v. IRS, 704 F.2d 523, 527 (11th Cir. 1983); Willamette Indus. Inc. v. IRS, 689 F.2d 865, 867 (9th Cir. 1982), cert. denied, 460 U.S. 1052 (1983); Barney v. IRS, 618 F.2d 1268, 1274 n.15 (8th Cir. 1980) (dictum); Chamberlain v. Kurtz, 589 F.2d 827, 843 (5th Cir.), cert. denied, 444 U.S. 842 (1979); see also Cliff v. IRS, 496 F. Supp. 568, 571 (S.D.N.Y. 1980). The Fifth Circuit has further reasoned that 26 U.S.C. §6103 is a subpart (A) statute. See Linsteadt v. IRS, 729 F.2d 998, 1000 (5th Cir. 1984); see also Stephenson v. IRS, Civil No. C78-1071A, slip op. at 3 (N.D. Ga. Sept. 21, 1981). Of course, it should be remembered that §6103 applies only to tax return information obtained by the Department of the Treasury, not to such information maintained by other agencies which was obtained by means other than through the provisions of §6103. See FOIA Update, Spring 1988, at 5.

At least one circuit court of appeals and several district courts have explicitly embraced a third theory. Based on the reasoning of Zale Corp. v. IRS, 481 F. Supp. 486, 490 (D.D.C. 1979), these courts have held that it is not necessary to view 26 U.S.C. §6103 as an Exemption 3 statute in order to withhold tax return information because the provisions of this tax code section are intended to operate as the sole standard governing the disclosure or nondisclosure of such information, thereby "displacing" the FOIA. See, e.g., Cheek v. IRS, 703 F.2d 271, 271 (7th Cir. 1983) (Section 6103 also "displaces" the Privacy Act of 1974); King v. IRS, 688 F.2d 488, 495 (7th Cir. 1982); Hosner v. IRS, 3 GDS ¶83,164, at 83,816 (D.D.C. 1983); Kuzma v. IRS, Civil No. 81-600E, slip op. at 7-8 (W.D.N.Y. Dec. 31, 1984); Hulsey v. IRS, 497 F. Supp. 617, 618 (N.D. Tex. 1980); see also White v. IRS, 707 F.2d 897, 900 (6th Cir. 1983) (indicating approval of Zale).

Viewing 26 U.S.C. §6103 as a "displacement" statute permits the courts to avoid the de novo review required by the FOIA and to apply instead less stringent standards of review pursuant to the Administrative Procedure Act, 5 U.S.C. §§701-06, and can relieve agencies from certain procedural requirements of the FOIA, such as the time limitations for responding to requests and the duty to segregate and release nonexempt information. See Grasso v. IRS, 785 F.2d at 73-74; White v. IRS, 707 F.2d at 900; Goldsborough v. IRS, Civil No. Y-81-1939, slip op. at 12 (D. Md. May 10, 1984); Green v. IRS, 556 F. Supp. 79, 84 (N.D. Ind. 1982), aff'd mem., 734 F.2d 18 (7th Cir. 1984); Meyer v. Department of the Treasury, 82-2 U.S. Tax Cas. (CCH) ¶9678, at 85,448 (W.D. Mich. 1982). Nevertheless, even under this approach the government may be required to provide detailed Vaughn indices of the information being withheld, rather than general affidavits; the Sixth Circuit required this despite the fact that the court

below had relied solely on the "displacement" theory for its decision. See Osborn v. IRS, 754 F.2d 195, 197 (6th Cir. 1985).

However, other courts have specifically refused to adopt this "displacement" analysis on the ground that to do so, once it is already evident that 26 U.S.C. §6103 is an Exemption 3 statute, "would be an exercise in judicial futility [requiring district courts] to engage in both FOIA and Zale analyses when confronted" with such cases. Currie v. IRS, 704 F.2d at 528; accord Grasso v. IRS, 785 F.2d at 74; Long v. IRS, 742 F.2d at 1177 (also rejecting ERTA Amendment as "displacement" statute); Linsteadt v. IRS, 729 F.2d at 1001-02; see also Britt v. IRS, 547 F. Supp. 808, 813 (D.D.C. 1982); Tigar & Buffone v. CIA, 2 GDS ¶81,172, at 81,461 (D.D.C. 1981). The D.C. Circuit two years ago addressed this issue in Church of Scientology v. IRS, 792 F.2d 146, 148-50 (D.C. Cir. 1986), in which it squarely rejected the "displacement" argument on the basis that the procedures in 26 U.S.C. §6103 for members of the public to obtain access to IRS documents do not duplicate, and thus do not "displace," those of the FOIA.

The D.C. Circuit's rejection of the "displacement" theory in relation to 26 U.S.C. §6103 is consistent with previous D.C. Circuit decisions involving similar "displacement" arguments. For example, the D.C. Circuit had previously rejected a "displacement" argument involving the Department of State's Emergency Fund statutes, 22 U.S.C. §2671 and 31 U.S.C. §107, when it held that inasmuch as Exemption 3 is not satisfied by these statutes, information cannot be withheld pursuant to them, even though they were enacted after the FOIA. See Washington Post Co. v. Department of State, 685 F.2d 698, 703-04 & n.9 (D.C. Cir.), reh'g en banc denied, 685 F.2d 706 (D.C. Cir. 1982), cert. granted, 464 U.S. 812, vacated & remanded, 464 U.S. 979 (1983). (After the Supreme Court granted the government's petition for certiorari, the Washington Post Company withdrew its FOIA request, which had the procedural effect of nullifying the D.C. Circuit's decision. See also FOIA Update, Fall 1983, at 11. Thus, the Supreme Court has never substantively reviewed this issue.) Cf. Paisley v. CIA, 712 F.2d at 697 (FOIA, not Speech or Debate Clause, is definitive word on disclosure of information within government's possession); Church of Scientology v. Postal Serv., 633 F.2d at 1333 (postal statute does not displace more detailed and later-enacted FOIA absent specific indication of congressional intent to the contrary).

However, in Ricchio v. Kline, 773 F.2d 1389, 1395 (D.C. Cir. 1985), the D.C. Circuit held that the procedures of the Presidential Recordings and Materials Preservation Act, 44 U.S.C. §2111 (Supp. 1985), exclusively govern the disclosure of transcripts of the tape recordings of President Nixon's White House conversations, based upon the Act's comprehensive, carefully tailored procedure for releasing Presidential materials to the public. Thus, the "displacement" argument may still be advanced for statutes which provide procedures for the release of information to the public which in essence duplicate the procedures provided by the FOIA, see Church of Scientology v. IRS, 792 F.2d at 149 (dictum), or for statutes which comprehensively override the FOIA's access scheme, see Ricchio v. Kline, 773 F.2d at 1395; cf. SDC Dev. Corp. v. Mathews, 542 F.2d 1116, 1120 (9th Cir. 1976) (reaching "displacement-type" result for records governed by National Library of Medicine Act, 42 U.S.C. §275). In this connection, it should be noted that the FOIA's new fee provision referring to other statutes which set fees for particular types of records, 5 U.S.C. §552(a)(4)(A)(vi), has the effect of causing those statutes to "displace" the FOIA's basic fee provisions. (For a further discussion of this point, see Fees and Fee Waivers, infra.)

Another Exemption 3 issue concerns the Trade Secrets Act, 18 U.S.C. §1905, which prohibits the unauthorized disclosure of commercial and financial information. Although in Chrysler Corp. v. Brown, 441 U.S. 281, 319 n.49 (1979), the Supreme Court declined to decide whether §1905 is an Exemption 3 statute, most lower courts confronted with the issue have held that it is not. See, e.g., Florida Medical Ass'n v. HEW, 479 F. Supp. 1291, 1302 (M.D. Fla. 1979); United Technologies Corp. v. Marshall, 464 F. Supp. 845, 851 (D. Conn. 1979); Westchester Gen. Hosp. v. HEW, 464 F. Supp. 236, 243 (M.D. Fla. 1979); St. Mary's Hosp. Inc. v. Califano, 462 F. Supp. 315, 317 (S.D. Fla. 1978), aff'd sub nom. St. Mary's Hosp. Inc. v. Harris, 604 F.2d 407 (5th Cir. 1979); Guerra v. Guajardo, 466 F. Supp. 1046, 1057-58 (S.D. Tex. 1978), aff'd mem., 597 F.2d 769 (5th Cir. 1979); Nationwide Mutual Ins. Co. v. Friedman, 451 F. Supp. 736, 742 (D. Md. 1978); Crown Central Petroleum Corp. v. Kleppe, 424 F. Supp. 744, 751-52 (D. Md. 1976); see also Acumenics Research & Technology v. Department of Justice, 843 F.2d 800, 805 n.6, 806 (4th Cir. 1988) (finding "no basis" for argument that Exemption 3 and §1905 prevent disclosure of information that is outside scope of Exemption 4); General Elec. Co. v. NRC, 750 F.2d 1394, 1401-02 (7th Cir. 1984) (same); National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 686-87 (D.C. Cir. 1976) (implying §1905's prohibition is too general to be incorporated into Exemption 3); AT&T Information Sys. Inc. v. GSA, 627 F. Supp. 1396, 1404-05 (D.D.C. 1986) (holding Exemption 3 can provide no relief where it has been determined that Exemption 4 is inapplicable, because Exemption 4 and 18 U.S.C. §1905 are co-extensive) rev'd on other grounds, 810 F.2d 1233 (D.C. Cir. 1987); Canal Ref. Co. v. Corrallo, 616 F. Supp. 1035, 1042 (D.D.C. 1985). Accord Hercules, Inc. v. Marsh, 659 F. Supp. 849, 854 (W.D. Va. 1987) (holding Exemption 4 and §1905 "coextensive"), aff'd, 839 F.2d 1027 (4th Cir. 1988); Burnside-Ott Aviation Training Center, Inc. v. United States, 617 F. Supp. 279, 285 (S.D. Fla. 1985) (§1905 is no broader than Exemption 4); FOIA Update, Summer 1985, at 3 ("OIP Guidance: Discretionary Disclosure and Exemption 4"). But see Burroughs Corp. v. Brown, 501 F. Supp. 375, 382 (E.D. Va. 1980), rev'd on other grounds sub nom. General Motors Corp. v. Marshall, 654 F.2d 294 (4th Cir. 1981); Gulf Oil Corp. v. Marshall, 1 GDS ¶79,163, at 79,274 (D.D.C. 1979); Westinghouse Elec. Corp. Research & Dev. Center v. Brown, 443 F. Supp. 1225, 1232-33 (E.D. Va. 1977); see also 9 to 5 Org. of Women Office Workers v. Board of Governors of the Fed. Reserve Sys., 721 F.2d 1, 12 (1st Cir. 1983) (specifically declining to address issue).

This past year, the D.C. Circuit issued a long-awaited decision that "definitively" resolved the issue. In CNA Fin. Corp. v. Donovan, 830 F.2d 1132, 1137-43 (D.C. Cir. 1987), cert. denied, 108 S. Ct. 1270 (1988), the court held that §1905 does not satisfy either of amended Exemption 3's requirements and thus does not qualify as a separate withholding statute. First, its prohibition against disclosure is not absolute, as it prohibits only those disclosures that are "not authorized by law." Id. at 1138. Because duly promulgated agency regulations can provide the necessary authorization for release, the agency "possesses discretion to control the applicability" of §1905. Id. at 1139. The existence of this discretion precludes §1905 from satisfying subpart (A) of Exemption 3. Id. at 1138. Moreover, the court held that §1905 failed to satisfy the first prong of subpart (B) because it "in no way channels the discretion of agency decision-makers." Id. at 1139. Indeed, the court concluded, this utter lack of statutory guidance rendered §1905 susceptible to invocation at the "whim of an administrator." Id. Finally, §1905 also failed to satisfy the second prong of subpart (B) because of the "encyclopedic character" of the material within its scope and the absence of any limitation on the agencies covered or the sources of data included. Id. at 1140-41. Given all these elements, the

court held that §1905 simply does not operate as an Exemption 3 statute. Id. at 1141.

This decision is entirely consistent with the legislative history of the 1976 amendment to Exemption 3, which states that §1905 was not intended to qualify as a nondisclosure statute within its purview and that any analysis of trade secrets and commercial or financial information should focus instead on the applicability of Exemption 4. See CNA Fin. Corp. v. Donovan, 830 F.2d at 1142 n.70; H.R. Rep. No. 880, 94th Cong., 2d Sess. 23, reprinted in 1976 U.S. Code Cong. & Admin. News 2183, 2205. See also Acumenics Research & Technology v. Department of Justice, 843 F.2d at 805 n.6; General Elec. Co. v. NRC, 750 F.2d 1394, 1401-02 (7th Cir. 1984); General Dynamics Corp. v. Marshall, 607 F.2d 234, 236-37 (8th Cir. 1979). It also follows the Department of Justice's policy position on the issue. See FOIA Update, Summer 1986, at 6 (advising agencies that §1905 should not be regarded as an Exemption 3 statute).

A particularly controversial issue during the early 1980's was whether the Privacy Act of 1974, 5 U.S.C. §552a, could serve as an Exemption 3 statute. The Privacy Act authorizes an individual to obtain access to those federal records maintained under the individual's name or personal identifier, subject to certain broad, system-wide exemptions. See, e.g., 5 U.S.C. §552a(j)(2). If the Privacy Act had been regarded as an Exemption 3 statute, records exempt from disclosure to first-party requesters under the Privacy Act also would have been exempt under the FOIA; if not, requesters would have been able to obtain information on themselves under the FOIA notwithstanding that such information was exempt under the Privacy Act. In 1982, the Department of Justice, therefore, took the position that the Privacy Act was an Exemption 3 statute within the first-party requester context. See FOIA Update, Spring 1983, at 3.

When a conflict subsequently arose among the circuit courts of appeals which considered the proper relationship between these two access statutes, the Supreme Court agreed to resolve the issue. See Provenzano v. Department of Justice, 717 F.2d 799 (3d Cir. 1983), cert. granted, 466 U.S. 926 (1984); Shapiro v. DEA, 721 F.2d 215 (7th Cir. 1983), cert. granted, 466 U.S. 926 (1984). However, these cases became moot when Congress, upon enacting the Central Intelligence Agency Information Act, explicitly provided that the Privacy Act is not an Exemption 3 statute. See Pub. L. No. 98-477, 98 Stat. 2209, §2(c) (effective Oct. 15, 1984) (amending subsection (q) of the Privacy Act, 5 U.S.C. §552a(q)). Thus, the Supreme Court dismissed the appeals in Provenzano and Shapiro, and the issue has been placed entirely to rest. See Provenzano v. Department of Justice, 469 U.S. 14 (1984); FOIA Update, Fall 1984, at 4.

VI. EXEMPTION 4

Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person [which is] privileged or confidential." 5 U.S.C. §552(b)(4). This exemption is intended to protect both the interests of commercial entities that submit proprietary information to the government and the interests of the government in receiving continued access to such data. The exemption covers two broad categories of information in federal agency records: (1) trade secrets, and (2) information which is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential.

The Court of Appeals for the D.C. Circuit has adopted a narrow "common law" definition of the term "trade secret," at

least for Exemption 4 purposes, in a decision that represented a distinct departure from what until then had been almost universally accepted by the courts--that "trade secret" is a broad term extending to virtually any information that provides a competitive advantage. In Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983), the term "trade secret" was defined as "a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." This definition requires that there be a "direct relationship" between the trade secret and the productive process. Id. See, e.g., Pacific Sky Supply, Inc. v. Department of the Air Force, Civil No. 86-2044, slip op. at 1-2 (D.D.C. Nov. 20, 1987) (design drawings of airplane fuel pumps developed by private company and used by Air Force held protectible as trade secrets), modifying (D.D.C. Sept. 29, 1987), motion to amend judgment denied (D.D.C. Dec. 16, 1987); Yamamoto v. IRS, Civil No. 83-2160, slip op. at 2 (D.D.C. Nov. 16, 1983) (report on computation of standard mileage rate prepared by private company and used by IRS held protectible as trade secret).

The overwhelming bulk of Exemption 4 cases focus on whether the withheld information falls within its second, much larger category. To do so, the information must be commercial or financial, obtained from a person, and privileged or confidential. See, e.g., Gulf & Western Indus. v. United States, 615 F.2d 527, 529 (D.C. Cir. 1979); Consumers Union v. VA, 301 F. Supp. 796, 802 (S.D.N.Y. 1969), appeal dismissed as moot, 436 F.2d 1363 (2d Cir. 1971).

If information relates to business or trade, most courts have little difficulty in considering it "commercial or financial." Indeed, the D.C. Circuit has firmly held that these terms should be given their "ordinary meanings," and has specifically rejected the argument that the term "commercial" be confined to records that "reveal basic commercial operations," holding instead that records are commercial so long as the submitter has a "commercial interest" in them. Public Citizen Health Research Group v. FDA, 704 F.2d at 1290; accord Washington Research Project, Inc. v. HEW, 504 F.2d 238, 244 n.6 (D.C. Cir. 1974), cert. denied, 421 U.S. 963 (1975); see also FOIA Update, Winter 1985, at 3-4 ("OIP Guidance: Protecting Intrinsic Commercial Value"); FOIA Update, Fall 1983, at 3-5 ("OIP Guidance: Copyrighted Material and the FOIA"). But see also Washington Research Project, Inc. v. HEW, 504 F.2d at 244-45 (scientific research designs submitted in grant applications not "commercial" absent showing that the research itself had any commercial character).

In American Airlines, Inc. v. National Mediation Bd., 588 F.2d 863, 870 (2d Cir. 1978), a case involving information submitted by a labor union, the Second Circuit held that the term "commercial" includes anything "pertaining or relating to or dealing with commerce." See also M/A-COM Information Sys. v. HHS, 656 F. Supp. 691, 692 (D.D.C. 1986) (settlement negotiation documents reflecting "accounting and other internal procedures" deemed "commercial" as submitter had a "commercial interest" in them); Hustead v. Norwood, 529 F. Supp. 323, 326 (S.D. Fla. 1981) ("information relating to the employment and unemployment of workers constitutes commercial or financial information"); Brockway v. Department of the Air Force, 370 F. Supp. 738, 740 (N.D. Iowa 1974) (reports generated by a commercial enterprise "must generally be considered commercial information"), rev'd on other grounds, 518 F.2d 1184 (8th Cir. 1975). Commercial information can include even material submitted by a nonprofit entity. See Critical Mass Energy Project v. NRC, 830 F.2d 278, 281 (D.C.

Cir. 1987) (entity's "non-profit status is not determinative of the character of the information it reports; information may qualify as 'commercial' even if the provider's . . . interest in gathering, processing, and reporting the information is noncommercial"); see also Sharyland Water Supply Corp. v. Block, 755 F.2d 397, 398 (5th Cir.) (nonprofit water supply company's audit reports deemed "clearly commercial"), cert. denied, 471 U.S. 1137 (1985); American Airlines, Inc. v. National Mediation Bd., 588 F.2d at 870 (nonprofit union's information deemed "commercial").

Examples of items generally regarded as commercial or financial information include: business sales statistics; research data; technical designs; customer and supplier lists; profit and loss data; overhead and operating costs; and information on financial condition. See Landfair v. Department of the Army, 645 F. Supp. 325, 327 (D.D.C. 1986). Protection for financial information is not limited to economic data generated solely by corporations or other business entities, but rather has been held to apply to personal financial information as well. See Washington Post Co. v. HHS, 690 F.2d 252, 266 (D.C. Cir. 1982); FOIA Update, Fall 1983, at 14. But see also Washington Post Co. v. HHS, 690 F.2d at 266 (list of nonfederal employment positions held not "financial" within meaning of Exemption 4).

The second of Exemption 4's specific criteria, that the information be "obtained from a person," is quite easily met in virtually all circumstances. The term "person" refers to a wide range of entities, including corporations, state governments and foreign governments. See, e.g., Stone v. Export-Import Bank, 552 F.2d 132, 137 (5th Cir. 1977) (foreign government), cert. denied, 434 U.S. 1012 (1978); Hustead v. Norwood, 529 F. Supp. at 326 (state government); Comstock Int'l, Inc. v. Export-Import Bank, 464 F. Supp. 804, 806 (D.D.C. 1979) (corporation). The courts have held, however, that information generated by the federal government is not "obtained from a person" and is therefore excluded from Exemption 4's coverage. See, e.g., Critical Mass Energy Project v. NRC, 830 F.2d at 281 n.15 ("For FOIA purposes, a 'person' may be a 'partnership, corporation, association, or public or private organization other than an agency.'" (citing 5 U.S.C. §551(2))); Board of Trade v. Commodity Futures Trading Comm'n, 627 F.2d 392, 404 (D.C. Cir. 1980); Buffalo Evening News, Inc. v. SBA, 666 F. Supp. 467, 469 (W.D.N.Y. 1987); Consumers Union v. VA, 301 F. Supp. at 803. Such information, though, might possibly be protectible under Exemption 5, which incorporates a qualified privilege for sensitive commercial or financial information generated by the government. See Federal Open Mkt. Comm. v. Merrill, 443 U.S. 340, 360 (1979); accord Morrison-Knudsen Co. v. Department of the Army, 595 F. Supp. 352, 354-56 (D.D.C. 1984), aff'd mem., 762 F.2d 138 (D.C. Cir. 1985). (The "commercial privilege" is further addressed in the discussion of Exemption 5, infra.)

Documents prepared by the government can still come within Exemption 4, however, if they contain summaries or reformulations of information supplied by a source outside the government. See, e.g., Gulf & Western Indus. v. United States, 615 F.2d at 529; Mulloy v. Consumer Product Safety Comm'n, Civil No. 85-645, slip op. at 2 (S.D. Ohio Aug. 2, 1985) (manufacturing and sales data compiled in Establishment Inspection Report prepared by Commission investigator after on-site visit to plant held protectible under Exemption 4); BDM Corp. v. SBA, 2 GDS ¶81,044, at 81,121 (D.D.C. 1980). One court has even gone so far as to hold that product test results generated under government supervision are not excluded from coverage. See Daniels Mfg. Corp. v. Department of Defense, Civil No. 85-291, slip op. at 4 (M.D. Fla. June 3, 1986).

Finally, the third requirement is met if information is "privileged or confidential." Most Exemption 4 litigation has concentrated on the meaning of the word "confidential." In earlier years, courts based the application of Exemption 4 upon whether there was a promise of confidentiality by the government to the submitting party, see, e.g., GSA v. Benson, 415 F.2d 878, 881 (9th Cir. 1969), or upon whether there was an objective expectation of confidentiality, see, e.g., M.A. Schapiro & Co. v. SEC, 339 F. Supp. 467, 471 (D.D.C. 1972). These earlier tests have been superseded by the rule of National Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974), the leading case on the issue, which significantly altered the test for "confidentiality" under Exemption 4. In National Parks, the D.C. Circuit held that neither a commercial entity's claim of confidentiality nor an agency's promise that certain information would not be released is determinative under Exemption 4, although both such factors can be considered. See id. at 767. Instead, the court declared that the term "confidential" in Exemption 4 should be read to protect governmental interests as well as private ones, according to the following two-part test:

> To summarize, commercial or financial matter is "confidential" for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

Id. at 770 (footnote omitted).

These two Exemption 4 tests, which apply disjunctively, are often referred to in subsequent cases as "Prong 1" and "Prong 2." To successfully invoke the impairment prong--Prong 1--an agency must be able to demonstrate that the information was provided voluntarily and that the submitting entity would not have provided it if it had believed that the material would be subject to disclosure. See, e.g., Landfair v. Department of the Army, 645 F. Supp. at 328; Carlisle Tire & Rubber Co. v. Customs Serv., 1 GDS ¶79,162, at 79,268 (D.D.C. 1979) (impairment prong satisfied when agency's guarantee of confidentiality was essential to voluntary cooperation of foreign manufacturers in providing "essential" information), aff'd in part, rev'd in part on other grounds, 663 F.2d 210 (D.C. Cir. 1980); see also CNA Fin. Corp. v. Donovan, 830 F.2d 1132, 1152 n.143 (D.C. Cir. 1987) (impairment prong "not at issue" when submission of material mandatory), cert. denied, 108 S. Ct. 1270 (1988). The D.C. Circuit has held that an agency must also demonstrate that the threatened impairment is "significant"; a minor impairment is insufficient to overcome the general disclosure mandate of the FOIA. See Critical Mass Energy Project v. NRC, 830 F.2d at 283. To "pass muster" the agency's showing must consist of a comprehensive delineation of both the nature of the information that the agency fears it will be deprived of, and the precise manner in which access to it will be impaired. Id. at 286.

The question of voluntariness is not always a clear-cut one, particularly where participation in a program (e.g., bidding on a government contract) is voluntary, yet submission of the information is mandatory if the submitter wishes to enjoy the benefits of participation. See, e.g., National Parks & Conservation Ass'n v. Morton, 498 F.2d at 770 (no impairment because concessionaires were "required" to provide the information as a mandatory condition of doing business in a national park); Buffalo Evening News v. SBA, 666 F. Supp. at 471 (no impairment because it is unlikely that borrowers would decline benefits associated with obtaining

loans simply because status of loan was released); Daniels Mfg. Corp. v. Department of Defense, slip op. at 6 (no impairment when submission "virtually mandatory" if supplier wished to do business with the government); Badhwar v. Department of the Air Force, 622 F. Supp. 1364, 1377 (D.D.C. 1985) (same), aff'd in part & rev'd in part on other grounds, 829 F.2d 182 (D.C. Cir. 1987); Racal-Milgo Gov't Sys. v. SBA, 559 F. Supp. 4, 6 (D.D.C. 1981) (no impairment because "it is unlikely that companies will stop competing for government contracts if the prices contracted for are disclosed"). But see Orion Research, Inc. v. EPA, 615 F.2d 551, 554 (1st Cir.) (finding impairment for technical proposals because release "would induce potential bidders to submit proposals that do not include novel ideas"), cert. denied, 449 U.S. 833 (1980).

The agency's ability to compel the submission of information does not necessarily preclude Prong 1 protection if it has traditionally received the information voluntarily. In Timken Co. v. Customs Serv., 3 GDS ¶83,234, at 83,974 (D.D.C. 1983), it was held that the government is entitled to give promises of confidentiality in order to obtain the most comprehensive and accurate information possible and that it need not resort to the imposition of sanctions where information has customarily been submitted without them. See also Public Citizen Health Research Group v. FDA, 704 F.2d at 1291 n.29 (whether submissions are mandatory is a factor to be considered, but is "not necessarily dispositive"); Washington Post Co. v. HHS, 690 F.2d at 268-69; Atkinson v. SEC, Civil No. 83-2030, slip op. at 4 (D.D.C. Oct. 27, 1983); Stewart v. Customs Serv., 2 GDS ¶81,140, at 81,380 (D.D.C. 1981). More recently, the D.C. Circuit rejected a district court's theory that the impairment prong is automatically applicable whenever a submission is rendered voluntarily simply because it is preferable to have records submitted freely rather than through complulsion. Critical Mass Energy Project v. NRC, 830 F.2d at 283. The D.C. Circuit held that if that proposition were "sufficient to overcome FOIA's disclosure mandate" the requirement that an agency provide the court with a detailed showing of the extent of the feared impairment "would have little, or no, force." Id. Instead, the court held, "to show the requisite impairment of its information-gathering ability," an agency must demonstrate either 1) that cessation of voluntary submissions would, in fact, actually deprive the agency of access to the information, or 2) that alternative means of obtaining the information "would entail a significant risk that the value" of the submitted material would decrease. Id.

If an agency determines that release will not cause impairment, that decision should be given extraordinary deference by the courts. See, e.g., General Elec. Co. v. NRC, 750 F.2d 1394, 1402 (7th Cir. 1984) (observing that there is not "much room for judicial review of the quintessentially managerial judgment" that disclosure will not cause impairment); AT&T Information Sys. v. GSA, 627 F. Supp. 1396, 1401 (D.D.C. 1986) (finding that the agency "is in the best position to determine the effect of disclosure on its ability to obtain necessary technical information"), rev'd on procedural grounds & remanded, 810 F.2d 1233 (D.C. Cir. 1987). In this regard there are two conflicting decisions addressing the feasibility of a submitter raising the issue of impairment on behalf of an agency. In United Technologies Corp. v. HHS, 574 F. Supp. 86, 89 (D. Del. 1983), one district court ruled that a submitter has "standing" to raise the issue of impairment; but in a more recent case, Hercules, Inc. v. Marsh, 839 F.2d 1027, 1030 (4th Cir. 1988), the Fourth Circuit specifically refused to allow a submitter to make an impairment argument on the agency's behalf.

The great majority of Exemption 4 cases involve Prong 2, turning on whether disclosure would cause substantial competitive harm to the commercial entity from which the information was obtained. In order for an agency to make the most informed decision possible as to the probable competitive harm that would result from disclosure, it is essential for the decisionmaker to be fully apprised of the views of the data submitter as to the data's sensitivity. Executive Order No. 12,600, 52 Fed. Reg. 23,781 (1987), now mandates that all agencies establish procedures to notify submitters when their data is requested under the FOIA, whenever the agency "determines that it may be required to disclose" the data. Id. at §1. Once submitters are notified, they must be given a reasonable period of time within which to object to disclosure of any of the requested information. Id. at §4. The Executive Order requires that agencies give careful consideration to the submitters' objections and provide them with a written statement explaining why any such objections are not sustained. Id. at §5. (See the discussion of such matters under Reverse FOIA, infra.) For an example of the importance placed on objections to disclosure by the business submitter, see Black Hills Alliance v. Forest Serv., 603 F. Supp. 117, 121 (D.S.D. 1984) (disclosure ordered with court noting that "[i]t is significant that [the submitter] itself has not submitted an affidavit addressing" the issue of competitive harm).

The courts have tended to resolve issues of competitive harm on a case-by-case basis rather than by establishing general guidelines. For example, in some contexts customer names have been withheld because disclosure would cause substantial competitive harm, see, e.g., Goldstein v. ICC, Civil No. 82-1511, slip op. at 6 (D.D.C. July 31, 1985) (case reopened and customer names found protectible); BDM Corp. v. SBA, 2 GDS at 81,120, and in other contexts customer names have been ordered released because disclosure would not cause substantial competitive harm, see, e.g., Ivanhoe Citrus Ass'n v. Handley, 612 F. Supp. 1560, 1566 (D.D.C. 1985); Braintree Elec. Light Dep't v. Department of Energy, 494 F. Supp. 287, 290 (D.D.C. 1980). The individualized and sometimes conflicting determinations indicative of competitive harm holdings is well illustrated in one recent case in which the D.C. Circuit originally affirmed a district court's decision which found that customer names of "CAT" scanner manufacturers were protected, Greenberg v. FDA, 775 F.2d 1169, 1172-73 (D.C. Cir. 1985), but subsequently vacated that decision upon the death of one of its judges. See 803 F.2d 1213, 1215 (D.C. Cir. 1986). On reconsideration, the newly constituted panel found that disclosure of the customer list raised a factual question as to the showing of competitive harm that precluded the granting of summary judgment after all. See id. at 1219.

Actual competitive harm need not be demonstrated for purposes of Prong 2; evidence of "actual competition and a likelihood of substantial competitive injury" is all that need be shown. CNA Fin. Corp. v. Donovan, 830 F.2d at 1152; see also Gulf & Western Indus. v. United States, 615 F.2d at 530. Accord Journal of Commerce, Inc. v. Department of the Treasury, Civil No. 86-1075, slip op. at 4 (D.D.C. June 1, 1987) (submitter not required to "document" or "pinpoint" actual harm, but need only show its likelihood) (partial grant of summary judgment), renewed motion for summary judgment granted (D.D.C. Mar. 30, 1988). It is important to note, however, that where a commercial information submitter does not face any competition in the first place--for example, where a contract is not awarded competitively, but rather is always awarded to a single company--the "threshold" requirement for Prong 2 protection is lacking and the information cannot be withheld under a competitive harm theory. See Hercules, Inc. v. Marsh, 839 F.2d at 1030.

Although conclusory allegations of harm are unacceptable, it seems clear that "elaborate antitrust proceedings" are not required. See, e.g., National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 681 (D.C. Cir. 1976). Some courts have utilized a "mosaic" approach to sustain a finding of competitive harm, thereby protecting information that would not in and of itself cause harm, but which would be harmful when combined with information already available to the requester. See, e.g., Lederle Laboratories v. HHS, Civil No. 88-0249, slip op. at 22-23 (D.D.C. July 14, 1988) (scientific tests and identities of agency reviewers withheld because disclosure would permit requester to "indirectly obtain that which is directly exempted from disclosure"); Timken Co. v. Customs Serv., 491 F. Supp. 557, 559 (D.D.C. 1980); Carlisle Tire & Rubber Co. v. Customs Serv., 1 GDS at 79,269. In one case where it was found that a company's labor costs would be revealed by disclosure of its wage rate and manhour information, the court employed what could be called a "reverse-mosaic" approach and ordered release of the wage rates without the manhour information, finding that release of one without the other would not cause the company competitive harm. Painters Dist. Council #6 v. GSA, Civil No. 85-2971, slip op. at 8 (N.D. Ohio July 23, 1986). Another court recently concluded that there would be competitive harm from disclosure of certain wage information based upon the fact that the requester, who was a competitor of the submitter, had requested confidential treatment for its own similar submission. HLI Lordship Indus. v. Comm. For Purchase From The Blind And Other Severely Handicapped, 663 F. Supp. 246, 251 (E.D. Va. 1987).

Many courts have held that if the information sought to be protected is itself publicly available through other sources, disclosure under the FOIA will not cause competitive harm and Exemption 4 is not applicable. See, e.g., CNA Fin. Corp. v. Donovan, 830 F.2d at 1154; Continental Stock Transfer & Trust Co. v. SEC, 566 F.2d 373, 375 (2d Cir. 1977); Goldstein v. ICC, slip op. at 2; Trend Imports Sales, Inc. v. EPA, 3 GDS ¶83,115, at 83,707 (D.D.C. 1983). The public availability of the information has also defeated an agency's impairment claim. See Farmworkers Legal Serv. v. Department of Labor, 639 F. Supp. 1368, 1371 (E.D.N.C. 1986). Additionally, the mere passage of time does not necessarily erode Exemption 4 protection, provided that disclosure of the material would still be likely to cause substantial competitive harm. See, e.g., Burke Energy Corp. v. Department of Energy, 583 F. Supp. 507, 514 (D. Kan. 1984) (9-year-old data protected); Timken Co. v. Customs Serv., 3 GDS ¶83,234, at 83,976 (10-year-old data protected); see also FOIA Update, Fall 1983, at 14.

The feasibility of "reverse engineering" has been considered in evaluating a showing of competitive harm. In Worthington Compressors, Inc. v. Costle, 662 F.2d 45, 52 (D.C. Cir.), supplemental opinion sub nom. Worthington Compressors, Inc. v. Gorsuch, 668 F.2d 1371 (D.C. Cir. 1981), the D.C. Circuit held that the cost of reverse engineering (i.e., the cost of obtaining a finished product and dismantling it to learn its constituent elements) is a pertinent inquiry and that the test should be "whether release of the requested information, given its commercial value to competitors and the cost of acquiring it through other means, will cause substantial competitive harm to the business that submitted it." Accord Greenberg v. FDA, 803 F.2d at 1218; Daniels Mfg. Corp. v. Department of Defense, slip op. at 7-8; Airline Pilots Ass'n Int'l v. FAA, 552 F. Supp. 811, 814 (D.D.C. 1982). See also Zotos Int'l v. Young, 830 F.2d 350, 353 (D.C. Cir. 1987) (if commercially valuable information has remained secret for many years, it is incongruous to argue that it may be readily reverse-engineered) (non-FOIA case). This inquiry into the possibility of reverse engineering is not applicable to

documents withheld under the trade secret prong of Exemption 4. See Pacific Sky Supply, Inc. v. Department of the Air Force, slip op. at 2-3 (refusing to consider feasibility of reverse engineering for documents withheld as trade secrets because once trade secret determination is made, documents "'are exempt from disclosure, and no further inquiry is necessary'" (quoting Public Citizen Health Research Group v. FDA, 704 F.2d at 1286)).

Further, neither the willingness of the requester to restrict circulation of the information nor a claim by the requester that it is not a competitor of the submitter should logically impact on a showing of competitive harm. The question is whether "public disclosure" would cause harm; there is no "middle ground between disclosure and nondisclosure." Seawell, Dalton, Hugs & Timms v. Export-Import Bank, Civil No. 84-241-N, slip op. at 2 (E.D. Va. July 27, 1984); Burke Energy Corp. v. Department of Energy, 583 F. Supp. at 512.

Numerous types of competitive injury have been identified by the courts as properly cognizable under Prong 2, including the harms generally caused by disclosure of: assets, profits, losses and market shares, see, e.g., National Parks & Conservation Ass'n v. Kleppe, 547 F.2d at 684, data describing a company's workforce which would reveal labor costs, profit margins and competitive vulnerability, see, e.g., Westinghouse Elec. Corp. v. Schlesinger, 392 F. Supp. 1246, 1249 (E.D. Va. 1974), aff'd, 542 F.2d 1190 (4th Cir. 1976), cert. denied, 431 U.S. 924 (1977), a company's selling prices, purchase activity and freight charges, see, e.g., Braintree Elec. Light Dep't v. Department of Energy, 494 F. Supp. at 289, technical and commercial data, names of consultants and subcontractors, performance, cost and equipment information, see, e.g., BDM Corp. v. SBA, 2 GDS ¶81,189, at 81,495 (D.D.C. 1981), shipper and importer names, type and quantity of freight hauled, routing systems, cost of raw materials, and information constituting the "bread and butter" of a manufacturing company, see, e.g., Journal of Commerce, Inc. v. Department of the Treasury, Civil No. 86-1075, slip op. at 6-8 (D.D.C. Mar. 30, 1988), and technical proposals which are submitted, or could be used, in conjunction with bids on government contracts, see, e.g., Landfair v. Department of the Army, 645 F. Supp. at 329; Professional Review Org. v. HHS, 607 F. Supp. 423, 426 (D.D.C. 1985) (detailing manner in which professional services contract was to be conducted).

For examples of information not qualifying under Prong 2, see EHE Nat'l Health Serv., Inc. v. HHS, Civil No. 81-1087, slip op. at 5 (D.D.C. Feb. 24, 1984) ("mundane" information regarding submitter's operation) (reverse FOIA suit); American Scissors Corp. v. GSA, Civil No. 83-1562, slip op. at 8 (D.D.C. Nov. 15, 1983) (general description of manufacturing process with no details) (reverse FOIA suit). See also U.S. News & World Report v. Department of the Treasury, Civil No. 84-2303, slip op. at 12 (D.D.C. Mar. 26, 1986) (aggregate contract price for armored limousines for the President ordered disclosed as not competitively harmful given unique nature of contract and agency's role in design of vehicles); cf. Cove Shipping, Inc. v. Military Sealift Command, Civil No. 84-2709, slip op. at 8-10 (D.D.C. Feb. 27, 1986) (contract's wage and benefit breakdown not protected because it related to "one isolated contract in an industry where labor contracts vary from bid to bid") (civil discovery case in which Exemption 4 case law applied). In addition, several courts, including the D.C. Circuit, have held that the harms flowing from "embarrassing" disclosures, or disclosures which could cause "customer or employee disgruntlement," are not cognizable under Exemption 4. General Elec. Co. v. NRC, 750 F.2d at 1402; see also CNA Fin. Corp. v. Donovan, 830 F.2d at 1154 ("unfavorable publicity" and "demoralized" employees insufficient

for showing of competitive harm); Public Citizen Health Research Group v. FDA, 704 F.2d at 1291 n.30 (competitive harm limited to that flowing from "affirmative use of proprietary information by competitors") (emphasis in original); Badhwar v. Department of the Air Force, 622 F. Supp. at 1377 ("fear of litigation" held to be insufficient basis for Exemption 4 protection).

The status of unit prices in awarded government contracts, once a controversial issue under Exemption 4, has become more settled with recent court decisions. There are now two decisions which contain a thorough analysis of the possible effects of disclosure of unit prices, and in both cases the court denied Exemption 4 protection, finding that disclosure of the prices would not directly reveal confidential proprietary information, such as a company's overhead, profit rates, or multiplier, and that the possibility of competitive harm was thus too speculative. See Acumenics Research & Technology, Inc. v. Department of Justice, 843 F.2d 800, 808 (4th Cir. 1988) (reverse FOIA suit); J.H. Lawrence Co. v. Smith, Civil Nos. 81-2993, 82-0361, slip op. at 8-9 (D. Md. Nov. 10, 1982). Similarly, in the absence of a showing of competitive harm, the court in Racal-Milgo Gov't Sys. v. SBA, 559 F. Supp. at 6, denied Exemption 4 protection for prices charged the government for computer equipment and went on to state that "[d]isclosure of prices charged the Government is a cost of doing business with the Government." See also EHE Nat'l Health Serv., Inc. v. HHS, slip op. at 4 ("[O]ne who would do business with the government must expect that more of his offer is more likely to become known to others than in the case of a purely private agreement."). In AT&T Information Sys. v. GSA, 627 F. Supp. at 1403, the court recognized the "strong public interest in release of component and aggregate prices in Government contract awards," and thus again rejected an Exemption 4 claim for unit prices. (Although this decision was later reversed and remanded due to the inadequacy of the agency's record, the court of appeals specifically expressed no views on the merits of the dispute. See 810 F.2d at 1236) But see Sperry Univac Div. v. Baldrige, 3 GDS ¶83,265, at 84,052 (E.D. Va. 1982) (protecting unit prices on finding that they revealed submitter's pricing and discount strategy), appeal dismissed, No. 82-1723 (4th Cir. Nov. 22, 1982).

The current Federal Acquisition Regulation also mandates the disclosure of successful offerors' unit prices (with some exceptions) in negotiated contracts in excess of $10,000 through a post-award debriefing process. See 48 C.F.R. §15.1001(c)(1)(iv) (1985). Because Exemption 4 protection is vitiated if the information is publicly released elsewhere, all unit prices required to be disclosed under the FAR debriefing scheme should be not be considered within the available protection of Exemption 4. See FOIA Update, Fall 1984, at 4. See also FOIA Update, Winter 1986, at 6.

In addition to the two major tests for determining confidentiality under Exemption 4--delineated as Prong 1 and Prong 2--the National Parks decision specifically left open the possibility of a third prong that would protect other governmental interests, such as program effectiveness and compliance. See 498 F.2d at 770 n.17. In Comstock Int'l, Inc. v. Export-Import Bank, 464 F. Supp. at 808, loan applicant information was withheld under this "third prong" on a showing that disclosure would impair the Bank's ability to promote U.S. exports. See also Washington Post Co. v. HHS, 690 F.2d at 268 n.51; National Parks & Conservation Ass'n v. Kleppe, 547 F.2d at 678 n.16; Public Citizen Health Research Group v. FDA, 539 F. Supp. 1320, 1325 (D.D.C. 1982), rev'd & remanded on other grounds, 704 F.2d 1280 (D.C. Cir. 1983). In each of these latter cases, the additional prong was mentioned, but not relied upon for the case holding. See also FOIA Update,

Fall 1983, at 15. In Clark v. Department of the Treasury, Civil No. 84-1873, slip op. at 4-6 (E.D. Pa. Jan. 24, 1986), the identities of Flower Bond owners were protected under this "third prong" based upon the court's finding that the government had a legitimate interest in "fulfilling pre-FOIA contractual commitments of confidentiality" given to investors in order to ensure that the pool of future investors willing to purchase government securities was not reduced. The court found that if that group of potential investors were reduced, the pool of money from which the government borrows would correspondingly be reduced, thereby harming the national interest. Id. at 4.

The "third prong" of National Parks received its first thorough appellate court analysis and acceptance in 9 to 5 Org. for Women Office Workers v. Board of Governors of the Fed. Reserve Sys., 721 F.2d 1 (1st Cir. 1983). There, the First Circuit expressly admonished against using the two primary prongs of National Parks as "the exclusive criteria for determining confidentiality" and held that the pertinent inquiry is whether public disclosure of the information will harm an "identifiable private or governmental interest which the Congress sought to protect by enacting Exemption 4 of the FOIA." Id. at 10. The D.C. Circuit itself recently addressed the question in Critical Mass Energy Project v. NRC, where the court adopted what it termed the "persuasive" reasoning of the First Circuit's decision in 9 to 5 and expressly held that an agency may invoke Exemption 4 on the basis of interests other than the two principally identified in National Parks. 830 F.2d at 282, 286. Thus, thirteen years after it first raised the possibility that Exemption 4 could protect interests other than those reflected in Prong 1 and Prong 2, the D.C. Circuit finally has definitively embraced the "third prong."

Several years ago, based upon the decision in 9 to 5, the Department of Justice issued policy guidance on Exemption 4 protection for "intrinsically valuable" records--records which are significant not for their content, but as valuable commodities which can be sold in the marketplace. Exemption 4 protection permits the owners of such records to retain their full proprietary interest in them when release through the FOIA would result in a substantial loss of their market value. See FOIA Update, Winter 1985, at 3-4 ("OIP Guidance: Protecting Intrinsic Commercial Value"). See also FOIA Update, Fall 1983, at 3-5 (setting forth similar basis for protecting copyrighted materials against substantial adverse market effect caused by FOIA disclosure).

The term "privileged" in Exemption 4 has, in recent years, begun to be utilized by the courts as a significant, potentially powerful alternative for protecting nonconfidential commercial or financial information. The D.C. Circuit has indicated that this term should not be treated as being merely synonymous with "confidential," particularly in light of the legislative history's explicit reference to certain privileges, e.g., attorney-client and doctor-patient privileges. See Washington Post Co. v. HHS, 690 F.2d at 267 n.50. Yet not long ago, only two district court decisions had discussed "privilege" in the Exemption 4 context. In one case, a court upheld the Department of the Interior's withholding of detailed statements by law firms of work that they had done for the Hopi Indians on the ground that they were "privileged" because of their work-product nature within the meaning of Exemption 4: "The vouchers reveal strategies developed by Hopi counsel in anticipation of preventing or preparing for legal action to safeguard tribal interests. Such communications are entitled to protection as attorney work-product." Indian Law Resource Center v. Department of the Interior, 477 F. Supp. 144, 148 (D.D.C. 1979). In the second case, a legal memor-

andum prepared for a utility company by its attorney qualified as legal advice protectible under Exemption 4 as subject to the attorney-client privilege. See Miller, Anderson, Nash, Yerke & Wiener v. Department of Energy, 499 F. Supp. 767, 771 (D. Or. 1980). In both of these cases the information was withheld also as "confidential."

Two years ago, for the first time, a court protected material relying solely on the "privilege" portion of Exemption 4, recognizing protection for documents subject to the "confidential report" privilege. See Washington Post Co. v. HHS, 603 F. Supp. 235, 237-39 (D.D.C. 1985), rev'd on procedural grounds & remanded, 795 F.2d 205 (D.C. Cir. 1986). Another court, in a brief opinion, recognized Exemption 4 protection for settlement negotiation documents, but did not expressly characterize them as "privileged." See M/A-COM Information Sys., 656 F. Supp. at 692; see also FOIA Update, Fall 1985, at 3-4 ("OIP Guidance: Protecting Settlement Negotiations"). Another court recently recognized Exemption 4 protection for documents subject to the critical self-evaluative privilege. See Washington Post Co. v. Department of Justice, Civil No. 84-3581, slip op. at 21 (D.D.C. Sept. 25, 1987) (magistrate's recommendation), adopted (D.D.C. Dec. 15, 1987) (appeal pending). On the other hand, the Fifth Circuit has "declined to hold that the [FOIA] creates a lender-borrower privilege," despite the express reference to such a privilege in Exemption 4's legislative history. See Sharyland Water Supply Corp. v. Block, 755 F.2d at 400. Although the "privilege" portion of Exemption 4 has developed relatively slowly, the potential for obtaining protection on this basis remains high.

Finally, it should be noted that the Trade Secrets Act, 18 U.S.C. §1905--a broadly worded criminal statute addressed also in connection with Exemption 3, supra--prohibits the disclosure of much more than simply "trade secret" information and instead prohibits the unauthorized disclosure of all data protectible by Exemption 4. Indeed, virtually every court that has considered the issue has found §1905 and Exemption 4 to be "coextensive." See, e.g., General Elec. Co. v. NRC, 750 F.2d at 1402. Most recently, the D.C. Circuit issued its long-awaited decision in CNA Fin. Corp. v. Donovan, 830 F.2d at 1144-52, which contains an extensive analysis of the argument advanced by several commentators that the scope of the Trade Secrets Act is narrow, extending no broader than the scope of its three predecessor statutes. The D.C. Circuit rejected that argument and held that the scope of §1905 is "at least co-extensive with that of Exemption 4." Id. at 1151. Because the FOIA itself would provide authorization for release of material that fell outside the scope of Exemption 4, the court concluded that it need not "attempt to define the outer limits" of §1905. Id. at 1152 n.139.

The practical effect of §1905 is to limit an agency's ability to make a discretionary release of otherwise-exempt material, because to do so in violation of §1905 would not only be a criminal offense, it would also constitute "a serious abuse of agency discretion" redressable through a reverse FOIA suit. National Org. for Women v. Social Sec. Admin., 736 F.2d 727, 743 (D.C. Cir. 1984) (Robinson, J., concurring); Charles River Park "A," Inc. v. HUD, 519 F.2d 935, 942 (D.C. Cir. 1975). See also FOIA Update, Summer 1985, at 3 ("OIP Guidance: Discretionary Disclosure and Exemption 4"). Thus, in the absence of some statute or properly promulgated regulation authorizing release--which would remove the disclosure prohibition of §1905--a determination by an agency that material falls within Exemption 4 is "tantamount" to a decision that it cannot be released. CNA Fin. Corp. v. Donovan, 830 F.2d at 1144.

VII. EXEMPTION 5

Exemption 5 of the FOIA protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." 5 U.S.C. §552(b)(5). As such, it has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975). See also FTC v. Grolier Inc., 462 U.S. 19, 26 (1983); Martin v. Office of Special Counsel, 819 F.2d 1181, 1184 (D.C. Cir. 1987).

Although originally it was "not clear that Exemption 5 was intended to incorporate every privilege known to civil discovery," Federal Open Mkt. Comm. v. Merrill, 443 U.S. 340, 354 (1979), the Supreme Court has now stressed that the coverage of Exemption 5 is quite broad, encompassing statutory privileges and those commonly recognized by case law, and is not limited to those privileges explicitly mentioned in the legislative history. See United States v. Weber Aircraft Corp., 465 U.S. 792, 800 (1984); see also FOIA Update, Fall 1984, at 6. Accordingly, the D.C. Circuit Court of Appeals has stated that the statutory language "unequivocally" incorporates "all civil discovery rules into FOIA Exemption (b)5." Martin v. Office of Special Counsel, 819 F.2d at 1185; see also Badhwar v. Department of the Air Force, 829 F.2d 182, 184 (D.C. Cir. 1987) ("Exemption 5 requires the application of existing rules regarding discovery."). However, this incorporation of discovery privileges requires that the privilege be applied in the FOIA context as it exists in the discovery context. See Department of Justice v. Julian, 108 S. Ct. 1606, 1614 (1988) (presentence report privilege, designed to protect report subjects, cannot be invoked against them as first-party requesters). Thus the precise contours of a privilege, with regard to applicable parties or types of information which are protectible, are also incorporated into the FOIA. Id. The three primary, most frequently invoked privileges which have been held to be incorporated into Exemption 5 are the deliberative process privilege (sometimes referred to as "executive privilege"), the attorney work-product privilege and the attorney-client privilege. See NLRB v. Sears, Roebuck & Co., 421 U.S. at 149.

Initial Considerations

The threshold issue under Exemption 5 is whether a record is of the sort intended to be covered by the phrase "inter-agency or intra-agency memorandums," a phrase which would seem to contemplate only those documents generated by an agency and not circulated beyond the Executive Branch. In fact, however, in recognition of the practicalities of agency operations, the courts have construed the scope of Exemption 5 far more expansively and have included both documents generated outside of an agency and documents transmitted outside of an agency. This pragmatic approach has been characterized as the "functional test" for assessing the applicability of Exemption 5 protection. See Durns v. Bureau of Prisons, 804 F.2d 701, 704 n.5 (D.C. Cir.) (employing "a functional rather than a literal test in assessing whether memoranda are 'inter-agency or intra-agency'"), reh'g en banc denied, 806 F.2d 1122 (D.C. Cir. 1986), cert. granted, judgment vacated on other grounds & remanded, 108 S. Ct. 2010 (1988); see also Department of Justice v. Julian, 108 S. Ct. 1606, 1616 n.1 (1988) (Scalia, J. dissenting) (issue not reached by majority).

Regarding documents generated outside of an agency but produced pursuant to agency initiative, whether purchased or provided voluntarily without compensation, "Congress apparently did not intend 'inter-agency and intra-agency' to be rigidly exclu-

sive terms, but rather to include any agency document that is part of the deliberative process." Ryan v. Department of Justice, 617 F.2d 781, 790 (D.C. Cir. 1980). See also FOIA Update, June 1982, at 10 ("FOIA Counsellor: Protecting 'Outside' Advice"). Thus, recommendations from Congress may be protected, Ryan v. Department of Justice, 617 F.2d at 790 (protecting judicial recommendations from senators to Attorney General), as may advice from another federal agency, see FOIA Update, Spring 1983, at 6, as well as advice from a state agency, Mobil Oil Corp. v. FTC, 406 F. Supp. 305, 315 (S.D.N.Y. 1976) ("the rationale applies with equal force to advice from state as well as federal agencies"). Applying the functional test, the D.C. Circuit Court of Appeals held that Exemption 5 also applies to documents originating with a court. Durns v. Bureau of Prisons, 804 F.2d at 704 n.5 (presentence report prepared by probation officer for sentencing judge, with copies provided to Parole Commission and Bureau of Prisons). Cf. Badhwar v. Department of the Air Force, 829 F.2d 182, 184-85 (D.C. Cir. 1987) (upholding application of Exemption 5--without discussing "inter-agency and intra-agency" threshold--to material supplied by outside contractors).

Under this "functional" approach, documents generated by consultants outside of an agency are typically considered for Exemption 5 protection because agencies, in the exercise of their functions, commonly have "a special need for the opinions and recommendations of temporary consultants." Soucie v. David, 448 F.2d 1067, 1078 n.44 (D.C. Cir. 1971); cf. CNA Fin. Corp. v. Donovan, 830 F.2d 1132, 1161 (D.C. Cir. 1987) (recognizing importance of outside consultants in deliberative process privilege context), cert. denied, 108 S. Ct. 1270 (1988). Indeed, such advice can "play[] an integral function in the government's decision [making]." Hoover v. Department of the Interior, 611 F.2d 1132, 1138 (5th Cir. 1980). See also, e.g., Lead Indus. Ass'n v. OSHA, 610 F.2d 70, 83 (2d Cir. 1979); Wu v. National Endowment For Humanities, 460 F.2d 1030, 1032 (5th Cir. 1972) (recommendations of volunteer consultants protected), cert. denied, 410 U.S. 926 (1973); Beltone Electronics Corp. v. FTC, Civil No. 81-1360, slip op. at 9-10 (D.D.C. Dec. 6, 1983) (documents prepared by paid outside consultants protected); American Soc'y of Pension Actuaries v. Pension Benefit Guar. Corp., 3 GDS ¶83,182, at 83,846 (D.D.C. 1983) (same); Information Acquisition Corp. v. Department of Justice, Civil No. 77-839, slip op. at 4 (D.D.C. May 23, 1979) (unsolicited comments from the public on Presidential nomination protected); see also FOIA Update, Summer 1987, at 4-5 ("OIP Guidance: Broad Protection for Witness Statements"); FOIA Update, June 1982, at 10. But see Formaldehyde Inst. v. HHS, Civil No. 87-3266, slip op. at 3-5 (D.D.C. Sept. 6, 1988) (while purporting to recognize "functional test," holding that academic journal is not part of agency "consultative process" when reviewing agency article submitted for publication) (appeal pending).

Similarly, documents generated within an agency but transmitted outside of that agency to Congress have been accorded protection under Exemption 5. See, e.g., Demetracopoulos v. CIA, 3 GDS ¶82,508, at 83,283 (D.D.C. 1982); Letelier v. Department of Justice, 3 GDS ¶82,257, at 82,714 (D.D.C. 1982). But see also Allen v. Department of Defense, 580 F. Supp. 74, 83 (D.D.C. 1983) (cautioning against use of Exemption 5 for agency congressional communications, but finding it appropriate "at least in some circumstances"); cf. Paisley v. CIA, 712 F.2d 686, 699 n.54 (D.C. Cir. 1983) (suggesting that agency responses to congressional requests for information may not constitute agency deliberations).

However, a minority of courts have not embraced the "functional test" and have rigidly applied the "inter-agency or intra-agency" language of the threshold to find that documents submitted by nonagency personnel are not protectible under the exemption. See Thurner Heat Treating Corp. v. NLRB, 839 F.2d 1256, 1259-60 (7th Cir. 1988) (witness statements taken from non-agency employees in contemplation of litigation held not intra-agency); Van Bourg, Allen, Weinberg & Roger v. NLRB, 751 F.2d 982, 985 (9th Cir. 1985) (Exemption 5 narrowly construed to apply "only to internal agency documents or documents prepared by outsiders who have a formal relationship with the agency"), reh'g en banc denied, No. 82-4719 (9th Cir. May 1, 1985); Poss v. NLRB, 654 F.2d 659, 659 (10th Cir. 1977) (same); Texas v. ICC, Civil No. A-87-CA-016, slip op. at 3-4 (W.D. Tex. Mar. 2, 1988) (communications between agency and interested nonagency entity held not protectible) (appeal pending); Kilroy v. NLRB, 633 F. Supp. 136, 140 (S.D. Ohio 1985) (witness statements taken from non-agency employees not intra-agency), aff'd mem., 823 F.2d 553 (6th Cir. 1987); see also Knight v. Department of Defense, Civil No. 87-480, slip op. at 2-3 (D.D.C. Dec. 7, 1987) (correspondence to contractors not intra-agency); American Soc'y of Pension Actuaries v. Pension Benefit Guar. Corp., Civil No. 82-2806, slip op. at 3 (D.D.C. July 22, 1983) (advice of professional advisory committees does not merit protection).

Similarly, the issue is unsettled as to documents generated in the course of settlement negotiations. Correspondence reflecting settlement negotiations between the government and an adverse party, which is of necessity transferred between the parties, has been held not to constitute "intra-agency" memoranda under Exemption 5. See County of Madison v. Department of Justice, 641 F.2d 1036, 1042 (1st Cir. 1981); M/A-COM Information Sys. v. HHS, 656 F. Supp. 691, 692 (D.D.C. 1986) (privilege allowed under Exemption 4 but not under Exemption 5); NAACP Legal Defense & Educ. Fund, Inc. v. Department of Justice, 612 F. Supp. 1143, 1145-46 (D.D.C. 1985); Norwood v. FAA, 580 F. Supp. 994, 1002-03 (W.D. Tenn. 1984) (on motion for clarification and reconsideration); Center for Auto Safety v. Department of Justice, 576 F. Supp. 739, 747-49 (D.D.C. 1983). However, certain of those courts recognized the great difficulties inherent in such a harsh Exemption 5 construction, especially in light of the "logic and force of [the] policy plea" that the government's indispensable settlement mechanism will be impeded as a result. County of Madison v. Department of Justice, 641 F.2d at 1040; Center for Auto Safety v. Department of Justice, 576 F. Supp. at 746 n.18. See also Murphy v. TVA, 571 F. Supp. 502, 506 (D.D.C. 1983) (public policy favoring compromise over confrontation would be "seriously undermined" if internal documents reflecting employees' thoughts during course of negotiations were released).

Accordingly, one court has held that notes of an agency employee which reflected positions taken and issues raised in treaty negotiations were properly withheld pursuant to Exemption 5 because their release would harm the agency deliberative process. See Fulbright & Jaworski v. Department of the Treasury, 545 F. Supp. 615, 620 (D.D.C. 1982). Another court has found the attorney work-product and deliberative process privileges to be properly invoked for documents prepared by agency personnel which reflected the substance of meetings between adverse parties and agency personnel in preparation for eventual settlement of a case. See Cities Serv. Co. v. FTC, 627 F. Supp. 827, 832 (D.D.C. 1984), aff'd mem., No. 83-812 (D.C. Cir. Dec. 2, 1985). See also FOIA Update, June 1982, at 10. Furthermore, Justice Brennan, noting the need for protecting attorney work-product information, has specifically cited as a particular disclosure danger the ability of adverse parties to "gain insight into the agency's general strategic and tactical approach to deciding when suits

are brought . . . and on what terms they may be settled." FTC v. Grolier Inc., 462 U.S. 19, 31 (1983) (Brennan, J., concurring) (emphasis added).

Thus, the law with respect to settlement documents is currently in a state of flux, with repeated judicial suggestions underscoring the dangers of their disclosure, but with substantial case precedents standing as obstacles to Exemption 5 protection for those documents that have been shared with adverse parties. The adverse decisions in this area, though, have failed to take cognizance of the relatively recent development of a distinct "settlement negotiation" privilege. See, e.g., Olin Corp. v. Insurance Co. of N. America, 603 F. Supp. 445, 449-50 (S.D.N.Y. 1985); Bottaro v. Hatton Assoc., 96 F.R.D. 158, 159-60 (E.D.N.Y. 1982); see also FOIA Update, Fall 1985, at 3-4 ("OIP Guidance: Protecting Settlement Negotiations"). In addition, settlement information may qualify for protection under Exemption 4 where the information meets the "commercial or financial" threshold, see M/A-COM Information Sys. v. HHS, 656 F. Supp. at 692, or under the more traditional Exemption 5 privileges, see, e.g., Cities Serv. Co. v. FTC, 627 F. Supp. at 832 (attorney working papers pertaining to settlement negotiations protected under attorney work-product privilege); Fulbright & Jaworski v. Department of the Treasury, 545 F. Supp. at 620 (documents reflecting details of treaty negotiations protected under deliberative process privilege). Accordingly, while such information should be withheld by agencies at the administrative level pursuant to Exemption 5, particularly where strong policy interests militating against disclosure are present, special care should be taken to maximize the prospects of favorable case law development on this delicate issue.

Finally, it should be remembered that it is not the "hypothetical litigation" between particular parties (in which relevance or need are appropriate factors) which must govern the Exemption 5 inquiry, NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 n.16 (1975); rather, it is the circumstances in private litigation in which memoranda would "routinely be disclosed." H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10 (1966). Therefore, whether the privilege invoked is absolute or qualified is of no significance. See FTC v. Grolier Inc., 462 U.S. at 27. See also FOIA Update, Fall 1984, at 6. Accordingly, no requester is entitled to greater rights of access under Exemption 5 by virtue of whatever special interests might influence the outcome of actual civil discovery to which he is a party. See FTC v. Grolier Inc., 462 U.S. at 28; NLRB v. Sears, Roebuck & Co., 421 U.S. at 149; see also, e.g., Martin v. Office of Special Counsel, 819 F.2d 1181, 1184 (D.C. Cir. 1987) ("the needs of a particular plaintiff are not relevant to the exemption's applicability"); Swisher v. Department of the Air Force, 660 F.2d 369, 371 (8th Cir. 1981) (fact that privilege may be overcome by showing of "need" in civil discovery context in no way diminishes Exemption 5 applicability). Nevertheless, the mere fact that information may not generally be discoverable does not necessarily mean that it is not discoverable by a specific class of requesters. Just as the FOIA's privacy exemptions are not used against a first-party requester, see H.R. Rep. No. 1380, 93d Cong., 2d Sess. 13 (1974), a privilege that is designed to protect a certain class of persons cannot be invoked against those persons as FOIA requesters. See Department of Justice v. Julian, 108 S. Ct. at 1614 (presentence report privilege, designed to protect reports' subjects, cannot be invoked against them as first-party requesters).

Indeed, such an approach, combined with a pragmatic application of Exemption 5's threshold language, is the only means by which the Supreme Court's firm admonition against the use of FOIA to circumvent discovery privileges can be given effect. See

United States v. Weber Aircraft Corp., 465 U.S. 792, 801-02 (1984) ("We do not think that Congress could have intended that the weighty policies underlying discovery privileges could be so easily circumvented."); see also Martin v. Office of Special Counsel, 819 F.2d at 1186 (Where requester is "unable to obtain those documents using ordinary civil discovery methods, . . . FOIA should not be read to alter that result.").

Deliberative Process Privilege

The most commonly invoked privilege incorporated within Exemption 5 is the deliberative process privilege, the general purpose of which is to "prevent injury to the quality of agency decisions." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). Specifically, three policy purposes have been consistently held to constitute the bases for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. See, e.g., Russell v. Department of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982); Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980); Jordan v. Department of Justice, 591 F.2d 753, 772-73 (D.C. Cir. 1978) (en banc); but see also ITT World Communications, Inc. v. FCC, 699 F.2d 1219, 1237-38 (D.C. Cir. 1983) (suggesting that otherwise exempt predecisional material "may" be ordered released so as to explain actual agency positions) (dictum), rev'd on other grounds, 466 U.S. 463 (1984).

Logically flowing from the foregoing policy considerations is the exemption's protection of the "decision making processes of government agencies." NLRB v. Sears, Roebuck & Co., 421 U.S. at 150. Ideally, Exemption 5 should be applied to protect not merely documents, but also the integrity of the deliberative process itself when the exposure of that process would result in harm. See, e.g., Schell v. HHS, 843 F.2d 933, 940 (6th Cir. 1988) ("Because Exemption 5 is concerned with protecting the deliberative process itself, courts now focus less on the material sought and more on the effect of the material's release."); Dudman Communications Corp. v. Department of the Air Force, 815 F.2d 1565, 1568 (D.C. Cir. 1987) ("Congress enacted Exemption 5 to protect the executive's deliberative processes--not to protect specific materials."); Texas Indep. Producers Legal Action Ass'n v. IRS, 605 F. Supp. 538, 546 (D.D.C. 1985) ("Exemption 5 protects the deliberative process not just deliberative material."); Chemical Mfrs. Ass'n v. Consumer Prod. Safety Comm'n, 600 F. Supp. 114, 117 (D.D.C. 1984) (danger that ongoing regulatory process would be subject to "delay and disrupt[ion]" if preliminary analyses were prematurely disclosed).

Indeed, in a major en banc decision issued this past year, the D.C. Circuit emphasized that even the mere status of an agency decision within an agency decisionmaking process may be protectible if the release of that information would have the effect of prematurely disclosing "the recommended outcome of the consultative process . . . as well as the source of any decision." Wolfe v. HHS, 839 F.2d 768, 775 (D.C. Cir. 1988) (en banc). This is particularly important to agencies involved in a regulatory process which specifically mandates public involvement in the decision process once the agency's deliberations are complete. See id. at 776; see also National Wildlife Fed'n v. United States Forest Serv., Civil No. 86-1255, slip op. at 10 (D.D.C. Sept. 26, 1987) (preliminary Draft Environmental Impact Statement protected); Chemical Mfrs. Ass'n v. Consumer Prod.

Safety Comm'n, 600 F. Supp. at 118 (preliminary scientific data generated in connection with study of chemical protected).

There are two fundamental requirements, both of which must be met, in order for the deliberative process privilege to be invoked. First, the communication must be predecisional, i.e., "antecedent to the adoption of an agency policy." Jordan v. Department of Justice, 591 F.2d at 774. Second, the communication must be deliberative, i.e., "a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters." Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975).

In determining whether a document is predecisional, an agency does not necessarily have to point specifically to an agency final decision, but merely establish "what deliberative process is involved, and the role played by the documents in issue in the course of that process." Coastal States Gas Corp. v. Department of Energy, 617 F.2d at 868. On this point the Supreme Court has been very clear:

> Our emphasis on the need to protect pre-decisional documents does not mean that the existence of the privilege turns on the ability of an agency to identify a specific decision in connection with which a memorandum is prepared. Agencies are, and properly should be, engaged in a continuing process of examining their policies; this process will generate memoranda containing recommendations which do not ripen into agency decisions; and the lower courts should be wary of interfering with this process.

NLRB v. Sears, Roebuck & Co., 421 U.S. at 151 n.18 (emphasis in original). See also Schell v. HHS, 843 F.2d at 941 ("When specific advice is provided, . . . it is no less predecisional because it is accepted or rejected in silence, or perhaps simply incorporated into the thinking of superiors for future use.").

Thus, as long as a document is generated as part of such a continuing process of examining agency policy, Exemption 5 can be applicable. See, e.g., Washington Post Co. v. Department of Defense, Civil No. 84-2949, slip op. at 21 (D.D.C. Feb. 25, 1987); Ashley v. Department of Labor, 589 F. Supp. 901, 908-09 (D.D.C. 1983) (documents containing agency self-evaluations need not be shown to be part of clear process leading up to "assured" final decision so long as agency can demonstrate that documents were part of some deliberative process). But see also Senate of Puerto Rico v. Department of Justice, 823 F.2d 574, 585 (D.C. Cir. 1987) (suggesting agency must specify final "decisions to which the advice or recommendations . . . contributed"); Parke, Davis & Co. v. Califano, 623 F.2d 1, 6 (6th Cir. 1980) (holding document must be "essential element" of deliberative process). Note, however that in Schell v. HHS, 843 F.2d at 939-41, the Sixth Circuit appeared to reject, implicitly, its Parke Davis "essential element" test. For an example of judicial confusion with respect to the deliberative process, see Cook v. Watt, 597 F. Supp. 545, 550-52 (D. Alaska 1983) (refusing to extend privilege to documents originating in deliberative process merely because process held in abeyance and no decision reached). Moreover, the predecisional character of a document is not lost simply because an agency has made a final decision, see May v. Department of the Air Force, 777 F.2d 1012, 1014-15 (5th Cir. 1985); Cuccaro v. Secretary of Labor, 770 F.2d 355, 357 (3d Cir. 1985), nor is it lost through the passage of time, see Founding Church of Scientology v. Levi, 1 GDS ¶80,155, at 80,374 (D.D.C. 1980); but see Exxon Corp. v. Department of Energy, 585 F. Supp.

690, 699 (D.D.C. 1983) (suggesting that some passage of time could "render the privilege moot").

Documents that are commonly encompassed by the deliberative process privilege include "advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated," NLRB v. Sears, Roebuck & Co., 421 U.S. at 150; see also Joslin v. Department of Labor, Civil No. 86-2449, slip op. at 6 (D. Colo. May 9, 1988) (documents "designed to foster intra-agency debate" held deliberative), the release of which would be likely to "stifle honest and frank communication within the agency." Coastal States Gas Corp. v. Department of Energy, 617 F.2d at 866; see also Schell v. HHS, 843 F.2d at 942 ("It is the free flow of advice, rather than the value of any particular piece of information, that Exemption 5 seeks to protect."); National Wildlife Fed'n v. United States Forest Serv., slip op. at 10 (premature disclosure of preliminary draft Environmental Impact Statement may cause planning team to "be hesitant to candidly perform their tasks or to present recommended alternatives for fear of unwarranted criticism"). Under some circumstances disclosure of even the identity of the author of a deliberative document could chill the deliberative process, thus warranting protection of that person's identity. See, e.g., Brinton v. Department of State, 636 F.2d 600, 604 (D.C. Cir. 1980), cert. denied, 452 U.S. 905 (1981); cf. Wolfe v. HHS, 839 F.2d at 775-76; see also FOIA Update, Spring 1985, at 6.

Plainly, such "predecisional" documents are not only those circulated within the agency, but can also be those from an agency lacking decisional authority which advise another agency possessing such authority, see Renegotiation Bd. v. Grumman Aircraft Eng'g Corp., 421 U.S. 168, 188 (1975); Bureau of Nat'l Affairs, Inc. v. Department of Justice, 742 F.2d 1484, 1497 (D.C. Cir. 1984). In any event, "[t]here should be considerable deference to the [agency's] judgment as to what constitutes . . . 'part of the agency give-and-take--of the deliberative process--by which the decision itself is made.'" Chemical Mfrs. Ass'n v. Consumer Prod. Safety Comm'n, 600 F. Supp. at 118.

A particular category of documents likely to be exempt under the deliberative process privilege is "drafts," Exxon Corp. v. Department of Energy, 585 F. Supp. at 698, although such a designation "does not end the inquiry." Arthur Andersen & Co. v. IRS, 679 F.2d 254, 257 (D.C. Cir. 1982). Even draft documents, to be protected, must be predecisional and must be related to a particular deliberative process, see Coastal States Gas Corp. v. Department of Energy, 617 F.2d at 866; Burke Energy Corp. v. Department of Energy, 583 F. Supp. 507, 513 (D. Kan. 1984), and it is incumbent upon the agency to delineate the role of the document in the decisionmaking chain, see Arthur Andersen & Co. v. IRS, 679 F.2d at 258.

It should be remembered though, that the very process by which a "draft" evolves into a "final" document can itself constitute a deliberative process. See Dudman Communications Corp. v. Department of the Air Force, 815 F.2d at 1568-69; Russell v. Department of the Air Force, 682 F.2d at 1048-50; Exxon Corp. v. Department of Energy, 585 F. Supp. at 698; see also FOIA Update, Spring 1986, at 2; FOIA Update, Jan. 1983, at 6. As a result, Exemption 5 protection is available to a draft document regardless of whether it differs from its final version. See Lead Indus. Ass'n v. OSHA, 610 F.2d 70, 86 (2d Cir. 1979); see also Exxon Corp. v. Department of Energy, 585 F. Supp. at 698; City of West Chicago v. NRC, 547 F. Supp. 740, 751 (N.D. Ill. 1982); FOIA Update, Spring 1986, at 2. But see Texaco, Inc. v. Department of

Energy, 2 GDS ¶81,296, at 81,833 (D.D.C. 1981) (aberrational ruling, without analysis, to the contrary).

In contrast, however, are post-decisional documents. They generally embody statements of policy and final opinions which have the force of law, see, e.g., Taxation With Representation Fund v. IRS, 646 F.2d 666, 677 (D.C. Cir. 1981), which implement an established policy of an agency, see, e.g., Brinton v. Department of State, 636 F.2d at 605, or which explain actions that an agency has already taken, see, e.g., NLRB v. Sears, Roebuck & Co., 421 U.S. at 153-54. But cf. Murphy v. TVA, 571 F. Supp. 502, 505 (D.D.C. 1983) (protection afforded to "interim" decisions which agency retains option of changing). Exemption 5 does not apply to post-decisional documents, as "the public is vitally concerned with the reasons which did supply the basis for an agency policy actually adopted." NLRB v. Sears, Roebuck & Co., 421 U.S. at 152. Indeed, many courts have questioned whether certain documents at issue were tantamount to agency "secret law," i.e., "orders and interpretations which [the agency] actually applies to cases before it," Sterling Drug, Inc. v. FTC, 450 F.2d 698, 708 (D.C. Cir. 1971), and which are "routinely used by agency staff as guidance." Coastal States Gas Corp. v. Department of Energy, 617 F.2d at 869. See also Schlefer v. United States, 702 F.2d 233, 243-44 (D.C. Cir. 1983). Such documents should be disclosed because they are not in fact predecisional, but rather "discuss established policies and decisions." Coastal States Gas Corp. v. Department of Energy, 617 F.2d at 868 (emphasis in original).

Several criteria have been fashioned to clarify the "often blurred" distinction, Schlefer v. United States, 702 F.2d at 237, between predecisional and postdecisional documents. See generally ITT World Communications, Inc. v. FCC, 699 F.2d at 1235; Arthur Andersen & Co. v. IRS, 679 F.2d at 258-59. First, an agency should determine whether the document is a "final opinion" within the meaning of one of the automatic disclosure provisions of the FOIA, subsection (a)(2)(A). See Federal Open Mkt. Comm. v. Merrill, 443 U.S. 340, 360-61 n.23 (1979). In an extensive consideration of this point, the Fifth Circuit held that, as section (a)(2)(A) specifies "the adjudication of [a] case[]," Congress intended "final opinions" to be only those decisions resulting from proceedings (such as that in Sears) in which a party invoked (and obtained a decision concerning) a specific statutory right of "general and uniform" applicability. Skelton v. United States Postal Serv., 678 F.2d 35, 41 (5th Cir. 1982). But see also Afshar v. Department of State, 702 F.2d 1125, 1142-43 (D.C. Cir. 1983) (even single recommendation of no precedential value or applicability to rights of individual members of public loses protection if specifically adopted as basis for final decision).

Second, the nature of the decisionmaking authority vested in the office or person issuing the document must be considered. If the author lacks "legal decision authority," Renegotiation Bd. v. Grumman Aircraft Eng'g Corp., 421 U.S. at 184-85, the document is far more likely to be predecisional. See also Badhwar v. Department of the Air Force, 615 F. Supp. 698, 702-03 (D.D.C. 1985) (Air Force safety board does not make decisions, only recommendations), aff'd in part, remanded in part, on other grounds, 829 F.2d 182 (D.C. Cir. 1987); American Postal Workers Union v. Office of Special Counsel, Civil No. 85-3691, slip op. at 6 (D.D.C. June 24, 1986) (prosecutorial recommendations to special counsel which were not binding or dispositive considered predecisional). A crucial caveat in this regard, however, is that courts often look "beneath formal lines of authority to the reality of the decisionmaking process." Schlefer v. United States, 702 F.2d at 238. Hence, even an assertion by the agency that an

official lacks ultimate decisionmaking authority might be "superficial" and unavailing, id., if agency "practices" commonly accord decisionmaking authority to that official. Id. at 241; see also Badran v. Department of Justice, 652 F. Supp. 1437, 1439 (N.D. Ill. 1987) (INS decision on plaintiff's bond was final, even though it was reviewable by immigration judge, because "immigration judges are independent from the INS, and no review of plaintiff's bond occurred within the INS").

Careful analysis of the decisionmaking process is sometimes required to determine whether the records reflect an earlier preliminary decision or recommendations concerning follow-up issues, see, e.g., Coyote Valley Band of Pomo Indians v. United States, Civil No. 87-2786, slip op. at 4 (N.D. Cal. Nov. 6, 1987); Dow, Lohnes & Albertson v. Presidential Comm'n on Broadcasting to Cuba, 624 F. Supp. 572, 574-75 (D.D.C. 1984), or whether the document sought reflects a final decision or merely advice to a higher authority. See Bureau of Nat'l Affairs, Inc. v. Department of Justice, 742 F.2d at 1497; American Fed'n of Gov't Employees v. Department of Commerce, 632 F. Supp. 1272, 1276 (D.D.C. 1986), remanded on other grounds, No. 86-5390 (D.C. Cir. Dec. 9, 1987). Thus, agency recommendations to OMB concerning the development of proposed legislation to be submitted to Congress are predecisional, see Bureau of Nat'l Affairs, Inc. v. Department of Justice, 742 F.2d at 1497, but descriptions of "agency efforts to ensure enactment of policies already established" are post-decisional, Dow, Lohnes & Albertson v. United States Information Agency, Civil No. 82-2569, slip op. at 15-16 (D.D.C. June 5, 1984), vacated in part, No. 84-5852 (D.C. Cir. Apr. 17, 1985); see also Badhwar v. Department of Justice, 622 F. Supp. 1364, 1372 (D.D.C. 1985) ("There is nothing predecisional about a recitation of corrective action already taken.").

Third, it is useful to examine the direction in which the document flows along the decisionmaking chain. Naturally, a document "from a subordinate to a superior official is more likely to be predecisional," Coastal States Gas Corp. v. Department of Energy, 617 F.2d at 868, than the contrary case: "[F]inal opinions . . . typically flow from a superior with policymaking authority to a subordinate who carries out the policy." Brinton v. Department of State, 636 F.2d at 605. See also Government Accountability Project v. Office of Special Counsel, Civil No. 87-0235, slip op. at 5-6 (D.D.C. Feb. 22, 1988) (protected documents "plainly contain advisory positions adopted by officials subordinate in rank to the final decisionmakers"); American Fed'n of Gov't Employees v. Department of Commerce, 632 F. Supp. at 1276; Ashley v. Department of Labor, 589 F. Supp. at 908.

Lastly, even if a document is clearly protected from disclosure by the deliberative process privilege, it may lose this protection if a final decision "chooses expressly to adopt or incorporate [it] by reference." NLRB v. Sears, Roebuck & Co., 421 U.S. at 161 (emphasis in original). See Afshar v. Department of State, 702 F.2d at 1140. At least one court, however, has proposed a less stringent standard of "formal or informal adoption," Coastal States Gas Corp. v. Department of Energy, 617 F.2d at 866. See also Skelton v. United States Postal Serv., 678 F.2d at 39 n.5 (dictum). Mere "approval" of a predecisional document does not necessarily constitute adoption of it, see, e.g., American Fed'n of Gov't Employees v. Department of the Army, 441 F. Supp. 1308, 1311 (D.D.C. 1977), but an inference of incorporation or adoption was once found to exist where a decisionmaker accepted a staff recommendation without giving a statement of reasons. See Martin v. Merit Sys. Protection Bd., 3 GDS ¶82,416, at 83,044 (D.D.C. 1982); but see American Postal Workers Union v. Office of Special Counsel, slip op. at 7-9 (incorpora-

tion not inferred). Furthermore, where it is unclear whether a recommendation provided the basis for a final decision, then the recommendation should be protected. See Renegotiation Bd. v. Grumman Aircraft Eng'g Corp., 421 U.S. at 184-85; Afshar v. Department of State, 702 F.2d at 1143 n.22; see also Ahearn v. United States Army Materials & Mechanics Research Center, 580 F. Supp. 1405, 1407 (D. Mass. 1984); Lone Star Indus., Inc. v. FTC, Civil No. 82-3150, slip op. at 13 (D.D.C. June 8, 1983); Atkinson v. SEC, Civil No. 83-2030, slip op. at 3-4 (D.D.C. Oct. 27, 1983). But see also Carroll v. IRS, Civil No. 82-3524, slip op. at 17 (D.D.C. Jan. 31, 1986) (holding that test is whether views expressed are ultimately adopted, not whether document itself is adopted).

The primary limitation on the scope of the deliberative process privilege is that it ordinarily is inapplicable to purely factual matters, or to factual portions of otherwise deliberative memoranda. Not only would factual material "generally be available for discovery," EPA v. Mink, 410 U.S. 73, 87-88 (1973), but its release usually will not threaten consultative agency functions. See Montrose Chem. Corp. v. Train, 491 F.2d 63, 66 (D.C. Cir. 1974). This seemingly straightforward distinction between deliberative and factual materials blurs, however, when the facts themselves reflect the agency's deliberative process, see Skelton v. Postal Serv., 678 F.2d at 38-39, prompting the D.C. Circuit to observe that "the use of the factual matter/deliberative matter distinction produced incorrect outcomes in a small number of cases." Dudman v. Department of Air Force, 815 F.2d at 1568. In fact, just this past year, the D.C. Circuit held that factual information should be examined "in light of the policies and goals that underlie" the privilege and "the context in which the materials are used." Wolfe v. HHS, 839 F.2d at 774.

Recognizing the shortcomings of a rigid factual/deliberative distinction, courts properly allow agencies to withhold factual material in an otherwise "deliberative" document under two circumstances. See FOIA Update, Summer 1986, at 6. The first circumstance occurs where a document employs specific facts out of a larger group of facts and this very act is deliberative in nature. In Montrose Chemical Corp. v. Train, the summary of a large volume of public testimony compiled to facilitate the EPA Administrator's decision on a particular matter was held to be part of the agency's internal deliberative process. See 491 F.2d at 71. The very act of distilling the testimony, of separating the significant from the insignificant facts, constituted an exercise of judgment by agency personnel. See id. at 68. Such "selective" facts are therefore entitled to the same protection as that afforded to purely deliberative materials, as their release would "permit indirect inquiry into the mental processes," Williams v. Department of Justice, 556 F. Supp. 63, 65 (D.D.C. 1982), and so "expose" predecisional agency deliberations. Mead Data Central, Inc. v. Department of the Air Force, 566 F.2d 242, 256 (D.C. Cir. 1977). See also Lead Indus. Ass'n v. OSHA, 610 F.2d at 85 (disclosing factual segments of summaries would reveal deliberative process by "demonstrating which facts in the massive rule-making record were considered significant to the decisionmaker"); Farmworkers Legal Servs. v. Department of Labor, 639 F. Supp. 1368, 1373 (E.D.N.C. 1986) (list of farmworker camps was a "selective fact" and thus protected); Sorensen v. Department of Agric., Civil No. 83-4143, slip op. at 7 (D. Idaho Mar. 11, 1985) (document comprising agency's "attempt to organize, evaluate and prioritize the facts of importance" held exempt). A necessary caveat in this regard is that "a report does not become part of the deliberative process merely because it contains only facts which the person making the report thinks material." Playboy Enters. v. Department of Justice, 677 F.2d 931, 935 (D.C. Cir. 1982). See also Lacy v. Department of the

Navy, 593 F. Supp. 71, 78 (D. Md. 1984) (photographs attached to deliberative report "do not become part of the deliberative process merely because some photographs were selected and others were not"). The factual materials must be generated in the course of an agency's decisionmaking process. See Playboy Enters. v. Department of Justice, 677 F.2d at 936.

The second circumstance occurs when the information is so inextricably connected to the deliberative material that its disclosure will expose or cause harm to the agency's deliberations. If revealing factual information is tantamount to revealing the agency's deliberations, then the facts may be withheld. See, e.g., Wolfe v. HHS, 839 F.2d at 774-76 ("fact" of the status of proposal in deliberative process protected); Washington Post Co. v. Department of Defense, Civil No. 84-2403, slip op. at 5 (D.D.C. Apr. 15, 1988) (factual assertions in briefing documents found "thoroughly intertwined" with opinions and impressions); Washington Post Co. v. Department of Defense, Civil No. 84-2949, slip op. at 23 (summaries and lists of materials relied upon in drafting report found "inextricably interwined with the policy-making process"). Similarly, where factual or statistical information is actually an expression of deliberative communications it may be withheld because to reveal that information would reveal the agency's deliberations. See, e.g., National Wildlife Fed'n v. United States Forest Serv., slip op. at 9 (variables reflected in computer program's mathematical equation held protectible); American Whitewater Affiliation v. Federal Energy Regulatory Comm'n, Civil No. 86-1917, slip op. at 7 (D.D.C. Dec. 2, 1986) ("the cost and energy comparisons involved in this case are deliberative"); Professional Review Org. of Fla., Inc. v. HHS, 607 F. Supp. 423, 427 (D.D.C. 1985) (scores used to rate procurement proposals may be "numerical expressions of opinion rather than 'facts'"); Brinderson Constructors, Inc. v. Army Corps of Engineers, Civil No. 85-0905, slip op. at 11 (D.D.C. June 11, 1986) ("computations are certainly part of the deliberative process"). Moreover, the protection of the very integrity of the deliberative process can, in some contexts, be the basis for protecting factual information. See, e.g., Wolfe v. HHS, 839 F.2d at 776 (revealing status of proposal in deliberative process "could chill discussions at a time when agency opinions are fluid and tentative"); Dudman Communications Corp. v. Department of the Air Force, 815 F.2d at 1568 (revealing editorial judgments would stifle creative thinking).

Factual information within a deliberative document may be protected also where it is impossible to reasonably segregate meaningful portions of that factual information from the deliberative information. See Local 3, Int'l Bhd. of Elec. Workers v. NLRB, 845 F.2d 1177, 1180 (2d Cir. 1988) (short document would be rendered "nonsensical" by segregation); see also Lead Indus. Ass'n v. OSHA, 610 F.2d at 86 ("Instead of merely combing the documents for 'purely factual' tidbits, the court should have considered the segments in the context of the whole document and that document's relation to the administrative process."); Badhwar v. Department of the Air Force, 622 F. Supp. at 1375 (impossible to "reasonably" segregate non-deliberative material from autopsy report); Morton-Norwich Products, Inc. v. Mathews, 415 F. Supp. 78, 82 (D.D.C. 1976).

It should also be pointed out that Exemption 5 additionally protects scientific reports that constitute the interpretation of technical data insofar as "the opinion of an expert reflects the deliberative process of decision or policy making." Parke, Davis & Co. v. Califano, 623 F.2d at 6. But see Ethyl Corp. v. EPA, 478 F.2d 47, 50 (4th Cir. 1973) (characterizing such material as "technological data of a purely factual nature"). The government interest in withholding technical data is heightened if such

material is requested at a time when disclosure of a scientist's "nascent thoughts . . . would discourage the intellectual risk-taking so essential to technical progress," Chemical Mfrs. Ass'n v. Consumer Prod. Safety Comm'n, 600 F. Supp. at 118. Moreover, it is noteworthy that the D.C. Circuit has stated that the "results of . . . factual investigations" may be within the protective scope of Exemption 5. Paisley v. CIA, 712 F.2d 686, 698 n.53 (D.C. Cir. 1983) (dictum).

Attorney Work-Product Privilege

The second traditional privilege incorporated into Exemption 5 is the attorney work-product privilege, which protects documents and other memoranda prepared by an attorney in contemplation of litigation. See Hickman v. Taylor, 329 U.S. 495, 509-10 (1947); Fed. R. Civ. P. 26(b)(3). As its purpose is to protect the adversary trial process by insulating the attorney's preparation from scrutiny, see Jordan v. Department of Justice, 591 F.2d 753, 775 (D.C. Cir. 1978) (en banc), the work-product privilege does not attach until at least "some articulable claim, likely to lead to litigation," has arisen. Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 865 (D.C. Cir. 1980). The privilege is not limited to civil proceedings, but rather extends to administrative proceedings, see, e.g., Exxon Corp. v. Department of Energy, 585 F. Supp. 690, 700 (D.D.C. 1983), see also Martin v. Office of Special Counsel, 819 F.2d 1181, 1187 (D.C. Cir. 1987) (same result under Exemption (d)(5) of the Privacy Act), and to criminal matters as well, see, e.g., Antonelli v. Sullivan, 732 F.2d 560, 561 (7th Cir. 1983); see also FOIA Update, Spring 1984, at 7. But cf. Powell v. Department of Justice, 584 F. Supp. 1508, 1520 (N.D. Cal. 1984) (suggesting, but not deciding, that attorney work-product materials generated in a criminal case should be subject to disclosure under criminal discovery provisions).

The privilege sweeps broadly in several respects. See generally FOIA Update, Summer 1983, at 6. First, litigation need never have actually commenced, so long as specific claims have been identified which make litigation probable. See Kent Corp. v. NLRB, 530 F.2d 612, 623 (5th Cir.), cert. denied, 429 U.S. 920 (1976). The mere fact it is conceivable that litigation may occur at some unspecified time in the future will not necessarily be sufficient to protect attorney-generated documents; "the policies of the FOIA would be largely defeated" if agencies were to withhold any documents created by attorneys "simply because litigation might someday occur." Senate of Puerto Rico v. Department of Justice, 823 F.2d 574, 587 (D.C. Cir. 1987) (quoting Coastal States Gas Corp. v. Department of Energy, 617 F.2d at 865). However, where litigation is likely, a specific claim need not have arisen. See Delaney, Migdail & Young, Chartered v. IRS, 826 F.2d 124, 127 (D.C. Cir. 1987) (memoranda that "advise the agency of the types of legal challenges likely to be mounted against a proposed program, potential defenses available to the agency and the likely outcome" held protectible).

In fact, it has been held that a document prepared for two disparate purposes was compiled in anticipation of litigation if "litigation was a major factor" in the decision to create it. Wilson v. Department of Energy, Civil No. 84-3163, slip op. at 7 n.1 (D.D.C. Jan. 28, 1985). But see also United States v. Gulf Oil Corp., 760 F.2d 292, 296-97 (Temp. Emer. Ct. App. 1985) (holding that anticipation of litigation must be "the primary motivating purpose behind the creation of the document") (non-FOIA case). Even documents prepared when the identity of the opposing party was unknown can suffice to come within the privilege. See, e.g., Delaney, Migdail & Young, Chartered v. IRS, 826 F.2d at 127; Anderson v. Parole Comm'n, 3 GDS ¶83,055, at 83,557

(D.D.C. 1983); Automobile Importers of America, Inc. v. FTC, 3 GDS ¶82,488, at 83,226 (D.D.C. 1982); cf. Lone Star Indus. v. FTC, Civil No. 82-3150, slip op. at 7-8 & n.2 (D.D.C. June 8, 1983) (questioning propriety of work-product protection in absence of clear evidence that economist's documents were prepared under direction of attorney or in relation to any discrete FTC litigation). The attorney work-product privilege has also been held to cover documents "relat[ing] to possible settlements" of litigation. See, e.g., Cities Serv. Co. v. FTC, 627 F. Supp. 827, 832 (D.D.C. 1984), aff'd mem., 778 F.2d 889 (D.C. Cir. 1985); cf. Carey-Canada, Inc. v. Aetna Casualty & Surety Co., 118 F.R.D. 250, 251-52 (D.D.C. 1987) (civil discovery context). Logically, it can also protect the final agency decision to terminate litigation. See FOIA Update, Summer 1985, at 5. But documents prepared subsequent to the closing of a case are assumed, absent any specific basis for concluding otherwise, not to have been prepared in antipation of litigation. See Senate of Puerto Rico v. Department of Justice, 823 F.2d at 586.

Second, Rule 26(b)(3) of the Federal Rules of Civil Procedure allows the privilege to be used to protect documents prepared "by or for another party or by or for that other party's representative." See Fed. R. Civ. P. 26(b)(3). Not only do documents prepared by agency attorneys who are responsible for the litigation of a case which is being defended or prosecuted by the Department of Justice qualify for the privilege, see, e.g., Cook v. Watt, 597 F. Supp. 545, 548 (D. Alaska 1983), but also documents prepared by an attorney "not employed as a litigator," see Illinois State Bd. of Educ. v. Bell, Civil No. 84-0337, slip op. at 9-10 (D.D.C. May 31, 1985). Courts have looked at the plain meaning of this rule and have extended work-product protection to material prepared by non-attorneys who are supervised by attorneys. See, e.g., Nishnic v. Department of Justice, 671 F. Supp. 771, 772-73 (D.D.C. 1987) (historian's research and interviews protected); Wilson v. Department of Energy, slip op. at 8 (consultant's report protected); Exxon Corp. v. FTC, 466 F. Supp. 1088, 1099 (D.D.C. 1978) (economist's report protected), aff'd, 663 F.2d 120 (D.C. Cir. 1980). The unstated assumption in the above cases is that work-product protection is appropriate where the non-attorney acts as the agent of the attorney. Where that is not the case, the work-product privilege will not be extended to protect the material prepared by the non-attorney. See Nishnic v. Department of Justice, 671 F. Supp. at 810-11 (summaries of witness statements taken by USSR officials for United States Department of Justice held not protectible).

Third, the work-product privilege has been held to persist where the information has been shared with a party holding a common interest with the agency, see United States v. Gulf Oil Corp., 760 F.2d at 295-96 (documents shared between two companies contemplating merger); Chilivis v. SEC, 673 F.2d 1205, 1211-12 (11th Cir. 1982); Nishnic v. Department of Justice, slip op. at 10 (documents shared with a foreign nation). But see Texas v. ICC, Civil No. A-87-CA-016, slip op. at 3-4 (W.D. Tex. Mar. 2, 1988) (communications between agency and interested nonagency held not protectible) (appeal pending). The privilege has even been held to persist where it has become the basis for a final agency decision, see Iglesias v. CIA, 525 F. Supp. 547, 549 (D.D.C. 1981); see also FOIA Update, Summer 1985, at 5; cf. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 160 (1975) (holding that memoranda reflecting an agency decision to prosecute a party do not constitute a "final disposition" of a "case" within the meaning of subsection (a)(2) of the FOIA). But see FTC v. Grolier Inc., 462 U.S. 19, 33 n.4 (1983) (Brennan, J., concurring) ("[I]t is difficult to imagine how a final decision could be 'prepared in anticipation of litigation or for trial.'").

Fourth, the Supreme Court's decisions in United States v. Weber Aircraft Corp., 465 U.S. 792 (1984), and FTC v. Grolier Inc., 462 U.S. 19, viewed in light of the traditional contours of the attorney work-product doctrine, afford sweeping Exemption 5 protection to factual materials. Because factual work-product enjoys qualified immunity from civil discovery, such materials are discoverable "only upon a showing that the party seeking discovery has substantial need" of materials which cannot be obtained elsewhere without "undue hardship." Fed. R. Civ. P. 26(b)(3). In Grolier, 462 U.S. at 26, the Court held that the "test under Exemption 5 is whether the documents would be 'routinely' or 'normally' disclosed upon a showing of relevance." See also, e.g., NLRB v. Sears, Roebuck & Co., 421 U.S. at 149 & n.16. Because the rules of civil discovery require a showing of "substantial need" and "undue hardship" upon a request for factual work-product, such material is not "routinely" or "normally" discoverable. This "routinely or normally discoverable" test was unanimously reaffirmed by the Supreme Court in Weber Aircraft, 465 U.S at 799. More recently, it was applied by the D.C. Circuit Court of Appeals to clarify once and for all that factual information is fully entitled to work-product protection. Martin v. Office of Special Counsel, 819 F.2d at 1187 (holding that "[t]he work-product privilege simply does not distinguish between factual and deliberative material."). See also Jochen v. Office of Special Counsel, Civil No. 86-4765, slip op. at 4 (C.D. Cal. Feb. 4, 1987); Pennsylvania Dep't of Pub. Welfare v. HHS, 623 F. Supp. 301, 307 (M.D. Pa. 1985); United Technologies Corp. v. NLRB, 632 F. Supp. 776, 781 (D. Conn. 1985) ("if a document is attorney work product the entire document is privileged"), aff'd on other grounds, 777 F.2d 90 (2d Cir. 1985); Christmann & Weborn v. Department of Energy, 589 F. Supp. 584, 586 (N.D. Tex. 1984) (citing Weber), aff'd mem., 768 F.2d 1348 (5th Cir. 1985); FOIA Update, Fall 1984, at 6. Although no distinction between factual and deliberative work-product should be applied, several pre-Weber circuit court of appeals decisions mistakenly limited attorney work-product protection to "deliberative" material. See Robbins Tire & Rubber Co. v. NLRB, 563 F.2d 724, 735 (5th Cir. 1977), rev'd on other grounds, 437 U.S. 214 (1978); Deering Milliken Inc. v. Irving, 548 F.2d 1131, 1138 (4th Cir. 1977); Title Guar. Co. v. NLRB, 534 F.2d 484, 492-93 n.15 (2d Cir), cert. denied, 429 U.S. 834 (1976).

A collateral problem is the applicability of the attorney work-product privilege to witness statements. Within the civil discovery context, the Supreme Court has recognized at least a qualified privilege from civil discovery for such documents, i.e., such material was held discoverable only upon a showing of necessity and justification. Hickman v. Taylor, 329 U.S. at 511. Applying the "routinely and normally discoverable" test of Grolier, the D.C. Circuit has specifically held that witness statements are protectible under Exemption 5. Martin v. Office of Special Counsel, 819 F.2d at 1187. Despite the weight of law that supports the proposition that the contours of Exemption 5 are coextensive with the protections of the work-product privilege, some courts have held that witness statements are not protectible, either on the theory that they fail to meet the Exemption 5's threshold requirement, see Thurner Heat Treating Corp. v. NLRB, 839 F.2d 1256, 1259-60 (7th Cir. 1988) (witness statements taken from nonagency employees held not "intra-agency"); Van Bourg, Allen, Weinberg & Roger v. NLRB, 751 F.2d 982, 985 (9th Cir. 1985) (Exemption 5 narrowly construed so as not to apply to "internal agency documents or documents prepared by outsiders who have a formal relationship with the agency"); Poss v. NLRB, 565 F.2d 654, 659 (10th Cir. 1977) (same); Kilroy v. NLRB, 633 F. Supp. 136, 142 (S.D. Ohio 1985) (rejecting the application of Weber to witness statements), aff'd mem., 823 F.2d 553 (6th Cir. 1987), or that the witness statements are factual

information which must be segregated for release, see, e.g., Wayland v. NLRB, 627 F. Supp. 1473, 1476 (M.D. Tenn. 1986) (witness statements not shown to be other than an objective reporting of facts and "thus do not reflect the attorney's theory of the case and his litigation strategy"). But see FOIA Update, Summer 1987, at 4-5 ("OIP Guidance: Broad Protection for Witness Statements"). These questionable exceptions to the traditional protection accorded witness statements should not in any event affect the viability of protecting aircraft accident witness statements under a common law privilege first enunciated in Machin v. Zuckert, 316 F.2d 336 (D.C. Cir.), cert. denied, 375 U.S. 896 (1963), and reaffirmed in Weber Aircraft, 465 U.S. at 799. See Badhwar v. Department of the Air Force, 829 F.2d 182, 185 (D.C. Cir. 1987) ("[T]he disclosure of 'factual' information that may have been volunteered[] would defeat the policy on which the Machin privilege is based.").

As a final point, it should be noted that the Supreme Court's decision in Grolier resolved a split in the circuits by ruling that the termination of litigation does not vitiate the protection for material otherwise properly categorized as attorney work-product. See 462 U.S. at 28; cf. Clark-Cowlitz Joint Operating Agency v. Federal Energy Regulatory Comm'n, 798 F.2d 499, 502-03 (D.C. Cir. 1986) (en banc) (same result under the Government in the Sunshine Act). Thus, there no longer exists any temporal limitation whatsoever on work-product protection under the FOIA. See FOIA Update, Summer 1983, at 1-2.

Attorney-Client Privilege

The third traditional privilege incorporated into Exemption 5 concerns "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." Mead Data Central, Inc. v. Department of the Air Force, 566 F.2d 242, 252 (D.C. Cir. 1977). Unlike the attorney work-product privilege, the availability of the attorney-client privilege is not limited to the context of litigation. Moreover, while it usually applies to facts divulged by a client to his attorney, this privilege also encompasses opinions given by an attorney to his client based upon those facts, see, e.g., Schlefer v. United States, 702 F.2d 233, 245 (D.C. Cir. 1983); Brinton v. Department of State, 636 F.2d 600, 605 (D.C. Cir. 1980), cert. denied, 452 U.S. 905 (1981), as well as communications between attorneys which reflect client-supplied information, see, e.g., Green v. IRS, 556 F. Supp. 79, 85 (N.D. Ind. 1982), aff'd mem., 734 F.2d 18 (7th Cir. 1984).

The Supreme Court, in the civil discovery context, has emphasized the policy underlying the attorney-client privilege--"that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client." Upjohn Co. v. United States, 449 U.S. 383, 389 (1981); see FOIA Update, Spring 1985, at 3-4. As is set out in greater detail in the attorney work-product discussion supra, the Supreme Court held in United States v. Weber Aircraft Corp., 465 U.S. 792, 799-800 (1984), and in FTC v. Grolier Inc., 462 U.S. 19, 26-28 (1983), that the scopes of the various privileges are coextensive in the FOIA and civil discovery contexts. Thus, those decisions which expand or contract the privilege's contours depending on whether it is presented in a civil discovery or FOIA context, see, e.g., Mead Data Central, Inc. v. Department of the Air Force, 556 F.2d at 255 & n.28, do not accurately reflect the law. See FOIA Update, Spring 1985, at 3-4.

The parallelism of a civil discovery privilege and Exemption 5 protection is particularly significant with respect to the

concept of a "confidential communication" within the attorney-client relationship. To this end, one court has held that confidentiality may be inferred when the communications suggest that "'the government is dealing with its attorneys as would any private party seeking advice to protect personal interests.'" Alamo Aircraft Supply, Inc. v. Weinberger, Civil No. 85-1291, slip op. at 4 (D.D.C. Feb. 21, 1986) (quoting Coastal States Corp. v. Department of Energy, 617 F.2d 854, 863 (D.C. Cir. 1980)); but see Dow, Lohnes & Albertson v. Presidential Comm'n on Broadcasting to Cuba, 624 F. Supp. 572, 578 (D.D.C. 1984) (confidentiality must be shown in order to assert Exemption 5). In Upjohn, the Supreme Court held that the privilege protects attorney-client communications where the specifics of the communication are confidential, even though the underlying subject matter is known to third parties. See 449 U.S. at 395-96. See also United States v. Cunningham, 672 F.2d 1064, 1073 n.8 (2d Cir. 1982), cert. denied, 466 U.S. 951 (1984); In re Ampicillin Antitrust Litig., 81 F.R.D. 377, 388-90 (D.D.C. 1978). Accordingly, the line of FOIA decisions that squarely conflicts with the Upjohn analysis, see, e.g., Schlefer v. United States, 702 F.2d at 245; Brinton v. Department of State, 636 F.2d at 604; Mead Data Central, Inc. v. Department of the Air Force, 556 F.2d at 255, should no longer be followed.

Finally, the Supreme Court in Upjohn concluded that the privilege encompasses confidential communications made to the attorney not only by decisionmaking "control group" personnel, but also by lower-echelon employees as well. See 449 U.S. at 392-97. This broad construction of the attorney-client privilege acknowledges the reality that such lower-echelon personnel often possess information relevant to an attorney's advice-rendering function. See id. See also LSB Indus. v. IRS, 556 F. Supp. 40, 43 (W.D. Okla. 1982) (agency investigators reporting information used by agency attorneys); Murphy v. TVA, 571 F. Supp. 502, 506 (D.D.C. 1983) (circulation within agency to employees involved in matter for which advice sought does not breach confidentiality).

Other Privileges

The FOIA neither expands nor contracts existing privileges, nor does it create any new privileges. See Association for Women in Science v. Califano, 566 F.2d 339, 342 (D.C. Cir. 1977); see also Badhwar v. Department of the Air Force, 829 F.2d 182, 184 (D.C. Cir. 1987) ("To decide [whether a recognized privilege should be abandoned] in a FOIA case would be inappropriate, as Exemption 5 requires the application of existing rules regarding discovery, not their reformulation."). However, the Supreme Court has indicated that Exemption 5 may incorporate virtually all civil discovery privileges; if a document is immune from civil discovery, it is similarly protected from mandatory disclosure under the FOIA. See United States v. Weber Aircraft Corp., 465 U.S. 792, 799-800 (1984); FTC v. Grolier Inc., 462 U.S. 19, 26-27 (1983). But see Powell v. Department of Justice, 584 F. Supp. 1508, 1519 (N.D. Cal. 1984) (suggesting that greater access under criminal discovery could affect disclosure under FOIA). Because Rule 501 of the Federal Rules of Evidence provides for courts to create privileges as necessary, see Trammel v. United States, 445 U.S. 40, 47 (1980), there exists the strong potential for "new" privileges to be applied under Exemption 5. However, one caveat should be noted in the application of discovery privileges under the FOIA: A privilege should not be used against a requester who would routinely receive such information in civil discovery. See, e.g., Department of Justice v. Julian, 108 S. Ct. 1606, 1614 (1988) (presentence report privilege, designed to protect reports' subjects, cannot be invoked against them as first-party requesters); cf. Badhwar v. Department of the Air Force, 829 F.2d at 184.

The Supreme Court in Federal Open Mkt. Comm. v. Merrill, 443 U.S. 340, 360 (1979), found an additional privilege incorporated within Exemption 5 based on Federal Rule of Civil Procedure 26(c)(7), which provides that "for good cause shown . . . a trade secret or other confidential research, development or commercial information" is protected from discovery. This qualified privilege is available "at least to the extent that this information is generated by the Government itself in the process leading up to the awarding of a contract" and expires upon the awarding of the contract or upon the withdrawal of the offer. 443 U.S. at 360. The theory underlying the privilege is that early release of such information would likely put the government at a competitive disadvantage by endangering consummation of a contract; consequently, "the sensitivity of the commercial secrets involved, and the harm that would be inflicted upon the Government by premature disclosure should . . . serve as relevant criteria." Id. at 363. Based upon this underlying theory, there is nothing to prevent Merrill from being read more expansively to protect the government from competitive disadvantage outside of the contract setting; indeed, the issue in Merrill was not presented strictly within such a setting. See id. at 360.

While the breadth of this privilege is not as yet fully established, a realty appraisal generated by the government in the course of soliciting buyers for its property has been held to fall squarely within it, see Government Land Bank v. GSA, 671 F.2d 663, 666 (1st Cir. 1982), as have an agency's background documents which it used to calculate its bid in a "contracting out" procedure, see Morrison-Knudsen Co. v. Department of the Army, 595 F. Supp. 352, 354-56 (D.D.C. 1984), aff'd mem., 762 F.2d 138 (D.C. Cir. 1985), as well as portions of inter-agency cost estimates prepared by the government for use in the evaluation of construction proposals submitted by private contractors, see Hack v. Department of Energy, 538 F. Supp. 1098, 1100 (D.D.C. 1982). But see also American Soc'y of Pension Actuaries v. Pension Benefit Guar. Corp., Civil No. 82-2806, slip op. at 3-4 (D.D.C. July 22, 1983) (distinguishing Merrill). See generally Feldman, "The Government's Commercial Data Privilege Under Exemption Five of the Freedom of Information Act," 105 Mil. L. Rev. 125 (1984); Belazis, "The Government's Commercial Information Privilege: Technical Information and the FOIA's Exemption 5," 33 Admin. L. Rev. 415 (1981); see also FOIA Update, Fall 1983, at 14-15. Quite clearly, however, purely legal memoranda drafted to assist contract award deliberations are not encompassed by this privilege. See Shermco Indus. v. Department of the Air Force, 613 F.2d 1314, 1319-20 n.11 (5th Cir. 1980).

More recently still, the Supreme Court, in United States v. Weber Aircraft Corp., 465 U.S. at 799, held that Exemption 5 incorporates the special privilege protecting witness statements generated during Air Force aircraft accident investigations. Broadening the holding of Merrill that a privilege "mentioned in the legislative history of Exemption 5 is incorporated by the exemption," 465 U.S. at 800, the Court ruled in Weber Aircraft that this long-recognized civil discovery privilege, even though not specifically mentioned there, nevertheless falls within Exemption 5. See also FOIA Update, Spring 1984, at 12-13. The "plain statutory language," 465 U.S. at 802, and the clear congressional intent to sustain claims of privilege when confidentiality is necessary to ensure efficient governmental operations, id., support this result. See also Badhwar v. Department of the Air Force, 829 F.2d at 185 (privilege applied to report from contractors). This privilege has been applied also to protect statements made in Inspector General investigations. See Ahearn v. United States Army Materials & Mechanics Research Center, 583 F. Supp. 1123, 1124 (D. Mass. 1984); see also American Fed'n of Gov't Employees v. Department of the Army, 441 F. Supp. 1308,

1313 (D.D.C. 1977); but see also Washington Post Co. v. Department of the Air Force, 617 F. Supp. 602, 606-07 (D.D.C. 1985) (finding privilege inapplicable where report format provided anonymity to witnesses).

Similarly, the Fifth Circuit has recognized an Exemption 5 privilege based on Federal Rule of Civil Procedure 26(b)(4), which limits the discovery of reports prepared by expert witnesses. See Hoover v. Department of the Interior, 611 F.2d 1132, 1141 (5th Cir. 1980). The document at issue in Hoover was an appraiser's report prepared in the course of condemnation proceedings. See id. at 1135. In support of its conclusions, the Fifth Circuit stressed that such a report would not have been routinely discoverable and that premature release would jeopardize the bargaining position of the government. See id. at 1142; cf. Chemical Mfrs. Ass'n v. Consumer Prod. Safety Comm'n, 600 F. Supp. 114, 118-19 (D.D.C. 1984) (Rule 26(b)(4) provides parallel protection in civil discovery for opinions of expert witnesses who will not testify at trial).

Lastly, because Exemption 5 incorporates virtually all civil discovery privileges, courts are increasingly recognizing the applicability of other privileges, whether traditional or new, to the FOIA context. Among those other privileges now recognized for the purposes of the FOIA are the confidential report privilege, cf. Washington Post Co. v. HHS, 603 F. Supp. 235, 238-39 (D.D.C. 1985) ("confidential report" privilege applied under Exemption 4), rev'd on other grounds, 795 F.2d 205 (D.C. Cir. 1986), the presentence report privilege, Department of Justice v. Julian, 108 S. Ct. at 1614 (recognizing privilege, but finding it applicable only to third-party requesters), the critical self-evaluative privilege, Washington Post Co. v. Department of Justice, Civil No. 84-3581, slip op. at 18-21 (D.D.C. Sept. 25, 1987) (magistrate's recommendation), adopted (D.D.C. Dec. 15, 1987) (privilege applied under Exemption 4) (appeal pending), and the settlement negotiations privilege, see M/A-COM Information Sys. v. HHS, 656 F. Supp. 691, 692 (D.D.C. 1986) (privilege applied under Exemption 4 but not under Exemption 5). (For a detailed discussion of the settlement negotiations privilege, see Initial Considerations, supra.)

While it is evident that courts will continue to apply such civil discovery privileges under Exemption 5 of the FOIA, the mere fact that a privilege has been recognized by state law will not necessarily mean that it will be recognized by a federal court. See, e.g., Sneirson v. Chemical Bank, 108 F.R.D. 159, 162 (D. Del. 1985) (non-FOIA case); Cincotta v. City of New York, Civil No. 83-7506-(KTD), slip op. at 3-4 (S.D.N.Y. Nov. 14, 1984) (non-FOIA case).

Waiver

Once a claim of Exemption 5 privilege has been established, a final inquiry often need be undertaken: a determination of whether, through prior disclosure, the privilege has been waived. Resolution of this inquiry requires a careful analysis of the specific nature of and circumstances surrounding the prior disclosure. See FOIA Update, Spring 1983, at 6.

Although courts are generally sympathetic to the necessities of effective agency functioning when confronted with an issue of waiver, see, e.g., Cooper v. Department of the Navy, 558 F.2d 274, 278 (5th Cir. 1977) (prior disclosure of aircraft accident investigation report to aircraft manufacturer held not to constitute waiver); Van Atta v. Defense Intelligence Agency, Civil No. 87-1508, slip op. at 5-6 (D.D.C. July 6, 1988) (disclosure to foreign government does not constitute waiver); Medera Community

Hosp. v. United States, Civil No. 86-542, slip op. at 6-9 (E.D. Cal. June 28, 1988) (no waiver where memoranda interpreting agency's regulations sent to state auditor involved in enforcement proceeding); Erb v. Department of Justice, 572 F. Supp. 954, 956 (W.D. Mich. 1983) (nondisclosure under Exemption 7(A) upheld after "limited disclosure" of FBI criminal investigative report to defense attorney and state prosecutor), courts do look harshly on prior releases which result in unfairness or are caused by carelessness, see, e.g., North Dakota ex rel. Olson v. Andrus, 581 F.2d 177, 182 (8th Cir. 1978) (voluntary "selective disclosure" of an agency document to one party in litigation was"offensive" to the FOIA and waived agency's subsequent assertion of Exemption 5 against other party to litigation). More recently, in Hopkins v. Department of the Navy, Civil No. 84-1868, slip op. at 5-6 (D.D.C. Feb. 5, 1985), a commercial life insurance company sought access to records reflecting the name, rank, and duty location of servicemen stationed at Quantico. The district court, although not technically applying the doctrine of waiver, rejected the agency's privacy arguments on the grounds that officers' reassignment stations were routinely published in the Navy Times and that the Department of Defense had disclosed the names and addresses of 1.4 million service members to the Reagan-Bush Campaign Committee. See id. at 6. See also In re Subpoena Duces Tecum, 738 F.2d 1367, 1371-74 (D.C. Cir. 1984) (voluntary disclosure by private party of information to one agency waived attorney work-product and attorney-client privileges when same information sought by second agency) (non-FOIA case).

An agency's failure to heed even its own regulations regarding circulation of internal agency documents was found determinative and led to a finding of waiver in Shermco Indus. v. Department of the Air Force, 613 F.2d 1314, 1320 (5th Cir. 1980). Similarly, an agency's carelessness in permitting access to certain information, see, e.g., Cooper v. Department of the Navy, 594 F.2d 484, 488 (5th Cir. 1978), cert. denied, 444 U.S. 926 (1979), and an entirely mistaken disclosure of the contents of a document, see, e.g., Dresser Indus. Valve Operations, Inc. v. EEOC, 2 GDS ¶82,197, at 82,575 (W.D. La. 1982), have resulted in waiver; see also Washington Post Co. v. Department of the Air Force, 617 F. Supp. 602, 605 (D.D.C. 1985) (discretionary disclosure of document's conclusions waived privilege for body of document); Powell v. United States, 584 F. Supp. 1508, 1520-21 (N.D. Cal. 1984) (suggesting that attorney work-product privilege may be waived when agency made earlier release of such information which "reflect[ed] positively" on agency, and later may have withheld work-product information on the same matter which did not reflect so "positively" on agency).

However, where an earlier release was not of the actual information for which an exemption was later asserted, but only of information of a "similar nature," no waiver was found. See Stein v. Department of Justice, 662 F.2d 1245, 1259 (7th Cir. 1981); Morrison-Knudsen Co. v. Department of the Army, 595 F. Supp. 352, 354-55 (D.D.C. 1984), aff'd mem., 762 F.2d 138 (D.C. Cir. 1985); Johnson Oil Co. v. Department of Energy, 3 GDS ¶83,089, at 83,634 (D. Utah 1981); see also Abbotts v. NRC, 766 F.2d 604, 607-08 (D.C. Cir. 1985) (previously disclosed reports estimating strength of security forces guarding nuclear plant does not waive Exemption 1 protection for documents concerning actual strength of security force); Goldstein v. ICC, Civil No. 82-1511, slip op. at 4 (D.D.C. July 20, 1984); Murphy v. TVA, 571 F. Supp. 502, 505 (D.D.C. 1983). Indeed, even the oral disclosure of the conclusion reached in a predecisional document "does not, without more, waive the [deliberative process] privilege." Morrison v. Department of Justice, Civil No. 87-3394, slip op. at 3 (D.D.C. Apr. 29, 1988). Moreover, disclosure to a small group of nongovernmental personnel, with no copies

permitted, has been held not to inhibit agency decisionmaking so that the deliberative process privilege was not waived. See Dow, Lohnes & Albertson v. Presidential Comm'n on Broadcasting to Cuba, 624 F. Supp. 572, 577-78 (D.D.C. 1984); see also Brinderson Constructors, Inc. v. Army Corps of Eng'rs, Civil No. 85-0905, slip op. at 12 (D.D.C. June 11, 1986) (plaintiff's participation in agency enterprise did not entitle plaintiff to all related documents).

As is suggested above, if the agency is able to establish that it acted responsibly and in furtherance of a legitimate governmental purpose, its later claim of exemption will likely prevail. See FOIA Update, Spring 1983, at 6; see also Badhwar v. Department of the Air Force, 629 F. Supp. 478, 481 (D.D.C. 1986), aff'd in part, remanded in part, on other grounds, 829 F.2d 182 (D.C. Cir. 1987); FOIA Update, Winter 1984, at 4. Of course, circulation of a document within the agency does not waive an exemption, see, e.g., Lasker-Goldman Corp. v. GSA, 2 GDS ¶81,125, at 81,322 (D.D.C. 1981), nor does disclosure among agencies, see, e.g., Chilivis v. SEC, 673 F.2d 1205, 1211-12 (11th Cir. 1982), or to advisory committees (even those including members of the public), see, e.g., Aviation Consumer Action Project v. Washburn, 535 F.2d 101, 107-08 (D.C. Cir. 1976). Similarly, deference to the common agency practice of disclosing specifically requested information to a congressional committee, see, e.g., Aspin v. Department of Defense, 491 F.2d 24, 26 (D.C. Cir. 1973); see also Eagle-Picher Indus. v. United States, 11 Cl. Ct. 452, 460-61 (1987) (work-product privilege not waived in nonspecific congressional testimony "if potentially thousands of documents need be reviewed to determine if the gist or a significant part of documents were revealed") (non-FOIA case), or to the General Accounting Office (an arm of Congress), see, e.g., Shermco Indus. v. Department of the Air Force, 613 F.2d at 1320-21, does not waive Exemption 5 protection for that information. It also has been held by one court that disclosure to a nonadversary party does not constitute waiver. See Old Orchard Citizens Group, Inc. v. HUD, 636 F. Supp. 542, 544 (N.D. Ohio 1986).

Indeed, when an agency has been compelled to disclose a document under limited and controlled conditions, such as under a protective order in an administrative proceeding, see, e.g., Lead Indus. Ass'n v. OSHA, 610 F.2d 70, 79 n.13 (2d Cir. 1979), or when it does so in the course of criminal discovery, see, e.g., Crooker v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 85-0615, slip op. at 4-5 (D.D.C. Aug. 2, 1985) (nondisclosure under Exemption 7(A) upheld even though requester reviewed document in prior parole hearing), rev'd on other grounds, 789 F.2d 64 (D.C. Cir. 1986); Erb v. Department of Justice, 572 F. Supp. at 956 (nondisclosure to third party upheld under Exemption 7(A) even though document provided to defendant through criminal discovery); Krohn v. Department of Justice, 3 GDS ¶83,120, at 83,724 (D.D.C. 1979) (nondisclosure under Exemption 7(D) upheld even though requester previously reviewed documents as defendant in criminal discovery), its authority to later withhold the document is not diminished. See also Interco, Inc. v. FTC, 490 F. Supp. 39, 44 (D.D.C. 1979) (nondisclosure upheld under Exemption 4 after information disclosed to state attorneys general who gave assurances that it would not be released to public).

The one circumstance in which an agency's failure to treat information in a responsible, appropriate fashion should not result in waiver is when an agency employee has made an unauthorized "leak" of information. Recognizing that a finding of waiver in such circumstances would only lead to "exacerbation of the harm created by the leaks," Murphy v. FBI, 490 F. Supp. 1138, 1142 (D.D.C.), summary judgment vacated as moot, No. 80-1612 (D.C. Cir. 1980), the courts have consistently refused to penal-

ize victimized agencies by holding that because of such conduct a waiver has occurred. See, e.g., Simmons v. Department of Justice, 796 F.2d 709, 712 (4th Cir. 1986) (unauthorized disclosure does not constitute waiver); Medina-Hincapie v. Department of State, 700 F.2d 737, 742 n.20 (D.C. Cir. 1983) (official's ultra vires release does not constitute waiver); Washington Post Co. v. Department of Defense, Civil No. 84-2949, slip op. at 16-18 (D.D.C. Feb. 25, 1987) (congressional leaks); Lone Star Indus. v. FTC, Civil No. 82-3150, slip op. at 17 n.8 (D.D.C. June 8, 1983); Laborers' Int'l Union v. Department of Justice, 578 F. Supp. 52, 58 n.3 (D.D.C. 1983), aff'd, 772 F.2d 919 (D.C. Cir. 1984); Lasker-Goldman Corp. v. GSA, 2 GDS, at 81,322; Safeway Stores, Inc. v. FTC, 428 F. Supp. 346, 347 (D.D.C. 1977). On the other hand, "official" disclosures, i.e., direct acknowledgments by authoritative government sources, may well waive an otherwise applicable FOIA exemption. See Abbotts v. NRC, 766 F.2d at 607-08; Schlesinger v. CIA, 591 F. Supp. 60, 61 (D.D.C. 1984); see also Afshar v. Department of State, 702 F.2d 1125, 1133 (D.C. Cir. 1983); United States Student Ass'n v. CIA, 620 F. Supp. 565, 571 (D.D.C. 1986).

Finally, it should be noted that an agency is not required to demonstrate in a FOIA case that it has positively determined that not a single disclosure of any withheld information has occurred. See Williams v. Department of Justice, 556 F. Supp. 63, 66 (D.D.C. 1982) (court refused, in FOIA action brought by former Senator convicted in Abscam investigation, to impose on defendant duty to search for possibility that privacy interests "may have been partially breached in the course of many-faceted proceedings occurring in different courts over a period of prior years," for to do so "would defeat the exemption in its entirety or at least lead to extended delay and uncertainty"); cf. McGehee v. Casey, 718 F.2d 1137, 1141 n.9 (D.C. Cir. 1983) (in non-FOIA case involving CIA's prepublication review, agency "cannot reasonably bear the burden of conducting an exhaustive search to prove that a given piece of information is not published anywhere" else). Normally, the burden is on the plaintiff to show that the information sought is public. See, e.g., Dow, Lohnes & Albertson v. Presidential Comm'n on Broadcasting to Cuba, 624 F. Supp. at 578 ("Unless plaintiff can demonstrate that specific information in the public domain appears to duplicate that being withheld, it has failed to bear its burden of showing prior disclosure."); United States Student Ass'n v. CIA, 620 F. Supp. at 571 (plaintiff's generalized assertion rejected as unsupported by factual submission).

VIII. EXEMPTION 6

Personal privacy interests are protected by two provisions of the FOIA, Exemptions 6 and 7(C). While the application of Exemption 7(C), discussed infra, is limited to information compiled for law enforcement purposes, Exemption 6 permits the government to withhold all information about individuals in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. §552(b)(6). Of course, these exemptions cannot be invoked to withhold from a requester information pertaining only to himself. See H.R. Rep. No. 1380, 93d Cong., 2d Sess. 13 (1974).

To warrant protection, information must first meet the threshold requirement of Exemption 6; in other words, it must fall within the category of "personnel and medical files and similar files." Personnel and medical files are easily identified. However, there has not always been complete agreement about the meaning of the term "similar files." Prior to 1982,

judicial interpretations of that phrase varied considerably, including a troublesome line of cases in the D.C. Circuit Court of Appeals, commencing with Board of Trade v. Commodity Futures Trading Comm'n, 627 F.2d 392, 400 (D.C. Cir. 1980), which narrowly construed the term to encompass only "intimate" personal details.

In 1982, the Supreme Court acted decisively to resolve this controversy. In Department of State v. Washington Post Co., 456 U.S. 595 (1982), it firmly held, based upon a review of the legislative history of the FOIA, that Congress intended the term to be interpreted broadly, rather than narrowly. See 456 U.S. at 599-603 (citing H.R. Rep. No. 1497, 89th Cong., 2d Sess. 11 (1966); S. Rep. No. 813, 89th Cong., 1st Sess. 9 (1965); S. Rep. No. 1219, 88th Cong., 2d Sess. 14 (1964)). The Court stated that the protection of an individual's privacy "surely was not intended to turn upon the label of the file which contains the damaging information." 456 U.S. at 601 (citing H.R. Rep. No. 1497, 89th Cong., 2d Sess. 11 (1966)). Rather, the Court made clear that all information which "applies to a particular individual" meets the threshold requirement for Exemption 6 protection. Id. at 602.

Nevertheless, a divided panel of the D.C. Circuit recently endeavored to narrow the Supreme Court's broad interpretation of this term by adding a new requirement that such information not only "appl[y] to a particular individual," as the Supreme Court enunciated, but that it also be "personal" in nature. New York Times Co. v. NASA, 852 F.2d 602, 606 (D.C. Cir. 1988) (petition for rehearing en banc pending). Based upon this new "similar files" imperative, the D.C. Circuit affirmed a district court disclosure order for a tape recording of the last words of the space shuttle Challenger crew, saying that the recording "contains no information about any astronaut beyond participation in the launch." Id. The dissenting judge on the panel accused the majority of creating a "new barrier of uncertain height" to privacy protection and found it "inconceivable that the 'sound and inflection' of a person's voice during the last seconds of his or her life is not information that 'somehow relates to an individual's life.'" Id. at 609 (D. Ginsburg, J., dissenting).

It is also important to note that under Exemption 6, information must not merely pertain to an individual, but rather, must be identifiable to a specific individual. See, e.g., Arieff v. Department of the Navy, 712 F.2d 1462, 1467-68 (D.C. Cir. 1983) (list of drugs ordered for use by some members of group of over 600 individuals held not identifiable to any specific individual); Citizens for Envtl. Quality v. Department of Agric., 602 F. Supp. 534, 538-39 (D.D.C. 1984) (health test results ordered disclosed because identity of only agency employee tested could not, after deletion of his name, be ascertained from information known outside agency) (citing Department of the Air Force v. Rose, 425 U.S. 352, 380 n.19 (1976) (dicta)).

Once it has been established that information meets the threshold requirement of Exemption 6, the focus of the inquiry turns to whether disclosure of the records at issue "would constitute a clearly unwarranted invasion of personal privacy." This requires a balancing of the public's right to disclosure against the individual's right to privacy. Department of the Air Force v. Rose, 425 U.S. at 372; Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d 856, 862 (D.C. Cir. 1981). First, it must be ascertained whether a protectible privacy interest exists which would be threatened by disclosure. If no privacy interest is found, further analysis is unnecessary, and the information at issue must be disclosed. Ripskis v. HUD, 746 F.2d 1, 3 (D.C. Cir. 1984). On the other hand, if a privacy

interest is found to exist, the public interest in disclosure, if any, must be weighed against the privacy interest in nondisclosure. Id. Where no public interest exists, the information should be protected. See International Bhd. of Elec. Workers Local No. 5 v. HUD, 852 F.2d 87, 89 (3d Cir. 1988). Similarly, where the privacy interest outweighs the public interest, the information should be withheld; if the opposite is true, the information should be released.

The first step in the Exemption 6 balancing process requires an assessment of the privacy interests at issue. The relevant inquiry is whether public access to the information at issue would violate a viable privacy interest of the subject of such information. See Schell v. HHS, 843 F.2d 933, 938 (6th Cir. 1988); Ripskis v. HUD, 746 F.2d at 3. During this past year, in a case involving FOIA requests for "rap sheets" that contain items of criminal history information that might have been publicly available many years ago, the D.C. Circuit issued two decisions which strongly suggested that no privacy interests could be maintained in such information under Exemption 7(C). Reporters Comm. for Freedom of the Press v. Department of Justice, 816 F.2d 730, 740 (D.C. Cir. 1987) [hereinafter Reporters Comm. I], modified on denial of panel reh'g, 831 F.2d 1124, 1126 (D.C. Cir. 1987) [hereinafter Reporters Comm. II], reh'g en banc denied, Nos. 85-6020, 85-6144 (D.C. Cir. Dec. 4, 1987), cert. granted, 108 S. Ct. 1467 (1988). The Supreme Court's consideration of this particular issue during its coming Term should further delineate the contours of reasonable privacy expectations.

As a general rule, the threat to privacy must be real rather than speculative. Department of the Air Force v. Rose, 425 U.S. at 380 n.19; Carter v. Department of Commerce, 830 F.2d 388, 391 (D.C. Cir. 1987). Some courts have taken this to mean that the privacy interest must be threatened by the very disclosure of information and not by any possible "secondary effects" of such release. Arieff v. Department of the Navy, 712 F.2d at 1468; Southern Utah Wilderness Alliance, Inc. v. Hodel, 680 F. Supp. 37, 39 (D.D.C. 1988) ("'injury and embarrassment' must be found in the material itself, as released, because Exemption 6 does not take into account unsubstantiated speculation about possible secondary side effects that may follow release") (appeal pending); Hopkins v. Department of the Navy, Civil No. 84-1868, slip op. at 5 (D.D.C. Feb. 5, 1985) ("receipt of unsolicited commercial mailings" is "secondary effect" of disclosure of names and addresses). However, it has been most pragmatically observed that "to give credence to [such a] distinction . . . [can be] to honor form over substance." Hudson v. Department of the Army, Civil No. 86-1114, slip op. at 6 (D.D.C. Jan. 29, 1987) (protecting personal information on basis that disclosure could ultimately lead to physical harm) (appeal pending). See also, e.g., Hemenway v. Hughes, 601 F. Supp. 1002, 1006-07 (D.D.C. 1985) (same).

In some instances, the disclosure of information may involve little or no invasion of privacy because no expectation of privacy exists. For example, if the information at issue is particularly well known or is unquestionably within the public domain, no such expectation is generally found to exist. See, e.g., Southern Utah Wilderness Alliance, Inc. v. Hodel, 680 F. Supp. at 39 (identities of visitors to national park); Norwood v. FAA, 580 F. Supp. 994, 999 (W.D. Tenn. 1983) (identities of striking air traffic controllers who were rehired); American Fed'n of Gov't Employees v. VA, 2 GDS ¶81,159, at 81,424-25 (D.D.C. 1981) (names of federal employees involved in union activity during work hours); National W. Life Ins. Co. v. United States, 512 F. Supp. 454, 461 (N.D. Tex. 1980) (names and duty

stations of Postal Service employees). But see also Core v. Postal Serv., 730 F.2d 946, 948 (4th Cir. 1984) ("slight" invasion of privacy found in disclosing information identifying successful federal job applicants).

Similarly, FOIA requesters do not ordinarily expect that their names will be kept private; therefore, release of their names would not cause even the minimal invasion of privacy necessary to trigger the balancing test. See FOIA Update, Winter 1985, at 6; cf. Martinez v. FBI, Civil No. 82-1547, slip op. at 7 (D.D.C. Dec. 19, 1985) (identities of news reporters seeking information concerning criminal investigation not protected) (Exemption 7(C)). Personal information about requesters, such as home addresses and phone numbers, should not, however, be disclosed. See FOIA Update, Winter 1985, at 6. In addition, the identities of requesters under the Privacy Act of 1974, 5 U.S.C. §552a, should be protected because, unlike under the FOIA, an expectation of privacy can fairly be inferred from the personal nature of the records. See FOIA Update, Winter 1985, at 6. Moreover, individuals who write to the government expressing personal opinions generally do so with some expectation of confidentiality, and thus, their identities, but not necessarily the substance of their letters, should be withheld. See id.; see also Holy Spirit Ass'n v. FBI, 683 F.2d 562, 564 (D.C. Cir. 1982) (Mackinnon, J., concurring). But see also Powell v. Department of Justice, Civil No. C-82-0326, slip op. at 5 (N.D. Cal. Mar. 27, 1985) (ordering disclosure of names of private citizens who wrote to Members of Congress and to Attorney General expressing views on McCarthy-era prosecution).

Additionally, neither corporations nor associations possess protectible privacy interests. See, e.g., Sims v. CIA, 642 F.2d 562, 572 n.47 (D.C. Cir. 1980); National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 685 n.44 (D.C. Cir. 1976); Ivanhoe Citrus Ass'n v. Handley, 612 F. Supp. 1560, 156-57 (D.D.C. 1985). The closely held corporation or similar business entity is, however, an exception to this principle. "While corporations have no privacy, personal financial information is protected, including information about small businesses when the individual and corporation are identical." Providence Journal Co. v. FBI, 460 F. Supp. 778, 785 (D.R.I. 1978), rev'd on other grounds, 602 F.2d 1010 (1st Cir. 1979), cert. denied, 444 U.S. 1071 (1980). See also National Parks & Conservation Ass'n v. Kleppe, 547 F.2d at 685-86; FOIA Update, Sept. 1982, at 5.

The right to privacy of deceased persons is not entirely settled, but the majority rule is that death extinguishes their privacy rights. See, e.g., Tigar & Buffone v. Department of Justice, Civil No. 80-2382, slip op. at 9-10 (D.D.C. Sept. 30, 1983) (Exemption 7(C)); Diamond v. FBI, 532 F. Supp. 216, 227 (S.D.N.Y. 1981), aff'd on other grounds, 707 F.2d 75 (2d Cir. 1983), cert. denied, 465 U.S. 1004 (1984); Rabbitt v. Department of the Air Force, 383 F. Supp. 1065, 1070 (S.D.N.Y. 1974), on motion for reconsideration, 401 F. Supp. 1206, 1210 (S.D.N.Y. 1975). Cf. United States v. Schlette, 842 F.2d 1574, 1581 (9th Cir. 1988) (disclosure of presentence report pursuant to Rule 32(c) of Federal Rules of Criminal Procedure). But see also Kiraly v. FBI, 728 F.2d 273, 277-78 (6th Cir. 1984) (Exemption 7(C)). The disclosure of particularly sensitive personal information about a deceased person may, however, threaten the privacy interests of surviving family members or close associates and may be protectible as such. See Marzen v. HHS, 825 F.2d 1148, 1154 (7th Cir. 1987) (deceased infant's medical records exempt because release "would almost certainly cause . . . parents more anguish"); Badhwar v. Department of the Air Force, 829 F.2d 182, 186 (D.C. Cir. 1987) (autopsy reports might "shock the sensibilities of surviving kin"); Crooker v. Bureau of Prisons, Civil No.

86-0510, slip op. at 5 (D.D.C. Feb. 27, 1987) (release of "painful and graphic details" of the murders of corrections officers "would cause great pain to the deceased's surviving family"); Price v. Department of Justice, Civil No. 84-330A, slip op. at 5-8 (M.D. La. June 24, 1985) (protecting highly detailed medical and psychiatric data concerning inmate who died in federal facility). See also New York Times Co. v. NASA, 852 F.2d at 611 (D. Ginsburg, J., dissenting) (admonishing majority for failing to give NASA opportunity to present evidence that release of recording of Challenger astronauts' last words would invade surviving families' privacy); FOIA Update, Sept. 1982, at 5.

Public figures do not surrender all rights to privacy by placing themselves in the public eye, although their expectations of privacy may be diminished. In some instances, "[t]he degree of intrusion is indeed potentially augmented by the fact that the individual is a well known figure." Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d at 865. Disclosure of sensitive personal information, in particular investigative material, about a public figure is appropriate "only where exceptional interests militate in favor of disclosure." Id. at 866. Thus, although one's status as a public figure might, in close cases, tip the balance in favor of disclosure, a public figure does not, by virtue of his status, forfeit all rights of privacy. Id. at 865; see also FOIA Update, Sept. 1982, at 5; cf. Strassman v. Department of Justice, 792 F.2d 1267, 1268 (4th Cir. 1986) (Exemption 7(C)). It should be noted that, unlike under the Privacy Act, foreign nationals are entitled to the same privacy rights under the FOIA as U.S. citizens. See Shaw v. Department of State, 559 F. Supp. 1053, 1067 (D.D.C. 1983); see also FOIA Update, Summer 1985, at 5.

In addition, individuals who testify at criminal trials do not forfeit their rights to privacy except on those very matters that become part of the public record. See Kiraly v. FBI, 728 F.2d at 279; Brown v. FBI, 658 F.2d 71, 75 (2d Cir. 1981). But cf. Irons v. FBI, 851 F.2d 532, 537 (1st Cir. 1988) (finding that under Exemption 7(D), "[n]ot only trial testimony itself, but material relevant thereto, is . . . unlocked when a witness takes the stand"), vacated pending en banc reh'g, No. 87-1516 (1st Cir. Sept. 20, 1988). Similarly, individuals who provide law enforcement agencies with reports of illegal conduct have well-recognized privacy interests, particularly when such persons reasonably fear reprisals for their assistance. See Holy Spirit Ass'n v. FBI, 683 F.2d at 564-65 (concurring opinion) (Exemptions 6 and 7(C)). (For a more detailed treatment of the privacy protection of such law enforcement sources, see the discussion of Exemption 7(C), infra.)

An agency generally is not required to conduct research to determine whether an individual has died or whether his activities have sufficiently become the subject of public knowledge so as to bar the application of Exemption 6. See FOIA Update, Winter 1984, at 5. See also, e.g., Williams v. Department of Justice, 556 F. Supp. 63, 66 (D.D.C. 1982) (agency good-faith processing, rather than extensive research for public disclosures, sufficient in lengthy, multi-faceted judicial proceedings); cf. McGehee v. Casey, 718 F.2d 1137, 1141 n.9 (D.C. Cir. 1983) (non-FOIA case holding that CIA cannot reasonably bear burden of conducting exhaustive search to prove that particular items of classified information have never been published). But see also Diamond v. FBI, 707 F.2d at 77 (approving district court order requiring agency to review 200,000 pages outside scope of request to search for evidence as to whether subjects' privacy had been waived through death or prior public disclosure) (Exemption 7(C)); Wilkinson v. FBI, Civil No. 80-1048, slip op. at 12-13 (C.D. Cal. June 17, 1987) (holding Exemption 7(C) inapplicable

to documents dated more than thirty years earlier because government relied on presumption that "all persons the subject of FOIA requests are . . . living"); Powell v. Department of Justice, slip op. at 12-13 (requiring agency to determine present "specific life situations" of individuals who were referenced in 30-year-old treason/sedition investigation) (Exemption 7(C)).

Likewise, the FOIA does not require an agency "to track down an individual about whom another has requested information merely to obtain the former's permission to comply with the request." Blakey v. Department of Justice, 549 F. Supp. 362, 365 (D.D.C. 1982) (Exemption 7(C)), aff'd in part, vacated in part mem., 720 F.2d 215 (D.C. Cir. 1983). However, the fact that a requester has not submitted authorizations from third parties does not in and of itself justify the automatic withholding of all information regarding those third parties on privacy grounds. See Ray v. Department of Justice, No. 86-5972, slip op. at 1 (6th Cir. June 22, 1987) (Exemption 7(C)); McTigue v. Department of Justice, Civil No. 84-3583, slip op. at 15 (D.D.C. Dec. 3, 1985) (Exemption 7(C)).

It may, at times, be difficult to ascertain the degree to which the disclosure of information would violate an individual's privacy. The D.C. Circuit has declared that extensive discovery or a trial, although uncommon in FOIA cases, may be necessary to determine the "expectable consequences of a public release of particular information" when the requester and the agency present conflicting evidence. Washington Post Co. v. Department of State, 840 F.2d 26, 37 (D.C. Cir. 1988) (ordering discovery and, if necessary, trial to determine harm consequent upon disclosure of information concerning U.S. citizenship status of Iranian political figure) (petition for rehearing en banc pending).

Once it has been determined that a privacy interest is threatened by disclosure, the second step in the balancing process comes into play; this stage of the analysis requires an assessment of the public interest in disclosure. The measure of the public interest has traditionally been "the public benefit gained from making information freely available." Reporters Comm. I, 816 F.2d at 740 (quoting Board of Trade v. Commodity Futures Trading Comm'n, 627 F.2d at 398). The burden of establishing that disclosure will benefit the public is on the requester. See Carter v. Department of Commerce, 830 F.2d at 391 nn.8 & 13.

Traditionally, after evaluating the asserted public interest in disclosure, agencies and courts accord that interest some measure of value so as to weigh it against the threat to privacy. See, e.g., Department of the Air Force v. Rose, 425 U.S. at 372; Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d at 862; Ripskis v. HUD, 746 F.2d at 3. However, in modifying its earlier Exemption 7(C) ruling in Reporters Comm. I, the D.C. Circuit recently threw all privacy balancing under the FOIA into a state of uncertainty by holding that one should not factor into the balance the public interest that would be served by disclosure of the particular information in question. Reporters Comm. II, 831 F.2d at 1126. It declared, rather, that "public interest," as embodied by the FOIA, means nothing "more or less than the general disclosure policies of the statute" and that the "public's need to know particular information" need never be considered. Id. at 1126, 1127. Because this novel conception departs greatly from established interpretations of the privacy balancing test, and provides agencies with little practical means of applying it, the Department of Justice has advised all agencies that they should continue to engage in traditional FOIA balancing under both Exemptions 6 and 7(C), pending resolution of this issue by the Supreme Court in the

Reporters Comm. appeal, which will be argued before the Court during its coming Term. See FOIA Update, Spring 1988, at 3-5 ("OIP Guidance: Privacy Protection in the Wake of the Reporters Committee Decisions").

The law is clear that disclosure must benefit the public overall and not just the requester. See FOIA Update, Sept. 1982, at 6. Indeed, courts have held that individuals who seek records for their own benefit, such as to obtain discovery in a private lawsuit, are not acting to further a public interest. See FOIA Update, Sept. 1982, at 6 (citing, e.g., Lloyd & Henniger v. Marshall, 526 F. Supp. 485, 487 (M.D. Fla. 1981)). See also Brown v. FBI, 658 F.2d at 75 ("[I]t is the interest of the general public, and not that of the private litigant, that must be considered."); State Farm Fire & Casualty Co. v. Department of Justice, Civil No. 86-3242, slip op. at 7 (C.D. Ill. Apr. 16, 1987) (finding no public interest where "company seeks information for purely private use in private litigation"); National Treasury Employees Union v. Department of the Treasury, 3 GDS ¶83,224, at 83,948 (D.D.C. 1983) ("The gravaman of plaintiff's request is . . . to afford access to documents for use in a grievance proceeding. These are private, not public interests.").

Similarly, many courts have found that a request made for purely commercial purposes furthers no public interest. See, e.g., Multnomah County Medical Soc'y v. Scott, 825 F.2d 1410, 1413 (9th Cir. 1987) ("[c]ommercial interest does not warrant disclosure of otherwise private information"); Minnis v. Department of Agric., 737 F.2d 784, 786-87 (9th Cir. 1984), cert. denied, 471 U.S. 1053 (1985); Wine Hobby USA, Inc. v. IRS, 502 F.2d 133, 137 (3d Cir. 1974). But see also Aronson v. HUD, 822 F.2d 182, 185-86 (1st Cir. 1987) (plaintiff's "commercial motivations are irrelevant for determining the public interest served by disclosure; they do however, suggest one of the ways in which private interests could be harmed by disclosure and a reason why individuals would wish to keep the information confidential.") (emphasis in original). The Ninth Circuit alone has adopted a position which specifically factors into the balancing process the requester's personal interest in disclosure. See, e.g., Multnomah County Medical Soc'y v. Scott, 825 F.2d at 1413; Minnis v. Department of Agric., 737 F.2d at 786; Van Bourg, Allen, Weinberg & Roger v. NLRB, 728 F.2d 1270, 1273 (9th Cir. 1984), vacated, 756 F.2d 692 (9th Cir.), reinstated, 762 F.2d 831 (9th Cir. 1985); Church of Scientology v. Department of the Army, 611 F.2d 738, 747 (9th Cir. 1979).

A strong public interest can be that of public oversight of government operations. However, one who claims such a purpose must support his claim by more than mere allegation; he must show that the information in question is "of sufficient importance to warrant such" oversight. Miller v. Bell, 661 F.2d 623, 630 (7th Cir. 1981), cert. denied, 456 U.S. 960 (1982). The FOIA was designed to "check against corruption and to hold the governors accountable to the governed." Multnomah County Medical Soc'y v. Scott, 825 F.2d at 1415 (quoting NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978)). See also Washington Post Co. v. HHS, 690 F.2d 252, 264 (D.C. Cir. 1982); Arieff v. Department of the Navy, 712 F.2d at 1468; National Ass'n of Atomic Veterans, Inc. v. Director, Defense Nuclear Agency, 583 F. Supp. 1483, 1487 (D.D.C. 1984). Indeed, information which would inform the public of violations of the public trust has a strong public interest and is accorded great weight in the balancing process. See, e.g., Cochran v. United States, 770 F.2d 949, 956-57 (11th Cir. 1985) (nonjudicial punishment findings and discipline imposed on Army major general for misuse of government funds and facilities) (Privacy Act "wrongful disclosure" suit); Stern v. FBI, 737 F.2d

84, 93-94 (D.C. Cir. 1984) (name of high-level FBI official censured for deliberate and knowing misrepresentation) (Exemption 7(C)); Columbia Packing Co. v. Department of Agric., 563 F.2d 495, 499 (1st Cir. 1977) (federal employees found guilty of accepting bribes); Sullivan v. VA, 617 F. Supp. 258, 260-61 (D.D.C. 1985) (reprimand of senior official for misuse of government vehicle and failure to report accident) (Privacy Act "wrongful disclosure" suit/Exemption 7(C)); Congressional News Syndicate v. Department of Justice, 438 F. Supp. 538, 544 (D.D.C. 1977) (misconduct by White House staffers); cf. Castaneda v. United States, 757 F.2d 1010, 1012 (9th Cir.) (identity of USDA investigator ordered disclosed where court found his reports "were inconsistent and may have been unreliable" and his motives and truthfulness were "in doubt") (Exemption 7(C)), amended upon denial of panel reh'g, 773 F.2d 251, 251 (9th Cir. 1985); Ferri v. Bell, 645 F.2d 1213, 1218 (3d Cir. 1981) (attempt to expose alleged deal between prosecutor and witness found to be in public interest) (Exemption 7(C)), vacated & reinstated in part on reh'g, 671 F.2d 769 (3d Cir. 1982); Stern v. SBA, 516 F. Supp. 145, 149 (D.D.C. 1980) (names of agency personnel charged with discriminatory violations). But see also Department of the Air Force v. Rose, 425 U.S. at 381 (names of cadets found to have violated Academy honor code protected); Stern v. FBI, 737 F.2d at 94 (protecting names of mid-level employees censured for negligence); Chamberlain v. Kurtz, 589 F.2d 827, 842 (5th Cir.) (names of disciplined IRS agents protected), cert. denied, 444 U.S. 842 (1979); Heller v. Marshals Serv., 655 F. Supp. 1088, 1091 (D.D.C. 1987) (protecting names of agency personnel found to have committed "only minor, if any, wrongdoing") (Exemption 7(C)).

Some courts have recognized that the public interest in disclosure may be embodied in other federal statutes. In International Bhd. of Elec. Workers Local No. 5 v. HUD, the Third Circuit found such a public interest in disclosure in the Davis-Bacon Act, which requires that federal contractors pay their employees at the wage-rate prevailing in the locality in which they work. 852 F.2d at 90. The court noted that if disclosure of the names and addresses of such employees "makes it more likely that contractors will abide by the [Davis-Bacon] Act's requirements, the release of the information is in the public interest." Id; see also United Ass'n of Journeyman & Apprentices of the Plumbing & Pipefitting Indus. v. Department of the Army, 841 F.2d 1459, 1461 (9th Cir. 1988) ("A strong public interest is served where . . . the underlying purpose of disclosure is the enforcement of federal laws embodying important congressional policies."); Painting & Drywall Work Preservation Fund, Inc. v. HUD, Civil No. 86-2431, slip op. at 3 (D.D.C. Aug. 13, 1987), appeal held in abeyance pending decision by Supreme Court in Reporters Committee, No. 88-5076 (D.C. Cir. June 6, 1988); International Bhd. of Elec. Workers, Local 41 v. HUD, 593 F. Supp. 542, 545 (D.D.C. 1984), aff'd, 763 F.2d 435 (D.C. Cir. 1985). Similarly, courts have identified such a public interest in disclosure of the names and addresses of federal employees under a federal labor relations statute. See Department of the Navy v. FLRA, 840 F.2d 1131, 1135 (3d Cir. 1988); Department of Agric. v. FLRA, 836 F.2d 1139, 1143 (8th Cir. 1988), petition for cert. filed, No. 88-349 (U.S. Aug. 26, 1988); American Fed'n of Gov't Employees v. FLRA, 786 F.2d 554, 557 (2d Cir. 1986).

Additionally, the effect of policies reflected in other statutes may weigh into the balancing process. Such statutory requirements include the Federal Corrupt Practices Act's mandatory public reporting of campaign contributions, see Common Cause v. National Archives & Records Serv., 628 F.2d 179, 183-85 (D.C. Cir. 1980) (Exemption 7(C)); the public disclosure of financial statements required by the Ethics in Government Act, see Washington Post Co. v. HHS, 690 F.2d at 265; Fitzgerald v. OPM, Civil

No. 83-1834, slip op. at 6 (D.D.C. July 5, 1984); the provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 prohibiting disclosure of the fruits of wiretaps, see Providence Journal Co. v. FBI, 602 F.2d at 1013-14 (Exemption 7(C)); and the Foreign Agents Registration Act's reporting requirements, see Emerson v. Department of Justice, 603 F. Supp. 459, 464 & n.9 (D.D.C. 1985), rev'd on other grounds mem., 792 F.2d 1186 (D.C. Cir. 1986) (Exemption 7(C)). See also Marzen v. HHS, 825 F.2d at 1154 (finding nondisclosure proper upon consideration of state statute mandating same).

Assertions of "public interest" should be scrutinized carefully to ensure that they are indeed legitimate. For example, in Minnis v. Department of Agric., 737 F.2d at 787, although the Ninth Circuit Court of Appeals recognized a valid public interest in questioning the fairness of an agency lottery system which awarded permits to raft down the Rogue River, it found, upon careful analysis, that the release of the names and addresses of the applicants would in no way further that interest. In another case, the same court found invalid the plaintiff's claim that it requested the names and addresses of Medicare recipients in order to provide them with an educational publication, because a careful analysis showed that the publication was not educational and indeed was misleading in a "self-serving" way. Multnomah County Medical Soc'y v. Scott, 825 F.2d at 1414. Similarly, in Heights Community Congress v. VA, 732 F.2d 526, 530 (6th Cir.), cert. denied, 469 U.S. 1034 (1984), the Sixth Circuit found that the release of names and home addresses would result only in the "involuntary personal involvement" of innocent purchasers rather than appreciably furthering a concededly valid public interest in determining whether anyone had engaged in "racial steering." See also Kimberlin v. Department of the Treasury, 774 F.2d 204, 208 (7th Cir. 1985) ("The record fails to reflect any benefit which would accrue to the public from disclosure and [the requester's] self-serving assertions of government wrongdoing and coverup do not rise to the level of justifying disclosure.") (Exemption 7(C)); Johnson v. Department of Justice, 739 F.2d 1514, 1519 (10th Cir. 1984) (finding that because allegations of improper use of law enforcement investigation were not at all supported in requested records, disclosure of FBI Special Agent names would not serve public interest) (Exemption 7(C)); Stern v. FBI, 737 F.2d at 92 (finding that certain specified public interests "would not be satiated in any way" by disclosure) (Exemption 7(C)); Miller v. Bell, 661 F.2d at 630 (noting that plaintiff's broad assertions of government cover-up were unfounded as investigation was of consequence to plaintiff only and therefore did not "warrant probe of FBI efficiency") (Exemption 7(C)).

In some situations there may even be a public interest in nondisclosure. See FOIA Update, Sept. 1982, at 5. Many courts have recognized such an interest implicitly, particularly where disclosure would in some way harm ongoing or future law enforcement activities. See, e.g., Miller v. Bell, 661 F.2d at 631; Church of Scientology v. Department of State, 493 F. Supp. 418, 421 (D.D.C. 1980); Flower v. FBI, 448 F. Supp. 567, 571-72 (W.D. Tex. 1978). In addition, the D.C. Circuit has emphasized that the release of outstanding performance evaluations of specific federal employees would "not necessarily bring unalloyed benefits" and, indeed, would likely create discord among employees and discourage the honesty essential to the evaluation process. Ripskis v. HUD, 746 F.2d at 3; see also May v. Department of the Air Force, Civil No. 84-0340, slip op. at 11 (S.D. Miss. Dec. 7, 1984) (protecting the names of supervisors who evaluate employees "has public purpose of obtaining frank comments"), rev'd on other grounds, 777 F.2d 1012 (5th Cir. 1985); Ferris v. IRS, 2 GDS ¶82,084, at 82,363 (D.D.C. 1981) ("even the disclosure of favorable information would place an employee in an embarrassing

position with other employees"). Accord Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d at 865 n.22 ("public interest properly factors into both sides of the balance") (Exemption 7(C)). But see also Washington Post Co. v. HHS, 690 F.2d at 260 n.23 (discounting dissenting opinion's "broad inquiry" into public interest factors, including non-disclosure harms).

Once both the privacy interest at stake and the public interest in disclosure have been ascertained, the two competing interests must be weighed against one another. Department of the Air Force v. Rose, 425 U.S. at 372. In other words, it must be determined which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. Ripskis v. HUD, 746 F.2d at 3. In balancing these interests, "the 'clearly unwarranted' language of Exemption 6 weights the scales in favor of disclosure." Id. If the public benefit is weaker than the threat to privacy, the latter will prevail, and the information should be withheld. The threat to privacy need not be obvious; it need only outweigh the public interest. See Public Citizen Health Research Group v. Department of Labor, 591 F.2d 808, 809 (D.C. Cir. 1978). For an instructive discussion of strongly competing interests, see Heights Community Congress v. VA, 732 F.2d at 530 (public interest in pursuing possible evidence of "racial steering" in VA-financed housing outweighed by privacy invasion threatened by possible interrogation of innocent veteran purchasers); see also American Fed'n of Gov't Employees v. United States, 712 F.2d 931, 932-33 (4th Cir. 1983) (per curiam) (home addresses of members of bargaining unit at Social Security Administration Headquarters properly withheld from union); FOIA Update, Sept. 1982, at 5.

Although "the presumption in favor of disclosure is as strong [under Exemption 6] as can be found anywhere in the Act," Washington Post Co. v. HHS, 690 F.2d at 261, the courts have vigorously protected the personal, intimate details of an individual's life, the release of which is likely to cause distress or embarrassment. Courts regularly uphold the nondisclosure of information concerning marital status, legitimacy of children, medical condition, welfare payments, family fights and reputation, see, e.g., Rural Housing Alliance v. Department of Agric., 498 F.2d 73, 77 (D.C. Cir. 1974), religious affiliation, see, e.g., Church of Scientology v. Department of the Army, 611 F.2d at 747, citizenship, see, e.g., Hemenway v. Hughes, 601 F. Supp. at 1006 ("Nationals from some countries face persistent discrimination . . . [and] are potential targets for terrorist attacks."), financial status, see, e.g., Oklahoma Publishing Co. v. HUD, Civil No. 87-1935-P, slip op. at 4 (W.D. Okla. June 17, 1988); but see Buffalo Evening News, Inc. v. SBA, 666 F. Supp. 467, 472 (W.D.N.Y. 1987) (ordering disclosure of information concerning recipients of disaster loans, including payment and default status), criminal histories or "rap sheets," see, e.g., Cooper v. Department of Justice, 578 F. Supp. 546, 548 (D.D.C. 1983). But see Reporters Comm. I, 816 F.2d at 737. Courts have also accorded protection to the identities of attorneys who were the subjects of disciplinary proceedings which were later dismissed, see Carter v. Department of Commerce, 830 F.2d 388, 391 (D.C. Cir. 1987), and to United States citizens incarcerated in foreign prisons, see Harbolt v. Department of State, 616 F.2d 772, 774 (5th Cir.), cert. denied, 449 U.S. 856 (1980). Even the release of "favorable information," such as the details of an individual's outstanding performance evaluation, "may well embarrass an individual or incite jealousy" among co-workers. Ripskis v. HUD, 746 F.2d at 3.

An area which has generated extensive litigation and which warrants special discussion is that of requests for compilations

of names and home addresses of individuals. Claims of "public interest" must be scrutinized very carefully in such cases. As noted before, many courts have held that requests made for the sole purpose of obtaining mailing lists for solicitation are purely commercial and consequently involve no public interest. See Multnomah County Medical Soc'y v. Scott, 825 F.2d at 1411 (names and addresses of Medicare beneficiaries not disclosed to physicians' professional organization); Minnis v. Department of Agric., 737 F.2d at 788 (names and addresses of applicants for rafting permits not released to commercial establishment located on river); Wine Hobby USA, Inc. v. IRS, 502 F.2d at 137 (names and addresses of individuals licensed to produce wine at home for their own consumption not released to distributor of amateur wine-making equipment); Falzone v. Department of the Navy, Civil No. 85-3862, slip op. at 2-3 (D.D.C. Oct. 16, 1986) (names and addresses of overseas naval personnel not disclosed to realtor) (appeal pending); DiPersia v. R.R. Retirement Bd., 638 F. Supp. 485, 489 (D. Conn. 1986) (names and addresses of railroad employees withheld from author of pamphlet concerning Federal Employers Liability Act); HMG Mktg. Ass'ns v. Freeman, 523 F. Supp. 11, 14 (S.D.N.Y. 1980) (names and addresses of individuals filing applications to buy historic silver dollars from GSA not released to mail merchandising company); cf. Schwaner v. Department of the Air Force, Civil No. 88-0560, slip op. at 7 (D.D.C. Aug. 1, 1988) (nondisclosure of names and military addresses of Air Force personnel upheld where requester, an insurance salesman, had purely commercial purpose) (Exemption 2). But cf. Army Times Publishing Co. v. Department of the Army, 684 F. Supp. 720, 724 (D.D.C. 1988) (disclosure ordered of names and military addresses of Army personnel because "broad circulation" of newspaper requester is in public interest, even though its "motive is commercial in nature") (Exemption 2).

In those cases where "mailing list" requests are for non-commercial purposes, however, the courts have recognized a variety of public interest factors entitled to heavy and often dispositive weight. See, e.g., International Bhd. of Elec. Workers Local No. 5 v. HUD, 852 F.2d at 92 (public interest in ensuring compliance with wage law warrants disclosure of names and addresses, but not social security numbers, of federal contractor employees); Aronson v. HUD, 822 F.2d at 185-87 (public interest in "the disbursement of funds the government owes its citizens" outweighs the privacy interest of such citizens to be free from others' attempts "to secure a share of that sum" when the government's efforts at disbursal are inadequate); Van Bourg, Allen, Weinberg & Roger v. NLRB, 728 F.2d at 1273 (strong public interest in releasing names and addresses of eligible union voters in order to determine whether election fairly conducted); Getman v. NLRB, 450 F.2d at 675-76 (public interest need for study of union elections held sufficient to warrant release to professor of names and addresses of employee voters); Southern Utah Wilderness Alliance, Inc. v. Hodel, 680 F. Supp. at 39-40 (public interest in monitoring environmental threats to national parks held to outweigh any privacy interest in identities of visitors to parks); Florida Rural Legal Servs., Inc. v. Department of Justice, Civil No. 87-1264, slip op. at 6 (S.D. Fla. Feb. 10, 1988) (names and addresses of illegal aliens ordered disclosed so legal services group can inform them of citizenship registration requirement where INS not informing of such); National Ass'n of Retired Fed. Employees v. Horner, 633 F. Supp. 1241, 1244 (D.D.C. 1986) (public interest in disclosing names and addresses of federal annuitants to nonprofit organization which promotes their interests) appeal held in abeyance pending decision by Supreme Court in Reporters Committee, No. 86-5446 (D.C. Cir. May 27, 1988); National Ass'n of Atomic Veterans, Inc. v. Director, Defense Nuclear Agency, 583 F. Supp. at 1487-88 (names and addresses of veterans involved in atomic testing

ordered disclosed because of public interest in increasing their knowledge of benefits and possible future health testing); Norwood v. FAA, 580 F. Supp. at 999 (names of rehired striking air traffic controllers ordered disclosed because of public interest in seeing that FAA treats all strikers in "fair and consistent manner") (alternative holding); Disabled Officer's Ass'n v. Rumsfeld, 428 F. Supp. 454, 458 (D.D.C. 1977) (nonprofit organization serving needs of retired military officers held entitled to names and addresses of such personnel), aff'd mem., 574 F.2d 636 (D.C. Cir. 1979). But see Local 3, Int'l Bhd. of Elec. Workers v. NLRB, 845 F.2d 1177, 1181 (2d Cir. 1988) (upholding nondisclosure of employees' names and addresses from union which is not certified bargaining representative); Farnum v. HUD, Civil No. 87-CV-74107, slip op. at 10-11 (E.D. Mich. June 20, 1988) (using analysis of First Circuit in Aronson v. HUD, finding government's efforts at disbursal have improved, thereby lessening public interest in disclosure so as to become outweighed by privacy interest in nondisclosure).

In several related cases, courts have considered the disclosure of the names and home addresses of federal employees under a federal labor relations statute which requires an agency to provide the bargaining agent with any data necessary to the collective bargaining process unless disclosure is prohibited by law (i.e., the Privacy Act of 1974). See Department of the Navy v. FLRA, 840 F.2d at 1135; Department of the Air Force v. FLRA, 838 F.2d 229, 230-31 (7th Cir. 1988); Department of Agric. v. FLRA, 836 F.2d at 1141; HHS v. FLRA, 833 F.2d 1129, 1132 (4th Cir. 1987); American Fed'n of Gov't Employees v. FLRA, 786 F.2d at 556. Using an Exemption 6 balancing analysis, the courts have ordered the release of the names and addresses of government employees, finding that the public interest in collective bargaining outweighs the privacy interest of such employees to be free from solicitation by the union. Department of the Navy v. FLRA, 840 F.2d at 1137; HHS v. FLRA, 833 F.2d at 1135-36; American Fed'n of Gov't Employees v. FLRA, 786 F.2d at 557. See also Department of the Air Force v. FLRA, 838 F.2d at 233 (without balancing, ordering disclosure of employee names and addresses because threat to privacy is minimal); Department of Agric. v. FLRA, 836 F.2d at 1144 (finding public interest mandates disclosure only as to those employees who do not request confidentiality). It now is expected that, as a result of these rulings, the Office of Personnel Management will soon approve promulgation of agency "routine use" regulations under the Privacy Act so as to allow the disclosure of employee names and addresses to the bargaining unions.

An area which has been evolving and merits particular discussion is the applicability of Exemption 6 to requests for information about civilian and military federal employees. Generally, civilian employees' names, present and past position titles, grades, salaries and duty stations are releasable as no viable privacy interest exists in such data. See 5 C.F.R. §293.311 (1988); see also FOIA Update, Summer 1986, at 3. In addition, the Justice Department recommends the release of additional items, particularly those relating to professional qualifications for federal employment. See FOIA Update, Sept. 1982, at 3. See also Core v. Postal Serv., 730 F.2d at 948 (qualifications of successful federal applicants); Associated Gen. Contractors, Inc. v. United States, 488 F. Supp. 861, 863 (D. Nev. 1980) (education, former employment, academic achievements and employee qualifications).

Certain military personnel, though, are properly afforded greater privacy protection than other servicemen and nonmilitary employees. Courts have found that because of the threat of terrorism, servicemen stationed outside the United States have a

greater expectation of privacy. See Hudson v. Department of the Army, slip op. at 8-9 (finding threat of terrorism creates privacy interest in names, ranks and addresses of Army personnel stationed in Europe, Middle East and Africa); Falzone v. Department of the Navy, slip op. at 2-3 (finding same with respect to names and addresses of naval officers serving overseas or in classified, sensitive or readily deployable positions). Courts have, however, ordered the release of names of military personnel stationed in the United States. See Hopkins v. Department of the Navy, slip op. at 4 (ordering disclosure of "names, ranks and official duty stations of servicemen stationed at Quantico" to life insurance salesman); Jafari v. Department of the Navy, 3 GDS ¶83,250, at 84,014 (E.D. Va. 1983) (finding no privacy interest in "duty status" or attendance records of reserve military personnel) (Privacy Act "wrongful disclosure" suit), aff'd on other grounds, 728 F.2d 247 (4th Cir. 1984). In addition, certain other federal employees, such as law enforcement personnel, possess, by virtue of the nature of their work, protectible privacy interests in their work addresses. See FOIA Update, Summer 1986, at 3-4. (See also discussions of Exemption 2, supra, and Exemption 7(C), infra.)

The personal details of a federal employee's service have generally been accorded protection. See, e.g., Ripskis v. HUD, 746 F.2d at 3-4 (names and identifying data contained on evaluation forms of HUD employees who received outstanding performance ratings); Stern v. FBI, 737 F.2d at 94 (identities of mid-level employees censured for negligence) (Exemption 7(C)); Core v. Postal Serv., 730 F.2d at 948-49 (identities and qualifications of unsuccessful applicants for federal employment); American Fed'n of Gov't Employees v. United States, 712 F.2d at 932-33 (employees' home addresses); Chamberlain v. Kurtz, 589 F.2d at 841-42 (names of disciplined IRS agents); Tannehill v. Department of the Air Force, Civil No. 87-1335, slip op. at 4-5 (D.D.C. Feb. 4, 1988) (identities of, and reasons why, Air Force officers not eligible for reassignment); Heller v. Marshals Serv., 655 F. Supp. at 1091 ("extremely strong interest" in protecting privacy of individual who cooperated with internal investigation of possible criminal activity by fellow employees); Ferri v. Department of Justice, 573 F. Supp. 852, 862-63 (W.D. Pa. 1983) (FBI background investigation of Assistant U.S. Attorney); Rosenfeld v. HHS, 3 GDS ¶83,082, at 83,617 (D.D.C. 1983) (names of those on proposed reduction-in-force list), aff'd mem. on other grounds, No. 83-1341 (D.C. Cir. Nov. 30, 1983); Dubin v. Department of the Treasury, 555 F. Supp. 408, 412 (N.D. Ga. 1981) (studies of supervisors' performance and recommendations for performance awards), aff'd mem., 697 F.2d 1093 (11th Cir. 1983); Schonberger v. National Transp. Safety Bd., 508 F. Supp. 941, 944-45 (D.D.C. 1981) (results of complaint by employee against supervisor), aff'd mem., No. 81-1442 (D.C. Cir. Dec. 1, 1981); Ferris v. IRS, 2 GDS at 82,362-63 (forms reflecting supervisors' performance objectives and expectations); Information Acquisition Corp. v. Department of Justice, 3 GDS ¶83,149, at 83,782-83 (D.D.C. 1981) (FBI background investigation concerning federal judicial appointment); Iglesias v. CIA, 525 F. Supp. 547, 561 (D.D.C. 1981) (agency attorney's response to Office of Professional Responsibility misconduct allegations); Plain Dealer Publishing Co. v. Department of Labor, 471 F. Supp. 1023, 1028-30 (D.D.C. 1979) (medical, personnel and related documents of employees filing claims under Federal Employees Compensation Act); Information Acquisition Corp. v. Department of Justice, 444 F. Supp. 458, 463-64 (D.D.C. 1978) ("core" personal information, such as marital status or college grades); Metropolitan Life Ins. Co. v. Usery, 426 F. Supp. 150, 167-69 (D.D.C. 1976) (job performance evaluations, reasons for termination and affirmative action program reports), aff'd on other grounds sub nom. National Org. for Women v. Social Security Admin., 736 F.2d 727 (D.C. Cir.

1984); cf. Professional Review Org., Inc. v. HHS, 607 F. Supp. 423, 427 (D.D.C. 1984) (resume data of proposed staff of government contract bidder). But see Washington Post Co. v. HHS, 690 F.2d at 258-65 (personal financial information required for appointment as HHS scientific consultant not exempt when balanced against need for oversight of awarding of government grants). The Sixth Circuit has recently suggested that the disclosure of a document prepared by a government employee during the course of his employment "will not constitute a clearly unwarranted invasion of personal privacy simply because it would invite a negative reaction or cause embarrassment in the sense that a position is thought by others to be wrong or inadequate." Schell v. HHS, 843 F.2d at 939.

In the early 1980's, a peculiar line of cases began to develop within the D.C. Circuit regarding the professional or business conduct of an individual. Specifically, the court required the disclosure of information concerning an individual's business dealings with the federal government; indeed, even embarrassing information, if related to an individual's professional life, has been subject to disclosure. See, e.g., Sims v. CIA, 642 F.2d at 574 (names of persons who conducted scientific and behavioral research under contracts with or funded by CIA); Board of Trade v. Commodity Futures Trading Comm'n, 627 F.2d at 399-400 (identities of trade sources who supplied information to CFTC); Cohen v. EPA, 575 F. Supp. 425, 430 (D.D.C. 1983) (names of suspected EPA "Superfund" violators) (Exemption 7(C)); Stern v. SBA, 516 F. Supp. at 149 (names of agency personnel accused of discriminatory practices). See also Kurzon v. HHS, 649 F.2d 65, 69 (1st Cir. 1981) (names and addresses of unsuccessful grant applicants to National Cancer Institute). It is noteworthy, however, that in two later cases, Stern v. FBI and Ripskis v. HUD, the D.C. Circuit did not focus on this factual aspect in reaching its nondisclosure decisions. See also Professional Review Org., Inc. v. HHS, 607 F. Supp. at 427 (finding protectible privacy interests in resumes of professional staff of successful government contract applicant sought by unsuccessful bidder); Hemenway v. Hughes, 601 F. Supp. at 1006 (citizenship information on journalists accredited to attend press briefings held protectible). Thus, it remains to be seen to what extent protection of such "professional" information will continue to be available in the future.

An added factor which may enter into the balancing process is the extent to which the information at issue is available from other sources. The availability of alternative methods of acquiring the requested information may weigh against disclosure. See Multnomah County Medical Soc'y v. Scott, 825 F.2d at 1413; Minnis v. Department of Agric., 737 F.2d at 788. If the privacy interest is substantial, the public interest is small, and an alternative means of acquiring the requested information exists, the balance may be tipped in favor of nondisclosure. See, e.g., Local 3, Int'l Bhd. of Elec. Workers v. NLRB, 845 F.2d at 1181 (union may contact employees through alternative means such as solicitation at workplace entrances); American Fed'n of Gov't Employees v. HHS, 712 F.2d at 932 (union may achieve desired communication through such alternative means as "bulletin board and indirect distribution through the employer"). On the other hand, the "public nature of information may be a reason to conclude . . . that the release of such information would not constitute a 'clearly unwarranted invasion of personal privacy.'" Department of State v. Washington Post Co., 456 U.S. at 603 n.5. Public availability "'strengthens the case for FOIA disclosure by suggesting that disclosure will not seriously invade personal privacy.'" National Ass'n of Atomic Veterans, Inc. v. Director, Defense Nuclear Agency, 583 F. Supp. at 1487 (quoting Washington

Post Co. v. HHS, 690 F.2d 252, 259 (D.C. Cir. 1982)); see also Hopkins v. Department of the Navy, slip op. at 6.

Finally, in applying Exemption 6, it must be remembered that all reasonably segregable, nonexempt portions of requested records must be released. See 5 U.S.C. §552(b) (last sentence). For example, in Department of the Air Force v. Rose, the Supreme Court ordered the release of case summaries of disciplinary proceedings, provided that personal identifying information was deleted. 425 U.S. at 380-81. See also L&C Marine Transport, Ltd. v. United States, 740 F.2d 919, 923 (11th Cir. 1984) (deletion of names and identifying information of employee-witnesses upheld because disclosure would link each witness to a particular previously disclosed statement) (Exemption 7(C)); Arieff v. Department of the Navy, 712 F.2d at 1468-69 (computer list of numbers and types of drugs routinely ordered by congressional pharmacy must be released after deletion of any item identifiable to specific individual); Chamberlain v. Kurtz, 589 F.2d at 841-42 (documents concerning disciplined IRS employees releasable, provided names and other identifiers deleted); FOIA Update, Winter 1986, at 6; cf. Ripskis v. HUD, 746 F.2d at 4 (agency voluntarily released outstanding performance rating forms with identifying information deleted).

Nevertheless, in some situations the absence or deletion of personal identifying information may not be adequate to provide privacy protection. Indeed, to protect those who were the subjects of disciplinary actions which were later dismissed, the D.C. Circuit recently upheld the nondisclosure of public information contained in such disciplinary files where the redaction of personal information would not be adequate to protect the privacy of the subjects because the requester could easily obtain and compare unredacted copies of the documents from public sources. Carter v. Department of Commerce, 830 F.2d at 391. See also, e.g., Marzen v. HHS, 825 F.2d at 1152 (redaction of "identifying characteristics" would not protect privacy of deceased infant's family because others could ascertain identity and "would learn the intimate details connected with the family's ordeal"); Alirez v. NLRB, 676 F.2d 423, 428 (10th Cir. 1982) (mere deletion of names and other identifying data concerning small group of co-workers determined to be inadequate to protect them from embarrassment or reprisals because requester could still possibly identify individuals) (Exemption 7(C)); Schonberger v. National Transp. Safety Bd., 508 F. Supp. at 945 (no segregation possible where request was for one employee's file).

IX. EXEMPTION 7

Exemption 7 of the FOIA, as amended, protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (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, or (F) could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. §552(b)(7), as amended by Pub. L. No. 99-570, §1802 (1986).

As originally enacted, this exemption permitted the withholding of "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency." 5 U.S.C. §552(b)(7) (1970). As such, it was consistently construed to exempt all material contained in an investigatory file, regardless of the status of the underlying investigation or the nature of the documents requested. See, e.g., Weisberg v. Department of Justice, 489 F.2d 1195, 1198-1202 (D.C. Cir. 1973), cert. denied, 416 U.S. 993 (1974). In 1974, Congress rejected the application of a "blanket" exemption for investigatory files and narrowed the scope of Exemption 7 by requiring that withholding be justified by one of six specified types of harm. Under this revised Exemption 7 structure, an analysis of whether a record was protected by this exemption involved two steps. First, the record had to qualify as an "investigatory record compiled for law enforcement purposes." Second, its disclosure had to be found to threaten one of the enumerated harms of Exemption 7's six subparts. See FBI v. Abramson, 456 U.S. 615, 622 (1982).

In 1986, after many years of administrative and legislative consideration of the need for FOIA reform legislation, Congress amended this exemption once again, retaining the basic Exemption 7 structure established by the 1974 FOIA amendments, but significantly broadening the protection given to law enforcement records virtually throughout the exemption and its subparts. See Washington Post Co. v. Department of Justice, Civil No. 84-3581, slip op. at 22 (D.D.C. Sept. 25, 1987) (magistrate's recommendation) (holding that record created by nongovernmental entity independent of Department's investigation but later compiled for that investigation, satisfied the threshold of Exemption 7 as "broadened" by 1986 amendments, and noting that "[a]gency's burden of proof in this threshold test has been lightened considerably"), adopted (D.D.C. Dec. 15, 1987) (appeal pending). The FOIA Reform Act modified the existing threshold requirement in two distinct respects--by deleting the word "investigatory" and by adding the words "or information"--such that Exemption 7 protections are now potentially available to all "records or information compiled for law enforcement purposes." 5 U.S.C. §552(b)(7), as amended by Pub. L. No. 99-570, §1802 (1986).

The more technical of these two language modifications is the expansion of the exemption to cover "information" compiled for law enforcement purposes. This modification, by its terms, permits Exemption 7 to apply not only to compilations of information as they are preserved in particular records requested, but also to any part of the information itself, so long as that information was compiled for law enforcement purposes. Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 5 (Dec. 1987) [hereinafter Attorney General's Memorandum]. It plainly was designed "to ensure that sensitive law enforcement information is protected under Exemption 7 regardless of the particular format or record in which [it] is maintained." S. Rep. No. 221, 98th Cong., 1st Sess. 23 (1983).

This amendment thus alters the unit of focus under Exemption 7 from a "record" to an item of "information." Attorney General's Memorandum at 5. In so doing, it builds upon the approach to Exemption 7's threshold that was employed by the Supreme Court in FBI v. Abramson, 456 U.S. at 626, in which the Court pragmatically focused on the "kind of information" contained in the law

enforcement records before it. This amendment thus means that an item of information originally compiled by an agency for a law enforcement purpose does not lose Exemption 7 protection merely because it is maintained in or recompiled into a non-law enforcement record. See, e.g., Lesar v. Department of Justice, 636 F.2d 472, 487 (D.C. Cir. 1980). This properly places "emphasis on the contents, and not the physical format of documents." Center for Nat'l Sec. Studies v. CIA, 577 F. Supp. 584, 590 (D.D.C. 1983) (applying Abramson to hold duplicate copy of congressional record maintained in agency files is not an "agency record"); see also Gould Inc. v. GSA, 688 F. Supp. 688, 698 (D.D.C. 1988) (Exemption 7 protection necessarily also applies to original documents, copies or summaries of records or information incorporated into a law enforcement investigation from an unrelated file where disclosure would reveal the very information sought to be protected in the law enforcement file) (appeal pending).

A related and more difficult issue is raised by information which the government did not initially obtain or generate for law enforcement purposes that subsequently was compiled for a valid law enforcement purpose. Two very recent decisions have reached opposite conclusions on this issue. After a rather cursory discussion of the issue, the Second Circuit Court of Appeals in John Doe Corp. v. John Doe Agency, 850 F.2d 105, 109 (2d Cir. 1988) (petition for rehearing en banc pending), concluded that audit reports which later were incorporated into a criminal investigation failed to meet the threshold requirement of Exemption 7. This opinion relied heavily on the legislative history of the 1974 FOIA amendments, which it concluded specified that the substitution of the word "records" for "files" was intended to prevent government withholding of records "produced in the routine course of government operations . . . merely because they had been commingled with investigative materials generated later in the course of a law enforcement proceeding." 850 F.2d at 109 (emphasis added). See also Hatcher v. Postal Serv., 556 F. Supp. 331, 334-35 (D.D.C. 1982). In contrast, just three weeks before the John Doe decision, the District Court for the District of Columbia held that audit reports which subsequently had become an "integral part of an ongoing criminal investigation," were "compiled" for law enforcement purposes. Gould Inc. v. GSA, 688 F. Supp. at 691 (finding after review of the legislative history and the existing case law "that at no time has the plain meaning of the statute required an exclusive focus on whether records or information was originally compiled for law enforcement purposes") (emphasis in original). There the court interpreted the same legislative history cited in John Doe Corp. as merely imposing a requirement that agencies cannot commingle "otherwise benign materials" with sensitive law enforcement records simply to protect them from public disclosure under the umbrella of Exemption 7." 688 F. Supp at 697 (emphasis in original). See also Fedders Corp. v. FTC, 494 F. Supp. 325, 328 n.4 (S.D.N.Y.), aff'd mem., 646 F.2d 560 (2d Cir. 1980); FOIA Update, Spring 1984, at 5-6.

The 1986 FOIA amendments, which neither court analyzed, do not specifically resolve this issue but offer support for protecting such documents, inasmuch as the changes were "plainly . . . designed 'to ensure that sensitive law enforcement information is protected under Exemption 7 regardless of the particular format or record in which [it] is maintained.'" Attorney General's Memorandum at 5 (quoting S. Rep. No. 221, 98th Cong., 1st Sess. 23 (1983)) (emphasis added). They were intended to avoid use of any mechanical process for determining the purpose for which a physical record was created and to instead establish a focus on the purpose for which information contained in a record has been generated. See id. In making their determinations of threshold Exemption 7 applicability, agencies should now focus on the con-

tent and compilation purpose of each item of information involved, regardless of the overall character of the record in which it happens to be maintained. Id.

A considerably greater expansion of Exemption 7's scope results from the FOIA Reform Act's removal of the requirement that records or information be "investigatory" in character in order to qualify for Exemption 7 protection. Attorney General's Memorandum at 6. Under the former Exemption 7 formulations, agencies and courts considering Exemption 7 issues often found themselves struggling with the "investigatory" requirement, which held the potential of disqualifying sensitive law enforcement information from Exemption 7 protection. Courts construing this statutory term generally interpreted it as requiring that the records in question result from specifically focused law enforcement inquiries as opposed to more routine monitoring or oversight of government programs. Compare, e.g., Sears, Roebuck & Co. v. GSA, 509 F.2d 527, 529-30 (D.C. Cir. 1974) (records submitted for mere monitoring of employment discrimination found not "investigatory") with Center for Nat'l Policy Review on Race & Urban Issues v. Weinberger, 502 F.2d 370, 373 (D.C. Cir. 1974) (records of agency review of public schools suspected of discriminatory practices found "investigatory").

The distinction between "investigatory" and "non-investigatory" law enforcement records, however, was not always so clear. Compare, e.g., Gregory v. FDIC, 470 F. Supp. 1329, 1334 (D.D.C. 1979) (bank examination report "typifies routine oversight" and thus not "investigatory"), rev'd on other grounds, 631 F.2d 896 (D.C. Cir. 1980) with Copos v. Rougeau, 504 F. Supp. 534, 538 (D.D.C. 1980) (compliance review forecast report "clearly" an investigative record). Moreover, the "investigatory" requirement per se was frequently blurred together with the "law enforcement purposes" aspect of the exemption, so that it sometimes became difficult to distinguish between the two. See, e.g., Rural Hous. Alliance v. Department of Agric., 498 F.2d 73, 81 & n.47 (D.C. Cir. 1974). Law enforcement manuals containing sensitive information about specific procedures and guidelines followed by an agency were held not to qualify as "investigatory records," because they had not originated in connection with any specific investigation, even though they clearly had been compiled for law enforcement purposes. See Sladek v. Bensinger, 605 F.2d 899, 903 (5th Cir. 1979) (holding Exemption 7 inapplicable to DEA manual that "was not compiled in the course of a specific investigation"); Cox v. Department of Justice, 576 F.2d 1302, 1310 (8th Cir. 1978) (same).

By eliminating the "investigatory" requirement under Exemption 7, the FOIA Reform Act should put an end to such troublesome distinctions and broaden the potential sweep of the exemption's coverage. Attorney General's Memorandum at 7. The protections of Exemption 7's six subparts are now available to all records or information that have been compiled for "law enforcement purposes." Id. Even records generated pursuant to routine agency activities that could never be regarded as "investigatory" now qualify for Exemption 7 protection where those activities involve a law enforcement purpose. This should include records generated for general law enforcement purposes that do not necessarily relate to specific investigations. Records such as law enforcement manuals, for example, which were found unqualified for Exemption 7 protection only because they were not "investigatory" in character, should readily satisfy the exemption's revised threshold requirement. Id. See, e.g., Sladek v. Bensinger, 605 F.2d at 903; Cox v. Department of Justice, 576 F.2d at 1310. The sole issue thus remaining is the application of the phrase "law enforcement purposes" in the context of the amended Exemption 7.

Although there is as yet little case law under the 1986 FOIA amendments addressing the parameters of this new, less demanding threshold standard of Exemption 7, it is useful to examine the cases interpreting the identical "law enforcement purposes" language under the prior version of this exemption. The "law" to be enforced within the meaning of "law enforcement purposes" includes both civil and criminal statutes, see, e.g., Rural Hous. Alliance v. Department of Agric., 498 F.2d at 81 & n.46; Williams v. IRS, 479 F.2d 317, 318 (3d Cir.), cert. denied, 414 U.S. 1024 (1973), as well as those statutes authorizing administrative (i.e., regulatory) proceedings, see, e.g., Center for Nat'l Policy Review on Race & Urban Issues v. Weinberger, 502 F.2d at 373; Ehringhaus v. FTC, 525 F. Supp. 21, 22-23 (D.D.C. 1980); cf. Nagel v. HEW, 725 F.2d 1438, 1441 (D.C. Cir. 1984) ("employer's determination whether a federal employee is performing his job adequately constitutes an authorized law enforcement activity" within meaning of subsection (e)(7) of Privacy Act of 1974). In addition to federal law enforcement, Exemption 7 applies to records compiled to enforce state law, see Wojtczak v. Department of Justice, 548 F. Supp. 143, 146-48 (E.D. Pa. 1982); see also Shaw v. FBI, 749 F.2d 58, 64 (D.C. Cir. 1984) (authorized federal investigation into the commission of state crime constitutes valid criminal law enforcement investigation, which qualifies for protection under the second half of Exemption 7(D)), as well as foreign law, see, e.g., Bevis v. Department of Justice, 801 F.2d 1386, 1388 (D.C. Cir. 1986); see also FOIA Update, Spring 1984, at 6-7.

However, if the agency lacks authority to pursue a particular law enforcement matter, Exemption 7 generally may not be invoked. See, e.g., Weissman v. CIA, 565 F.2d 692, 696 (D.C. Cir. 1977); see also Kuzma v. IRS, 775 F.2d 66, 69 (2d Cir. 1985) ("[u]nauthorized or illegal investigative tactics may not be shielded from public by use of FOIA exemptions."). But cf. Pratt v. Webster, 673 F.2d 408, 423 (D.C. Cir. 1982) (Exemption 7 refers to purposes and methods; questionable methods do not defeat exemption's coverage where law enforcement is primary purpose); Iglesius v. FBI, Civil No. G79-0350, slip op. at 15 (W.D. Mich. July 3, 1985) (provided a rational nexus can be found between investigation and agency's law enforcement duties, courts will not inquire into legality of agency's methods), subsequent opinion (W.D. Mich. Nov. 18, 1985); but cf. Hrones v. CIA, 685 F.2d 13, 19 (1st Cir. 1982) (legality of agency's actions in national security investigation falls outside scope of judicial review in FOIA action); Edwards v. CIA, 512 F. Supp. 689, 694 (D.D.C. 1981) (disclosure of sources, methods and identities of those involved in actions outside agency charter not necessarily required because of risks attendant upon public scrutiny) (dictum).

All law enforcement records found exempt under the old language undoubtedly remain withholdable. See Rural Hous. Alliance v. Department of Agric., 498 F.2d at 80-82 (threshold of Exemption 7 met if investigation focuses directly on specific illegal acts which could result in civil or criminal penalties); Southam News v. INS, 674 F. Supp. 881, 887 (D.D.C. 1987) (based upon pre-1986 language, Service Lookout Book used to assist in exclusion of inadmissible aliens found to satisfy threshold requirement); U.S. News & World Report v. Department of the Treasury, Civil No. 84-2302, slip op. at 4 (D.D.C. Mar. 26, 1986) (records pertaining to acquisition of two armored limousines for President meet threshold test; activities involved investigation of how best to safeguard the President); Nader v. ICC, Civil No. 82-1037, slip op. at 10-11 (D.D.C. Nov. 23, 1983) (disbarment proceeding meets Exemption 7 threshold because it is "quasi-criminal" in nature).

"Background security investigations by governmental units which have authority to conduct such functions" have been held by

most courts to meet the threshold tests under the former formulation of Exemption 7. S. Conf. Rep. 1200, 93d Cong., 2d Sess. 12, reprinted in 1974 U.S. Code Cong. & Admin. News 6267, 6291. See, e.g., Miller v. United States, 630 F. Supp. 347, 349 (E.D.N.Y. 1986) (USIA background security investigation of federal job applicant meets Exemption 7 threshold); Block v. FBI, Civil No. 83-0813, slip op. at 14-15 (D.D.C. Nov. 19, 1984) (FBI background investigation of applicant for federal employment protectible under Exemption 7); Meeropol v. Smith, Civil No. 85-1121, slip op. at 78 (D.D.C. Feb. 29, 1984) (CIA background investigation falls within threshold of Exemption 7), aff'd in part sub nom. Meeropol v. Meese, 790 F.2d 942 (D.C. Cir. 1986); Information Acquisition Corp. v. Department of Justice, Civil No. 77-0839, slip op. at 4-5 (D.D.C. May 23, 1979) (citizen complaint in pre-appointment background investigation of Supreme Court Justice Rehnquist protected pursuant to Exemption 7); DeFina v. FAA, Civil No. 75-1526, slip op. at 16 (S.D.N.Y. Feb. 26, 1976) (FBI background investigation protectible pursuant to Exemption 7); Koch v. Department of Justice, 376 F. Supp. 313, 315 (D.D.C. 1974) (background investigations fell within Exemption 7 because they involved determinations as to whether applicants had engaged in criminal conduct which would disqualify them for federal employment); see also FOIA Update, Fall 1985, at 6. But see Benson v. United States, Civil No. 80-15-MC, slip op. at 3 (D. Mass. June 12, 1980) (court "not satisfied" that background investigations conducted by the Civil Service Commission are "investigatory records compiled for law enforcement purposes"); Information Acquisition Corp. v. Department of Justice, Civil No. 77-0840, slip op. at 3 (D.D.C. Apr. 7, 1978) (court "not persuaded" that records of pre-appointment background investigation of former Chief Justice Burger qualify for protection under Exemption 7).

Personnel investigations of government employees are protected if they focus on "specific and potentially unlawful activity by particular employees" of a civil or criminal nature. Stern v. FBI, 737 F.2d 84, 89 (D.C. Cir. 1984); see also Jackson v. Federal Bureau of Prisons, No. 87-5186, slip op. at 4 (D.C. Cir. Jan. 5, 1988) (unpublished memorandum) (prison investigation into allegation that prison official improperly disclosed inmate's personal file does not satisfy threshold without showing that investigation focused on law violation rather than internal personnel matters); Housley v. Department of the Treasury, Civil No. 87-3427, slip op. at 3 (D.D.C. July 29, 1988) (investigation concerning misconduct by Special Agent which if proved could have resulted in federal civil or criminal sanctions, satisfies Exemption 7 threshold); Snider v. Mossinghoff, Civil No. 82-2903, slip op. at 2 (D.D.C. Sept. 14, 1983) (investigation concerning attorney's professional conduct meets Exemption 7 threshold); Schwartz v. Department of Justice, Civil No. 76-2039, slip op. at 1-2 (D.D.C. Feb. 9, 1978) (investigation concerning alleged improprieties by Assistant United States Attorney in prosecution of criminal case satisfies Exemption 7 threshold). In contrast, "an agency's general monitoring of its own employees to insure compliance with the agency's statutory mandate and regulations" does not satisfy the threshold 7 requirement. Stern v. FBI, 737 F.2d at 89 (dictum). See also Rural Hous. Alliance v. Department of Agric., 498 F.2d at 81; Phoenix Newspapers, Inc. v. FBI, Civil No. 86-1199, slip op. at 15 (D. Ariz. July 9, 1987) (purely internal investigation of a shooting death of FBI Special Agent does not meet Exemption 7 threshold).

In determining whether a document was "compiled for law enforcement purposes" under Exemption 7, the courts have in the past generally distinguished between agencies with both law enforcement and administrative functions and those whose principal function is criminal law enforcement. Attorney General's Memorandum at 7. An agency whose functions are "mixed" usually had

to show that the records at issue involved the enforcement of a statute or regulation within its authority. See Lewis v. IRS, 823 F.2d 375, 379 (9th Cir. 1987); Birch v. Postal Serv., 803 F.2d 1206, 1210-11 (D.C. Cir. 1986) (threshold met because enforcement of laws regarding use of mails falls within statutory authority of Postal Service); Church of Scientology v. Department of the Army, 611 F.2d 738, 748 (9th Cir. 1979). Courts have additionally required that the records be compiled for "adjudicative or enforcement purposes." Rural Hous. Alliance v. Department of Agric., 498 F.2d at 81.

In the case of criminal law enforcement agencies, the courts have accorded the government varying degrees of special deference when considering whether their records meet the threshold requirement of Exemption 7. Compare, e.g., Pratt v. Webster, 673 F.2d at 416-18, with Kuehnert v. FBI, 620 F.2d 662, 666-67 (8th Cir. 1980). Indeed, the the First, Second, and Eighth Circuit Courts of Appeals have adopted a per se rule that qualifies all "investigative" records of criminal law enforcement agencies for protection under Exemption 7. See Curran v. Department of Justice, 813 F.2d 473, 475 (1st Cir. 1987); Williams v. FBI, 730 F.2d 882, 884-85 (2d Cir. 1984) (records of a law enforcement agency given "absolute protection" even if "records were compiled in the course of an unwise, meritless or even illegal investigation"); Kuehnert v. FBI, 620 F.2d at 666; Irons v. Bell, 596 F.2d 468, 474-76 (1st Cir. 1979) ("investigatory records of law enforcement agencies are inherently records compiled for 'law enforcement purposes' within the meaning of Exemption 7"). See also Struth v. FBI, 673 F. Supp. 949, 961 (E.D. Wis. 1987) (interpreting Stein v. Department of Justice, 662 F.2d 1245, 1260-61 (7th Cir. 1981), as following per se approach); Black v. FBI, Civil No. 82-370, slip op. at 3 (N.D. Ohio May 30, 1986) ("court will conclusively presume that the investigation which generated the document was undertaken for a law enforcement purpose"). It is unclear as yet how the elimination of the term "investigatory" affects this already broad protection.

Other courts, while still according significant deference to criminal law enforcement agencies, have held that the government must demonstrate some nexus between the records and a proper law enforcement purpose. See, e.g., Binion v. Department of Justice, 695 F.2d 1189, 1193-94 (9th Cir. 1983) ("a fortiori" approach appropriate where FBI pardon investigation was "clearly legitimate"); Friedman v. FBI, 605 F. Supp 306, 321 (N.D. Ga. 1981) (review of records showed that FBI was "'gathering information with the good faith belief that the subject may violate or has violated federal law' rather than 'merely monitoring the subject for purposes unrelated to enforcement of federal law'") (quoting Lamont v. Department of Justice, 475 F. Supp. 761, 770 (S.D.N.Y. 1979)); Malizia v. Department of Justice, 519 F. Supp. 338, 347 (S.D.N.Y. 1981) (in order to qualify for Exemption 7 protection, "agency must demonstrate at least a 'colorable claim of a rational nexus' between activities being investigated and violations of federal laws"); cf. Arenberg v. DEA, 849 F.2d 579, 581 (11th Cir. 1988) (applicable standard not articulated, but suggesting courts should be "hesitant" to reexamine law enforcement agency's decision to investigate if there is plausible basis for agency's decision). But see also Powell v. Department of Justice, 584 F. Supp. 1508, 1522 (N.D. Cal. 1984) (in camera inspection required to determine whether FBI investigation of legal defense committees was "realistically based on a legitimate concern" that the committees' actions threatened the national security), summary judgment granted in pertinent part, Civil No. C-82-0326 (N.D. Cal. Mar. 27, 1985).

The existing standard for review of criminal records in the D.C. Circuit Court of Appeals is somewhat more stringent than

the per se rule discussed above. The D.C. Circuit held in Pratt that records generated as part of a counterintelligence program of questionable legality which was part of an otherwise clearly authorized law enforcement investigation met the threshold requirement for Exemption 7, and rejected the per se approach. See 673 F.2d at 416 n.17. Instead, it adopted a two-part test for determining whether the threshold for Exemption 7 has been met: (1) whether the agency's investigatory activities that give rise to the documents sought are related to the enforcement of federal laws or to the maintenance of national security, and (2) whether the nexus between the investigation and one of the agency's law enforcement duties is based on information sufficient to support at least a colorable claim of rationality. Id. at 420-21; see e.g., Keys v. Department of Justice, 830 F.2d 337, 340 (D.C. Cir. 1987); King v. Department of Justice, 830 F.2d 210, 229 (D.C. Cir. 1987); Founding Church of Scientology v. Smith, 721 F.2d 828, 829 n.1 (D.C. Cir. 1983); see also, e.g., Laborers' Int'l Union v. Department of Justice, 772 F.2d 919, 921 (D.C. Cir. 1984) (Pratt is "governing legal standard"); cf. Shaw v. FBI, 749 F.2d at 63 (Pratt standard applies as well to second half of Exemption 7(D)).

Despite the removal of the word "investigatory" from the threshold requirement of Exemption 7, the D.C. Circuit has in some instances continued to rely on the Pratt test, a portion of which expressly requires a nexus between requested records and an investigation. See Williams v. Department of Justice, No. 85-6154, slip op. at 3 (D.C. Cir. May 18, 1988) (dictum) (unpublished memorandum); James v. FBI, No. 87-5346, slip op. at 2 (D.C. Cir. Apr. 7, 1988) (dictum) (unpublished memorandum); King v. Department of Justice, 830 F.2d at 229 n.141 (dictum) (1986 amendments did not "qualif[y] the authority of Pratt" test). None of those cases, however, faced an issue concerning whether the records at issue were "investigatory" in nature. In Keys v. Department of Justice, 830 F.2d at 340, decided months before the Williams and James decisions, the panel modified the language of the Pratt test to reflect those amendments to require that an agency demonstrate the existence of a nexus "between [its] activity" (rather than its investigation) "and its law enforcement duties." See Rochon v. Department of Justice, No. 88-5075, slip op. 3 (D.C. Cir. Sept. 14, 1988) (agency must demonstrate nexus between its compilation of records and its law enforcement duties) (unpublished memorandum). Although not specifically relying on the amended test, the panel in Keys held that records compiled solely because the subject had a known affiliation with organizations that were strongly suspected of harboring Communists met the Exemption 7 threshold. See Keys v. Department of Justice, 830 F.2d at 341-42; cf. Williams v. Department of Justice, slip op. at 4 (files of U.S. Marshals Service concerning protected witnesses satisfy Exemption 7 threshold under original Pratt test). Nevertheless, since neither Williams nor James adopted the modified Pratt test adopted by Keys, the impact of this change in the threshold is still not entirely clear.

Even under the test enunciated in Pratt, however, significant deference has been accorded criminal law enforcement agencies. See 673 F.2d at 421 ("a court should be hesitant to second-guess a law enforcement agency's decision to investigate if there is a plausible basis for its decision"); see also, e.g., Keys v. Department of Justice, 830 F.2d at 344 (court generally "understood" former requirement that records be "investigatory" "to impose little substantive limitation on the exemption independent of the finding of a qualifying purpose"); King v. Department of Justice, 830 F.2d at 230-32 (subject's close association with "individuals and organizations . . . of investigative interest to the FBI" and consequent investigation of subject during the McCarthy era for possible violation of national security laws

meets threshold in the absence of evidence supporting the existence of an improper purpose); Doe v. Department of Justice, Civil No. 86-1050, slip op. 2-4 (D.D.C. Sept. 4, 1987) (citing pre-amendment language of Exemption 7, court noted that expense and other administrative records concerning FBI informant met the lesser burden imposed on law enforcement agencies to show records are compiled for law enforcement purposes); Abramson v. FBI, 566 F. Supp. 1371, 1375 (D.D.C. 1983) (plausible though unlikely explanation of law enforcement purpose is "colorable" explanation sufficient to meet second part of Pratt test) (dictum). Nevertheless, the D.C. Circuit has indicated in Pratt and elsewhere that if an investigation is shown to be in fact conducted for an improper purpose, Exemption 7 may not be invoked to protect the generated records. See Pratt v. Webster, 673 F.2d at 420-21 (Exemption 7 not intended to "include investigatory activities wholly unrelated to law enforcement agencies' legislated functions of preventing risks to the national security and violations of the criminal laws and of apprehending those who do violate the laws"); Shaw v. FBI, 749 F.2d at 63 ("mere existence of a plausible criminal investigatory reason to investigate would not protect the files of an inquiry explicitly conducted . . . for purposes of harassment"); Lesar v. Department of Justice, 636 F.2d at 487 (questioning whether records that were generated after investigation "wrongly strayed beyond its original law enforcement scope" would meet threshold test for Exemption 7).

The exact effects of the 1986 FOIA amendments on the parameters of the Exemption 7 threshold remain to be seen. As courts now apply the plain meaning of its language afresh in the absence of any "investigatory" requirement, it will command the careful attention of all federal agencies who wish to consider the extent to which, if at all, any of their records may now qualify for the first time for possible Exemption 7 protection. For the principal federal law enforcement agencies, this means that any record heretofore not considered covered by Exemption 7 due solely to its non-investigatory character likely is sufficiently related to the agency's general law enforcement mission that it can be considered for Exemption 7 protection. Because of the significance of this change in the coverage of Exemption 7, it is important that other agencies be alert to and carefully consider the extent to which any of their records, albeit non-investigatory, are so directly related to a specific law enforcement activity that they might reasonably qualify for any necessary protection under one of Exemption 7's subparts. Such records as law enforcement manuals, background investigation documents, and program oversight reports can be prime candidates for such consideration. Attorney General's Memorandum at 8-9. At bottom, however, the effect of these amendments will be realized only upon the case-by-case identification of particular items of non-investigatory law enforcement information, the continued disclosure of which could cause one of the harms specified in Exemption 7's six subparts.

Exemption 7(A)

The first subpart of Exemption 7, Exemption 7(A), now authorizes the withholding of "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. §552(b)(7)(A), as amended by Pub. L. No. 99-570, §1802 (1986). The Freedom of Information Reform Act has lowered the showing of harm required from a demonstration that release "would interfere with" to "could reasonably be expected to interfere with" enforcement proceedings. See Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 10 (Dec. 1987). Determining the applicability of

this Exemption 7 subsection thus requires a two-step analysis focusing on: (1) whether a law enforcement proceeding is pending or prospective and (2) whether release of information about it could reasonably be expected to cause some articulable harm. The courts have held that the mere pendency of enforcement proceedings is an inadequate basis for the invocation of Exemption 7(A); the government must also establish that some distinct harm is likely to result if the record or information requested is disclosed. See, e.g., Crooker v. Bureau of Alcohol, Tobacco & Firearms, 789 F.2d 64, 65-67 (D.C. Cir. 1986).

Although it will remain for the further development of case law under the 1986 FOIA amendments to determine the precise applicability of Exemption 7(A) in its new form, it is instructive to look at pre-amendment cases. With regard to the first step of the Exemption 7(A) analysis, the legislative history as well as judicial interpretations of congressional intent of this subsection as it was originally enacted make clear that Exemption 7(A) was not intended to "endlessly protect material simply because it [is] in an investigatory file," NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 232 (1978). Rather, Exemption 7(A) is temporal and, as a general rule, may be invoked only as long as the relevant proceeding remains pending, see, e.g., Seegull Mfg. Co. v. NLRB, 741 F.2d 882, 886-87 (6th Cir. 1984) (NLRB administrative practice of continuing to assert Exemption 7(A) for six-month "buffer period" after termination of proceedings found to be "arbitrary and capricious"); Barney v. IRS, 618 F.2d 1268, 1273-74 (8th Cir. 1980); Kilroy v. NLRB, 633 F. Supp. 136, 142, 143 (S.D. Ohio 1985), aff'd mem., 823 F.2d 553 (6th Cir. 1987); Antonsen v. Department of Justice, Civil No. K-82-008, slip op. at 9-10 (D. Alaska Mar. 20, 1984) ("It is difficult to conceive how the disclosure of these materials could have interfered with any enforcement proceedings" after a criminal defendant had been tried and convicted.), is prospective, see, e.g., Southam News v. INS, 674 F. Supp. 881, 887 (D.D.C. 1987) ("Service Lookout Book," containing "names of violators, alleged violators and suspected violators," is protected as proceedings clearly are at least prospective against each violator); Marzen v. HHS, 632 F. Supp. 785, 805 (N.D. Ill. 1986), aff'd, 825 F.2d 1148 (7th Cir. 1987); Ehringhaus v. FTC, 525 F. Supp. 21, 22-23 (D.D.C. 1980), or is preventative, see, e.g., Moorefield v. Secret Serv., 611 F.2d 1021, 1025-26 (5th Cir.), cert. denied, 449 U.S. 909 (1980). See also Brinkerhoff v. Montoya, 3 GDS ¶82,421, at 83,055 (N.D. Tex. 1981) (fact that judicial adjudication is not "imminent" not dispositive of applicability of Exemption 7(A)).

Indeed, where an investigation is dormant, Exemption 7(A) has been held to be applicable because of the possibility that the investigation could lead to a "prospective law enforcement proceeding." See, e.g., National Pub. Radio v. Bell, 431 F. Supp. 509, 514-15 (D.D.C. 1977). See also FOIA Update, Spring 1984, at 6. Further, even after an investigation is closed the exemption may be applicable if disclosure would interfere with a related, pending enforcement proceeding. See, e.g., New England Medical Center Hosp. v. NLRB, 548 F.2d 377, 385-87 (1st Cir. 1976), reh'g en banc denied, 548 F.2d 387 (1st Cir. 1977); Freedberg v. Department of the Navy, 581 F. Supp. 3, 4 (D.D.C. 1982) (Exemption 7(A) applicable where two murderers convicted, but two others remained at large); Automobile Importers of Am., Inc. v. FTC, 3 GDS ¶82,488, at 83,227 (D.D.C. 1982) (FTC memoranda discussing general remedies found properly withheld pursuant to Exemption 7(A) because some proceedings still pending); see also FOIA Update, Spring 1984, at 6; cf. Senate of Puerto Rico v. Department of Justice, 823 F.2d 574, 578 (D.C. Cir. 1987) (relying on language of statute prior to the 1986 amendments, case remanded for additional explanation of why no segregable portions of documents could be released without interference to

related proceedings). The related proceeding must, however, be a concrete possibility, rather than a mere hypothetical one. See Badran v. Department of Justice, 652 F. Supp. 1437, 1440 (E.D. Wis. 1987) (relying on pre-amendment language, court held that mere possibility that person mentioned in the file might some day violate the law was insufficient to invoke Exemption 7(A)). In one of the first district court cases to apply Exemption 7(A)'s amended language, it was held that records concerning proceedings now closed that were still a part of a related case in which an indictment had been issued remained protected by this exemption. Dickie v. Department of the Treasury, Civil No. 86-0649, slip op. at 8 (D.D.C. Mar. 31, 1987).

Exemption 7(A) also may be invoked when an investigation has terminated but an agency retains oversight or some other continuing enforcement-related responsibility. See, e.g., Crooker v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 83-1646 (D.D.C. Apr. 30, 1984) (Exemption 7(A) remains applicable while motion to withdraw guilty plea still pending); Erb v. Department of Justice, 572 F. Supp. 954, 956 (W.D. Mich. 1983) (investigation "concluded 'for the time being'" subsequently reopened); ABC Home Health Servs., Inc. v. HHS, 548 F. Supp. 555, 556, 559 (N.D. Ga. 1982) ("final settlement" subject to reevaluation for at least three years); Timkin Co. v. Customs Serv., 531 F. Supp. 194, 199-200 (D.D.C. 1981) (final determination which could be challenged or appealed); Zeller v. United States, 467 F. Supp. 487, 501 (S.D.N.Y. 1979) (records compiled to determine whether party is complying with consent decree). But see Center for Auto Safety v. Department of Justice, 576 F. Supp. 739, 751-55 (D.D.C. 1983) (records concerning modification of consent decree held not exempt). In a case decided under Exemption 7(A) as amended, Injex Indus. v. NLRB, Civil No. C-86-3850, slip op. at 4-6 (N.D. Cal. Dec. 18, 1986), it was held that although the unfair labor practice proceeding involving the plaintiff had been closed, release of impounded ballots would interfere with the NLRB's responsibility to conduct and process future collective bargaining representation elections.

The "law enforcement proceedings" to which Exemption 7(A) may be applicable have been interpreted broadly. Such proceedings have been held to include not only criminal actions, see, e.g., Gould Inc. v. GSA, 688 F. Supp. 689, 701 (D.D.C. 1988) (appeal pending); National Pub. Radio v. Bell, 421 F. Supp. at 510, but to regulatory proceedings as well, see, e.g., Injex Indus. v. NLRB, slip op. at 5-6 (NLRB's responsibility to process collective bargaining representation elections constitutes law enforcement proceedings); Fedders Corp. v. FTC, 494 F. Supp. 325, 327-28 (S.D.N.Y.), aff'd mem., 646 F.2d 560 (2d Cir. 1980). Enforcement proceedings in state courts, see, e.g., Dickie v. Department of the Treasury, slip op. at 8, and foreign courts also qualify for Exemption 7(A) protection, see, e.g., Bevis v. Department of State, 801 F.2d 1386, 1388 (D.C. Cir. 1986).

With respect to the showing of harm to law enforcement proceedings required to invoke Exemption 7(A), the Supreme Court has rejected the position that "interference" must always be established on a document-by-document basis, and it has held that a determination of the exemption's applicability may be made "generically," based on the categorical types of records involved. NLRB v. Robbins Tire & Rubber Co., 437 U.S. at 236. Thus, most courts have accepted affidavits in Exemption 7(A) cases that specify the distinct, generic categories of documents at issue and the harm that would result from their release, rather than requiring extensive detailed itemizations of each document. See, e.g., Wright v. OSHA, 822 F.2d 642, 646 (7th Cir. 1987); Spannaus v. Department of Justice, 813 F.2d 1285, 1288-89 (4th Cir. 1987); Curran v. Department of Justice, 813 F.2d 473, 475 (1st Cir.

1987); Bevis v. Department of State, 801 F.2d 1386, 1389 (D.C. Cir. 1986); Barney v. IRS, 618 F.2d at 1271 n.5; Moorefield v. Secret Serv., 611 F.2d at 1022; see also FOIA Update, Spring 1984, at 3-4; cf. Lewis v. IRS, 823 F.2d 375, 378-79 (9th Cir. 1987) (records described in opinion only as containing information relating to pending criminal investigation found sufficient).

Specific guidance has recently been provided in the First, Fourth and D.C. Circuit Courts of Appeals as to what constitutes an adequate "generic category" in an Exemption 7(A) affidavit. See Curran v. Department of Justice, 813 F.2d at 476 ("details regarding initial allegations giving rise to this investigation; notification of [FBI Headquarters] of the allegations; interviews with witnesses and subjects; investigative reports furnished to the prosecuting attorneys," and similar categories all sufficient); Spannaus v. Department of Justice, 813 F.2d at 476 (same); Bevis v. Department of Justice, 801 F.2d at 1390 ("identities of possible witnesses and informants, reports on the location and viability of potential evidence, and polygraph reports" sufficient; categories "identified only as 'teletypes,' 'airtels,' or 'letters'" insufficient). The general principle uniting these cases is that affidavits must provide at least a general, "functional" description of the types of documents at issue sufficient to indicate the type of interference to the law enforcement investigation. See, e.g., Curran v. Department of Justice, 813 F.2d at 475 ("Withal, a tightrope must be walked: categories must be distinct enough to allow meaningful judicial review, yet not so distinct as prematurely to let the cat out of the investigative bag."); cf. Pruitt Elec. Co. v. Department of Labor, 587 F. Supp. 893, 895-96 (N.D. Tex. 1984) (disclosure of reference material consulted by investigator that might aid an unspecified target in unspecified manner found not to cause interference); Safecard Servs., Inc. v. SEC, Civil No. 84-3073, slip op. at 6 n.3 (D.D.C. May 19, 1988) (agency "file" is not sufficient generic category to justify withholding pursuant to Exemption 7(A)). Note, however, that both Curran and Spannaus approved a miscellaneous category of "other sundry items of information." Curran v. Department of Justice, 813 F.2d at 476; (wide range of records made some generality "understandable--and probably essential"); Spannaus v. Department of Justice, 813 F.2d at 1287, 1289. The D.C. Circuit has not as yet specifically addressed an affidavit with such a category.

The functional test set forth in Bevis and Crooker does not require a detailed showing that release of the records is likely to interfere with the law enforcement proceedings; it is sufficient for the agency to make a generalized showing that release of these particular kinds of documents would generally interfere with enforcement proceedings. See Gould Inc. v. GSA, 688 F. Supp. at 703-04 n.34; Alyeska Pipeline Serv. Co. v. EPA, Civil No. 86-2176, slip op. at 6-7 (D.D.C. Sept. 9, 1987) (government need not "show that intimidation will certainly result," but it must "show that the possibility of witness intimidation exists"), aff'd, ___ F.2d ___ (D.C. Cir. Sept. 13, 1988). Making this showing should be easier under the amended language of the statutes. See Gould Inc. v. GSA, 688 F. Supp. at 703 n.33 (1986 FOIA amendments "relaxed the standard of demonstrating interference with enforcement proceedings.").

On a related procedural issue, the D.C. Circuit in Bevis held that even though an agency "need not justify its withholding on a document-by-document basis in court, [it] must itself review each document to determine the category in which it properly belongs." Bevis v. Department of State, 801 F.2d at 1389. Accord Hillcrest Equities, Inc. v. Department of Justice, Civil No. CA3-85-2351-R, slip op. at 7 (N.D. Tex. Jan. 26, 1987). In cases in-

volving voluminous records, it may be appropriate to request the court to allow submission of an affidavit based on a representative sample of the documents. Cf. Bevis v. Department of State, 801 F.2d at 1390 (may be appropriate for court to sample documents in camera where number involved is excessive); Vaughn v. Rosen, 383 F. Supp. 1049, 1052 (D.D.C. 1974) (reliance on submission of nine sample documents held sufficient compliance with court order requiring more detailed affidavit of voluminous number of documents), aff'd, 523 F.2d 1136 (D.C. Cir. 1975).

The courts have long accepted that Congress intended that Exemption 7(A) apply "whenever the government's case in court would be harmed by the premature release of evidence or information," NLRB v. Robbins Tire & Rubber Co., 437 U.S. at 232, or where disclosure would impede any necessary investigation prior to the enforcement proceeding, see National Pub. Radio v. Bell, 431 F. Supp. at 514-15. In Robbins Tire, the Supreme Court found that the NLRB had established interference with its unfair labor practice enforcement proceeding by showing that release of its witness statements would create a great potential for witness intimidation and could deter their cooperation. 437 U.S. at 239.

Other courts have ruled that interference has been established where, for example, the disclosure of information could prevent the government from obtaining data in the future, see, e.g., Gould Inc. v. GSA, 688 F. Supp. at 703 (disclosure of information would have chilling effect on sources who are employees of requester); Nishnic v. Department of Justice, 671 F. Supp. 776, 794 (D.D.C. 1987) (disclosure of identity of foreign source would end its ability to provide information in unrelated ongoing law enforcement activities); Timkin Co. v. Customs Serv., 531 F. Supp. at 199-200. But cf. Clyde v. Department of Labor, Civil No. 85-0139, slip op. at 6 (D. Ariz. July 3, 1986) (possible reluctance of contractors to enter into voluntary conciliations with government if substance of negotiations released does not constitute an open law enforcement proceeding when specific conciliation process has ended); Cohen v. EPA, 575 F. Supp. 425, 428-29 (D.D.C. 1983) (Exemption 7(A) inapplicable to protect letters sent to entities suspected of unlawfully releasing hazardous substances; disclosure not shown to deter parties from cooperating with voluntary cleanup programs).

Indeed, the D.C. Circuit Court of Appeals in Alyeska Pipeline Serv. Co. v. EPA, ___ F.2d at ___, recently upheld the lower court's decision that disclosure of documents which might identify which of the requester's employees had provided those documents to a private party (who in turn had provided them to EPA) would "thereby subject them to potential reprisals and deter them from providing further information to EPA." The exemption has also been held to be properly invoked when release would hinder an agency's ability to control or shape investigations, see, e.g., J.P. Stevens & Co. v. Perry, 710 F.2d 136, 143 (4th Cir. 1983), enable targets of investigations to elude detection, see, e.g., Moorefield v. Secret Serv., 611 F.2d at 1026, suppress or fabricate evidence, see, e.g., Alyeska Pipeline Serv. Co. v. EPA, ___ F.2d at ___; Nishnic v. Department of Justice, 671 F. Supp. at 794; Vosburgh v. IRS, Civil No. 87-1179, slip op. at 5 (D. Kan. Nov. 24, 1987), or prematurely reveal evidence or strategy in the government's case, see, e.g., Ehringhaus v. FTC, 525 F. Supp. at 22-23. But cf. John Doe Corp. v. John Doe Agency, 850 F.2d 105, 109 (2d Cir. 1988) (routinely generated documents in government files which were subsequently incorporated into a criminal law enforcement investigation held not protected by Exemption 7(A) even though disclosure "may enable a potential defendant to prepare responses to the investigation and to construct a defense to criminal charges") (petition for rehearing en banc pending). Still other courts have indicated that any pre-

mature discovery, by and of itself, can constitute interference with an enforcement proceeding. See Lewis v. IRS, 823 F.2d at 378-79, 380; Barney v. IRS, 618 F.2d at 1273; Steinberg v. IRS, 436 F. Supp. 1272, 1273 (S.D. Fla. 1979); see also Korkala v. Department of Justice, Civil No. 86-0242, slip op. at 8-9 (D.D.C. July 31, 1987) (applying exemption as amended where disclosure "could generally interfere with enforcement proceedings").

Exemption 7(A) will generally not afford protection where the target of the investigation has possession of or submitted the information in question, see, e.g., Wright v. OSHA, 822 F.2d at 646; Grasso v. IRS, 785 F.2d 70, 77 (3d Cir. 1986); Campbell v. HHS, 682 F.2d 256, 262 (D.C. Cir. 1982). Nevertheless, it is now increasingly clear that courts will protect such material if an agency can demonstrate that its "selectivity of recording" information provided by the target would suggest the nature and scope of the investigation, Willard v. IRS, 776 F.2d 100, 103 (4th Cir. 1985); Gould Inc. v. GSA, 688 F. Supp. at 704 n.37; Brinkerhoff v. Montoya, 3 GDS at 83,055, or if it can articulate with specificity how each category of documents, if disclosed, would cause interference, see Campbell v. HHS, 682 F.2d at 265; Linsteadt v. IRS, 729 F.2d 998, 1004-05 (5th Cir. 1984); Doe v. Department of Justice, slip op. at 5-6; cf. Alyeska Pipeline Serv. Co. v. EPA, ___ F.2d at ___ (mere assertions that requester knows scope of investigation not sufficient to present genuine issue of material fact that would preclude summary judgment).

Thus far, only a few cases have been decided addressing the statutory changes in the language of Exemption 7(A) since the enactment of the FOIA Reform Act. No Exemption 7(A) decision to date has dispositively based its holding on the new language, but several decisions recognize that the change in the language of this exemption effectively broadens its protection. See Alyeska Pipeline Serv. Co. v. EPA, ___ F.2d at ___ n.18 (improper reliance of lower court on pre-amendment version of Exemption 7(A) irrelevant as it simply "required EPA to meet a higher standard than FOIA now demands"); Curran v. Department of Justice, 813 F.2d at 474 n.1 ("the drift of the changes is to ease--rather than to increase--the government's burden in respect to Exemption 7(A)"); Gould Inc. v. GSA, 688 F. Supp. at 703 n.33; Korkala v. Department of Justice, slip op. at 6 n.*; see also Wright v. OSHA, 822 F.2d at 647; Spannaus v. Department of Justice, 813 F.2d at 1289; cf. Allen v. Department of Defense, 658 F. Supp. 15, 23 (D.D.C. 1986) (similar modification of the language of Exemption 7(C) created a "broader protection" than available under former language).

As a final matter, agencies should be aware of the new "(c)(1) exclusion," 5 U.S.C. §552(c)(1), which was enacted by the FOIA Reform Act. This special record exclusion applies to situations in which the very fact of a criminal investigation's existence is as yet unknown to the investigation's subject, and disclosure of the existence of the investigation (which would be revealed by any acknowledgment of the existence of responsive records) could reasonably be expected to interfere with enforcement proceedings. In such circumstances, an agency may treat the records as not subject to the requirements of the FOIA. (See discussion under Exclusions, infra.)

Exemption 7(B)

Exemption 7(B) of the FOIA protects "records or information compiled for law enforcement purposes [the disclosure of which] would deprive a person of a right to a fair trial or an impartial adjudication." 5 U.S.C. §552(b)(7)(B), as amended by Pub. L. No. 99-570, §1802 (1986). This rarely invoked exemption, which is aimed at avoiding prejudicial pretrial publicity, was broadly

applied this past year in Washington Post Co. v. Department of Justice, Civil No. 84-3581, slip op. at 29-31 (D.D.C. Sept. 25, 1987) (finding that disclosure of company's self-evaluative report concerning drug Oraflex "would have an adverse effect on the company's ability to receive a fair and impartial trial" in various personal injury cases pending against it) (magistrate's recommendation), adopted (D.D.C. Dec. 15, 1987) (appeal pending). Other than Washington Post, this exemption has not been the subject of any significant judicial interpretation.

Exemption 7(C)

Exemption 7(C) provides protection for personal information in law enforcement records. It closely parallels Exemption 6 as it requires an identification and balancing of the relevant privacy and public interests to determine whether the disclosure of an item of law enforcement information "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. §552(b)(7)(C), as amended by Pub. L. No. 99-570, §1802 (1986). For this reason, it is helpful on many Exemption 7(C) issues to refer also to the discussion of Exemption 6, supra.

By contrast with Exemption 6, however, Exemption 7(C)'s language establishes a lesser burden of proof to justify withholding in two distinct respects. It is well established that the omission of the word "clearly" from the language of Exemption 7(C) lessens the burden of the agency and stems from a recognition of the fact that law enforcement records are inherently more invasive of privacy than "personnel and medical files and similar files." See Congressional News Syndicate v. Department of Justice, 438 F. Supp. 538, 541 (D.D.C. 1977) ("[A]n individual whose name surfaces in connection with an investigation may, without more, become the subject of rumor and innuendo."); see also, e.g., Iglesias v. CIA, 525 F. Supp. 547, 562 (D.D.C. 1981). Additionally, the recent Freedom of Information Reform Act has further broadened the protection afforded by Exemption 7(C) by lowering the risk of harm standard from "would" to "could reasonably be expected to." 5 U.S.C. §552(b)(7)(C); see Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 9-12 (Dec. 1987) [hereinafter Attorney General's Memorandum].

As is the case with Exemption 6, the first step in employing the balancing test is to identify and evaluate the privacy interests, if any, that inhere in the requested records. "It is generally recognized that the mention of an individual's name in a law enforcement file will engender comment and speculation and carries a stigmatizing connotation." Branch v. FBI, 658 F. Supp. 204, 209 (D.D.C. 1987); see also Miller v. Bell, 661 F.2d 623, 631-32 (7th Cir. 1981) ("real potential for harassment"), cert. denied, 456 U.S. 960 (1982); Lesar v. Department of Justice, 636 F.2d 472, 488 (D.C. Cir. 1980) (it is difficult, if not impossible, to anticipate all respects in which disclosure might damage reputation or lead to personal embarrassment or discomfort); Maroscia v. Levi, 569 F.2d 1000, 1002 (7th Cir. 1977); Southam News v. INS, 674 F. Supp. 881, 887 (D.D.C. 1987) (disclosure of identities of individuals excludable from U.S. "would result in derogatory inferences about and possible embarrassment to those individuals"); Stauss v. IRS, 516 F. Supp. 1218, 1222 n.7 (D.D.C. 1981) (disclosure could chill tax protestors' lawful expression of disagreement with tax policies); cf. Cerveny v. CIA, 445 F. Supp. 772, 776 (D. Colo. 1978) (mere mention of individual's name as subject of CIA file could be damaging to his or her reputation) (Exemption 6). But see Silets v. FBI, 591 F. Supp. 490, 498 (N.D. Ill. 1984) ("The mere 'mention' of a person in an FBI report, by itself, does not support invocation of the

(b)(7)(C) exemption."); Lamont v. Department of Justice, 475 F. Supp. 761, 778 (S.D.N.Y. 1979); but see also Reporters Comm. for Freedom of the Press v. Department of Justice, 816 F.2d 730, 740 (D.C. Cir.) (privacy interest in third-party "rap sheet" records "seems insignificant" if it was at one time a matter of public record) [hereinafter Reporters Comm. I], amended upon denial of panel reh'g, 831 F.2d 1124 (D.C. Cir. 1987), reh'g en banc denied, Nos. 85-6020, 85-6144 (D.C. Cir. Dec. 4, 1987), cert. granted, 108 S. Ct. 1467 (1988).

Furthermore, just because a requester might on his own be able to "piece together" the identities of third parties whose names have been deleted does not diminish the exemption's protection; Weisberg v. Department of Justice, 745 F.2d 1476, 1491 (D.C. Cir. 1984); see also L&C Marine Transp., Ltd. v. United States, 740 F.2d 919, 922 (11th Cir. 1984) ("An individual does not lose his privacy interest under 7(C) because his identity . . . may be discovered through other means.").

Exemption 7(C) has frequently been applied to withhold references to persons who were of "investigatory interest" to a criminal law enforcement agency. See, e.g., Antonelli v. FBI, 721 F.2d 615, 618 (7th Cir. 1983) ("revealing that a third party has been the subject of FBI investigations is likely to constitute an invasion of [personal privacy]"), cert. denied, 467 U.S. 1210 (1984); Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d 856, 861-66 (D.C. Cir. 1981) (identities of those investigated but not charged must be withheld unless "exceptional interests militate in favor of disclosure"); Maroscia v. Levi, 569 F.2d at 1002; Heller v. Marshals Serv., 655 F. Supp. 1088, 1090 (D.D.C. 1987) (federal employees "have a strong [privacy] interest in not being associated unwarrantedly with alleged criminal activity"); Rushford v. Civiletti, 485 F. Supp. 477, 479 (D.D.C. 1980) ("severe adverse impact upon both his personal life and his official performance"), aff'd mem. sub nom. Rushford v. Smith, 656 F.2d 900 (D.C. Cir. 1981). But see Cunningham v. FBI, 540 F. Supp. 1, 2 (N.D. Ohio 1981), motion to vacate denied, Civil No. 78-486 (N.D. Ohio Feb. 2, 1984), rev'd & remanded, 765 F.2d 61 (6th Cir. 1985). For a thoughtful discussion of this issue as it applies to Criminal Division investigations of registrants under the Foreign Agents Registration Act, see Emerson v. Department of Justice, 603 F. Supp. 459, 462-64 (D.D.C. 1985), rev'd on other grounds mem., 792 F.2d 1186 (D.C. Cir. 1986).

The identities of federal, state and local law enforcement personnel referenced in investigatory files are routinely withheld, usually for reasons similar to those described quite aptly by the Fourth Circuit Court of Appeals:

> One who serves his state or nation as a career public servant is not thereby stripped of every vestige of personal privacy, even with respect to the discharge of his official duties. Public identification of any of these individuals could conceivably subject them to harassment and annoyance in the conduct of their official duties and in their private lives.

Nix v. United States, 572 F.2d 998, 1006 (4th Cir. 1978). See FOIA Update, Spring 1984, at 5; see also Johnson v. Department of Justice, 739 F.2d 1514, 1518-19 (10th Cir. 1984); New England Apple Council, Inc. v. Donovan, 725 F.2d 139, 142-44 (1st Cir. 1984) (Inspector General investigator has "interest in retaining the capability to perform his tasks effectively by avoiding untoward annoyance or harassment"); Miller v. Bell, 661 F.2d at 630

("It is not necessary that harassment rise to the level of endangering physical safety before the protections of 7(C) can be invoked."); Lesar v. Department of Justice, 636 F.2d at 487-88 (annoyance or harassment); Maroscia v. Levi, 569 F.2d at 1002; Malizia v. Department of Justice, 519 F. Supp. 338, 348-49 (S.D.N.Y. 1981) (protection against retaliation); Ferguson v. Kelley, 455 F. Supp. 324, 327 (N.D. Ill. 1978) (on reconsideration). However, one judge of the United States District Court for the District of Columbia has held on two occasions that nondisclosure of identities of FBI clerical personnel who performed administrative tasks with respect to requested records could not be predicated on Exemption 7(C) despite his recognition that it could subject them to harassing inquiries for unauthorized access to those records. Southam News v. INS, 674 F. Supp. at 888; Downs v. FBI, Civil No. 87-0301, slip op. at 3 (D.D.C. Mar. 29, 1988).

It should be noted that because Exemption 7(C) involves a balancing of the private and public interests on a case-by-case basis, see, e.g., Common Cause v. National Archives & Records Serv., 628 F.2d 179, 184-86 (D.C. Cir. 1980) (because balancing is required, per se withholding is inappropriate), there exists no "blanket exemption for the names of all [law enforcement] personnel in all documents." Lesar v. Department of Justice, 636 F.2d at 487. See, e.g., Stern v. FBI, 737 F.2d 84, 94 (D.C. Cir. 1984) (name of high-level FBI employee who engaged in intentional wrongdoing ordered released; names of two mid-level employees whose negligence furthered cover-up held protectible); see also Johnson v. Department of Justice, 739 F.2d at 1519 (FBI agents' identities found properly protectible absent evidence in record of impropriety); Heller v. Marshals Serv., 655 F. Supp. at 1090-91 (identities of federal marshals held protectible where there was "virtually no wrongdoing" on their part). Nonetheless, absent misconduct on the part of investigators, most courts have held the identities of law enforcement personnel exempt pursuant to 7(C). See, e.g., Doherty v. Department of Justice, 775 F.2d 49, 52 (2d Cir. 1985) ("Identities of FBI agents, of FBI non-agent personnel [and] of employees of the Immigration and Naturalization Service are embraced by exemption (b)(7)(C)."). The few aberrational decisions ordering disclosure of the names of government investigators--other than where proven misconduct has been involved--contain no persuasive reasoning contrary to the overwhelming majority of decisions on this issue. See, e.g., Castaneda v. United States, 757 F.2d 1010, 1012 (9th Cir.) (holding USDA investigator's privacy interest "not great" and noting that his "name would be discoverable in any civil case brought [against the agency]"), amended upon denial of panel reh'g, 773 F.2d 251 (9th Cir. 1985); Canadian Javelin, Ltd. v. SEC, 501 F. Supp. 898, 904 (D.D.C. 1980) (names of SEC investigators ordered disclosed); Iglesias v. CIA, 525 F. Supp. at 563 (names of government employees involved in conducting investigation ordered disclosed); see also Myers v. Department of Justice, Civil No. 85-1746, slip op. at 3-6 (D.D.C. Sept. 22, 1986) ("no privacy interest exists" as to names of law enforcement personnel who testified at requester's criminal trial).

In addition, all courts of appeals which have faced the issue have found protectible privacy interests--in conjunction with or in lieu of protection under Exemption 7(D)--in the identities of individuals who provide information to law enforcement agencies. See, e.g., Cleary v. FBI, 811 F.2d 421, 424 (8th Cir. 1987) (disclosure would subject "sources to unnecessary questioning concerning the investigation [and] to subpoenas issued by private litigants in civil suits incidentally related to the investigation"); Cuccaro v. Secretary of Labor, 770 F.2d 355, 359 (3d Cir. 1985) ("privacy interest of . . . witnesses who participated in OSHA's investigation outweighs public interest in dis-

closure"); L&C Marine Transp., Ltd. v. United States, 740 F.2d at 923 (disclosure of identities of employee-witnesses in OSHA investigation could cause "problems at their jobs and with their livelihoods"); New England Apple Council, Inc. v. Donovan, 725 F.2d at 144-45 ("Disclosure could have a significant, adverse effect on this individual's private or professional life."); Kiraly v. FBI, 728 F.2d 273, 278-80 (6th Cir. 1984); Holy Spirit Ass'n v. FBI, 683 F.2d 562, 564-65 (D.C. Cir. 1982) (concurring opinion); Alirez v. NLRB, 676 F.2d 423, 427-28 (10th Cir. 1982); Lesar v. Department of Justice, 636 F.2d at 488; Scherer v. Kelley, 584 F.2d 170, 176 (7th Cir. 1978), cert. denied, 440 U.S. 964 (1979); Maroscia v. Levi, 569 F.2d at 1002. This has been so even where it was shown that "the information provided to law enforcement authorities was knowingly false." Gabrielli v. Department of Justice, 594 F. Supp. 309, 313 (N.D.N.Y. 1984). See also Block v. FBI, Civil No. 83-0813, slip op. at 11 (D.D.C. Nov. 19, 1984) ("[Requester's] personal interest in knowing who wrote letters concerning him . . . is not sufficient to demonstrate a public interest.") (Exemption 6).

The names of witnesses, their home and business addresses, and their telephone numbers have been held properly protectible under Exemption 7(C). See L&C Marine Transp., Ltd. v. United States, 740 F.2d at 922 ("employee-witnesses . . . have a substantial privacy interest"); Antonelli v. Sullivan, 732 F.2d 560, 562 (7th Cir. 1984) ("[The requester] has mentioned no legitimate need for the witnesses' phone numbers and we can well imagine the invasions of privacy that would result should he obtain them."); Farese v. Department of Justice, 683 F. Supp. 273, 275 (D.D.C. 1987) (names and number of family members of participants in Witness Security Program, as well as funds authorized to each held exempt because disclosure "would pose a possible danger to the persons named" or "might subject those persons to harassment."); United States Steel Corp. v. Department of Labor, 558 F. Supp. 80, 82-83 (W.D. Pa. 1983) (names, addresses and phone numbers of witnesses found exempt); Friedman v. FBI, 605 F. Supp. 306, 321 (N.D. Ga. 1981) ("names and other unique personal information" about witnesses held exempt); see also Harper v. Department of Justice, Civil No. 86-5489, slip op. at 3 (D.C. Cir. Sept. 22, 1987) (names of potential witnesses held exempt); Kilroy v. NLRB, 633 F. Supp. 136, 145 (S.D. Ohio 1985) (names and telephone numbers of persons who provided affidavits held exempt), aff'd mem., 823 F.2d 553 (6th Cir. 1987); cf. Brown v. FBI, 658 F.2d 71, 75-76 (2d Cir. 1981) (information concerning witness who testified against requester protected under Exemption 6). But see Ferri v. Bell, 645 F.2d 1213, 1218 (3d Cir. 1981) (public interest in "Brady material" concerning possible "deal" between witness and prosecution outweighs witness' privacy interests); Joslin v. Department of Labor, Civil No. 86-C-2449, slip op. at 10-11 (D. Colo. May 9, 1988) (names of employee-witnesses who cooperated with OSHA Officer during accident investigation ordered disclosed because "strong public interest in encouraging safe working environments through tort litigation outweighs any hypothetical embarrassment to the privacy interests of the employee-witnesses who gave statements").

Of course, Exemption 7(C) cannot be invoked to shield the fact that a third party has been investigated once the agency has publicly confirmed the existence of such an investigation because there is little or no privacy interest in such public-record information. See FOIA Update, Winter 1986, at 4 ("OIP Guidance: Privacy 'Glomarization'"); cf. Reporters Comm. I, 816 F.2d at 738 ("ordinary meaning of privacy suggests . . . Exemption 7(C) does not exempt . . . publically [sic] available [information]"). Indeed, public record information, such as federal conviction and sentencing data, should generally be released. See, e.g., Rizzo v. Department of Justice, Civil No. 84-2080, slip op. at 5-6

(D.D.C. Feb. 28, 1985) (facts elicited at public trial are matters of public knowledge); Tennessean Newspapers, Inc. v. Levi, 403 F. Supp. 1318, 1320-21 (M.D. Tenn. 1975) (identities of individuals recently arrested or indicted ordered disclosed). See also Akron Standard Div. of Eagle-Picher Indus. v. Donovan, 780 F.2d 568, 572 (6th Cir. 1986) (information relating to job performance that "had been fully explored in public proceedings" not exempt); Myers v. Department of Justice, slip op. at 5 (matters discussed in trial testimony of law enforcement officials not exempt). (See Exemption 7(D), infra, for a discussion of the status of open-court testimony under that exemption.) But see Kimberlin v. Department of the Treasury, 774 F.2d 204, 209 (7th Cir. 1985) (Exemption 7(C) held applicable to third party's driver's license and passport "which were introduced into evidence" in federal criminal trial).

Once a privacy interest has been identified and assessed, it is to be balanced against the public interest, if any, that would be served by disclosure. Although many courts discuss the public interest factor with language implying that it exclusively and invariably favors disclosure, see, e.g., Lesar v. Department of Justice, 636 F.2d at 486, several courts have implicitly recognized a public interest favoring the nondisclosure of personal privacy information, particularly the public interest in avoiding the impairment of ongoing and future law enforcement investigations. See, e.g., Miller v. Bell, 661 F.2d at 631; Church of Scientology v. Department of State, 493 F. Supp. 418, 421 (D.D.C. 1980); Flower v. FBI, 448 F. Supp. 567, 571-72 (W.D. Tex. 1978). More explicitly, the D.C. Circuit in Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d at 865 n.22, specifically recognized that the "public interest properly factors into both sides of the balance." See also FOIA Update, Sept. 1982, at 5. (For a more detailed discussion of the appropriate factors to be balanced under both Exemptions 6 and 7(C), see FOIA Update, Sept. 1982, at 6, and the discussion of Exemption 6, supra.)

Moreover, the D.C. Circuit Court of Appeals recently underscored the fact that the public interest in disclosure must be significant, if not compelling, to overcome legitimate privacy interests. Senate of Puerto Rico v. Department of Justice, 823 F.2d 574, 588 (D.C. Cir. 1987) (general interest in "getting to the bottom" of highly controversial investigation held not sufficient to overcome "substantial privacy interests"). Furthermore, "[w]here the requester fails to assert a public interest purpose for disclosure, even a less than substantial invasion of another's privacy is unwarranted." King v. Department of Justice, 586 F. Supp. 286, 294 (D.D.C. 1983), aff'd, 830 F.2d 210 (D.C. Cir. 1987). Accord Dickie v. Department of the Treasury, Civil No. 86-0649, slip op. at 9 (D.D.C. Mar. 31, 1987) (same); see Aleman v. Shapiro, Civil No. 85-3313, slip op. at 5 (D.D.C. May 5, 1987) (plaintiff must assert sufficient public interest in disclosure to outweigh privacy interest of individuals mentioned in law enforcement files).

This traditional process by which personal privacy interests are balanced against the public interest has recently been called into question by the D.C. Circuit's Reporters Committee decisions. The case presents the difficult question of whether "rap sheets" on persons who have been arrested or convicted for criminal offenses more than 30 years ago--which may have been publicly available at some place and point in time--can be withheld under Exemption 7(C). See Reporters Comm. I, 816 F.2d at 738. In addition to holding that "any privacy interest in those records seems insignificant," id. at 740, the D.C. Circuit held that the privacy balancing process should no longer involve any assessment of "the public interest in disclosure of [the] par-

ticular information" in question. Reporters Comm. II, 831 F.2d at 1126. (See further discussion of this issue under Exemption 6, supra.) However, pending the Supreme Court's review of this case during its upcoming Term, agencies are advised to continue to engage the traditional balancing process under both Exemption 6 and Exemption 7(C). See FOIA Update, Spring 1988, at 3-5 ("OIP Guidance: Privacy Protection in the Wake of the Reporters Committee Decisions").

The applicability of Exemption 7(C) is not necessarily diminished by the passage of time. See, e.g., Keys v. Department of Justice, 830 F.2d 337, 348 (D.C. Cir. 1987) (passage of 40 years did not "dilute the privacy interest as to tip the balance the other way"); King v. Department of Justice, 830 F.2d at 234 (rejecting argument that passage of time diminished privacy interests at stake in records over 35 years old); Diamond v. FBI, 707 F.2d 75, 77 (2d Cir. 1983) ("the danger of disclosure may apply to old documents"), cert. denied, 465 U.S. 1004 (1984); Branch v. FBI, 658 F. Supp. at 209 ("[P]rivacy interests of the persons mentioned in the investigatory files do not necessarily diminish with the passage of time."); see also Rose v. Department of the Air Force, 495 F.2d 261, 267 (2d Cir. 1974) ("[A] person's privacy may be as effectively infringed by reviving dormant memories as by imparting new information.") (Exemption 6), aff'd, 425 U.S. 352 (1976); Lamont v. Department of Justice, 475 F. Supp. at 777. But see Silets v. FBI, 591 F. Supp. at 498 ("[W]here documents are exceptionally old, it is likely that their age has diminished the privacy interests at stake."); Wilkinson v. FBI, 633 F. Supp. 336, 345 (C.D. Cal. 1986) ("'There is likely to be little fear of retaliation, humiliation, or embarrassment over twenty years after the events.'") (quoting Powell v. Department of Justice, 584 F. Supp. 1508, 1526 (N.D. Cal. 1984)). In fact, this may be especially true in instances in which the information was obtained through questionable law enforcement investigations. See, e.g., Dunaway v. Webster, 519 F. Supp. 1059, 1079 (N.D. Cal. 1981) ("[The target of a McCarthy era investigation] may . . . deserve greater protection, because the connection to such an investigation might prove particularly embarrassing or damaging."); see also, e.g., Diamond v. FBI, 707 F.2d at 77.

Protecting the privacy interests of individuals who are the subjects of FOIA requests and are named in investigatory records requires special procedures. Many agencies with criminal law enforcement responsibilities follow the approach of the FBI, which is to respond to FOIA requests for records concerning other individuals by refusing to confirm or deny whether such records exist. Such a response is necessary because most members of the public draw adverse inferences from the mere fact that an individual is mentioned in the files of a criminal law enforcement agency. (For an in-depth discussion of this approach, see FOIA Update, Winter 1986, at 3-4 ("OIP Guidance: Privacy 'Glomarization'"); see also FOIA Update, Sept. 1982, at 2.) Therefore, except where the third-party subject is deceased, provides a written waiver of his privacy or has been officially confirmed to be the subject of an investigatory file (e.g., has been indicted for a federal crime), or where the public interest in disclosure is found to be overriding, law enforcement agencies should categorically "Glomarize" all such third-party requests--refusing either to confirm or deny the existence of responsive records--in order to protect the privacy of those who are in fact the subject of or mentioned in investigatory files. See FOIA Update, Winter 1986, at 3-4. (See the Exemption 1 discussion, supra, for the derivation of the term "Glomarize.") It should be noted in this regard that "a proper weighing [of the privacy and public interests] cannot take place without an examination [by the agency] of the actual records." Gilday v. Department of Justice, Civil No. 85-

292, slip op. at 10 (D.D.C. July 2, 1985). See also Shaw v. FBI, 604 F. Supp. 342, 345 (D.D.C. 1985). Additionally, at the litigation stage, the agency must demonstrate to the court either through a Vaughn affidavit or in camera submission, that its refusal to confirm or deny the existence of responsive records is appropriate. See Ely v. FBI, 781 F.2d 1487, 1492 n.4 (11th Cir. 1986) ("the government must first offer evidence, either publicly or in camera to show that there is a legitimate claim").

This "refusal to confirm or deny" approach is now widely accepted in the case law. See, e.g., Strassman v. Department of Justice, 792 F.2d 1267, 1268 (4th Cir. 1986) (request for records allegedly indicating whether the governor of West Virginia threatened to invoke Fifth Amendment); Antonelli v. FBI, 721 F.2d at 616-19 (prisoner seeking files on eight third parties); Knight Publishing Co. v. Department of Justice, Civil No. 84-510, slip op. at 1-2 (W.D.N.C. Mar. 28, 1985) (newspaper seeking any DEA investigatory file on governor, lieutenant governor or attorney general of North Carolina); Ray v. Department of Justice, Civil No. 3-84-1234, slip op. at 2-3 (M.D. Tenn. Nov. 28, 1984) (convicted killer of Dr. Martin Luther King, Jr., seeking file on former Tennessee state senator who introduced legislation which would bar convicts from receiving payment for literary works); Ely v. Secret Serv., Civil No. 83-2080, slip op. at 1-2 (D.D.C. Dec. 14, 1983) (inmate seeking file on third party "well known to plaintiff"); Ray v. Department of Justice, 558 F. Supp. 226, 228-29 (D.D.C. 1982) (convicted killer of Dr. Martin Luther King, Jr., seeking any file on his former attorney, Percy Foreman, or Congressman Louis Stokes), aff'd mem., 720 F.2d 216 (D.C. Cir. 1983); Blakey v. Department of Justice, 549 F. Supp. 362, 365-66 (D.D.C. 1982) (professor seeking any records relating to a minor figure in investigation of assassination of President Kennedy who was indexed under topics other than Kennedy assassination), aff'd in part, vacated in part mem., 720 F.2d 215 (D.C. Cir. 1983); Rushford v. Civiletti, 485 F. Supp. at 479-81 (reporter seeking criminal files on federal judges). But cf. Gough v. FBI, Civil No. F85-008, slip op. at 2-3 (D. Alaska Dec. 27, 1983) (subject of request publicly stated FBI had aided in investigation of him).

For examples of the procedural difficulties involved in defending a "Glomar" response when the requester's "speculation" as to the contents of the records (if any exist) raises a considerable public interest, see Shaw v. FBI, 604 F. Supp. at 344-45 (requester seeking any investigatory files on individuals who he believed participated in assassination of President Kennedy); Flynn v. Department of Justice, Civil No. 83-2282, slip op. at 1-3 (D.D.C. Feb. 18, 1984) (allegation of documents reflecting judicial bias), summary judgment for defendant granted (D.D.C. Apr. 6, 1984); see also Knight Publishing Co. v. Department of Justice, slip op. at 2 (on motion to compel unsealing of in camera affidavit).

While it still remains to be seen exactly what effect the recent legislative amendments will have on the development of Exemption 7(C) case law, it has already been recognized that now there is a "broader category of information that is protectible under 7(C)." Allen v. Department of Defense, 658 F. Supp. 15, 23 (D.D.C. 1986). The United States District Court for the District of Columbia, in interpreting the amended language, has pointedly observed that it affords the agency "greater latitude in protecting privacy interests" in the law enforcement context. Washington Post Co. v. Department of Justice, Civil No. 84-3581, slip op. at 31 (D.D.C. Sept. 25, 1987) (magistrate's recommendation), adopted (D.D.C. Dec. 15, 1987) (appeal pending). Such information "is now evaluated by the agency under a more elastic standard; exemption 7(C) is now more comprehensive." Id. See also

Keys v. Department of Justice, 830 F.2d at 346 (at least after the 1986 FOIA amendments, "government need not 'prove to a certainty that release will lead to an unwarranted invasion of personal privacy'") (quoting Reporters Comm. I, 816 F.2d at 738); Nishnic v. Department of Justice, 671 F. Supp. 776, 788 (D.D.C. 1987) (holding phrase "could reasonably be expected to" to be a more easily satisfied standard than "likely to materialize"). The significantly lessened certainty of harm now required should permit agencies to afford full protection to personal privacy interests in law enforcement files wherever it can reasonably be seen that those interests are threatened by FOIA disclosure. See Attorney General's Memorandum at 9-12.

Exemption 7(D)

The Freedom of Information Reform Act of 1986 significantly bolstered the protections afforded confidential sources by Exemption 7(D) in a number of respects. See Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 13-15 (Dec. 1987) [hereinafter Attorney General's Memorandum]. As now amended, Exemption 7(D) provides protection for "records or information compiled for law enforcement purposes [which] could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source." 5 U.S.C. §552(b)(7)(D), as amended by Pub. L. No. 99-570, §1802 (1986).

Although in some respects the 1986 FOIA amendments essentially codified what had been the prevailing judicial interpretation of the prior language of the exemption, in other areas the amendment represents a significant expansion of the exemption's shield for confidential sources. Now, both Congress and the courts have clearly manifested their appreciation that a "robust" Exemption 7(D) is crucial to ensuring that "confidential sources are not lost because of retaliation against the sources for past disclosure or because of the sources' fear of future disclosure." Brant Constr. Co. v. EPA, 778 F.2d 1258, 1262 (7th Cir. 1985); see Struth v. FBI, 673 F. Supp. 949, 965 (E.D. Wis. 1987) ("[T]his exemption need not be construed narrowly because, in enacting it, Congress displayed an intent to preserve, not destroy, confidentiality in certain necessary situations.").

By specifically identifying particular categories of individuals and institutions to be included in the term "source," the FOIA Reform Act enacts into positive law the position reflected in the legislative history of the 1974 amendments to the FOIA: that the term "confidential source" was chosen by design to encompass a broader group than would have been included had the term "informer" been used. See Conf. Rep. No. 1200, 93d Cong., 2d Sess. 13, reprinted in 1974 U.S. Code Cong. & Admin. News 6285, 6291. Both statute and case law now unequivocally recognize that sources include state and local law enforcement agencies, see, e.g., Lesar v. Department of Justice, 636 F.2d 472, 489-91 (D.C. Cir. 1980); Abrams v. FBI, 511 F. Supp. 758, 763 (N.D. Ill. 1981); Parton v. Department of Justice, 727 F.2d 774, 775-77 (8th Cir. 1984) (state prison officials interviewed in connection with a civil rights investigation), and foreign law enforcement agencies, see, e.g., Founding Church of Scientology v. Regan, 670 F.2d 1158, 1161-62 (D.C. Cir. 1981) (including foreign Interpol national bureaus), cert. denied, 456 U.S. 976 (1982). Other federal enforcement agencies, however, remain ineligible for exemption as confidential sources, see Retail

Credit Co. v. FTC, 1976-1 Trade Cas. (CCH) ¶60,727, at 68,127 n.3 (D.D.C. 1976); see also FOIA Update, Spring 1984, at 7.

By its own language, however, the statutory enumeration is not exhaustive. The term "source" continues to include a broad variety of individuals and institutions not legislatively specified, such as: citizens providing unsolicited allegations of misconduct, see, e.g., Brant Constr. Co. v. EPA, 778 F.2d at 1263; Pope v. United States, 599 F.2d 1383, 1386-87 (5th Cir. 1979); Mobil Oil Corp. v. FTC, Civil No. 74-Civ-311, slip op. at 3 (S.D.N.Y. Dec. 7, 1978); citizens who respond to inquiries from law enforcement agencies, see, e.g., Miller v. Bell, 661 F.2d 623, 627-28 (7th Cir. 1981), cert. denied, 456 U.S. 960 (1982); and private employees responding to an OSHA investigation of an industrial accident, see, e.g., L&C Marine Transp., Ltd. v. United States, 740 F.2d 919, 924-25 (11th Cir. 1984). Of course, commercial or financial institutions, now encompassed in the statutory phrase "any private institution," have long been acknowledged in the majority case law as confidential sources. See, e.g., Founding Church of Scientology v. Levi, 579 F. Supp. 1060, 1063 (D.D.C. 1982), aff'd per curiam, 721 F.2d 828 (D.C. Cir. 1983); Biberman v. FBI, 528 F. Supp. 1140, 1143 (S.D.N.Y. 1982); Dunaway v. Webster, 519 F. Supp. 1059, 1082 (N.D. Cal. 1981).

The same underlying considerations which mandate that a broad spectrum of individuals and institutions be encompassed by the term "source" also require that the adjective "confidential" be entitled to a similarly broad construction: It merely signifies that the information was provided in confidence or in trust, with the assurance that it would not be disclosed to others. See, e.g., Shaw v. FBI, 749 F.2d 58, 61 (D.C. Cir. 1984); Radowich v. United States Attorney, Dist. of Md., 658 F.2d 957, 959 (4th Cir. 1981); Borton, Inc. v. OSHA, 566 F. Supp. 1420, 1425 (E.D. La. 1983) (magistrate's recommendation published as "appendix"). Thus, it only logically follows that "'the availability of Exemption 7(D) depends not upon the factual contents of the document sought, but upon whether the source was confidential.'" Shaw v. FBI, 749 F.2d at 61 (emphasis in original) (quoting Weisberg v. Department of Justice, 745 F.2d 1476, 1492 (D.C. Cir. 1984), reh'g en banc denied, No. 82-1229 (D.C. Cir. June 4, 1985)). Accord Lesar v. Department of Justice, 636 F.2d at 492. Because this exemption hinges on the circumstances under which the information is provided, and not exclusively on the harm resulting from disclosure (in contrast to Exemptions 6 and 7(C)), no balancing test is applied under Exemption 7(D). See, e.g., Katz v. FBI, No. 87-3712, slip op. at 9 (5th Cir. Mar. 30, 1988) (unpublished memorandum); Brant Constr. Co. v. EPA, 778 F.2d at 1262-63 ("Congress has struck the balance in favor of nondisclosure."); Cuccaro v. Secretary of Labor, 770 F.2d 355, 360 (3d Cir. 1985); Sands v. Murphy, 633 F.2d 968, 971 (1st Cir. 1980); Struth v. FBI, 673 F. Supp. at 966; Keys v. Department of Justice, Civil No. 85-2588, slip op. at 9 (D.D.C. May 12, 1986) (where Exemption 7(D) applies court can only "suggest" a broader disclosure, even in the face of substantial public interest), aff'd, 830 F.2d 337 (D.C. Cir. 1987).

The first clause of Exemption 7(D), with respect to any civil or criminal law enforcement records, focuses upon the identity of a confidential source, rather than the information furnished by the source. The 1974 legislative history of Exemption 7(D), though, plainly evidences Congress' intention to absolutely and comprehensively protect the identity of anyone who provided information to a government agency in confidence. See Conf. Rep. No. 1200, 93d Cong., 2d Sess. 13, reprinted in 1974 U.S. Code Cong. & Admin. News 6285, 6291. Thus, this exemption's first clause protects "both the identity of the informer and infor-

mation which might reasonably be found to lead to disclosure of such identity." 120 Cong. Rec. 17033 (1974) (statement of Sen. Hart). Consequently, the courts have readily recognized that the first clause of Exemption 7(D) safeguards not only such obviously identifying information as informants' names and addresses, see Cuccaro v. Secretary of Labor, 770 F.2d at 359-60, but also all information which would "tend to reveal" the source's identity, Pollard v. FBI, 705 F.2d 1151, 1155 (9th Cir. 1983). See also Katz v. Webster, Civil No. 82-Civ-1092, slip op. at 26 (S.D.N.Y. May 20, 1985) (source and symbol file numbers); Martinez v. FBI, Civil No. 82-1547, slip op. at 13 (D.D.C. Oct. 11, 1983) (same). Accordingly, protection for source-identifying information extends well beyond material which is merely a substitute for the source's name. To prevent indirect identification of a source, even the name of a third-party who is not a confidential source--but who acted as an intermediary for the source in his dealings with the agency--can be withheld. See Birch v. Postal Serv., 803 F.2d 1206, 1212 (D.C. Cir. 1986); United Technologies Corp. v. NLRB, 777 F.2d 90, 95 (2d Cir. 1985). Further source-identification protection is now provided by the "(c)(2) exclusion," 5 U.S.C. §552(c)(2), which permits a criminal law enforcement agency to entirely exclude records from the FOIA under specified circumstances when necessary to avoid divulging the existence of a source relationship. (See discussion of Exclusions, infra.) Additionally, even information provided by a source may be withheld under the first clause of Exemption 7(D) where disclosure of that information would permit the "linking" of a source to specific source-provided material. L&C Marine Transp., Ltd. v. United States, 740 F.2d at 923-25.

Informants' identities are protected whenever they have provided information either under an express promise of confidentiality, see King v. Department of Justice, 830 F.2d 210, 235 (D.C. Cir. 1987), or "under circumstances from which such an assurance could be reasonably inferred." Conf. Rep. No. 1200, 93d Cong., 2d Sess. 13, reprinted in 1974 U.S. Code Cong. & Admin. News 6285, 6291; see, e.g., King v. Department of Justice, 830 F.2d at 235 (informants' close personal association with investigative targets created an "apparent conflict in allegiance" between their friendship with targets and their cooperation with the FBI, from which assurance of confidentiality readily could be inferred); Radowich v. United States Attorney, Dist. of Md., 658 F.2d at 960; Pope v. United States, 599 F.2d at 1386; Nix v. United States, 572 F.2d 998, 1003 (4th Cir. 1978) (circumstances surrounding creation of FBI records give rise to implied assurance of confidentiality; any other interpretation would jeopardize law enforcement agency's ability to obtain information in future); Maroscia v. Levi, 569 F.2d 1000, 1002 (7th Cir. 1977). An implicit promise of confidentiality may be discerned not only from the inherent sensitivity of criminal investigations, but also from the circumstances surrounding civil investigations. See, e.g., United Technologies Corp. v. NLRB, 777 F.2d at 94 ("An employee-informant's fear of employer retaliation can give rise to a justified expectation of confidentiality"); see also Voelker v. FBI, 638 F. Supp. 571, 573 (E.D. Mo. 1986) (identifying individuals who supplied information in an FBI background investigation could subject them to "possible loss of business or social standing, ridicule, harassment, and even bodily harm") (Privacy Act case).

Circumstances from which a promise of confidentiality will be inferred include instances where the agency has a "recognized policy" embodied in public regulations of granting confidentiality to certain categories of complainants. See, e.g., Mobil Oil Corp. v. FTC, slip op. at 2-3; cf. Londrigan v. FBI, 722 F.2d 840, 844-45 (D.C. Cir. 1983) (implied confidentiality requirement of Exemption (k)(5) of Privacy Act of 1974 satisfied where agency

demonstrates well-documented policy of generally promising confidentiality to interviewees). It has also been held that the identities of persons providing statements in response to routinely given "unsolicited assurances of confidentiality" are protectible under Exemption 7(D). See, e.g., Brant Constr. Co. v. EPA, 778 F.2d at 1263; L&C Marine Transp., Ltd. v. United States, 740 F.2d at 924 n.5; Pope v. United States, 599 F.2d at 1386-87; Borton, Inc. v. OSHA, 566 F. Supp. at 1422. Indeed, even a conditional promise of confidentiality has been held to be sufficient. See Donovan v. FBI, 625 F. Supp. 808, 813 (S.D.N.Y.) ("[I]nformant's request for confidentiality . . . is not altered by an ambiguous consent to the use of the informant's name, if necessary."), aff'd in part, 806 F.2d 55 (2d Cir. 1986).

There exists some conflict in the case law as to the availability of Exemption 7(D) protection for sources who are advised that they might be called to testify if a trial eventually takes place. In three decisions involving civil enforcement of federal labor laws, courts have held that a promise of confidentiality is effectively vitiated where the informant is advised he may ultimately be called as a witness. See, e.g., Van Bourg, Allen, Weinberg & Roger v. NLRB, 751 F.2d 982, 986 (9th Cir.), reh'g en banc denied, No. 82-4719 (9th Cir. May 1, 1985); Poss v. NLRB, 565 F.2d 654, 658 (10th Cir. 1977); Nemacolin Mines Corp. v. NLRB, 467 F. Supp. 521, 524-25 (W.D. Pa. 1979).

The evolving and decidedly superior view, however, resoundingly rejects a rigid "potential witness" rule. In United Technologies Corp. v. NLRB, 777 F.2d at 95, the Second Circuit observed that such a harsh rule is unacceptable "under any circumstances." It declared:

> This [rule] frustrates the employee's and the Board's reasonable expectations that confidentiality will be maintained unless and until there is a hearing at which the employee-informant will testify.
>
> * * * * *
>
> A potential witness rule would require an agency to choose, at the outset of its investigation, which informants it may later call to testify and which informants it will definitely not call. Only the latter would be guaranteed confidentiality.

Id. at 95 & n.6 (emphasis in original). Similarly, in categorically denouncing the contention that an individual's initial agreement to testify should constitute a "voluntary and intentional" waiver, the First Circuit perceptively observed:

> There are simply too many plausible explanations for a person's initial willingness to testify: he may know that he can recant at any time prior to raising his right hand, he may be gambling on the unlikelihood of his testimony ultimately proving to be needed, he may feel that his evidence will be directed toward a much narrower field . . . or he may be downright fearful of declining the government's invitation.

Irons v. FBI, 811 F.2d 681, 687 (1st Cir. 1987); see also, e.g., Burkall v. Bureau of Prisons, Civil No. 86-2491, slip op. at 3 (D.D.C. June 30, 1987); Martinez v. FBI, Civil No. 82-1547, slip op. at 9-10 (D.D.C. Dec. 19, 1985) ("It cannot be assumed that an

individual who agrees to testify in court, where there are various rights and protections accorded a witness, has also agreed to general public exposure of comments made to investigators."); United States Steel Corp. v. Department of Labor, 558 F. Supp. 80, 82-83 (W.D. Pa. 1983) (protecting interviewees promised confidentiality but advised they may be called to testify); T.V. Tower, Inc. v. Marshall, 444 F. Supp. 1233, 1237 (D.D.C. 1978); cf. Robbins Tire & Rubber Co. v. NLRB, 563 F.2d 724, 733-34 (5th Cir. 1977) (ordering disclosure of witness statements in non-criminal investigation where witness had actually been scheduled to testify), rev'd on other grounds, 437 U.S. 214 (1978). One court has taken a curious middle ground on this issue, protecting the identities of informants who appreciate only that they "might possibly" be subpoenaed to testify, but ordering disclosure of the identities of informants who "willingly agreed to testify [and had] a concrete expectation that their identities would be revealed within a short period of time." Powell v. United States, 584 F. Supp. 1508, 1529-30 (N.D. Cal. 1984).

Although the effect an agreement to testify has on a finding of confidentiality has been evaluated by several courts, few have addressed the question of what effect actual trial testimony has on the application of Exemption 7(D). When confronted with the issue in Lame v. Department of Justice, 654 F.2d 917 (3d Cir. 1981), the Third Circuit chose to couch its analysis in terms of the effect of actual testimony on the original expectation of confidentiality, see id. at 925, 927, and resolution of even that question was deferred pending submission of a more complete Vaughn index by the government, see id. at 928. In addressing the same question, however, the First Circuit initially rejected the notion that trial testimony diminishes the original promise of confidentiality. Irons v. FBI, 851 F.2d 532, 536-37 (1st Cir. 1988). Rather, that court focused on the issue of whether testimony at trial constitutes a waiver of Exemption 7(D) protection and found a waiver not only of the actual testimony, but of all material provided by the informant in underlying law enforcement files which could, hypothetically, have formed the subject of cross-examination. Id. at 539. In so doing, the court recognized that it was arguably placing itself at odds with the decisions of at least two other circuits, Kiraly v. FBI, 728 F.2d 273, 279-80 (6th Cir. 1984), and Scherer v. Kelley, 584 F.2d 170, 176 n.7 (7th Cir. 1978), cert. denied, 440 U.S. 964 (1979). 851 F.2d at 536. Most significantly, however, the First Circuit recently vacated this opinion and ordered the issue set for rehearing by the full Circuit Court. Irons v. FBI, No. 87-1516 (1st Cir. Sept. 20, 1988). It remains to be seen whether the full First Circuit will adhere to the original panel view; unless it does, that troublesome view will be a nullity.

While the precise wording varies from opinion to opinion, virtually every appellate court to consider the question has recognized that confidentiality is ordinarily presumed for law enforcement agency interviews in criminal investigations and that no demonstration of implied confidentiality on a source-by-source basis is required. The development of case law on this issue can be seen through the evolution of the following cases: Miller v. Bell, 661 F.2d at 627 ("Unless there is evidence to the contrary in the record, we believe such promises of confidentiality are inherently implicit in FBI interviews conducted pursuant to a criminal investigation."); Conoco Inc. v. Department of Justice, 687 F.2d 724, 730 (3d Cir. 1982); Ingle v. Department of Justice, 698 F.2d 259, 269 (6th Cir. 1983); Diamond v. FBI, 707 F.2d 75, 78 (2d Cir. 1983) (impossibility of justifying each use of Exemption 7(D) on basis of personal knowledge requires adoption of "functional approach"--protection automatic where "agency's 'investigatory function depends for its existence upon information supplied by individuals who in many cases would suffer

severe detriment if their identities were known'"), cert. denied, 465 U.S. 1004 (1984); Parton v. Department of Justice, 727 F.2d at 776; Johnson v. Department of Justice, 739 F.2d 1514, 1517-18 (10th Cir. 1984); Kimberlin v. Department of the Treasury, 774 F.2d 204, 208 (7th Cir. 1985) (confidentiality "inherently implicit" in BATF interviews); Donovan v. FBI, 806 F.2d 55, 61 (2d Cir. 1986) (reaffirming "functional approach" adopted by Diamond). The most recent decision on this subject, Keys v. Department of Justice, 830 F.2d at 345, discusses the foregoing cases and likewise concluded that "courts should find an assurance of confidentiality where it is reasonable to infer from the circumstances that its absence would impair the Bureau's ability to elicit the information." Significantly, the D.C. Circuit in Keys declared: "Certainly Miller's supposition that promises of confidentiality are 'inherently implicit' in FBI interviews is entirely appropriate here." Id.

Although one appellate decision, Lame v. Department of Justice, 654 F.2d at 925, appears to run contrary to these rather straightforward appellate holdings by requiring individualized justifications of implied confidentiality, that decision was based upon extraordinary circumstances. Because the plaintiff there sought interview reports of specific individuals who testified at trial or who were otherwise identified in court filings, the decision falls more properly into the "potential witness rule" category of cases. This is further evidenced by the Third Circuit's adoption of a completely opposite approach in its subsequent decision in Conoco Inc. v. Department of Justice, 687 F.2d at 730 ("All the agency is required to do is identify the document and state that the information was furnished by a confidential source."). In unusual instances, district courts have failed to apply a functional approach and demanded an informant-by-informant explanation of implied confidentiality. See, e.g., Wilkinson v. FBI, 633 F. Supp. 336, 347-49 (C.D. Cal. 1986) (particularized justifications of implied confidentiality required where the court expressed strong doubts as to legality of law enforcement investigation and some sources may have been potential witnesses or interviewed only about general background issues).

The second clause of Exemption 7(D) protects all information furnished to law enforcement authorities by confidential sources in the course of criminal or lawful national security intelligence investigations. See, e.g., Keys v. Department of Justice, 830 F.2d at 343 (requirement of an "investigation," while no longer a component of Exemption 7 threshold, remains "a predicate of exemption under the second clause of paragraph (D)"); Shaw v. FBI, 749 F.2d at 63-65 (articulating standard for determining if law enforcement undertaking satisfies "criminal investigation" threshold); Meeropol v. Smith, Civil No. 75-1121, slip op. at 76-78 (D.D.C. Feb. 29, 1984) (intelligence investigations), aff'd in part & remanded in part sub nom. Meeropol v. Meese, 790 F.2d 942 (D.C. Cir. 1986). For the purposes of this clause, criminal law enforcement authorities include federal agency inspectors general. Brant Constr. Co. v. EPA, 778 F.2d at 1265 (recognizing "substantial similarities between the activities of the FBI and the OIGs"). In an interesting elaboration on the definition of a "criminal investigation," one court has held that information originally compiled by county authorities in conjunction with a nonfederal criminal investigation did not forfeit its criminal investigatory character when subsequently obtained by federal authorities solely for use in a civil enforcement proceeding. Dayo v. INS, Civil No. C-2-83-1422, slip op. at 5-6 (S.D. Ohio Dec. 31, 1985).

Obviously, confidential source information that may be withheld under the second clause of Exemption 7(D) need not be

source-identifying. See, e.g., Shaw v. FBI, 749 F.2d at 61-62; Radowich v. United States Attorney, Dist. of Md., 658 F.2d at 964; Duffin v. Carlson, 636 F.2d 709, 712 (D.C. Cir. 1980). Thus, under the second clause of Exemption 7(D), courts have permitted the withholding of confidential information after the source's identity has been officially divulged or acknowledged. See, e.g., Cleary v. FBI, 811 F.2d 421, 423 (8th Cir. 1987); Shaw v. FBI, 749 F.2d at 62; Radowich v. United States Attorney, Dist. of Md., 658 F.2d at 964. Similarly, information provided by an anonymous source remains protected. See Mitchell v. Ralston, Civil No. 81-4478, slip op. at 2 (S.D. Ill. Oct. 14, 1982).

Because the phrase "confidential information furnished only by the confidential source" sometimes caused confusion in the past, the 1986 FOIA Amendments have unequivocally clarified the congressional intent by deleting the word "confidential" as a modifier of "information" and omitting the word "only" from this formulation. But even prior to the legislative change courts regularly employed this portion of Exemption 7(D) to protect all information provided by a confidential source, both because such withholdings were permitted by the plain language of the statute and in recognition of the fact that disclosure of any of this material would jeopardize the system of confidentiality that ensures a free flow of information from sources to investigatory agencies. See, e.g., Shaw v. FBI, 749 F.2d at 62 ("Whatever the phrase 'furnished only by the confidential source' may mean, it assuredly cannot mean 'obtainable only from the confidential source.'"); Weisberg v. Department of Justice, 745 F.2d at 1492; Johnson v. Department of Justice, 739 F.2d at 1518; Duffin v. Carlson, 636 F.2d at 712-13. It should not be overlooked in this regard that the Supreme Court's decision in United States v. Weber Aircraft Corp., 465 U.S. 792, 803 n.23 (1984), contains a pointed reference to the importance of extending broad protection to witness statements because otherwise such information "would not be obtained by the Government in the first place." Similarly, CIA v. Sims, 471 U.S. 159, 169-77 (1985), demonstrates the Supreme Court's unmistakable recognition of the importance of source protection, albeit in a somewhat different context.

Of course, an agency "has no duty to seek the witness's permission to waive his confidential status under the Act." Borton, Inc. v. OSHA, 566 F. Supp. at 1422. But even authorized or official disclosure of some information provided by a confidential source in no way opens the door to disclosure of any of the other information the source has provided. Shaw v. FBI, 749 F.2d at 62 ("Disclosure of one piece of information received from a particular party--and even the disclosure of that party as its source--does not prevent that party from being a 'confidential source' for other purposes."); Brant Constr. Co. v. EPA, 778 F.2d at 1265. In the same vein, source-provided information remains protected even where some of it has been the subject of testimony in open court. See, e.g., Kimberlin v. Department of the Treasury, 774 F.2d at 209 ("The disclosure [prior to or at trial] of information given in confidence does not render non-confidential any of the information originally provided."); Scherer v. Kelley, 584 F.2d at 176 n.7; see also FOIA Update, Spring 1984, at 6.

Additionally, disclosure of informant-related material to a party aligned with an agency in an administrative proceeding does not diminish the government's ability to invoke Exemption 7(D) in response to a subsequent request by a nonallied party. United Technologies Corp. v. NLRB, 777 F.2d at 95-96. Logically, this principle should be extended to encompass also parties aligned with the government in actual litigation. Nor is the protection of Exemption 7(D) forfeited by "court-ordered and court-supervised" disclosure to an opponent in civil discovery. Donohue v. Department of Justice, Civil No. 84-3451, slip op. at 11 (D.D.C.

Dec. 23, 1987). However, where the government fails to object in any way to such discovery, and consciously and deliberately puts confidential source material into the public record, a waiver of the exemption will be found to have occurred. Nishnic v. Department of Justice, 671 F. Supp. 776, 812 (D.D.C. 1987).

Obviously, if no waiver of Exemption 7(D) results from authorized release of relevant information, "[t]he per se limitation on disclosure under 7(D) does not disappear if the identity of the confidential source becomes known through other means." L&C Marine Transp., Ltd. v. United States, 740 F.2d at 925 (first clause of Exemption 7(D)); see, e.g., Weisberg v. Department of Justice, 745 F.2d at 1491 (joint withholding under Exemptions 7(C) and 7(D)); Lesar v. Department of Justice, 636 F.2d at 491 (information provided by local law enforcement agencies whose participation had become known); Keeney v. FBI, 630 F.2d 114, 119 n.2 (2d Cir. 1980) (confidentiality for information supplied by local law enforcement agency unaffected by identification of the agency as a source).

Because of the vital role that Exemption 7(D) plays in promoting effective law enforcement, its protections cannot be lost through the mere passage of time. See, e.g., Keys v. Department of Justice, 830 F.2d at 346 ("'Congress has not established a time limitation for exemption (7)(D) and it would be both impractical and inappropriate for the Court to do so.'"); King v. Department of Justice, 830 F.2d at 212-13, 236 (interviews conducted in 1941 and 1952 protected); Brant Constr. Co. v. EPA, 778 F.2d at 1265; Diamond v. FBI, 707 F.2d at 76-77 (protecting McCarthy-era documents); Abrams v. FBI, 511 F. Supp. at 762-63 (protecting 27-year-old documents). And, unlike Exemption 7(C), the safeguards of Exemption 7(D) remain wholly undiminished by the death of the source. See, e.g., Kiraly v. FBI, 728 F.2d at 279 (information provided by deceased source who also testified at trial); Cohen v. Smith, No. 81-5365, slip op. at 4 (9th Cir. Mar. 25, 1983) (unpublished memorandum), cert. denied, 464 U.S. 939 (1983); Stassi v. Department of Justice, Civil No. 78-0536, slip op. at 9-10 (D.D.C. Apr. 12, 1979); cf. Allen v. Department of Defense, 658 F. Supp. 15, 20 (D.D.C. 1986) (protection of deceased intelligence sources under Exemption 1); see also FOIA Update, Summer 1983, at 5.

While it remains to be seen precisely what effect the FOIA Reform Act will have on the development of Exemption 7(D) case law, the relaxation of Exemption 7(D)'s harm standard, in conjunction with the other legislative amendments to it, should significantly broaden the protection available to confidential sources. See Attorney General's Memorandum at 13. All federal agencies maintaining law enforcement information may now apply the strengthened Exemption 7(D) to ensure adequate source protection. They should employ, in the words of one of the first courts to consider the matter under the Reform Act, "[a] 'robust' reading of exemption 7(D)." Sluby v. Department of Justice, Civil No. 86-1503, slip op. at 5 (D.D.C. Apr. 30, 1987). Accord Irons v. FBI, 811 F.2d at 687-89 (post-amendment decision extending Exemption 7(D) protection to sources who received only conditional assurances of confidentiality).

Exemption 7(E)

As with other portions of Exemption 7, Exemption 7(E) was significantly strengthened by the Freedom of Information Reform Act of 1986. Previously, Exemption 7(E) encompassed only investigatory records compiled for law enforcement purposes the production of which "would . . . disclose investigative techniques and procedures." See Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 15 (Dec. 1987)

[hereinafter Attorney General's Memorandum]. It now affords protection to all law enforcement information "which 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." 5 U.S.C. §552(b)(7)(E), as amended by Pub. L. No. 99-570, §1802 (1986). Thus, it first should be noted that all of the recognized applications of Exemption 7(E) under its former version are in no way undercut by the provision as amended and thus remain fully in effect.

As reconstituted, the first clause of Exemption 7(E) permits the withholding of "records or information compiled for law enforcement purposes . . . [which] would disclose techniques and procedures for law enforcement investigations or prosecutions." It should not be overlooked that this first clause is phrased in such a way as to not require any particular determination of harm --or risk of circumvention of law--that would be caused by disclosure of the records or information within its coverage. Rather, it is designed to provide a more "categorical" protection of the information so described, not unlike that afforded under the second part of Exemption 7(D). See Attorney General's Memorandum at 16 n.27.

Notwithstanding this broadening of the scope of Exemption 7(E)'s protection, the general requirement that the technique or procedure not be already well known to the public remains. See Attorney General's Memorandum at 16 n.27 (citing S. Rep. No. 221, 98th Cong., 1st Sess. 25 (1983) (citing, in turn H.R. Rep. No. 1380, 93d Cong., 2d Sess. 12 (1974))). Examples of investigatory techniques previously found not protectible under Exemption 7(E) because courts have found them to be publicly known are "documentation appropriate for seeking search warrants before launching raiding parties" when this information has been revealed in court records, National Org. for the Reform of Marihuana Laws v. DEA, Civil No. 80-1339, slip op. at 8 (D.D.C. June 24, 1981), "mail covers" and the "use of post office boxes," Dunaway v. Webster, 519 F. Supp. 1059, 1082-83 (N.D. Cal. 1981), and "security flashes" and the "tagging of fingerprints," Ferguson v. Kelley, 448 F. Supp. 919, 926 (N.D. Ill. 1977). Post-amendment cases have dealt similarly with this issue, holding that details of a pretext contact which constituted "no more than a garden variety ruse or misrepresentation" were ineligible for Exemption 7(E) protection, Struth v. FBI, 673 F. Supp. 949, 970 (E.D. Wis. 1987), and disallowing the use of Exemption 7(E) when there was absolutely no indication "that disclosure of these documents would reveal secret investigative techniques," see Smith v. Department of Justice, Civil No. 86-6162 (E.D. Pa. Sept. 1, 1987).

However, even commonly known procedures have been protected from release when "their use in concert with other elements of an investigation and in their totality directed toward a specific investigative goal constitute a 'technique' which merits protection to insure its future effectiveness." Martinez v. FBI, Civil No. 82-1547, slip op. at 6 (D.D.C. Oct. 11, 1983); accord Dettman v. Department of Justice, Civil No. 82-1108, slip op. at 14 (D.D.C. Mar. 21, 1985), aff'd, 802 F.2d 1472, 1475 n.4 (D.C. Cir. 1986). See also FOIA Update, Spring 1984, at 5; cf. United States v. Van Horn, 789 F.2d 1492, 1508 (11th Cir. 1986) ("Disclosing the precise locations where surveillance devices are hidden or their precise specifications will educate criminals regarding how to protect themselves against police surveillance.") (recognizing qualified privilege in criminal case), reh'g en banc denied, No. 83-5102 (11th Cir. July 25, 1986).

In some cases, it is not possible to describe secret law enforcement techniques even in general terms without disclosing the very information to be withheld. See, e.g., Chong v. DEA, Civil No. 85-3726, slip op. at 19-20 (D.D.C. Mar. 14, 1988) (motion for reconsideration pending); Hayden v. CIA, 1 GDS ¶80,065, at 80,178 (D.D.C. 1980); Stassi v. Department of the Treasury, Civil No. 78-533, slip op. at 11 (D.D.C. Mar. 30, 1979). Several decisions, however, have described the general nature of the technique while withholding the details. See, e.g., Cohen v. Smith, No. 81-5365, slip op. at 8 (9th Cir. Mar. 25, 1983) (unpublished memorandum) (details of telephone interviews), cert. denied, 464 U.S. 939 (1983); Laroque v. Department of Justice, Civil No. 86-2677, slip op. at 7-8 (D.D.C. July 12, 1988) ("reason codes" and "source codes" in State Department "lookout notices"); Luther v. IRS, Civil No. 5-86-130, slip op. at 3-4 (D. Minn. June 8, 1987), (magistrate's recommendation), adopted (D. Minn. Aug. 13, 1987) ("IRS's Discriminant Function Scores" used to select returns for audit) (alternative holding); Ray v. Customs Serv., Civil No. 83-1476, slip op. at 16-17 (D.D.C. Jan. 28, 1985) (same); Fund for a Conservative Majority v. Federal Election Comm'n, Civil No. 84-1342, slip op. at 6-8 (D.D.C. Feb. 26, 1985) (audit criteria) (alternative holding); Oliva v. FBI, Civil No. 83-3724, slip op. at 4 (D.D.C. Mar. 30, 1984) (model, serial number and type of equipment used in connection with surveillance); LeClair v. Secret Serv., Civil No. 82-2162, slip op. at 5 (D. Mass. Feb. 23, 1983) ("Administrative Profile" used to evaluate individuals in connection with protective services); Windels, Marx, Davies & Ives v. Department of Commerce, 576 F. Supp. 405, 413-14 (D.D.C. 1983) (computer program used to detect anti-dumping law violations) (alternative holding); Minnesota v. Department of Energy, Civil No. 4-81-434, slip op. at 10 (D. Minn. Dec. 14, 1982) (details of techniques utilized in oil refinery audit); Hayward v. Department of Justice, 2 GDS ¶81,231, at 81,646 (D.D.C. 1981) (methods and techniques used by U.S. Marshals Service to relocate protected witnesses); Malloy v. Department of Justice, 457 F. Supp. at 545 (details concerning "bait money" and "bank security devices"); Boyce v. Deputy Director, Civil No. 78-084, slip op. at 4-5 (D.D.C. Oct. 25, 1978) (procedures unique to counterfeiting investigations); Ott v. Levi, 419 F. Supp. 750, 752 (E.D. Mo. 1976) (laboratory techniques used in arson investigation). See also U.S. News & World Report v. Department of the Treasury, Civil No. 84-2303, slip op. at 7 (D.D.C. Mar. 26, 1986) (extended former version of Exemption 7(E) to protect even Secret Service's contract specifications for President's armored limousine).

While the former version of Exemption 7(E) protected law enforcement techniques and procedures only where they could be regarded as "investigatory" or "investigative" in character, the first clause of the amended Exemption 7(E) no longer contains that limitation. Rather, it now simply covers "techniques and procedures for law enforcement investigations and prosecutions." 5 U.S.C. §552(b)(7)(E). As such, it authorizes the withholding of information consisting of, or reflecting, a law enforcement "technique" or a law enforcement "procedure," wherever it is "for law enforcement investigations or prosecutions" generally. See Attorney General's Memorandum at 15.

The protection now available under this first clause of the exemption is thus broader than that which formerly was available under Exemption 7(E) as a whole. One of the Exemption 7 weaknesses specifically addressed by Congress in achieving FOIA reform was its inadequacy to protect such records as law enforcement manuals which, though certainly containing law enforcement "techniques" and "procedures," ran afoul of the former "investigatory" requirement of the exemption. See S. Rep. No. 221, 98th Cong., 1st Sess. 23 (1983) (citing, e.g., Sladek v. Bensinger,

605 F.2d 899 (5th Cir. 1979)). Such documents, additionally including those which pertain to the "prosecutions" stage of the law enforcement process, now meet the requirements for withholding under Exemption 7(E) to the extent that they consist of, or reflect, law enforcement techniques and procedures best kept confidential. See Attorney General's Memorandum at 16.

Exemption 7(E)'s entirely new second clause separately protects "guidelines for law enforcement investigations or prosecutions if [their] disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. §552(b)(7)(E). This distinct new protection was added by Congress to ensure proper protection for the type of law enforcement guideline information found ineligible to be withheld in the D.C. Circuit's en banc decision in Jordan v. Department of Justice, 591 F.2d 753, 771 (D.C. Cir. 1978), a case involving guidelines for prosecutions. It reflects a dual concern with the need to eradicate any lingering effect of that decision, while at the same time ensuring that agencies do not unnecessarily maintain "secret law" on the standards used to regulate behavior. S. Rep. No. 221, 98th Cong., 1st Sess. 25 (1983). See Attorney General's Memorandum at 16-17.

Accordingly, this clause of Exemption 7(E) is available to protect any "law enforcement guideline" information of the type involved in Jordan, whether it pertains to the prosecution or basic investigation stage of a law enforcement matter, whenever it is determined that its disclosure "could reasonably be expected to risk circumvention of the law." In choosing this particular harm formulation, Congress employed the more relaxed harm standard now used widely throughout Exemption 7, and obviously "was guided by the 'circumvention of the law' standard that the D.C. Circuit established in its en banc decision in Crooker v. BATF, 670 F.2d 1051 (D.C. Cir. 1981) (en banc) (interpreting Exemption 2)." S. Rep. No. 221, 98th Cong., 1st Sess. 25 (1983). See Attorney General's Memorandum at 17.

Law enforcement agencies therefore may now avail themselves of the distinct protections now provided in Exemption 7(E)'s two clauses. Their "non-investigatory" law enforcement records, to the extent that they can be fairly regarded as reflecting techniques or procedures, are now entitled to categorical protection under Exemption 7(E)'s first clause. As well, law enforcement guidelines which satisfy the broad "could reasonably be expected to risk circumvention of law" standard can be protected under Exemption 7(E)'s new second clause. See Attorney General's Memorandum at 17 & n.31.

Exemption 7(F)

As a result of the Freedom of Information Reform Act of 1986, Exemption 7(F) now permits the withholding of information necessary to protect the physical safety of a wide range of individuals. Whereas Exemption 7(F) previously protected records that "would . . . endanger the life or physical safety of law enforcement personnel," the amended exemption now provides protection to "any individual" where disclosure of information about him "could reasonably be expected to endanger [his] life or physical safety." 5 U.S.C. §552(b)(7)(F), as amended by Pub. L. No. 99-570, §1802 (1986). See also Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 18-19 (Dec. 1987) [hereinafter Attorney General's Memorandum].

Prior to the FOIA Reform Act, this exemption had been invoked to protect both federal and local law enforcement officers. See, e.g., Maroscia v. Levi, 569 F.2d 1000, 1002 (7th Cir. 1977) (FBI special agents and "other law enforcement personnel"); Barham v. Secret Serv., Civil No. 82-2130-M, slip op. at 5

(W.D. Tenn. Sept. 13, 1982) (Secret Service agents); Docal v. Bensinger, 543 F. Supp. 38, 48 (M.D. Pa. 1981) (DEA special agents, supervisory special agents, and local law enforcement officers); Mahler v. Department of Justice, 2 GDS ¶82,032, at 82,263, (D.D.C. 1981) (Deputy U.S. Marshal); Nunez v. DEA, 497 F. Supp. 209, 212 (S.D.N.Y. 1980) (DEA special agents); Ray v. Turner, Civil No. 76-903, slip op. at 9 (D.D.C. Apr. 5, 1979) (U.S. Customs Service agent). For a discussion of the dangers faced by law enforcement personnel, see Docal v. Bensinger, 543 F. Supp. at 48 ("physical attacks, threats, harassment, and actual murders of undercover and other DEA Special Agents"). Significantly, Exemption 7(F) protection has been held to remain applicable even after a law enforcement officer subsequently retired. See Moody v. DEA, 592 F. Supp. 556, 559 (D.D.C. 1984). However, one court has held that this exemption does not protect the identities of law enforcement personnel who testified at the requester's criminal trial. See Myers v. Department of Justice, Civil No. 85-1746, slip op. at 6 (D.D.C. Sept. 22, 1986).

Under the amended language of Exemption 7(F), courts have begun to apply the broader protection now offered by this exemption. One court has held that this exemption is appropriate to withhold the "names and identifying information of federal employees, and third persons who may be unknown" to the requester. Luther v. IRS, Civil No. 5-86-130, slip op. at 6 (D. Minn. Aug. 11, 1987). Withholding of such information can be necessary to protect the employees from possible harm by the requester, who has threatened them in the past. Id. More recently, another court specifically held that the expansive language of "any individual" includes the protection of "identities of informants" who have been threatened with harm. Housley v. FBI, Civil No. 87-3231, slip op. at 7 (D.D.C. Mar. 18, 1988).

Several years ago, one court approved a rather novel, but certainly appropriate, application of this exemption to a description in an FBI laboratory report of a homemade machine gun because its disclosure would create the real possibility that law enforcement officers would have to face "individuals armed with homemade devices constructed from the expertise of other law enforcement people." LaRouche v. Webster, Civil No. 75-6010, slip op. at 22 (S.D.N.Y. Oct. 23, 1984).

Although Exemption 7(F)'s coverage may in large part be duplicative of that afforded by Exemption 7(C), it is potentially broader in that no balancing is required for withholding under Exemption 7(F). See also FOIA Update, Spring, 1984, at 5. It is difficult to imagine any circumstance, though, in which the public's interest in disclosure could outweigh the safety of any individual. Moreover, Exemption 7(F), as now amended, should be of greater utility to law enforcement agencies, given the lessened "could reasonably be expected" harm standard now in effect. Agencies can reasonably infer from this modification Congress' approval to withhold information wherever there is a reasonable likelihood of its disclosure causing harm to someone. See Attorney General's Memorandum at 18. See also, e.g., Dickie v. Department of the Treasury, Civil No. 86-0649, slip op. at 13 (D.D.C. Mar. 31, 1987) (upholding application of Exemption 7(F) as amended based upon agency judgment of "very strong likelihood" of harm).

X. EXEMPTION 8

Exemption 8 of the FOIA covers matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsi-

ble for the regulation or supervision of financial institutions." 5 U.S.C. §552(b)(8).

This exemption received little judicial attention during the first dozen years of the FOIA's operation. The only significant decision during that period was one which held that national securities exchanges and broker-dealers are not "financial institutions" within the meaning of the exemption. M.A. Schapiro & Co. v. SEC, 339 F. Supp. 467, 470 (D.D.C. 1972). With respect to stock exchanges, which have been held to constitute "financial institutions" under Exemption 8, this decision has not been followed. See Mermelstein v. SEC, 629 F. Supp. 672, 673-75 (D.D.C. 1986) (opinion based in part on legislative history of the Sunshine Act).

Subsequent courts interpreting Exemption 8 have declined to restrict the "particularly broad, all-inclusive" scope of the exemption. Consumers Union v. Office of the Comptroller of the Currency, Civil No. 86-1841, slip op. at 2 (D.D.C. Mar. 11, 1988); McCullough v. FDIC, 1 GDS ¶80,194, at 80,494 (D.D.C. 1980). They have reasoned that "if Congress has intentionally and unambiguously crafted a particularly broad, all-inclusive definition, it is not our function, even in the FOIA context, to subvert that effort." Consumers Union v. Heimann, 589 F.2d 531, 533 (D.C. Cir. 1978); see also Sharp v. FDIC, 2 GDS ¶81,107, at 81,270 (D.D.C. 1981). The D.C. Circuit Court of Appeals has gone so far as to state that in Exemption 8 Congress has provided "absolute protection regardless of the circumstances underlying the regulatory agency's receipt or preparation of examination, operating or condition reports." Gregory v. FDIC, 631 F.2d 896, 898 (D.C. Cir. 1980).

In examining the sparse legislative history of Exemption 8, courts have discerned two major purposes underlying it: (1) to "protect the security of financial institutions by withholding from the public reports that contain frank evaluations of a bank's stability," and (2) "to promote cooperation and communication between employees and examiners." Atkinson v. FDIC, 1 GDS ¶80,034, at 80,102 (D.D.C. 1980). See also Fagot v. FDIC, 584 F. Supp. 1168, 1173 (D.P.R. 1984), aff'd in part, rev'd in part mem., 759 F.2d 252 (1st Cir. 1985). Accordingly, different types of documents have been held to fall within the broad confines of Exemption 8. First and foremost, the authority of federal agencies to withhold bank examination reports prepared by federal bank examiners has not been questioned. See Sharp v. FDIC, 2 GDS at 81,270; Atkinson v. FDIC, 1 GDS at 80,102. Further, matters that are "related to" such reports--that is, documents that "represent the foundation of the examination process, the findings of such an examination, or its follow-up"--have also been held exempt from disclosure. Atkinson v. FDIC, 1 GDS at 80,102. See also Consumers Union v. Office of the Comptroller of the Currency, slip op. at 2-3; Folger v. Conover, Civil No. 82-4, slip op. at 6-8 (E.D. Ky. Oct. 25, 1983); Sharp v. FDIC, 2 GDS at 81,271.

Bank examination reports and related documents prepared by state regulatory agencies have been found protectible under Exemption 8 on more than one ground. The purposes of the exemption are plainly served by withholding such material because of the interconnected purposes and operations of federal and state banking authorities. See Atkinson v. FDIC, 1 GDS at 80,102. A state agency report transferred to a federal agency strictly for its confidential use, however, and thus still within the control of the state agency, was held as a threshold matter not even to be an "agency record" under the FOIA and thus not subject to disclosure. McCullough v. FDIC, 1 GDS at 80,495. In general, "all records, regardless of the source, of a bank's financial condition and operations and in the possession of a federal agency 'respon-

sible for the regulation or supervision of financial institutions' are exempt." Id.

Indeed, even records pertaining to banks that are no longer in operation can be withheld under Exemption 8 in order to serve the policy of promoting "frank cooperation" between bank and agency officials. Gregory v. FDIC, 631 F.2d at 899. Documents relating to cease-and-desist orders that issue after a bank examination as the result of a closed administrative hearing are also properly exempt. See, e.g., Atkinson v. FDIC, 1 GDS at 80,103. Additionally, reports examining bank compliance with consumer laws and regulations have been held to "fall squarely within the exemption." Id.; see also Consumers Union v. Heimann, 589 F.2d at 535; Consumers Union v. Office of the Comptroller of the Currency, slip op. at 2-3. Moreover, in keeping with the expansive construction of Exemption 8, courts have not required agencies to segregate and disclose portions of documents unrelated to the financial state of the institution: "[A]n entire examination report, not just that related to the 'condition of the bank' may be withheld." Atkinson v. FDIC, 1 GDS at 80,103.

XI. EXEMPTION 9

Exemption 9 of the FOIA covers "geological and geophysical information and data, including maps, concerning wells." 5 U.S.C. §552(b)(9). Although this exemption is very rarely invoked or interpreted, one court has held that it applies only to "well information of a technical or scientific nature." Black Hills Alliance v. Forest Serv., 603 F. Supp. 117, 122 (D.S.D. 1984) (excluding number, locations, and depths of proposed uranium exploration drill-holes). Only two other decisions have addressed Exemption 9 and both were "reverse" FOIA cases in which the applicability of the exemption was not in controversy and only the propriety of discretionary disclosure was contested. See Superior Oil Co. v. Federal Energy Regulatory Comm'n, 563 F.2d 191, 204 (5th Cir. 1977); Pennzoil Co. v. Federal Power Comm'n, 534 F.2d 627, 630 (5th Cir. 1976); cf. Ecee, Inc. v. Federal Energy Regulatory Comm'n, 645 F.2d 339, 348 (5th Cir. 1981) (requirement that producers of natural gas submit confidential geological information held valid).

XII. EXCLUSIONS

The Freedom of Information Reform Act of 1986 created an entirely new mechanism for protecting certain especially sensitive law enforcement matters under new subsection (c) of the FOIA. See Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 18-30 (Dec. 1987) [hereinafter Attorney General's Memorandum]. These three new special protection provisions, referred to as record "exclusions," now expressly authorize federal law enforcement agencies, for especially sensitive records under certain specified circumstances, to "treat the records as not subject to the requirements of [the FOIA]." 5 U.S.C. §552(c)(1), (c)(2), (c)(3), as enacted by Pub. L. No. 99-570, §1802 (1986). It must be appreciated at the outset, however, that the unfamiliar procedures required to properly employ these special record exclusions are by no means straightforward and must be implemented with the utmost care. See Attorney General's Memorandum at 27 n.48. Any question arising as to their implementation should be directed to the Office of Information and Privacy, at (FTS) 633-FOIA, and during at least the immediate future, any agency considering using an exclusion should do so only upon close consultation with OIP. Id.

Initially, it is crucial to recognize the somewhat subtle, but very significant, distinction between the result of employing a record exclusion and the concept that is colloquially known as "Glomarization." See Attorney General's Memorandum at 26 & n.47. That latter term refers to the practice by which agencies refuse to confirm or deny the existence of records responsive to a request. See, e.g., Gardels v. CIA, 689 F.2d 1100, 1103 (D.C. Cir. 1982); Phillippi v. CIA, 546 F.2d 1009, 1013 (D.C. Cir. 1976). (A more detailed discussion of "Glomarization" is contained in the Exemption 1 section, supra.) The application of one of the three new exclusions, on the other hand, results in a response to the FOIA requester stating that there exist no such records responsive to his FOIA request. While "Glomarization" remains adequate to provide necessary protection in certain situations, the new record exclusions should prove invaluable in addressing the exceptionally sensitive situations in which even "Glomarization" is inadequate to the task.

The (c)(1) Exclusion

The first of these novel provisions, to be 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.

5 U.S.C. §552(c)(1).

In most cases, the protection of Exemption 7(A) is sufficient to guard against any impairment of law enforcement investigations or proceedings through the FOIA. To avail itself of Exemption 7(A), however, an agency must routinely specify that it is doing so--first administratively and then, if sued, in court--even where it is invoking the exemption to withhold all responsive records in their entireties. Thus, in specific situations in which the very fact of an investigation's existence is yet unknown to the investigation's subject, invoking Exemption 7(A) in response to a FOIA request for pertinent records permits an investigation's subject to be "tipped off" to its existence. By the same token, any person (or entity) engaged in criminal activities could use a carefully worded FOIA request to try to determine whether he is under federal investigation. An agency response that does not invoke Exemption 7(A) to withhold law enforcement files tells such a requester that his activities have thus far escaped detection.

The (c)(1) exclusion now authorizes federal law enforcement agencies, under specified circumstances, to shield the very existence of records of ongoing investigations or proceedings by excluding them entirely from the FOIA's reach. See Attorney General's Memorandum at 18-22. To qualify for such exclusion from the FOIA, the records in question must be those which would otherwise be withheld in their entireties under Exemption 7(A).

Further, they must relate to an "investigation or proceeding [that] involves a possible violation of criminal law." 5 U.S.C. §552(c)(1)(A). Hence, any records pertaining to a purely civil law enforcement matter cannot be excluded from the FOIA under this provision, although they may qualify for ordinary Exemption 7(A) withholding. However, the statutory requirement that there be only a "possible violation of criminal law," by its very terms, admits a wide range of investigatory files maintained by more than just criminal law enforcement agencies. See Attorney General's Memorandum at 20 & n.37 (files of agencies which are not primarily engaged in criminal law enforcement activities may be eligible for protection if they contain information about potential criminal violations which are pursued toward the possibility of referral to the Department of Justice for further prosecution).

Next, the statute imposes two closely related requirements which go to the very heart of the particular harm addressed though this record exclusion. An agency determining whether it can employ (c)(1) protection must consider whether it has "reason to believe" that the investigation's subject is not aware of the its pendency and that, most fundamentally, the agency's disclosure of the very existence of the records in question "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. §552(c)(1)(B).

Obviously, where all investigatory subjects are already aware of an investigation's pendency, the "tip off" harm sought to be prevented through this record exclusion is not of concern. Accordingly, the language of this exclusion expressly obliges agencies to consider the level of awareness already possessed by the investigative subjects involved as they consider employing it. It is appropriate that agencies do so, as the statutory language provides, according to a good-faith, "reason to believe" standard, which very much comports with the "could reasonably be expected to" standard utilized both elsewhere in this exclusion and in the amended language of Exemption 7(A). See Attorney General's Memorandum at 21.

This "reason to believe" standard for considering a subject's present awareness should afford agencies all necessary latitude in making such determinations. As the exclusion is phrased, this requirement is satisfied so long as an agency determines that it affirmatively possesses "reason to believe" that such awareness does not in fact exist. While it is always possible that an agency might possess somewhat conflicting or even contradictory indications on such a point, unless an agency can resolve that a subject is aware of an investigation, it should not risk impairing the investigation through a telling FOIA disclosure. See Attorney General's Memorandum at 21. Moreover, agencies are not obligated to accept any bald assertions by investigative subject that they "know" of ongoing investigations against them; such assertions might well constitute no more than sheer speculation. Because such a ploy, if accepted, could defeat the exclusion's clear statutory purpose, agencies should rely upon their own objective indicia of subject awareness and consequent harm. See id. at n.38.

In the great majority of cases, invoking Exemption 7(A) will protect the interests of law enforcement agencies in responding to FOIA requests for active law enforcement files. The (c)(1) exclusion should be employed only in the exceptional case in which an agency reaches the judgment that, given its belief of subject unawareness, the mere invocation of Exemption 7(A) could reasonably be expected to cause harm--a judgment that should be made distinctly and thoughtfully. See Attorney General's Memorandum at 21.

Finally, the clear language of this exclusion specifically restricts its applicability to "during only such time" as the above required circumstances continue to exist. This limitation comports with the extraordinary nature of the protection afforded by the exclusion, as well as with the basic temporal nature of Exemption 7(A) underlying it. It means, of course, that an agency that has employed the exclusion in a particular case is obliged to cease doing so once the circumstances warranting it cease to exist. Once a law enforcement matter reaches a stage at which all subjects are aware of its pendency, or at which the agency otherwise determines that the public disclosure of that pendency no longer could lead to harm, the exclusion should be regarded as no longer applicable. If the FOIA request which triggered the agency's use of the exclusion remains pending either administratively or in court at such time, the excluded records should be identified as responsive to that request and processed in the ordinary manner. See Attorney General's Memorandum at 22. However, an agency is under no legal obligation to spontaneously reopen a closed FOIA request, even though records were excluded during its entire pendency: By operation of law, the records simply were not subject to the FOIA during the pendency of the request. Id. at 22 n.39.

Where all of these requirements are met, and an agency reaches the judgment that it is necessary and appropriate that the (c)(1) exclusion be employed in connection with a request, it means that the records in question will be treated, as far as the FOIA requester is concerned, as if they did not exist. See Attorney General's Memorandum at 22. Where it is the case that the excluded records are just part of the totality of records responsive to a FOIA request, the request will be handled as a seemingly routine request, with the other responsive records processed as if they were the only responsive records in existence. Where the only records responsive to a request fall within the exclusion, the requester will lawfully be advised that no records responsive to his FOIA request exist. Id.

In order to maintain the integrity of an exclusion, each agency that employs it must ensure that its FOIA responses are consistent throughout. Therefore, all agencies that could possibly employ at least one of the three exclusions should ensure that their FOIA communications are consistently phrased so that a requester cannot ever discern the existence of any excluded records, or of any matter underlying them, through the agency's response to his FOIA request.

The (c)(2) Exclusion

The second exclusion created by the FOIA Reform Act applies to a narrower situation, involving the threatened identification of confidential informants in criminal proceedings. See Attorney General's Memorandum at 22-24. The new "(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.

5 U.S.C. §552(c)(2).

This exclusion contemplates the situation in which a sophisticated requester could try to identify an informant by forcing a law enforcement agency into a position in which it

otherwise would have no lawful choice but to tellingly invoke Exemption 7(D) in connection with a request which encompasses informant records maintained on a named person. See Attorney General's Memorandum at 23.

In the ordinary situation, Exemption 7(D), as now amended, should adequately allow a law enforcement agency to withhold all items of information necessary to prevent the identification of any of its confidential sources. But as with Exemption 7(A), invoking Exemption 7(D) in response to a FOIA request tells the requester that somewhere within the records encompassed by his particular request there is reference to at least one confidential source. Again, under ordinary circumstances the disclosure of this fact poses no direct threat. But under certain extraordinary circumstances, this disclosure could result in devastating harms to the source and the system of confidentiality between sources and criminal law enforcement agencies.

The scenario in which the exclusion is most likely to be employed is one in which the ringleaders of a criminal enterprise suspect that they have been infiltrated by a source and therefore force all participants in the criminal venture either to directly request that any law enforcement files on them be disclosed to the organization or to execute a privacy waiver authorizing disclosure of their files in response to a request from the organization. Absent the (c)(2) exclusion, a law enforcement agency could effectively be forced to disclose information to the subject organization (i.e., through the very invocation of Exemption 7(D)) indicating that the named individual is a confidential source. See Attorney General's Memorandum at 23.

The (c)(2) exclusion is principally intended to address this unusual but dangerous situation by permitting an agency to escape the necessity of giving a response that would be tantamount to identifying a named party as a source. See Attorney General's Memorandum at 23-24. Any criminal law enforcement agency is now authorized to treat such requested records, within the extraordinary context of such a FOIA request, as beyond the FOIA's reach. As with the (c)(1) exclusion, the agency would have "no obligation to acknowledge the existence of such records in response to such request." S. Rep. No. 221, 98th Cong., 1st Sess. 25 (1983).

A criminal law enforcement agency forced to employ this exclusion should do so in the same fashion as it would employ the (c)(1) exclusion already discussed. See Attorney General's Memorandum at 24. It is imperative that all information which would normally be released to a first-party requester, other than information which would reflect that the requester is a confidential source, be disclosed. If, for example, the Federal Bureau of Investigation were to respond to a request for records pertaining to an individual having a known record of federal prosecutions by replying that "there exist no records responsive to your FOIA request," the interested criminal organization would surely recognize that its request had been afforded extraordinary treatment and would draw its conclusions accordingly.

The (c)(3) Exclusion

The third of these special record exclusions pertains only to certain law enforcement records that are maintained by the FBI. See Attorney General's Memorandum at 24-27. The new "(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 counter-

> intelligence, 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].

5 U.S.C. §552(c)(3).

This exclusion recognizes the exceptional sensitivity of the FBI's activities in the areas of foreign intelligence, counterintelligence and the battle against international terrorism, as well as the fact that the classified files of these activities can be particularly vulnerable to targeted FOIA requests. Sometimes, within the context of a particular FOIA request, the very fact that the FBI does or does not hold any records on a specified person or subject can itself be a sensitive fact, properly classified in accordance with Executive Order No. 12,356 and protectible under FOIA Exemption 1, 5 U.S.C. §552(b)(1). Attorney General's Memorandum at 25. Once again, however, the mere invocation of Exemption 1 to withhold such information can provide information to the requester which would have an extremely adverse effect on the government's interests. In some possible contexts, the furnishing of an actual "no records" response, even to a seemingly innocuous "first-party" request, can compromise sensitive activities. Id.

The FOIA Reform Act now takes cognizance of this through the (c)(3) exclusion, in which it authorizes the FBI to protect itself against such harm in connection with any of its records pertaining to these three especially sensitive areas. To do so, the FBI must of course reach the judgment, in the context of a particular request, that the very existence or nonexistence of responsive records is itself a classified fact and that it need employ this record exclusion to prevent its disclosure. Attorney General's Memorandum at 25. By the terms of this provision, the excluded records may be treated as such so long as their existence, within the context of the request, "remains classified information." 5 U.S.C. §552(c)(3).

Finally, it should be noted that while the statute refers to records maintained by the FBI, exceptional circumstances could possibly arise in which it would be appropriate for another component of the Justice Department or another federal agency to invoke this exclusion. See Attorney General's Memorandum at 25 n.45. Such a situation could occur where information in records of another component or agency is derived from FBI records which fully qualify for (c)(3) exclusion protection. In such extraordinary circumstances, the agency processing the derivative information should consult with the FBI regarding the possible joint invocation of the exclusion in order to avoid a potentially damaging inconsistent response. Id.

Procedural Considerations

Several procedural considerations regarding the implementation and operation of these special record exclusions should be noted. First, it should be self-evident that the decision to employ an exclusion in response to a particular request must not be reflected on anything made available to the requester. Where an agency reaches the judgment that it is necessary to employ an exclusion, it should do so as a specific official determination that is reviewed carefully by appropriate supervisory agency officials. See Attorney General's Memorandum at 27. The particular records covered by an exclusion action should be concretely and carefully identified and segregated from any responsive rec-

ords that are to be processed according to ordinary procedures. Id.

It must be remembered that providing a "no records" response as part of an exclusion strategy does not insulate the agency from either administrative or judicial review of the agency's action. The recipient of a "no records" response may challenge it because he believes that the agency has failed to conduct a sufficiently detailed search to uncover the requested records. See Attorney General's Memorandum at 29. Alternately, any requester, mindful of the exclusion mechanism and seeking information of a nature which could possibly trigger an exclusion action, could seek review in an effort to confirm his suspicions or to have a court determine whether the exclusion action, if in fact used, was appropriately employed.

Moreover, because the very objective of the exclusions is to preclude the requester from learning that there exist such responsive records, all administrative appeals and court cases involving a "no records" response must now receive extremely careful attention. If one procedure is employed in adjudicating appeals or litigating cases in which there are genuinely no responsive records and any different course is followed where an exclusion is in fact being used, sophisticated requesters could quickly learn to distinguish between the two and defeat an exclusion's very purpose. See Attorney General's Memorandum at 29.

Consequently, agencies should prepare in advance a uniform procedure to handle administrative appeals and court challenges which seek review of the possibility that an exclusion was employed in a given case. While there remains no obligation to advise a FOIA requester who receives a "no records" response of the procedure for filing an administrative appeal, see FOIA Update, Summer 1984, at 2; Attorney General's Memorandum at 29, agencies should accept any clear request for review of the possible use of an exclusion and specifically address it in evaluating and responding to the appeal. In the exceptional case in which an exclusion was in fact invoked, the appellate review authority should examine the correctness of that action and come to a judgment as to the exclusion's continued applicability as of that time. Id. at 28. In the event that an exclusion is found to have been improperly employed or to be no longer applicable, the appeal should be remanded for prompt processing of all formerly excluded records, with the requester advised accordingly. Id. Where it is determined either that an exclusion was properly employed or that, as in the overwhelming bulk of cases, no exclusion was used, the result of the administrative appeal should be, by all appearances, the same: The requester should be specifically advised that this aspect of his appeal was reviewed and found to be without merit. Id. at 28-29. Such administrative appeal responses, of course, necessarily must be stated in such a way that does not indicate whether an exclusion was in fact invoked. Id. at 29. Moreover, in order to preserve the effectiveness of the exclusion mechanism, requesters who inquire in any way whether an exclusion has been used should routinely be advised that it is the agency's standard policy to refuse to confirm or deny that an exclusion was employed in any particular case. See id. at 29 & n.52.

Exclusion issues in court actions must be handled with similarly careful and thoughtful preparation. First, it need be recognized that any judicial review of a suspected exclusion determination must of course be conducted ex parte, based upon an in camera court filing submitted directly to the judge. Attorney General's Memorandum at 29. Second, it is essential to the integrity of the exclusion mechanism that requesters not be able to determine whether an exclusion was employed at all in a given

case based upon how any case is handled in court. Thus, it is critical that the in camera defenses of exclusion issues raised in FOIA cases occur not merely in those cases in which an exclusion actually was employed and is in fact being defended. Id.

Accordingly, the Attorney General has stated that it is the government's standard litigation policy in the defense of FOIA lawsuits that, whenever a FOIA plaintiff raises a distinct claim regarding the suspected use of an exclusion, the government will routinely submit an in camera declaration addressing that claim, one way or the other. Attorney General's Memorandum at 30. Where an exclusion was in fact employed, the correctness of that action will be justified to the court. Where an exclusion was not in fact employed, the in camera declaration will state simply that it is being submitted to the court in order to mask whether or not an exclusion is being employed so as to preserve the integrity of the exclusion process overall. Id. In either case, the government will of course urge the court to issue a public decision which does not indicate whether it is or is not an actual exclusion case. Such a public decision, like an administrative appeal determination of an exclusion-related request for review, should specify only that a full review of the claim was had and that, if an exclusion was in fact employed, it was, and remains, amply justified. Id.

XIII. FEES AND FEE WAIVERS

Prior to the passage of the Freedom of Information Reform Act of 1986, the FOIA authorized agencies to assess reasonable charges only for document search and duplication, and any assessable fees were to be waived or reduced if disclosure of the requested information was found to be generally in the "public interest." 5 U.S.C. §552(a)(4)(A) (1982). The FOIA Reform Act brought significant changes to the way in which fees are now assessed under the FOIA; a new fee structure was established, including a new provision authorizing agencies to assess "review" charges when processing records in response to a commercial use request, and fee limitations were set on the assessment of certain fees both in general as well as for certain categories of requesters. See 5 U.S.C. §552(a)(4)(A)(ii), (iv), as amended by Pub. L. No. 99-570, §1803 (1986). Additionally, the new law replaced the statutory fee waiver provision with a somewhat revised standard. See 5 U.S.C. §552(a)(4)(A)(iii).

The new fee and fee waiver provisions were made effective as of April 25, 1987, but required implementing agency regulations to be fully effective. See Pub. L. No. 99-570, §1804(b) (not codified). Under the FOIA Reform Act, the Office of Management and Budget was charged with the responsibility of promulgating, pursuant to notice and receipt of public comment, a "uniform schedule of fees" for individual agencies to follow when promulgating their FOIA fee regulations. 5 U.S.C. §552(a)(4)(A)(i). On March 27, 1987, the Uniform Freedom of Information Act Fee Schedule and Guidelines ("OMB Fee Guidelines") was published in final form, see 52 Fed. Reg. 10011 (Mar. 27, 1987).

In addition, as the new statute required agencies to promulgate not only a fee schedule but also "procedures and guidelines for determining when such fees should be waived or reduced," 5 U.S.C. §552(a)(4)(A)(i), the Department of Justice, in accordance with its statutory responsibility to encourage agency compliance with the FOIA, see 5 U.S.C. §552(e), developed new governmentwide policy guidance on the waiver of FOIA fees, to replace its previous guidance issued in January 1983 (supplemented in November 1986) implementing the predecessor statutory fee waiver standard. See FOIA Update, Winter/Spring 1987, at 1-2; FOIA Update, Summer

1986, at 3; FOIA Update, Jan. 1983, at 3-4. Thus, on April 2, 1987, to assist federal agencies in addressing fee waivers in their new FOIA fee regulations, Assistant Attorney General for Legal Policy Stephen J. Markman issued the New FOIA Fee Waiver Policy Guidance to the heads of all federal departments and agencies. See FOIA Update, Winter/Spring 1987, at 3-10; Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 41-50 (Dec. 1987).

Because Congress provided only a 180-day period for the preparation and implementation of new agency fee regulations, virtually all federal agencies were still engaged in this multiple-step process as of the April 25, 1987 effective date. Consequently, the Office of Management and Budget advised agencies to give FOIA requesters the full benefits of both the old and the new provisions, consistent with the clear contemplation of the new law, see Pub. L. No. 99-570, §1804(b)(2), and the Department of Justice advised likewise regarding the making of fee waiver determinations. See FOIA Update, Winter/Spring, at 2. For a sample new fee regulation, see the Department of Justice's final such regulation, published at 52 Fed. Reg. 33229 (Sept. 2, 1987).

Fees

As amended by the FOIA Reform Act, the FOIA now sets forth three levels of fees which may be assessed in response to an access request; these categorical provisions concern limitations on the assessment of fees, with the level of fees to be charged depending upon the identity of the requester and the intended use of the information sought. See 5 U.S.C. §552(a)(4)(A)(ii); see also FOIA Update, Winter/Spring 1987, at 4. The following discussion will summarize these new fee provisions; the OMB Fee Guidelines, however, discuss these provisions in greater, authoritative detail and should be consulted by anyone with a FOIA fee, as opposed to fee waiver, question. See OMB Fee Guidelines, 52 Fed. Reg. at 10011-20. For an example of judicial deference to agency fee-category regulations, based upon the OMB Fee Guidelines, see National Sec. Archive v. Department of Defense, Civil No. 86-3454, slip op. at 6 (D.D.C. June 16, 1988) (appeal pending).

The first level of fees includes charges for "document search, duplication and review, when records are requested for commercial use." 5 U.S.C. §552(a)(4)(A)(ii)(I). The OMB Fee Guidelines define the term "commercial use" as "a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is being made, which can include furthering those interests through litigation." OMB Fee Guidelines, §6g, 52 Fed. Reg. at 10017. The new "review" costs which may be charged on such requests consist of the "direct costs incurred during the initial examination of a document for the purposes of determining whether [it] must be disclosed [under the FOIA]." 5 U.S.C. §552(a)(4)(A)(iv). Review time thus includes processing the documents for disclosure, i.e., doing all that is necessary to prepare them for release; review costs do not include, however, time spent resolving general legal or policy issues regarding the applicability of any particular exemption nor reviewing on appeal those exemptions already applied. See OMB Fee Guidelines, §§6f, 7c, 52 Fed. Reg. at 10017-18.

The second level of fees limits charges to document duplication costs only, "when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media." 5 U.S.C. §552(a)(4)(A)(ii)(II). The OMB Fee Guidelines define "education-

al institution" to include various categories of schools, as well as institutions of higher learning and vocational education. OMB Fee Guidelines, §6h, 52 Fed. Reg. at 10018. This definition is limited, however, by the requirement that the educational institution be one "which operates a program or programs of scholarly research." Id.; see also National Sec. Archive v. Department of Defense, slip op. at 4, 9 (approving implementation of this standdard in Department of Defense regulation). The definition of a "noncommercial scientific institution" refers to a "noncommercial" (as referenced in the OMB Fee Guidelines, §6g, 52 Fed. Reg. at 10017) institution "operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry." Id., §6i, 52 Fed. Reg. at 10018. Lastly, the definition of a "representative of the news media" refers to any person actively gathering information of current interest to the public for an organization that is organized and operated to publish or broadcast news to the general public. Id., §6j, 52 Fed. Reg. at 10018; see also National Sec. Archive v. Department of Defense, slip op. at 4, 9-10 (approving implementation of this standard in Department of Defense regulation). This definition may include freelance journalists, where they can demonstrate a solid basis for expecting the information disclosed to be published by a news organization. Id. The first case to construe this provision held that even a foreign news service may qualify as a representative of the news media. Southam News v. INS, 647 F. Supp. 881, 892 (D.D.C. 1987).

The third level of fees, which applies to all requesters who do not qualify for the fees set forth in the preceding two levels, consists of reasonable charges for document search and duplication, as was provided for in the former statutory FOIA fee provision. See 5 U.S.C. §552(a)(4)(A)(ii)(III). Reasonable charges for search time include all the time spent looking for responsive material, including page-by-page or line-by-line identification of material within documents. OMB Fee Guidelines, §6d, 52 Fed. Reg. at 10017. Additionally, agencies may charge for search time even if they fail to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure. Id., §9b, 52 Fed. Reg. at 10019. See also Cheek v. IRS, Civil No. 83-C-6851, slip op. at 2 (N.D. Ill. June 11, 1984).

The new fee structure now includes limitations both on the assessment of certain fees as well as restrictions on the authority of agencies to ask for an advance payment of a fee. See 5 U.S.C. §552(a)(4)(A)(iv)-(v). No FOIA fee may be charged by an agency if the cost to collect and process the fee is likely to equal or exceed the amount of the fee itself. 5 U.S.C. §552(a)(4)(A)(iv)(I). See OMB Fee Guidelines, §7f, 52 Fed. Reg. at 10018. In addition, except with respect to requesters seeking records for a commercial use, agencies must provide the first 100 pages of duplication, as well as the first two hours of search time, without charge. 5 U.S.C. §552(a)(4)(A)(iv)(II). See OMB Fee Guidelines, §7f, 52 Fed. Reg. at 10018-19. These two provisions work together so that, except with respect to commercial-use requesters, agencies would not begin to assess fees until after they had provided the free search and duplication; then the assessable fee must be greater than the agency's cost to collect and process it in order for the fee actually to be charged. OMB Fee Guidelines, §7f, 52 Fed. Reg. at 10018-19. Agencies also may not require a requester to make an advance payment, i.e., payment before work is begun or continued on a request, unless the agency first estimates that the assessable fee is likely to exceed $250.00, or unless the requester has previously failed to pay a properly assessed fee in a timely manner (i.e., within 30 days of the billing date). 5 U.S.C. §552(a)(4)(A)(v). See OMB Fee

Guidelines, §9d, 52 Fed. Reg. at 10020. This provision does not prevent agencies from requiring payment before records which have been processed are released.

The amended law also provides that FOIA fees are superseded by "fees chargeable under a statute specifically providing for setting the level of fees for particular types of records." 5 U.S.C. §552(a)(4)(A)(vi). Thus, when documents responsive to a FOIA request are maintained for distribution by an agency according to a statutorily based fee schedule, requesters must obtain the documents from that source and pay the applicable fees in accordance with the fee schedule of that other statute. See OMB Fee Guidelines, §§6b, 7, 52 Fed. Reg. at 10017, 10018.

Lastly, because the FOIA Reform Act is silent with respect to the standard and scope of judicial review of FOIA fee issues (see 5 U.S.C. §552(a)(4)(A)(vii) regarding the new de novo/administrative record standard and scope of review for fee waiver issues), the standard should remain the same as that under the predecessor statutory fee provision, i.e., agency action should be upheld unless it is found to be "arbitrary or capricious," in accordance with the Administrative Procedure Act, 5 U.S.C. §706. Unfortunately, perhaps due to this lack of statutory clarity, the first court to consider the appropriate standard of review for fee-category decisions mistakenly applied the de novo review reserved for fee waiver issues, although the effect of this conclusion was mitigated by the court's decision to uphold the agency's fee-category decision where "that decision is based upon a reasonable interpretation of the [1986] Amendments." National Sec. Archive v. Department of Defense, slip op. at 9.

Fee Waivers

Prior to the passage of the FOIA Reform Act, the FOIA authorized agencies to waive or reduce the customary charges for document search and duplication where it was determined that such action was "in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. §552(a)(4)(A) (1982). As the D.C. Circuit Court of Appeals had emphasized, this provision "was enacted to ensure that the public would benefit from any expenditure of public funds for the disclosure of public records." Ely v. Postal Serv., 753 F.2d 163, 165 (D.C. Cir.), cert. denied, 471 U.S. 1106 (1985). In January 1983, the Department of Justice issued fee waiver guidelines (see FOIA Update, Jan. 1983, at 3-4), setting forth five specific criteria, developed in numerous court decisions, for federal agencies to apply in determining whether the "public interest" warranted a waiver or reduction of fees. These criteria called upon agencies to determine: (1) whether there was a genuine "public interest" in the subject matter of the request, (2) whether the responsive records were informative on the issue of "public interest," (3) whether the requested information was already in the public domain, (4) whether the requester had the qualifications and ability to use and disseminate the information, and (5) whether the benefit to the general public was outweighed by any commercial or personal benefit to the requester. See id.

The replacement fee waiver standard established by the FOIA Reform Act, effective as of April 25, 1987, now more specifically defines the term "public interest," by providing that fees should be waived or reduced "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. §552(a)(4)(A)(iii). In light of this new fee waiver provision, the Department of Justice issued its new

fee waiver policy guidance on April 2, 1987, which superseded its previous 1983 fee waiver guidance as well as that issued in November 1986 (concerning institutions and record repositories), and advised agencies of the six analytical factors logically to be considered in applying the new statutory fee waiver standard. See FOIA Update, Winter/Spring 1987, at 3-10. Because the revised statutory standard does not depart substantially from its predecessor, the 1987 Department of Justice fee waiver guidance includes a consideration of most of the criteria applicable under that previous fee waiver standard. These six factors, as incorporated in the Department of Defense's fee regulation, were applied and implicitly approved in McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1286 (9th Cir. 1987).

The amended statutory fee waiver standard sets forth two basic requirements, both of which must be satisfied before properly assessable fees can, and should, be waived or reduced. See id. at 4. Requests for a waiver or reduction of fees must be considered on a case-by-case basis and should address both of these requirements in sufficient detail for the agency to make an informed decision. See id. at 6; McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d at 1285 (conclusory statements will not support fee waiver request); National Treasury Employees Union v. Griffin, 811 F.2d 644, 647 (D.C. Cir. 1987) (requester seeking fee waiver bears burden of identifying "public interest" involved). In order to determine whether the first fee waiver requirement is met--i.e., that disclosure of the requested information is in the "public interest" because it is likely to contribute significantly to public understanding of government operations or activities--agencies should consider the following four factors in sequence:

1. First, the subject matter of the requested records, in the context of the request, must specifically concern identifiable "operations or activities of the government." As the D.C. Circuit recently indicated in applying the predecessor fee waiver standard, "the links between furnishing the requested information and benefiting the general public" should not be "tenuous." National Treasury Employees Union v. Griffin, 811 F.2d at 648. While in most cases records possessed by a federal agency will meet this threshold, the records must be sought for their informative value in relation to specifically identified government operations or activities; a request for access to records for their intrinsic informational content alone would not satisfy this threshold consideration. See FOIA Update, Winter/Spring 1987, at 6.

2. Second, in order for the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request. Id. See Larson v. CIA, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (character of information a proper factor to consider); Shaw v. CIA, 3 GDS ¶83,009, at 83,444 (D.D.C. 1982) (denying fee waiver request so "broadly framed" it would include large amount of material uninformative on the issue); Eudey v. CIA, 478 F. Supp. 1175, 1177 (D.D.C. 1979) (nature of information a proper factor); see also American Fed'n of Gov't Employees v. Department of Commerce, 632 F. Supp. 1272, 1278 (D.D.C. 1986) (union's allegations of malfeasance too ephemeral to warrant a waiver of search fees without further evidence that informative information will be found), remanded on other grounds, No. 86-5390 (D.C. Cir. Dec. 9, 1987).

Requests for information already in the public domain, either in a duplicative or a substantially identical form, may not warrant a fee waiver as the disclosure would not be likely to

contribute to an understanding of government operations or activities where nothing new would be added to the existing public record. See, e.g., McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d at 1286 (new information has more potential to contribute to public understanding); Conner v. CIA, Civil No. 84-3625, slip op. at 2 (D.D.C. Jan. 31, 1986) (no fee waiver for information available in agency's public reading room), appeal dismissed for lack of prosecution, No. 86-5221 (D.C. Cir. Jan. 25, 1987); Blakey v. Department of Justice, 549 F. Supp. 362, 364-65 (D.D.C. 1982) (applying this principle under the previous statutory fee waiver standard), aff'd mem., 720 F.2d 215 (D.C. Cir. 1983); FOIA Update, Winter/Spring 1987, at 7. But see Coalition for Safe Power, Inc. v. Department of Energy, Civil No. 87-1380, slip op. at 6-8 (D. Or. July 22, 1988) (material's availability in agency's public reading room only one factor to consider).

3. Third, the disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. See Wagner v. Department of Justice, No. 86-5477, slip op. at 2 (D.C. Cir. Mar. 24, 1987) (general public must benefit from release) (unpublished memorandum); Walker v. IRS, Civil No. 86-0073, slip op. at 5 (M.D. Pa. June 16, 1987) (reasonable to presume plaintiff will be primary beneficiary of request for records on himself); Cox v. O'Brien, Civil No. 86-1639, slip op. at 2 (D.D.C. Dec. 16, 1986) (fee waiver denial proper where prisoners, not general public, would be beneficiaries of information pertaining to wholesalers for prison commissary); Crooker v. Department of the Army, 577 F. Supp. 1220, 1223 (D.D.C. 1984) (rejecting fee waiver under previous standard for information of interest to "a small segment of the scientific community," which would not "benefit the public at large"), appeal dismissed as frivolous, No. 84-5089 (D.C. Cir. June 22, 1984); see also National Treasury Employees Union v. Griffin, 811 F.2d at 648 (rejecting "union's suggestion that its size insures that any benefit to it amounts to a public benefit"). One case has even held that disclosure to a foreign news syndicate that publishes only in Canada satisfies the requirement that it contribute to "public understanding." Southam News v. INS, 647 F. Supp. at 892-93. As the proper focus must be on the benefit to be derived by the general public, any personal benefit to be derived by the requester, or the requester's particular financial situation, are not factors entitling him to a fee waiver. Indeed, it is now well settled that indigency alone, without a showing of a public benefit, is insufficient to warrant a fee waiver. See, e.g., Wagner v. Department of Justice, slip op. at 2 ("indigency does not ipso facto require a fee waiver"); Ely v. Postal Serv., 753 F.2d at 165 ("Congress rejected a fee waiver provision for indigents."); Crooker v. Department of the Army, 577 F. Supp. at 1224.

Additionally, agencies should evaluate the identity and qualifications of the requester--e.g., expertise in the subject area of the request and ability and intention to disseminate the information to the general public--in order to determine whether the general public would benefit from disclosure to that requester. See, e.g., Larson v. CIA, 843 F.2d at 1483 (inability to disseminate information alone is sufficient basis for denying fee waiver request); Eudey v. CIA, 478 F. Supp. at 1177 (articulating such approach under predecessor fee waiver standard). Specialized knowledge may be required to extract, synthesize and effectively convey the information to the public and requesters vary in their ability to do so. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d at 1286 (fee waiver request gave no indication of requesters' ability to understand and process the information nor whether they intended to actually disseminate it); see FOIA Update, Winter/Spring 1987, at 7. While

established representatives of the news media, as defined in the OMB Fee Guidelines, §6j, 52 Fed. Reg. at 10018, should readily be able to meet this aspect of the statutory requirement by showing their connection to a ready means of effective dissemination, other requesters should be required to describe with greater substantiation their expertise in the subject area and their ability and intention to disseminate the information. See id.; see also, e.g., McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d at 1286-87 (agency may request additional information; 23 questions not burdensome); Crooker v. Department of the Army, 577 F. Supp. at 1223-24 (prison inmate's intent to write book about brother's connection with dangerous poison not considered benefit to public); Burriss v. CIA, 524 F. Supp. 448, 449 (M.D. Tenn. 1981) (denial of plaintiff's fee waiver request "based upon mere representation that he is a researcher who plans to write a book" held not abuse of discretion).

It may be noted that some decisions under the former fee waiver standard suggest that journalists should presumptively be granted fee waivers. See National Treasury Employees Union v. Griffin, 811 F.2d at 649; Goldberg v. Department of State, Civil No. 85-1496, slip op. at 3-4 (D.D.C. Apr. 29, 1986), modified (D.D.C. July 25, 1986); Badhwar v. Department of the Air Force, 615 F. Supp. 698, 708 (D.D.C. 1985); Rosenfeld v. Department of Justice, Civil No. C-85-2247-MHP, slip op. at 4-5 (N.D. Cal. Oct. 29, 1985), motion for reconsideration denied (N.D. Cal. Mar. 25, 1986); Leach v. Customs Serv., Civil No. 85-1195, slip op. at 8-9 (D.D.C. Oct. 22, 1985). However, while an agency should certainly give weight to journalistic credentials under this factor, accord FOIA Update, Fall 1983, at 14, the statute provides no specific presumption that journalistic status alone is to be dispositive under the fee waiver standard. Accord McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d at 1284 (legislative history makes plain that "public interest" groups must satisfy statutory test).

Additionally, this consideration is not satisfied simply because a fee waiver request is made by a library or other record repository, or by a requester who intends merely to disseminate the information to such an institution. See FOIA Update, Winter/Spring 1987, at 8. Such requests which make no showing of how the information would be disseminated other than through passively making it available to anyone who might seek access to it do not meet the burden of demonstrating with particularity that the information will be communicated to the public. Id. These requests, like those of other requesters, should be analyzed to identify a particular person who actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public. Id. Accord National Treasury Employees Union v. Griffin, 811 F.2d at 647 (observing under previous standard that public benefit should be "identified with reasonable specificity").

4. Lastly, the disclosure must contribute "significantly" to public understanding of government operations or activities. To warrant a waiver or reduction of fees, the public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. See FOIA Update, Winter/Spring 1987, at 8. Such a determination must be an objective one; agencies are not permitted to make separate value judgments as to whether information, which would in fact contribute significantly to public understanding of government operations or activities, is "important" enough to be made public. Id. See Ettlinger v. FBI, 596 F. Supp. 867, 875 (D. Mass. 1984).

Once an agency determines that the "public interest" requirement for a fee waiver has been met, the statutory standard's second requirement calls for the agency to determine whether "disclosure of the information . . . is not primarily in the commercial interest of the requester." 5 U.S.C. §552(a)(4)(A)(iii). In order to decide whether this requirement is satisfied, agencies should consider the following two factors in sequence:

1. First, an agency must determine as a threshold matter whether the request involves any commercial interest of the requester which would be furthered by the disclosure. See FOIA Update, Winter/Spring 1987, at 9. A "commercial interest" is one that furthers a commercial, trade or profit interest as those terms are commonly understood. Id. See OMB Fee Guidelines, §6g, 52 Fed. Reg. at 10017-18. Accord, e.g., American Airlines, Inc. v. National Mediation Bd., 588 F.2d 863, 870 (2d Cir. 1978) (defining "commercial" in Exemption 4 as meaning anything "pertaining or relating to or dealing with commerce"). Information sought in furtherance of a tort claim for compensation or retribution for the requester is not considered to involve a "commercial interest." McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d at 1285. However, not only profit-making corporations but also individuals or other organizations may have a commercial interest to be furthered by the disclosure, depending upon the circumstances involved. See FOIA Update, Winter/Spring 1987, at 9; Critical Mass Energy Project v. NRC, 830 F.2d 278, 281 (D.C. Cir. 1987) (entity's "non-profit status is not by itself determinative" of commercial status). Agencies may properly consider the requester's identity and the circumstances surrounding the request and draw reasonable inferences regarding the existence of a commercial interest. Id.

Where a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order subsequently to compare it to the "public interest" in disclosure. In assessing the magnitude of the commercial interest, the agency should reasonably consider the extent to which the FOIA disclosure will serve the requester's identified commercial interest. Id.

2. Lastly, an agency must balance the requester's commercial interest against the identified "public interest" in disclosure and determine which interest is "primary." A fee waiver or reduction must be granted only where the "public interest" in disclosure can fairly be regarded as greater in magnitude than the requester's commercial interest. As one court has noted, when considering the balance to be struck under the predecessor fee waiver standard: "[I]n simple terms, the public should not foot the bill unless it will be the primary beneficiary of the [disclosure]." Burriss v. CIA, 524 F. Supp. at 449.

Although newsgathering organizations ordinarily have a commercial interest in obtaining information, agencies may generally presume that where a news media requester has satisfied the "public interest" standard, that will be the primary interest served. See FOIA Update, Winter/Spring 1987, at 10. On the other hand, disclosure to data brokers or others who compile and market government information for direct economic return may not be presumed to primarily serve the "public interest"; rather, requests on behalf of such entities can more readily be considered as primarily in their commercial interest, depending upon the nature of the records and their relation to the exact circumstances of the enterprise. Id.

When agencies analyze fee waiver requests by considering these six factors, they can rest assured that they have carried

out their statutory obligation to determine whether a waiver is in the "public interest." Id. Where an agency has relied on factors unrelated to the public benefit standard to deny a fee waiver request, however, courts have found an abuse of discretion. See, e.g., Goldberg v. Department of State, slip op. at 3-5 (agency policy of granting waiver of search fees but refusing to grant waiver of duplication fees for "public interest" documents held "both irrational and in violation of the statute"); Idaho Wildlife Fed'n v. United States Forest Serv., 3 GDS ¶83,271, at 84,056 (D.D.C. 1983) (reliance on regulation that proscribes granting of fee waiver where records are sought for litigation is abuse of discretion because regulation is overbroad in that it ignores "public interest" in certain litigation); Diamond v. FBI, 548 F. Supp. 1158, 1160 (S.D.N.Y. 1982) (agency may not decline to waive fees based merely upon perceived obligation to collect them); Common Cause v. IRS, 1 GDS ¶79,188, at 79,351 (D.D.C. 1979) ("public interest" in certain logs showing communications between IRS and Congress "speaks for itself"; IRS cannot deny requests for waiver of search fees simply on ground that the search would be burdensome), aff'd mem., 646 F.2d 656 (D.C. Cir. 1981); Eudey v. CIA, 478 F. Supp. at 1177 (agency may not consider quantity of documents to be released); Fitzgibbon v. CIA, Civil No. 76-700, slip op. at 1 (D.D.C. Jan. 19, 1977) ("An agency's determination not to waive fees is arbitrary and capricious where there is nothing in the agency's refusal of fee waiver which indicates that furnishing the information requested cannot be considered as primarily benefiting the general public.").

Prior to the FOIA Reform Act, the discretionary nature of the FOIA's fee waiver provision led the majority of courts to conclude that "the proper standard of judicial review of an agency's denial of a fee waiver is whether that decision is arbitrary or capricious," in accordance with the Administrative Procedure Act, 5 U.S.C. §706. Eudey v. CIA, 478 F. Supp. at 1176. See, e.g., Ely v. Postal Serv., 753 F.2d at 165; Ettlinger v. FBI, 596 F. Supp. at 871. But see Rizzo v. Tyler, 438 F. Supp. 895, 899 (S.D.N.Y. 1977) (agency fee waiver denial reviewed de novo). This meant that a court could not "replace its own judgment for that of [an agency] without first concluding that the [agency's] decision was completely unreasonable and unfair." Crooker v. Department of the Army, 577 F. Supp. at 1224.

This standard was changed, however, with the passage of the FOIA Reform Act. A specific judicial review provision was included in the amended FOIA, 5 U.S.C. §552(a)(4)(A)(vii), which now provides for the review of agency fee waiver denials according to a de novo standard. Yet this provision also explicitly provides that the scope of judicial review remains limited to the administrative record established before the agency, id., and thus it is crucial that the agency's fee waiver denial letter create a comprehensive administrative record of all the reasons for the denial. See National Treasury Employees Union v. Griffin, 811 F.2d at 648 (court may consider only information before the agency at time of decision); Larson v. CIA, 843 F.2d at 1483 (information not part of administrative record may not be considered by district court when reviewing agency fee waiver denial); Gilday v. Department of Justice, Civil No. 85-292, slip op. at 5 (D.D.C. July 22, 1985) (agency cannot wait until after litigation has commenced before giving reasons for denying fee waiver); Allen v. CIA, Civil No. 81-2543, slip op. at 12 (D.D.C. Aug. 24, 1984) (post hoc rationalization for fee waiver denial rejected); see also FOIA Update, Winter 1985, at 6; FOIA Update, Winter/Spring 1987, at 10. In this regard, agencies should also be aware that a challenge to an agency's fee waiver policy is not automatically rendered moot where the agency reverses itself and grants the specific fee waiver request;

courts may still entertain such challenges from plaintiffs who are frequent FOIA requesters. See Better Gov't Ass'n v. Department of State, 780 F.2d 86, 91-92 (D.C. Cir. 1986); Public Citizen v. OSHA, Civil No. 86-0705, slip op. at 2-3 (D.D.C. Aug. 5, 1987).

Because the new statutory fee waiver provision has only just begun to be interpreted by the courts, it remains to be seen how novel issues of interpretation regarding its "public interest" standard will be adjudicated. For additional guidance on any particular fee waiver issue, agencies should not hesitate to contact OIP's fee waiver specialist, at (FTS) 633-3642. See FOIA Update, Winter/Spring 1987, at 10.

XIV. LITIGATION CONSIDERATIONS

The adjudication of a FOIA action involves unique procedural and substantive concerns that even the experienced litigator might at first find bewildering. To provide a general overview of selected FOIA litigation considerations, this discussion will follow a rough chronology of typical FOIA litigation, from the point of determining whether jurisdictional prerequisites have been met to the assessment of costs on appeal.

At the outset, it should be noted that the Department of Justice substantially revised its policy of defending FOIA actions in May 1981. The Department of Justice defends "all suits challenging an agency's decision to deny a request submitted under the FOIA unless it is determined that: (a) the agency's denial lacks a substantial legal basis; or (b) defense of the agency's denial presents an unwarranted risk of adverse impact on other agencies' ability to protect important records." Memorandum From Attorney General William French Smith To Heads Of All Federal Departments And Agencies, dated May 5, 1981, reprinted in FOIA Update, June 1981, at 3. The "demonstrable harm" standard adopted by the Department of Justice in 1977 no longer is in effect. See id. at 1.

Jurisdiction and Venue

The United States district courts are vested with jurisdiction over FOIA cases by virtue of 5 U.S.C. §552(a)(4)(B), which provides in pertinent part:

> On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

Jurisdiction in a FOIA suit is thus predicated upon the plaintiff showing that an agency has (1) improperly (2) withheld (3) agency records. Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136, 150 (1980). Plaintiffs who do not allege any improper withholding of agency records fail to state a claim for which a court has jurisdiction under the FOIA. National Fed'n of Fed. Employees v. United States, Civil No. 87-2284, slip op. at 39 (D.D.C. May 27, 1988). But see Payne Enters. v. United States, 837 F.2d 486, 490-92 (D.C. Cir. 1988) (repeated unacceptably long agency delays in providing nonexempt information found sufficient to give rise to jurisdiction). In a companion case to Kissinger, Forsham v. Harris, 445 U.S. 169, 182

(1980), the Supreme Court elaborated on the definition of agency records, explaining that "an agency must first either create or obtain a record as a prerequisite to its becoming an 'agency record' within the meaning of the FOIA." (For further discussion of "agency records," see the cases cited under Procedural Requirements, supra.)

Whether an agency has "improperly" withheld records usually turns on the application of one or more exemptions applied to the documents at issue. However, an agency which denied access to nonexempt records on the ground that they were available from another source was found to have "improperly withheld" the requested records. Tax Analysts v. Department of Justice, 845 F.2d 1060, 1064-67 (D.C. Cir. 1988), reh'g en banc denied, No. 86-5625 (D.C. Cir. July 15, 1988). On the other hand, if the agency can establish that there exist no responsive documents, Malinkoski v. FBI, Civil No. 86-2239, slip op. at 4 (S.D.N.Y. June 17, 1987), or that all responsive records have been released to the requester, Williams v. Department of Justice, Civil No. 87-1567 (D.D.C. Nov. 5, 1987), summary affirmance granted, No. 87-5410 (D.C. Cir. Aug. 31, 1988); Southam News v. INS, 674 F. Supp. 881, 889 (D.D.C. 1987), the agency's refusal to produce them should not be deemed "improper withholding" within the meaning of the FOIA's jurisdictional language. In addition, an agency has not improperly withheld records where their disclosure is prohibited by a pre-existing court order. See, e.g., GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375, 384-86 (1980); Wagar v. Department of Justice, 846 F.2d 1040, 1047 (6th Cir. 1988) ("Nothing in GTE Sylvania supports the conclusion that the validity of nondisclosure orders depends upon whether they are based upon FOIA exemptions."); Legal Times v. FDIC, 1 GDS ¶80,234, at 80,585 (D.D.C. 1980); see also FOIA Update, Summer 1983, at 5. But see also Lykins v. Department of Justice, 725 F.2d 1455, 1460-61 & n.7 (D.C. Cir. 1984) (local rule of court held insufficient to trigger "improper withholding" defense).

A somewhat similar principle under the FOIA, although one not at all well settled or commonly applied, is that in a rare case, a court may decline to order the disclosure of nonexempt information as a matter of "equitable discretion." The D.C. Circuit has recognized this principle in the abstract, stating that it can be applied under "exceptional circumstances." See Halperin v. Department of State, 565 F.2d 699, 706 (D.C. Cir. 1977) (citing Soucie v. David, 448 F.2d 1067, 1077 (D.C. Cir. 1971)), cert. denied, 434 U.S. 1046 (1978); see also Weber Aircraft Corp. v. United States, 688 F.2d 638, 646 (9th Cir. 1982), rev'd on other grounds, 465 U.S. 792 (1984); Patriarca v. FBI, Civil No. 85-0707, slip op. at 1 (D.R.I. Nov. 13, 1985) (order preliminarily enjoining defendants from making release of nonexempt records), motion to dismiss denied 639 F. Supp. 1193 (D.R.I. 1986); K. Davis, Administrative Law Treatise 5:25 (Supp. 1982). But see Washington Post Co. v. Department of State, 685 F.2d 698, 700, 704 (D.C. Cir. 1982), reh'g en banc denied, 685 F.2d 706 (D.C. Cir. 1982), vacated & remanded, 464 U.S. 979 (1983). This principle should be advanced in court only under strongly compelling circumstances. See, e.g., O'Rourke v. Department of Justice, 684 F. Supp. 716, 719 (D.D.C. 1988) (finding insufficient basis for denying access on such equitable grounds); Caplan v. Bureau of Alcohol, Tobacco & Firearms, 445 F. Supp. 699, 705-06 (S.D.N.Y. 1978) (denial based on equitable discretion), aff'd on other grounds, 587 F.2d 544, 546 (2d Cir. 1978) (equitable discretion accepted in principle).

The venue provision of the FOIA, quoted above, provides plaintiffs with a broad choice of forums in which to bring suit. The United States District Court for the District of Columbia has over the years decided a great many of the leading cases under

the FOIA largely as the result of its designation as an appropriate forum for any FOIA action against a federal agency. See 5 U.S.C. §552(a)(4)(B). It is not yet settled, however, whether this provision affords "personal jurisdiction" in that judicial district for FOIA suits brought against the Tennessee Valley Authority, a wholly owned federal corporation outside the court's normal extraterritorial service of process. Compare Jones v. NRC, 654 F. Supp. 130, 132 (D.D.C. 1987) (no) with Murphy v. TVA, 559 F. Supp. 58, 59 (D.D.C. 1983) (yes).

While the doctrine of forum non conveniens does apply to FOIA actions, transfers of FOIA cases pursuant to 28 U.S.C. §1404(a) are relatively uncommon. See In re Scott, 709 F.2d 717, 721-22 (D.C. Cir. 1983) (writ of mandamus issued and case remanded where district court sua sponte transferred case, without determination of whether venue actually was proper in other forum, merely in effort to reduce burden of "very large number of in forma pauperis cases"). But see, e.g., Sims v. Department of Justice, Civil No. 86-0231, slip op. at 1 (D.D.C. Apr. 22, 1986) (transfer to district where documents are located, near where plaintiff resides, when "[n]one of the matters at issue . . . have any connection with the District of Columbia"); General Dynamics Corp. v. Department of the Army, Civil Nos. 85-3901, 86-0057, slip op. at 2 (D.D.C. Jan. 10, 1986) (transfer to district where there are pending criminal charges relating generally to subject matter of requested documents); Mobil Corp. v. SEC, 550 F. Supp. 67, 70-71 (S.D.N.Y. 1982) (sua sponte transfer of case to the District of Columbia where the 7,000 documents at issue were located and where related litigation was pending); Ferri v. Department of Justice, 441 F. Supp. 404, 406-07 (M.D. Pa. 1977) (court transferred FOIA action sua sponte under 28 U.S.C. §1404(a) because records sought were located in District of Columbia, all administrative action on request was taken there, and plaintiff's only nexus with transferring forum was his incarceration there); but see also Lead Indus. Ass'n v. OSHA, 610 F.2d 70, 79 (2d Cir. 1979) (expressing strong dissatisfaction with plaintiff's decision to lay venue for FOIA action in Southern District of New York when related, highly complex review of substantive OSHA rule was pending in District of Columbia; suggesting transfers or stays on court's own motion if such cases arose in future).

As a final jurisdictional point, it should be noted that a FOIA plaintiff, like any other, must file his suit before the expiration of the general statute of limitations. In a recent decision of first impression, the D.C. Circuit Court of Appeals has applied 28 U.S.C. §2401(a) to FOIA actions. Spannaus v. Department of Justice, 824 F.2d 52, 55-56 (D.C. Cir. 1987). Section 2401(a) states, in relevant part, that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." In Spannaus, it was held that the plaintiff's cause of action accrued--and, therefore, the statute of limitations began to run--once he had "constructively" exhausted his administrative remedies (see discussion of "Exhaustion of Administrative Remedies," infra) and not when all administrative appeals had been completed. 824 F.2d at 57-59. In accordance with the Spannaus decision, the National Archives and Records Administration propounded NARA Bulletin No. 87-6 (Apr. 6, 1987), which now sets the record-retention period at six years for all correspondence and supporting documentation relating to denied FOIA requests. See also Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 28 n.51 (Dec. 1987) (agencies should be sure to maintain any "excluded" records for purposes of possible further review) (citing FOIA Update, Fall 1984, at 4 (same regarding "personal" records)).

Pleadings

The agency's time to answer a FOIA complaint is 30 days from the date of service of process, not the usual 60 days that are permitted by Federal Rule of Civil Procedure 12(a). See 5 U.S.C. §552(a)(4)(C). While courts are no longer required to automatically accord expedited treatment to FOIA cases, they may still, in their discretion, expedite any such case "if good cause therefor is shown." 28 U.S.C. §1657 (1982 & Supp. IV 1987) (repealing 5 U.S.C. §552(a)(4)(D)). See FOIA Update, Spring 1985, at 6.

Not only is the usual "substantial evidence" standard of review of agency action replaced in the FOIA by a de novo review standard, but the defendant agency bears the burden of justifying its decision to withhold any information. See 5 U.S.C. §552(a)(4)(B); Alyeska Pipeline Serv. Co. v. EPA, ___ F.2d ___, ___ (D.C. Cir. Sept. 13, 1988) (agency expertise irrelevant when agency declaration satisfies burden and there is no issue of material fact); Washington Post Co. v. Department of State, 840 F.2d 26, 31-35 (D.C. Cir. 1988) (discussing legislative history of de novo review provision in Exemption 6 and Exemption 1 contexts) (petition for rehearing en banc pending); King v. Department of Justice, 830 F.2d 210, 217 (D.C. Cir. 1987); Vaughn v. Rosen, 484 F.2d 820, 823 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). However, where Exemption 1 is invoked, most courts have applied a somewhat lesser standard of review for classified documents in order not to compromise national security. See Stein v. Department of Justice, 662 F.2d 1245, 1253 (7th Cir. 1981) (courts should merely review sufficiency of affidavits rather than make "true de novo" determination); see also Goldberg v. Department of State, 818 F.2d 71, 76-77 (D.C. Cir. 1987) (despite de novo standard of review, court must give "substantial weight" to agency Exemption 1 affidavits), cert. denied, 108 S. Ct. 1075 (1988); Doherty v. Department of Justice, 775 F.2d 49, 51-52 (2d Cir. 1985) (same); Salisbury v. United States, 690 F.2d 966, 970 (D.C. Cir. 1982) (same) (quoting S. Rep. No. 1200, 93d Cong., 2d Sess. 12 (1974) (conference report)).

With respect to FOIA issues other than those involving the propriety of agency withholding of records, one circuit court has applied the de novo standard of review in a lawsuit dealing with an alleged violation of subsection (a)(1) of the FOIA, 5 U.S.C. §552(a)(1). See Mada-Luna v. Fitzpatrick, 813 F.2d 1006, 1011 (9th Cir. 1987). A major exception to the de novo standard of review is reverse FOIA lawsuits, in which the lesser "arbitrary and capricious" standard is applied. (See the discussion of Reverse FOIA matters, infra.) Judicial review of agency denial of a fee waiver request was undertaken according to the "arbitrary and capricious" standard prior to the 1986 FOIA amendments, which now mandate that courts are to determine fee waiver issues under the de novo standard of review, but limit their scope of review to the record before the agency. (See the discussion of Fees and Fee Waivers, supra.)

Although the cases are not in complete harmony on the point, there is a sound general rule that only federal agencies and departments are proper party defendants in FOIA litigation. This rule is derived from the language of 5 U.S.C. §552(a)(4)(B), which vests the district courts with jurisdiction to "enjoin the agency" from withholding records (emphasis added). See Petrus v. Bowen, 833 F.2d 581, 582 (5th Cir. 1987) ("Neither the [FOIA] nor the Privacy Act creates a cause of action for a suit against an individual employee of an agency."); Friedman v. FBI, 605 F. Supp. 314, 317 (N.D. Ga. 1984) (finding that "[d]eveloping case law supports this view"); Canadian Javelin v. SEC, 501 F. Supp. 898, 904 (D.D.C. 1980). See also, e.g., Voinche v. Department of Justice, No. 87-4781, slip op. at 1-2 (5th Cir. Feb. 4, 1988)

(unpublished memorandum) (no basis for suit against state governor, private citizen or telephone company), cert. denied, 108 S. Ct. 2030 (1988); Brinton v. Department of Labor, Civil No. 87-7010, slip op. at 1 (E.D. Pa. July 22, 1988) (subordinate officials not proper party defendants); Espenshade v. Carbone, Civil No. 86-2610, slip op. at 2-3 (D.D.C. May 15, 1987) (no proper party defendant where plaintiff sued individuals, Pennsylvania State University and the United States, without suing agency that allegedly withheld records improperly); Gillard v. United States Marshals, Civil No. 87-0689, slip op. at 1-2 (D.D.C. May 11, 1987) (District of Columbia not proper party defendant under federal FOIA); Maxberry v. Eastern Plasma of Ohio, No. 87-3022, slip op. at 3 (6th Cir. Aug. 11, 1987) (unpublished memorandum) (private institutions not proper party defendants), mem., 826 F.2d 1064 (6th Cir. 1987); Pruitt Elec. Co. v. Department of Labor, 587 F. Supp. 893, 896 (N.D. Tex. 1984) (agency solicitor and disclosure officer not proper party defendants); Exxon Corp. v. Department of Energy, 585 F. Supp. 690, 708 (D.D.C. 1983) (agency head and FOIA officer not proper party defendants); Providence Journal Co. v. FBI, 460 F. Supp. 778, 782-83 & n.2 (D.R.I. 1978) (FBI, its Director, and Attorney General not proper party defendants in FOIA suit regarding FBI documents), rev'd on other grounds, 602 F.2d 1010 (1st Cir. 1979), cert. denied, 444 U.S. 1071 (1980); Morpurgo v. Board of Higher Educ., 423 F. Supp. 704, 714 n.26 (S.D.N.Y. 1976). But see, e.g., Hamlin v. Kelley, 433 F. Supp. 180, 181 (N.D. Ill. 1977) (Attorney General and FBI Director held proper parties on grounds that they were sued in official capacities as custodians of documents, were most responsible for policies and decisions of their agencies, and were final authorities on FOIA administration).

The law of proper party defendants is less clear, however, where a suit is brought against an agency for a document in its possession that originated with another agency. Until relatively recently, there existed a well-settled general rule that only the originating agency was a proper party defendant in a FOIA lawsuit. See, e.g., British Airports Auth. v. CAB, 531 F. Supp. 408, 417-18 (D.D.C. 1982); see also FOIA Update, June 1982, at 5. But in McGehee v. CIA, 697 F.2d 1095, 1105-12 (D.C. Cir.), vacated in part on panel reh'g, reh'g en banc denied, 711 F.2d 1076 (D.C. Cir. 1983), the D.C. Circuit suggested that an agency receiving a FOIA request should process and defend responsive documents in its possession even though the documents originated with another agency. The Department of Justice has taken the position, however, that this decision is entirely interlocutory and nonbinding on this issue, and that agencies should not alter their existing practices of referring documents to originating agencies. See FOIA Update, Summer 1983, at 5. (It may be noted that subsequent to its decision in McGehee, the D.C. Circuit addressed this issue again in Paisley v. CIA, 712 F.2d 686, 691-92 (D.C. Cir. 1983). Although it is not evident on the face of that decision, that case in fact involved an intra-agency referral within the Department of Justice where the defendant agency was unquestionably the proper party to the suit.) In any event, it is clear that an agency cannot refuse to process documents originating with other agencies by merely advising the requester to seek them directly from those agencies. See Ostrer v. Department of Justice, Civil No. 85-0506, slip op. at 7-8 (D.D.C. Feb. 7, 1986), amended, slip op. at 2-3 (D.D.C. Apr. 9, 1986).

Although the McGehee pronouncements on referrals still have not been followed by the courts, the issues of proper party defendant and inter-agency referral remain somewhat clouded. The better practice is to consult with the agency or component whose information appears in responsive documents and, if the response to that consultation is delayed, to notify the requester that a supplemental response will follow its completion. When entire

documents originating with another agency or component are located, those documents should be referred to their originating agency for its direct response to the requester and the requester generally should be advised of such a referral. See FOIA Update, Summer 1983, at 5; see, e.g., 28 C.F.R. §16.4(c) (1987) (Department of Justice regulation on referrals and consultations). Some agencies have, by regulation, eliminated the problem of continuously referring certain routine records or classes of records to other agencies or components by establishing standard processing protocols. See, e.g., 28 C.F.R. §16.4(g) (1987) (Department of Justice regulation permitting such formal or information agreements).

Finally, lawsuits brought ostensibly under the FOIA may be summarily dismissed, pursuant to 28 U.S.C. §1915(d), where "[r]eview of the complaint, and its supplements and amendments, show that [the] suit is utterly frivolous, vexatious, and malicious." Chambers v. Carlson, Civil No. 87-0393, slip op. at 2 (D.D.C. June 16, 1987); see, e.g., McCloud v. Meese, No. 87-3011, slip op. at 2 (6th Cir. Sept. 30, 1987) (unpublished memorandum) (suit properly dismissed as frivolous when plaintiff failed to amend complaint to allege which records were improperly withheld); Franklin v. Oregon, 563 F. Supp. 1310, 1331 (D. Or. 1983); cf. United States v. Kaun, 827 F.2d 1144, 1152-53 (7th Cir. 1987) (frivolous FOIA suits not constitutionally protected, so injunction against filing one not overbroad); Crooker v. Marshals Serv., 641 F. Supp. 1141, 1143 (D.D.C. 1986) (given "plethora" of FOIA suits filed by plaintiff and fact that plaintiff fails routinely to oppose motions to dismiss, plaintiff's "litigation efforts have been for purposes of harassment;" plaintiff ordered to attach a memorandum to any subsequent lawsuit explaining why that suit is not barred by res judicata).

Exhaustion of Administrative Remedies

The general rule under the FOIA is that administrative remedies must be exhausted prior to judicial review. See, e.g., Spannaus v. Department of Justice, 824 F.2d 52, 58 (D.C. Cir. 1987); In re Motion To Compel Filed by Steele, 799 F.2d 461, 465-66 (9th Cir. 1986); Tuchinsky v. Selective Serv. Sys., 418 F.2d 155, 158 (7th Cir. 1969). Indeed, where a FOIA plaintiff attempts to obtain judicial review without first properly undertaking full and timely administrative exhaustion, his lawsuit is subject to ready dismissal for lack of subject matter jurisdiction. See, e.g., Dettman v. Department of Justice, 802 F.2d 1472, 1477 (D.C. Cir. 1986); Hymen v. Merit Sys. Protection Bd., 799 F.2d 1421, 1423 (9th Cir. 1986); Brumley v. Department of Labor, 767 F.2d 444, 445 (8th Cir. 1985); Tripati v. Department of Justice, Civil No. 87-3301, slip op. at 2 (D.D.C. Apr. 15, 1988) (plaintiff's failure to file administrative appeal before agency's regulation deadline constitutes failure to exhaust administrative remedies); Crooker v. Secret Serv., 577 F. Supp. 1218, 1219-20 (D.D.C. 1983), appeal dismissed, No. 83-2203 (D.C. Cir. Feb. 21, 1984).

The FOIA permits requesters to treat an agency's failure to comply with its specific time limits as full, or constructive, exhaustion of administrative remedies. 5 U.S.C. §552(a)(6)(C). Thus, when an agency does not respond to a perfected request within the ten-day statutory time limitations set forth in 5 U.S.C. §552(a)(6)(A)(i), the requester is deemed to have exhausted the administrative remedies and can seek immediate judicial review, even where the requester has not filed an administrative appeal. See, e.g., Virginia Transformer Corp. v. Department of Energy, 628 F. Supp. 944, 947 (W.D. Va. 1986); Jenks v. Marshals Serv., 514 F. Supp. 1383, 1384-87 (S.D. Ohio 1981); Information Acquisition Corp. v. Department of Justice, 444 F. Supp. 458, 462

(D.D.C. 1978); see also FOIA Update, Jan. 1983, at 6. Under the traditional view of constructive exhaustion, when the agency initially responds to the requester in a timely manner, the requester must administratively appeal a denial and wait twenty days for the agency to process that appeal--as is required by 5 U.S.C. §552(a)(6)(A)(ii)--before commencing litigation. See, e.g., Government Employees' Advisors & Representatives, Inc. v. Department of Labor, Civil No. 4-85-498-K, slip op. at 5-6 (N.D. Tex. Nov. 6, 1986); Walker v. IRS, Civil No. 86-0073, slip op. at 4 (M.D. Pa. June 16, 1986); Caifano v. Parole Comm'n, Civil No. 85-3513, slip op. at 2 (D.D.C. Feb. 26, 1986), dismissed (D.D.C. Sept. 18, 1986).

The D.C. Circuit Court of Appeals recently suggested--albeit in dicta--that where a FOIA requester waited beyond the ten-day period for the agency's initial response and then, in fact, received that response before suing the agency, the requester must exhaust his administrative appeal rights before litigating the initial response. See Spannaus v. Department of Justice, 824 F.2d at 59 (footnote omitted) ("Under that view of things, the requester's statutory right to sue might perhaps be either suspended (for the brief period during which an administrative appeal is available plus the 20 working days within which it must be processed) or entirely cut off (if the requester never appe the denial).") See also Tripati v. Department of Justice, slip op. at 2 ("plaintiff failed to exhaust his administrative remedies by failing to file a timely appeal of [the agency's] partial denial") (emphasis added).

In any event, it must be remembered that an agency response which merely acknowledges receipt of a request does not constitute a "determination" under the FOIA in that it neither denies records nor grants the right to appeal the agency's determination. See Martinez v. FBI, 3 GDS ¶83,005, at 83,435 (D.D.C. 1982); see also Brumley v. Department of Labor, 767 F.2d at 445. But cf. Dickstein v. IRS, 635 F. Supp. 1004, 1006 (D. Alaska 1986) (letter referring requester to alternative "procedures which involved less red tape and bureaucratic hassle" not deemed a denial). Significantly, the ten-day time period does not run until the request is received by the appropriate office in the agency, as required in the agency's regulations. Brumley v. Department of Labor, 767 F.2d at 445. In fact, when an agency has regulations that require that requests be made to specific offices for specific records, a request will not be deemed received--and no search for responsive records need be performed--if the requester does not follow those regulations. See Church of Scientology v. IRS, 792 F.2d 146, 150 (D.C. Cir. 1986), cert. granted on other issues, 107 S. Ct. 947 (1987). Additionally, even where a requester has "constructively" exhausted his administrative remedies by the agency's failure to respond determinatively to the request within the statutory time limits, the requester is not entitled to a Vaughn index during the administrative process. See Safecard Servs., Inc. v. SEC, Civil No. 84-3073, slip op. at 3-5 (D.D.C. Apr. 21, 1986); see also FOIA Update, Summer 1986, at 6.

Even if the agency has exceeded its ten-day time limit for the processing of initial responses to a request, its twenty-day time limit for the processing of administrative appeals, or its ten-day extension of either time limit, see 5 U.S.C. §552 (a)(6), requesters have been deemed not to have constructively exhausted their administrative remedies where they have failed to comply with agency requisites--for example, failed to provide required notarized signatures in first-party requests, see, e.g., Lilienthal v. Parks, 574 F. Supp. 14, 17-18 (E.D. Ark. 1983), failed to comply with an agency's Privacy Act requirement of a physician's authorization to release medical records, Kele v.

Department of Justice, Civil No. 86-0796, slip op. at 4-5 (D.D.C. June 9, 1988) (magistrate's recommendation), adopted (D.D.C. Sept. 6, 1988); Crooker v. Department of Justice, Civil No. 86-2333, slip op. at 5 (D.D.C. Oct. 2, 1987), aff'd, No. 87-5372 (D.C. Cir. Apr. 8, 1988), failed to "reasonably describe" the records sought, see, e.g., Marks v. Department of Justice, 578 F.2d 261, 263 (9th Cir. 1978), failed to comply with duplication or search fee requirements, see, e.g., Hanlon v. Department of Commerce, Civil No. 86-2906, slip op. at 1-2 (D.D.C. July 17, 1987); Crooker v. CIA, 577 F. Supp. 1225, 1225 (D.D.C. 1984); Lykins v. Department of Justice, 3 GDS ¶83,092, at 83,637 (D.D.C. 1983), failed to pay authorized copying fees incurred in a prior request before making new requests, see, e.g., Crooker v. Secret Serv., 577 F. Supp. 1218, 1219-20 (D.D.C. 1983), appeal dismissed, No. 83-2203 (D.C. Cir. Feb. 21, 1984); Mahler v. Department of Justice, 2 GDS ¶82,032, at 82,262 (D.D.C. 1981), failed to present for review at the administrative appeal level any objection to earlier processing practices, see, e.g., Dettman v. Department of Justice, 802 F.2d at 1477, or failed to challenge fee waiver denials at the administrative appeal stage, see Crooker v. CIA, Civil No. 86-3055, slip op. at 4-5 (D.D.C. May 10, 1988).

The impact of the constructive exhaustion provisions is further mitigated by the D.C. Circuit's ruling in Open America v. Watergate Special Prosecution Force, 547 F.2d 605, 615-16 (D.C. Cir. 1976), which holds that an agency is deemed to be in compliance with the FOIA if it is exercising good faith and "due diligence" by processing requests in the order in which they are received, absent a demonstration of "exceptional need or urgency" by the requester. Under this commonly accepted approach, the courts get immediately involved only in cases in which an agency is not exercising "due diligence" with respect to an individual request or is "lax overall in meeting its obligations under the Act with all available resources," or when the requester can show a genuine need for having his request processed out of turn. Id. See, e.g., Exner v. FBI, 542 F.2d 1121, 1123 (9th Cir. 1976) (threat to life of requester warranted expedited processing); Florida Rural Legal Servs. v. Department of Justice, Civil No. 87-1264, slip op. at 3-4 (S.D. Fla. Feb. 10, 1988) (agency required to give processing priority to nonprofit legal organization seeking list of undocumented aliens, where organization showed "exceptional need or urgency" for information); Cleaver v. Kelly, 427 F. Supp. 80, 81 (D.D.C. 1976) (plaintiff facing multiple criminal charges carrying possible death penalty in state court); Boult v. Department of Justice, Civil No. C76-1217A, slip op. at 3-4 (N.D. Ga. Oct. 22, 1976) (pending deportation which might endanger requester's physical safety justified expedited processing). But see, e.g., Antonelli v. FBI, Civil No. 84-1047, slip op. at 2-3 (D.D.C. Nov. 13, 1984) (subject's "advanced age [80] and poor health" do not require expedited processing when records sought to challenge his conviction); Gonzalez v. DEA, 2 GDS ¶81,016, at 81,069 (D.D.C. 1980) (post-judgment attack on conviction no reason to require expedited processing). See generally FOIA Update, Summer 1983, at 3 ("OIP Guidance: When to Expedite FOIA Requests").

In all other cases, agencies can apply for "Open America" or "due diligence" stays of judicial proceedings to obtain the additional time necessary to complete the administrative processing of the request. See, e.g., Crooker v. United States Attorney, Civil No. 83-2100, slip op. at 1 (D.D.C. June 26, 1985) (circumstances justify requested fourteen-month stay); Caifano v. Wampler, 588 F. Supp. 1392, 1394-95 (N.D. Ill. 1984) (expressing concern that when agency is exercising due diligence no relief can be given for violation of 10-day response period; cannot order agency to reallocate resources; will not permit filing of

suit to jump requester to "front of line"); Crooker v. Marshals Serv., 577 F. Supp. 1217, 1218 (D.D.C. 1983) (staffing cutbacks and 400 prior pending requests require nine-month delay), appeal dismissed, No. 83-2203 (D.C. Cir. 1984); cf. Weisberg v. Department of Justice, 848 F.2d 1265, 1271 (D.C. Cir. 1988) (delays in processing partially caused by plaintiff's litigation tactics form no basis for plaintiff's claim of eligibility for attorney fees); Crooker v. Federal Bureau of Prisons, 579 F. Supp. 309, 311-12 (D.D.C. 1984) (on issue of attorney fees, court found plaintiff had not "substantially prevailed" where agency exercised due diligence despite six-month delay in processing). But see Laroque v. Department of Justice, Civil No. 86-2677, slip op. at 1-2 (D.D.C. Aug. 11, 1987) (further stays denied because defendant failed to process records during one year since previous court deadline and failed to give reason for delay); Ely v. Marshals Serv., Civil No. 83-C-569-S (W.D. Wis. Oct. 31, 1983) (stay denied because length of agency backlog had not improved in six years). However, where there is a large volume of responsive documents that have not been processed, instead of granting an Open America stay to the agency until all initial processing has been completed, a court may order interim or "timed" releases. See, e.g., Hinton v. FBI, 527 F. Supp. 223, 223-25 (E.D. Pa. 1981) (21,000 pages of documents).

Adequacy of Search

In many suits under the FOIA, the defendant agency will face challenges not only to its reliance on particular exemptions, but also to the manner in which, and extent to which, it has endeavored to locate responsive documents. (For a review of administrative considerations in conducting searches, see the discussion under Procedural Requirements, supra.) To prevail in a FOIA suit, the defendant agency must prove that "each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." Miller v. Department of State, 779 F.2d 1378, 1383 (8th Cir. 1985) (citing National Cable Television Ass'n v. FCC, 479 F.2d 183, 186 (D.C. Cir. 1973)). The agency is therefore under a duty to conduct a "reasonable" search for responsive records. Weisberg v. Department of Justice, 705 F.2d 1344, 1352 (D.C. Cir. 1983) (failure to produce documents, which requester had previously indicated he did not want, did not render search unreasonable).

As the D.C. Circuit has stated, "the issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate." Weisberg v. Department of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984) (emphasis in original); see also Meeropol v. Meese, 790 F.2d 942, 952-53 (D.C. Cir. 1986) ("a search is not unreasonable simply because it fails to produce all relevant material; no search of this [large] size . . . will be free from error"); Miller v. Department of State, 779 F.2d at 1385 (8th Cir. 1985) ("The fact that a document once existed does not mean that it now exists; nor does the fact that an agency created a document necessarily imply that the agency has retained it."); Goland v. CIA, 607 F.2d 339, 353 (D.C. Cir. 1978) (production of records not previously segregated required only where material can be identified with reasonable effort), vacated in part & reh'g denied, 607 F.2d 367 (D.C. Cir. 1979), cert. denied, 445 U.S. 927 (1980); Marks v. Department of Justice, 578 F.2d 261, 263 (9th Cir. 1978) (no duty to search FBI field offices where requester directed request only to FBI Headquarters and did not specify which field offices he wanted searched); Marrera v. Department of Justice, 622 F. Supp. 51, 54 (D.D.C. 1985) (no requirement that agency search every division or field office; only requirement is "good faith" effort, using methods "reason-

ably expected to produce the information requested"); Dettman v. Department of Justice, Civil No. 82-1108, slip op. at 8 (D.D.C. Mar. 21, 1985) (government expected to operate under "reasonable plan designed to produce the requested documents"), aff'd on other grounds, 802 F.2d 1472 (D.C. Cir. 1986); Biberman v. FBI, 528 F. Supp. 1140, 1144 (S.D.N.Y. 1982) ("It has frequently been held that a general FOIA request to headquarters does not 'reasonably describe' a search of numerous field offices."); cf. American Fed'n of Gov't Employees v. Department of Commerce, 632 F. Supp. 1272, 1278 (D.D.C. 1986) (agency's refusal to perform canvass of 356 bureau offices for multitude of files held justified).

Additionally, it has been held that the FBI is not required to search beyond its indices in pro se cases where the requester has refused to pay the cost of the search, unless the requester pinpoints a specific file. See Ely v. FBI, Civil No. 84-1615, slip op. at 2-3 (D.D.C. Jan. 28, 1985); see also Church of Scientology v. IRS, 792 F.2d 146, 150 (D.C. Cir. 1986) (where agency regulations require requests be made to specific offices for specific records, no need to search additional offices when those regulations are not followed), cert. granted on other issues, 107 S. Ct. 947 (1987). But see also Larouche v. Webster, Civil No. 75-6010, slip op. at 10 (S.D.N.Y. Oct. 23, 1984) (FBI must search all specialized files on subject of request about which a requester is unlikely to know). The FBI's search of its indices has been deemed "reasonable" where it has searched through "main files" (where the subject of the request was the subject of the file) and "cross" or "see references" (where the subject of the request was merely mentioned in a file in which another individual or organization was the subject). See Freeman v. Department of Justice, Civil No. 85-0958A, slip op. at 6 (E.D. Va. Mar. 12, 1986), aff'd, No. 86-1073 (4th Cir. Dec. 29, 1986) (unpublished memorandum); Friedman v. FBI, 605 F. Supp. 306, 311 (N.D. Ga. 1981); Stern v. Department of Justice, Civil No. 77-3812-C, slip op. at 7 (D. Mass. Aug. 25, 1980). With respect to the processing of "cross" or "see references," only those portions of the file which pertain directly to the subject of the request are considered within the scope of the request. See Posner v. Department of Justice, 2 GDS ¶82,225, at 82,650 (D.D.C. 1982). As one court has phrased it, "[t]o require the government to release an entire document where plaintiff's name is only mentioned a few times would be to impose on the government a burdensome and time consuming task." Dettman v. Department of Justice, slip op. at 5-6. See also Osborne v. Department of Justice, Civil No. 84-1910, slip op. at 2-3 (D.D.C. Feb. 28, 1985) (DEA search of relevant records systems and case files regarding requester held sufficient); Dunaway v. Webster, 519 F. Supp. 1059, 1083 (N.D. Cal. 1981). With respect to a document in the requester's file which pertained entirely to a third party, one court has held that "[g]iven the lack of any relation between these pages and [the requester], as well as the minimal information that would remain after redaction, [the agency's] decision not to release these documents was not erroneous." Greenspun v. IRS, Civil No. 84-3426, slip op. at 4 (D.D.C. Sept. 30, 1985).

To prove the adequacy of its search, as in sustaining its claims of exemption, an agency may rely upon affidavits (see discussion of Vaughn indices, infra), so long as they are reasonably detailed, not conclusory, and "submitted in good faith." Weisberg v. Department of Justice, 705 F.2d at 1351 (quoting Goland v. CIA, 607 F.2d at 352); see Perry v. Block, 684 F.2d 121, 127 (D.C. Cir. 1982) ("affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice to demonstrate compliance with the obligations imposed by the FOIA"); Pacific Sky Supply, Inc. v. Department of the Air Force, Civil No. 86-2044, slip op. at 10 (D.D.C. Sept.

29, 1987) (affidavits held to sufficiently describe adequate search "[i]n the absence of countervailing evidence or apparent inconsistency of proof"); see also FOIA Update, Jan. 1983, at 6. An inadequate description of the search process, or a description which reveals an inadequate search, will necessitate denial of summary judgment. See, e.g., Southam News v. INS, 674 F. Supp. 881, 889-91 (D.D.C. 1987); Hydron Laboratories, Inc. v. EPA, 560 F. Supp. 718, 721 (D.R.I. 1983). See also Lindsey v. NSC, Civil No. 84-3897, slip op. at 2 (D.D.C. Mar. 11, 1985) (government rebuked for not submitting affidavit describing whether search was legally sufficient); Applegate v. NRC, 3 GDS ¶83,081, at 83,614 (D.D.C. 1983) (permitting discovery on adequacy of search), summary judgment granted, 3 GDS ¶83,201, at 83,887 (D.D.C. 1983) (court held for government but found it "disturbing" that agency designed "a filing and oral search system which could frustrate the clear and express purposes of FOIA"). Furthermore, in Pafenberg v. Department of the Army, Civil No. 82-2113, slip op. at 12 (D.D.C. Nov. 22, 1983), a court denied summary judgment to an agency because it found that while the agency's affidavit described circumstances in which destruction of the requested records may have occurred, it simply failed to show that destruction had in fact occurred, leading the court to observe that "[c]asual destruction of such materials seems unlikely, and cannot be demonstrated by the conjecture of one official, where defendants have themselves admitted the existence of a body of information pertaining to the handling of the requested materials."

Mootness

In a FOIA action, the courts have jurisdiction only where an agency has improperly withheld agency records. 5 U.S.C. §552(a)(4)(B). Therefore, if upon the initiation of a lawsuit it is determined that all documents found responsive to the underlying FOIA request have been released in full to the requester, the litigation should be dismissed on mootness grounds as there is no justiciable controversy. See Crooker v. Department of State, 628 F.2d 9, 10 (D.C. Cir. 1980); see also, e.g., Constangy, Brooks & Smith v. NLRB, 851 F.2d 839, 842 (6th Cir. 1988) (full disclosure of records pursuant to district court order moots appeal); Tijerina v. Walters, 821 F.2d 789, 799 (D.C. Cir. 1987); DeBold v. Stimson, 735 F.2d 1037, 1040 (7th Cir. 1984); Perry v. Block, 684 F.2d 121, 125 (D.C. Cir. 1982); Ely v. Criminal Div. of the Dep't of Justice, 588 F. Supp. 628, 630 (D.D.C. 1984).

Dismissal of a FOIA lawsuit can be appropriate when the plaintiff dies after the commencement of the suit, see, e.g., Hayles v. Department of Justice, Civil No. H-79-1599 (S.D. Tex. Nov. 2, 1982) (magistrate's recommendation adopted), or when the plaintiff otherwise fails to prosecute the suit, see, e.g., Warden v. FBI, 530 F. Supp. 66, 68-69 (N.D. Ill. 1981). Dismissal also may be appropriate where (1) records are publicly available upon payment of fees, see, e.g., Kleinerman v. Patent & Trademark Office, Civil No. 82-0295, slip op. at 2-3 (D. Mass. Apr. 25, 1983); (2) the agency is processing responsive records, see, e.g., Larson v. Executive Office for U.S. Attorneys, No. 85-2575, slip op. at 4-5 (D.C. Cir. Apr. 6, 1988) (unpublished memorandum) (appeal of district court denial of relief to plaintiff for defendant's processing delays mooted upon completion of processing); (3) a complete factual record has yet to be presented to the agency, see National Sec. Archive v. Department of Commerce, Civil No. 87-1581, slip op. at 6 (D.D.C. Nov. 25, 1987) (fee waiver case); or (4) there is a change in the factual circumstances underlying the lawsuit, see, e.g., National Wildlife Fed'n v. Department of the Interior, Civil No. 83-3586, slip op. at 6-7 (D.D.C. Oct. 15, 1987) (suit challenging fee waiver

guidelines dismissed as moot because pertinent FOIA section amended).

On the other hand, the D.C. Circuit Court of Appeals has held that when records are routinely withheld at the initial processing level but consistently released after an administrative appeal, and when this situation results in continuing injury to the requester, a lawsuit challenging that practice is ripe for adjudication and is not subject to dismissal on the basis of mootness. Payne Enters. v. United States, 837 F.2d 486, 488-93 (D.C. Cir. 1988). The defendant agency's "voluntary cessation" of that practice in Payne did not moot the case where the plaintiff challenged the agency's policy as an unlawful, continuing wrong. Id. at 491. See also Hercules, Inc. v. Marsh, 839 F.2d 1027, 1028 (4th Cir. 1988) (threat of disclosure of agency telephone directory not mooted by release because new request for subsequent directory pending; agency action thus "capable of repetition yet evading review") (reverse FOIA context); Better Gov't Ass'n v. Department of State, 780 F.2d 86, 90-91 (D.C. Cir. 1986) (although challenge to fee waiver standards as applied moot, challenge to facial validity of standards ripe and not moot); accord Public Citizen v. OSHA, Civil No. 86-0705, slip op. at 2 (D.D.C. Aug. 5, 1987); see also Maycock v. INS, Civil No. C-85-5169, slip op. at 2 (N.D. Cal. July 6, 1988) (allegation of ongoing practice of delaying and denying legitimate requests for information presents justiciable controversy).

Of course, a claim for attorney fees or costs survives dismissal of a FOIA action for mootness. Carter v. VA, 780 F.2d 1479, 1481-82 (9th Cir. 1986); Seegull Mfg. Co. v. NLRB, 741 F.2d 882, 884-86 (6th Cir. 1984); DeBold v. Stimson, 735 F.2d 1037, 1040 (7th Cir. 1984); Webb v. HHS, 696 F.2d 101, 107-08 (D.C. Cir. 1982); Kaun v. IRS, Civil No. 84-C-1433, slip op. at 3 (E.D. Wis. Sept. 23, 1987). When agencies belatedly release requested records in the midst of a FOIA lawsuit, courts frown upon efforts to avoid, on mootness grounds, the payment of attorney fees. See, e.g., Phoenix Newspapers, Inc. v. FBI, Civil No. 86-1199, slip op. at 4-5 (D. Ariz. Dec. 12, 1987) (government should not be able to foreclose recovery of attorney fees whenever it chooses to moot an action by releasing records after having denied disclosure at administrative level); Harrison Bros. Meat Packing Co. v. Department of Agric., 640 F. Supp. 402, 405-06 (M.D. Pa. 1986) ("ludicrous" for government to "suddenly and inexplicably" release records and assert mootness to avoid paying fees after having denied disclosure at administrative level). (See the discussion of Attorney Fees, infra.)

A FOIA lawsuit may be precluded by the doctrine of res judicata when it is brought by a plaintiff against the same agency for the same documents whose withholding has been previously adjudicated. National Treasury Employees Union v. IRS, 765 F.2d 1174, 1177 (D.C. Cir. 1985); see also Stimac v. Treasury Dept., Civil No. 87-C-4005, slip op. at 4 (N.D. Ill. Jan. 15, 1988); Crooker v. Department of Justice, Civil No. 86-2333, slip op. at 3-4 (D.D.C. Oct. 2, 1987), aff'd, No. 87-5372 (D.C. Cir. Apr. 8, 1988); Crooker v. Marshals Serv., 641 F. Supp. 1141, 1143 (D.D.C. 1986). However, res judicata is not applicable where there has been a change in the factual circumstances or legal principles applicable to the lawsuit. See, e.g., Graphic Communications Int'l Union, Local 554 v. Salem-Gravure, 843 F.2d 1490, 1493 (D.C. Cir. 1988) (non-FOIA case); Wolfe v. Froehlke, 358 F. Supp. 1318, 1219 (D.D.C. 1973) (lawsuit not barred because national security status changed), aff'd, 510 F.2d 654 (D.C. Cir. 1974). See also FOIA Update, Summer 1985, at 6.

Litigation also may be foreclosed by the applicability of the doctrine of collateral estoppel, which precludes relitigation

of an issue previously litigated by one party to the action. McLaughlin v. Bradlee, 803 F.2d 1197, 1201-02 & n.1 (D.C. Cir. 1986); see Church of Scientology v. Department of the Army, 611 F.2d 738, 750-51 (9th Cir. 1980) (complete identity of plaintiff and document at issue precludes relitigation); see also FOIA Update, Summer 1985, at 6. But see Ely v. FBI, Civil No. 83-876-T-15, slip op. at 4 (M.D. Fla. July 13, 1988) (collateral estoppel not appropriate where plaintiff did not have "full and fair opportunity to litigate" defendant's claim of privilege); Robertson v. Department of Defense, 402 F. Supp. 1342, 1347 (D.D.C. 1973) (private citizen's interest in subsequent FOIA action was not protected by government in prior reverse-FOIA suit over same documents because interests not congruent). As with the doctrine of res judicata, collateral estoppel is not applicable to a subsequent lawsuit if there is an intervening material change in the law or factual predicate. See, e.g., Minnis v. Department of Agric., 737 F.2d 784, 786 n.1 (9th Cir. 1984), cert. denied, 471 U.S. 1053 (1985).

In an unprecedented opinion addressing these related doctrines of issue preclusion, one district court judge this year went so far as to hold that the plaintiff was precluded by both res judicata and collateral estoppel from raising a FOIA claim for the same documents he sought in aid of a motion to quash a grand jury subpoena issued in his criminal case. North v. Walsh, Civil No. 87-2700, slip op. at 2 (D.D.C. Apr. 29), partial summary judgment granted (D.D.C. June 8, 1988) (appeal pending). Similarly, in a further development in the same case, the court observed that the judge handling the related criminal trial properly deferred decisions about document production and that a premature or overbroad FOIA release of the same records "would impair prospective law enforcement proceedings by distorting the criminal discovery mechanisms that have been designed to achieve a proper balance between the interests of the prosecution and those of the defense." North v. Walsh, Civil No. 87-2700, slip op. at 2 (D.D.C. Aug. 31, 1988).

"Vaughn" Index

A distinguishing feature of FOIA litigation is that the defending agency bears the burden of sustaining its action of withholding records. See 5 U.S.C. §552(a)(4)(B). The most commonly used device for meeting this burden of proof is the "Vaughn index," fashioned by the D.C. Circuit Court of Appeals in Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

The Vaughn index came into prominence mainly as a result of the 1974 Amendments to the FOIA, especially due to the addition of the "reasonably segregable" provision to subsection (b). See 5 U.S.C. §552(b) (final sentence). This requirement that agencies segregate and release disclosable information from that which is exempt grew out of congressional concern in 1974 over the agencies' sweeping application of exemptions up to that time. See generally H.R. Rep. No. 876, 93d Cong., 2d Sess. 7 (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 6267. Particularly in cases involving large numbers of documents, the requirement that courts conduct a de novo review of each portion of a record at issue effectively transferred the burden from agencies to the courts themselves. Moreover, reliance on in camera examination had the effect of weakening the adversarial process somewhat, as it afforded a plaintiff and his counsel no real input on the merits of a case. See King v. Department of Justice, 830 F.2d 210, 218 (D.C. Cir. 1987); Vaughn v. Rosen, 484 F.2d at 826.

The Vaughn decision addressed these concerns by requiring agencies to prepare an itemized index, correlating each withheld document (or portion) with a specific FOIA exemption and the relevant part of the agency's nondisclosure justification. Vaughn v. Rosen 484 F.2d at 827; accord King v. Department of Justice, 830 F.2d at 217; see, e.g., Conoco Inc. v. Department of Justice, 687 F.2d 724, 730-32 (3d Cir. 1982) (appendix containing court-approved detailed description of one document); Texas Indep. Producers Legal Action Ass'n v. IRS, 605 F. Supp. 538, 546 (D.D.C. 1984) (index must be relatively detailed justification). Such an index not only makes the trial court's job more manageable, it also enhances appellate review by having a public record available on which to base an appellate decision. See Vaughn v. Rosen, 484 F.2d at 824-25; King v. Department of Justice, 830 F.2d at 219; see also Ingle v. Department of Justice, 698 F.2d 259, 263-64 (6th Cir. 1983). But see Antonelli v. Sullivan, 732 F.2d 560, 562 (7th Cir. 1984) (no index required where small number of documents at issue and affidavit contains sufficient detail); National Treasury Employees Union v. Customs Serv., 602 F. Supp. 469, 473 (D.D.C. 1984) (fact that only one exemption is involved "nullif[ies] the need to formulate the type of itemization and correlation system required by the Court of Appeals in Vaughn"), aff'd, 802 F.2d 525 (D.C. Cir. 1986). If an index is not sufficiently detailed, a court may remand and require a more detailed index. See Founding Church of Scientology v. Bell, 603 F.2d 945, 949 (D.C. Cir. 1979) (also seemingly establishing firm requirement that Vaughn index be contained in no more than one document per case).

The Vaughn index has evolved into an extremely effective tool with which to resolve FOIA cases, developing various permutations to fit particular circumstances. "There is no set formula for a Vaughn index; . . . it is the function, not the form, which is important." Hinton v. Department of Justice, 844 F.2d 126, 129 (3d Cir. 1988). "All that is required, and that is the least that is required, is that the requester and the trial judge be able to derive from the index a clear explanation of why each document or portion of a document withheld is putatively exempt from disclosure." Id. Therefore, "[t]he degree of specificity of itemization, justification, and correlation required in a particular case will, however, depend on the nature of the document at issue and the particular exemption asserted." Information Acquisition Corp. v. Department of Justice, 444 F. Supp. 458, 462 (D.D.C. 1978); see, e.g., NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 223-24 (1978) (generic explanations, focusing on types of records and harm to investigations resulting from disclosure, permitted under Exemption 7(A)); Keys v. Department of Justice, 839 F.2d 337, 349 (D.C. Cir. 1987) (upholding adequacy of indexing system of generic explanations which need not specifically address each deletion); Weisberg v. Department of Justice, 745 F.2d 1476, 1490 (D.C. Cir. 1984) (index of a sampling of the withheld documents allowed, when over 60,000 pages at issue, even though no example of certain exemptions provided); Antonelli v. FBI, 721 F.2d 615, 617-19 (7th Cir. 1983) (no index required in third-party request for records where agency would neither confirm nor deny existence of records on particular individuals absent showing of public interest in disclosure), cert. denied, 467 U.S. 1210 (1984); Peco v. Department of Justice, Civil No. 86-3185, slip op. at 1-2 (D.D.C. July 28, 1988) (Vaughn index not required where affidavit provides sufficient justification for the claimed exemptions); Ferri v. Department of Justice, 573 F. Supp. 852, 856-57 (W.D. Pa. 1983) (6,000 pages of grand jury testimony not indexed held sufficiently described); Agee v. CIA, 517 F. Supp. 1335, 1337-38 (D.D.C. 1981) (index listing 15 categories upheld where more specific index would compromise national security); Peck v. FBI, 3 GDS ¶83,353, at 82,916 (N.D. Ohio 1981) (sample Vaughn of "one of every 50

documents" employed "for the purpose of relieving defendants of the burden and expense of preparing a complete index"); see also Airline Pilots Ass'n v. FAA, 552 F. Supp. 811, 815 (D.D.C. 1982) (Vaughn not required where agency provided requester with equivalent of information that Vaughn index would provide). But see King v Department of Justice, 830 F.2d at 224 (requiring more complete Vaughn index to support Exemption 1 claim for particularly old records); Safecard Servs. Inc. v. SEC, Civil No. 84-3073, slip op. at 7-9 (D.D.C. May 19, 1988) (burden of indexing relatively small number of documents--approximately 200--insufficient to justify sampling).

Moreover, courts have generally accepted the use of "coded" indices--in which agencies break certain FOIA exemptions into several categories, explain the particular nondisclosure rationales for each category, and then correlate the exemption and category to the particular documents at issue. See, e.g., Keys v. Department of Justice, 830 F.2d at 349; Branch v. FBI, 658 F. Supp. 204, 206-07 (D.D.C. 1987); United States Student Ass'n v. CIA, 620 F. Supp. 565, 568 (D.D.C. 1985); Bevis v. Department of State, 575 F. Supp. 1253, 1255 (D.D.C. 1983); Bubar v. FBI, 3 GDS ¶82,477, at 83,158 (D.D.C. 1982). But see Harper v. Department of Justice, No. 86-5489, slip op. at 5-6 (D.C. Cir. Sept. 22, 1987) (unpublished memorandum); Garside v. Webster, Civil No. C-1-84-1178, slip op. at 8 (S.D. Ohio Oct. 14, 1986); Donovan v. FBI, 625 F. Supp. 808, 811 (S.D.N.Y.), aff'd in part, rev'd in part, 806 F.2d 55 (2d Cir. 1986).

A "coded" affidavit has been held sufficient when "[e]ach deletion was correlated specifically and unambiguously to the corresponding exemption [which] . . . was adequately explained by functional categories . . . [so as to] place[] each document into its historical and investigative perspective." Keys v. Department of Justice, 830 F.2d at 349-50 (citations omitted). The D.C. Circuit Court of Appeals has gone so far as to hold that the district court judge's review of only the expurgated documents--an integral part of the "coded" affidavit--was sufficient in a situation in which the applicable exemption was obvious from the face of the documents. Delaney, Migdail & Young, Chartered v. IRS, 826 F.2d 124, 128 (D.C. Cir. 1987). See also King v. Department of Justice, 830 F.2d at 221 ("Utilization of reproductions of the material released to supply contextual information about material withheld is clearly permissible, but caution should be exercised in resorting to this method of description."). However, this approach has been found inadequate where the coded categories are too "far ranging" and more detailed subcategories could be provided. Id. at 221-22.

While several courts have permitted the use of coded affidavits to justify the withholding of material pursuant to Exemption 7(A) on a category-by-category "generic" basis, those courts have found, or would be prepared to find, legal sufficiency where the agency: defined its Exemption 7(A) categories functionally; conducted a document-by-document review in order to assign documents to the proper category; and explained how the release of each category of information would interfere with the enforcement proceedings. Bevis v. Department of State, 801 F.2d 1386, 1389-90 (D.C. Cir. 1986) (setting forth foregoing three-part test and remanding for FBI to reformulate its generic categories); see Curran v. Department of Justice, 813 F.2d 473, 476 (1st Cir. 1987) (stating that FBI affidavit met rigors of Bevis and therefore finding it unnecessary to state whether the Bevis test was too demanding); see also FOIA Update, Spring 1984, at 3-4.

It also should be noted that the "one document Vaughn index requirement" purportedly established in Founding Church of Scientology v. Bell, 603 F.2d at 949, is not followed as a practical

matter, particularly where more than one agency is involved in a suit. See, e.g., Afshar v. Department of State, 702 F.2d 1125, 1144-45 (D.C. Cir. 1983) (more than one affidavit may be supplied); United States Student Ass'n v. CIA, 620 F. Supp. at 567-68 (in request for voluminous documents, agency filed monthly indices as documents indexed). Additionally, it has been suggested that in certain circumstances a Vaughn affidavit which by itself would be inadequate to support withholding may be supplemented by in camera review of the withheld material. See King v. Department of Justice, 830 F.2d at 225; Safecard Servs., Inc. v. SEC, slip op. at 12 n.7; Dow Jones & Co., Inc. v. FBI, Civil No. 85-0097, slip op. at 6 (D.D.C. Jan. 5, 1988); Struth v. FBI, 673 F. Supp. 949, 956, (E.D. Wis. 1987). (See discussion of In Camera Inspection, infra.)

In a broad range of contexts, courts have refused to require agencies to file public Vaughn indexes which are so detailed as to reveal sensitive information, the withholding of which is the very issue of the litigation. Therefore, in camera affidavits are frequently utilized in Exemption 1 cases, as is discussed infra, where a public description of responsive documents would compromise national security. See, e.g., Keys v. Department of Justice, Civil No. 85-2588, slip op. at 3 (D.D.C. May 12, 1986), aff'd on other grounds, 830 F.2d at 337. See also CIA v. Sims, 471 U.S. 159, 179 (1985) ("the mere explanation of why information must be withheld can convey [harmful] information"). The same principle has been applied, for example, in an Exemption 5 case, e.g., Wolfe v. HHS, 839 F.2d 768, 77? n.3 (D.C. Cir. 1988) (en banc) ("Where the index itself would reveal significant aspects of the deliberative process, this court has not hesitated to limit consideration of the Vaughn index to in camera inspection."), in an Exemption 7(A) context, e.g., Alyeska Pipeline Serv. Co. v. EPA, Civil No. 86-2176 slip op. at 8 (D.D.C. Sept. 9, 1987) ("[R]equiring a Vaughn index in this matter will result in exactly the kind of harm to defendant's law enforcement proceedings which it is trying to avoid under exemption 7(A)."), aff'd on other grounds, ___ F.2d ___ (D.C. Cir. Sept. 13, 1988), and in Exemption 7(D) litigation, e.g., Keys v. Department of Justice, 839 F.2d at 349 (no requirement to produce Vaughn index in "degree of detail that would reveal precisely the information that the agency claims it is entitled to withhold").

As some form of affidavit, declaration or index virtually always accompanies the agency's motion for summary judgment, motions to compel preparation of a Vaughn submission prior to the agency's dispositive motion are premature. See, e.g., Frankenberry v. Department of Justice, Civil No. 87-3284 slip op. at 2 (D.D.C. Feb. 23, 1988); British Auth. v. Civil Aeronautics Bd., 2 GDS ¶81,234, at 81,654 (D.D.C. 1981) ("The standard practice . . . is for the Court to commit the parties to a schedule for briefing summary judgment motions . . . [by which] the defendant typically files first and simultaneously with or in advance of filing submits supporting affidavits and indices").

In Camera Inspection

In camera examination of documents is specifically authorized in the FOIA, 5 U.S.C. §552(a)(4)(B), but is the exception and not the rule. See Ingle v. Department of Justice, 698 F.2d 259, 266 (6th Cir. 1983); see also Lykins v. Department of Justice, 725 F.2d 1455, 1463 (D.C. Cir. 1984) (in camera examination not a substitute for government's obligation to provide detailed indices and justifications); Cooley v. Department of the Navy, Civil No. 85-1045, slip op. at 4 (D.D.C. Dec. 30, 1985) ("Considerations other than efficiency alone must dictate whether the judge should undertake an in camera inspection."). Where an agency meets its burden by means of sufficiently detailed affidavits, in

camera review may be deemed unnecessary and inappropriate. See, e.g., Local 3, Int'l Bhd. of Elec. Workers v. NLRB, 845 F.2d 1177, 1180 (2d Cir. 1988); Farese v. Department of Justice, No. 86-5528, slip op. at 6 (D.C. Cir. Aug. 12, 1987) (unpublished memorandum), mem., 826 F.2d 129 (D.C. Cir. 1987); Brinton v. Department of State, 636 F.2d 600, 606 (D.C. Cir. 1980), cert. denied, 452 U.S. 905 (1981); Michelson v. Department of Labor, Civil No. 85-2518, slip op. at 11 (D.D.C. June 30, 1986). In a recent decision, the D.C. Circuit Court of Appeals has suggested that district courts should require in camera inspection of documents when the Vaughn affidavits submitted by the parties are so incomplete as to preclude meaningful review or when there is evidence of agency bad faith. Carter v. Department of Commerce, 830 F.2d 388, 392-93 (D.C. Cir. 1987). See, e.g., Dow Jones & Co. v. FBI, Civil No. 85-0097, slip op. at 6-7 (D.D.C. Jan. 5, 1988) (in camera inspection ordered following submission of agency's second inadequate affidavit).

At the broad discretion of the trial judge--but see J.P. Stevens & Co. v. Perry, 710 F.2d 136, 142 (4th Cir. 1983) (district court's in camera inspection held to be error where Exemption 7(A) Vaughn affidavit was sufficient to show "interference" by disclosure of categories of documents); Lead Indus. Ass'n v. OSHA, 610 F.2d 70, 87-88 (2d Cir. 1979) (in camera inspection order found to be abuse of discretion)--in camera examination can be ordered even if a Vaughn index is filed. This may occur where the record in the case is too vague or the agency's claims of exemption are too sweeping. King v. Department of Justice, 830 F.2d 210, 225 (D.C. Cir. 1987). See, e.g., Weissman v. CIA, 565 F.2d 692, 697-98 (D.C. Cir. 1977); Dow Jones & Co. v. FBI, slip op. at 6-7; Struth v. FBI, 673 F. Supp. 949, 956 (E.D. Wis. 1987). However, an agency should first have an opportunity to submit its public affidavit. See Ingle v. Department of Justice, 698 F.2d at 264 ("'In camera inspection requires effort and resources and therefore a court should not resort to it routinely on the theory that "it can't hurt"'") (quoting Ray v. Turner, 587 F.2d 1187, 1195 (D.C. Cir. 1978)); Hoch v. CIA, 593 F. Supp. 675, 680 (D.D.C. 1984) ("[i]n camera proceedings are a last resort . . . particularly in national security situations"); Schlesinger v. CIA, 591 F. Supp. 60, 67-68 (D.D.C. 1984) (selective in camera review undertaken in Exemption 1 case to determine whether classification and agency justifications for withholding were proper where public disclosure would compromise national security); see also Meeropol v. Meese, 790 F.2d 942, 958-59 (D.C. Cir. 1986) (upholding district court decision to sample only one percent of voluminous documents).

Although there is no per se rule requiring in camera inspection, Center for Auto Safety v. EPA, 731 F.2d 16, 20 (D.C. Cir. 1984) (in camera inspection not required under Exemption 5), it has been found to be appropriate where only a small volume of records is involved. See Carter v. Department of Commerce, 830 F.2d at 393; Currie v. IRS, 704 F.2d 523, 531 (11th Cir. 1983); Allen v. CIA, 636 F.2d 1287, 1291-92 (D.C. Cir. 1980); see also Agee v. CIA, 517 F. Supp. 1335, 1336 (D.D.C. 1981) (selective in camera review); cf. Lame v. Department of Justice, 654 F.2d 917, 927 (3d Cir. 1981) (in camera sampling of documents held insufficient). But see Landfair v. Department of the Army, Civil No. 85-1421, slip op. at 9-10 (D.D.C. Mar. 27, 1986) (no in camera inspection necessary "irrespective of the number of documents involved" where affidavits appear adequate). However, one court has held that in camera review is not a procedure to be employed as a means of determining whether a requester should be charged duplication fees. See Larson v. Department of Justice, Civil No. 85-2991, slip op. at 2 (D.D.C. Sept. 30, 1986).

In limited circumstances, in camera ex parte oral testimony may be permitted, particularly in cases where documents contain national security information, because providing a more informative public description of the documents would risk revealing the very information the agency states is exempt from disclosure under the FOIA. See, e.g., Stein v. Department of Justice, 662 F.2d 1245, 1255 (7th Cir. 1981); Agee v. CIA, 517 F. Supp. at 1338; see also Arieff v. Department of the Navy, 712 F.2d 1462, 1469-71 (D.C. Cir. 1983); North Am. Man/Boy Love Ass'n v. FBI, 3 GDS ¶83,094, at 83,639 (S.D.N.Y. 1982), aff'd mem., 718 F.2d 1086 (2d Cir. 1983). When in camera testimony is taken, however, it should be transcribed and maintained under seal. See Pollard v. FBI, 705 F.2d 1151, 1154 (9th Cir. 1983); see, e.g., Physicians for Social Responsibility v. Department of Justice, Civil No. 85-0169, slip op. at 3-4 (D.D.C. Aug. 23, 1985); cf. Martin v. Department of Justice, No. 85-3091, slip op. at 3 (3d Cir. July 2, 1986), mem., 800 F.2d 1135 (3d Cir. 1986) (nonexempt portion of in camera transcript ordered disclosed).

Summary Judgment

Summary judgment is the vehicle by which virtually all FOIA cases are resolved. See Struth v. FBI, 673 F. Supp. 949, 953 (E.D. Wis. 1987) ("Summary judgment is commonly used to adjudicate FOIA cases."). Motions for summary judgment are governed by Federal Rule of Civil Procedure 56, which provides in part that "judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." Fed. R. Civ. P. 56(c). As long as there are no material facts at issue and no facts "susceptible to divergent inferences bearing upon an issue critical to disposition of the case," summary judgment is appropriate. Alyeska Pipeline Serv. Co. v. EPA, ___ F.2d ___, ___ (D.C. Cir. Sept. 13, 1988). See, e.g., Pacific Sky Supply, Inc. v. Department of the Air Force, Civil No. 86-2044, slip op. at 3-4 (D.D.C. Sept. 29, 1987); Windels, Marx, Davies & Ives v. Department of Commerce, 576 F. Supp. 405, 409-11 (D.D.C. 1983).

Although the D.C. Circuit Court of Appeals recently found summary judgment to be inappropriate "when litigants quarrel over key factual premises," Washington Post Co. v. Department of State, 840 F.2d 26, 29 (D.C. Cir. 1988) (petition for rehearing en banc pending), it even more recently found "a motion for summary judgment adequately underpinned is not defeated simply by bare opinion or an unaided claim that a factual controversy persists." Alyeska Pipeline Serv. Co. v. EPA, ___ F.2d. at ___ (footnote omitted). Also, "summary judgment need not be denied automatically in the face of non-substantive factual disputes, such as those that are, . . . 'metaphysical' in nature." Lombardo v. Department of Justice, Civil No. 87-2652, slip op. at 2 (D.D.C. June 22, 1988).

In a FOIA case, the agency has the burden of justifying nondisclosure, see Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 868 (D.C. Cir. 1980), and it must sustain its burden through the submission of detailed affidavits which identify the documents at issue and explain why they fall under the claimed exemptions. See King v. Department of Justice, 830 F.2d 210, 217 (D.C. Cir. 1987); Vaughn v. Rosen, 484 F.2d 820, 826-28 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). The widespread use of Vaughn indices, of course, means that affidavits, in the form of Vaughn indices, will nearly always be submitted in FOIA lawsuits, notwithstanding the rule's language making them optional in general.

"Summary judgment is available to the defendant in a FOIA case when the agency proves that it has fully discharged its obligations under the FOIA, after the underlying facts and the inferences to be drawn from them are construed in the light most favorable to the FOIA requester." Miller v. Department of State, 779 F.2d 1378, 1382 (8th Cir. 1985). Summary judgment may be granted solely on the basis of agency affidavits if they are clear, specific and reasonably detailed, if they describe the withheld information in a factual and non-conclusory manner, and if there is no contradictory evidence on the record or evidence of agency bad faith. See, e.g., Hayden v. NSA, 608 F.2d 1381, 1387 (D.C. Cir. 1979), cert. denied, 446 U.S. 937 (1980); Hemenway v. Hughes, 601 F. Supp. 1002, 1004 (D.D.C. 1985) (in FOIA cases, summary judgment does not hinge on existence of genuine issue of material fact, but rather on basis of agency affidavits if they are reasonably specific, demonstrate logical use of exemptions and are not controverted by evidence in record or by bad faith) (applying standard developed in national security context to Exemption 6). But see Washington Post Co. v. Department of State, 840 F.2d at 29-31 (case remanded for trial on likelihood of harm from disclosure). If all of these requisites are met, such affidavits are usually accorded substantial weight by the courts. See, e.g., Gardels v. CIA, 689 F.2d 1100, 1104 (D.C. Cir. 1982); Taylor v. Department of the Army, 684 F.2d 99, 106-07 (D.C. Cir. 1982). However, in a controversial 2-1 opinion, the D.C. Circuit indicated that, at least in the Exemption 4 context, it would give great weight to the rebuttal evidence of the requester and, therefore, require particular specificity in the affidavit of a company that submitted information to the FDA that the agency--and the company--argued was protectible pursuant to Exemption 4. See Greenberg v. FDA, 803 F.2d 1213, 1217-18 (D.C. Cir. 1986) (plaintiff able to rebut showing that disclosure of the requested information would, in fact, cause "substantial harm to the competitive position" of submitter company), reh'g en banc denied, No. 84-5672 (D.C. Cir. Jan. 8, 1987).

In certain circumstances, opinions or conclusions may be asserted in agency affidavits, particularly in cases where disclosure would compromise national security. See Gardels v. CIA, 689 F.2d at 1106 (there is "necessarily a region for forecasts in which informed judgment as to potential harm should be respected"); Halperin v. CIA, 629 F.2d 144, 149 (D.C. Cir. 1980) ("courts must take into account . . . that any affidavit of threatened harm to national security will always be speculative"); Hoch v. CIA, 593 F. Supp. 675, 683-84 (D.D.C. 1984); see also Moore v. FBI, Civil No. 83-1541, slip op. at 2 (D.D.C. Aug. 30, 1984) (FBI sufficiently identified "particular incident" given national security nature of documents), aff'd mem., No. 84-5616 (D.C. Cir. May 10, 1985). Further, "[c]ourts have consistently held that a requester's opinion disputing the risk created by disclosure is not sufficient to preclude summary judgment for the agency when the agency possessing the relevant expertise has provided sufficiently detailed affidavits." Struth v. FBI, 673 F. Supp. at 954. See, e.g., Goldberg v. Department of State, 818 F.2d 71, 78-79 (D.C. Cir. 1987) (under Exemption 1); Spannaus v. Department of Justice, 813 F.2d 1285, 1289 (4th Cir. 1987) (under Exemption 7(A)); Curran v. Department of Justice, 813 F.2d 473, 477 (1st Cir. 1987) (under Exemption 7(A)); Gardels v. CIA, 689 F.2d at 1106 n.5 (under Exemptions 1 and 3); Windels, Marx, Davies & Ives v. Department of Commerce, 576 F. Supp. at 410-11 (under Exemptions 2 and 7(E)); see also Lindsay v. NSC, Civil No. 84-3897, slip op. at 3 (D.D.C. July 12, 1985) (plaintiff cannot defeat summary judgment by saying that he will raise genuine issue "at a time of his own choosing").

Rule 56(e) of the Federal Rules of Civil Procedure provides that the affidavit must be based upon the personal knowledge of

the affiant, must demonstrate the affiant's competency to testify as to matters stated, and must set forth only facts which would be admissible in evidence. (A federal statute specifically permits unsworn declarations (i.e., without notarizations) to be utilized in all cases in which affidavits otherwise would be required. See 28 U.S.C. §1746 (1976).) "Gratuitous recitations of the affiant's own interpretation of the law," however, are inappropriate. Alamo Aircraft Supply, Inc. v. Weinberger, Civil No. 85-1291, slip op. at 3 (D.D.C. Feb. 21, 1986). In FOIA cases, the affidavit of an agency official knowledgeable about the way in which information is gathered should satisfy the personal knowledge requirement. See, e.g., United States Student Ass'n v. CIA, 620 F. Supp. 565, 567-68 (D.D.C. 1985); Laborers' Int'l Union v. Department of Justice, 578 F. Supp. 52, 55-56 (D.D.C. 1983) (affiant competent where observations based on review of investigative report and upon general familiarity with the nature of investigations similar to that documented in requested report), aff'd, 772 F.2d 919 (D.C. Cir. 1984); Founding Church of Scientology v. Levi, 579 F. Supp. 1060, 1064 (D.D.C. 1982); Ramo v. Department of the Navy, 487 F. Supp. 127, 130 (N.D. Cal. 1979), aff'd mem., 692 F.2d 765 (9th Cir. 1982); see also Exxon Corp. v. FTC, 384 F. Supp. 755, 760 (D.D.C. 1974) (supervisor of personnel who searched for responsive records had requisite personal knowledge), remanded mem., 527 F.2d 1386 (D.C. Cir. 1976). However, affiants must establish that they have actually reviewed the withheld material, Sellar v. FBI, Civil No. 84-1611, slip op. at 3 (D.D.C. July 22, 1988), and should not be selected merely because they occupy a particular position in the agency. Cf. Timken Co. v. Customs Serv., 3 GDS ¶83,234, at 83,975 n.9 (D.D.C. 1983) (affiant merely sampled documents that staff had reviewed for him).

Discovery

Discovery is extremely restricted in FOIA actions, except with respect to the scope of an agency's search, its indexing and classification procedures, and similar factual matters. See, e.g., Weisberg v. Department of Justice, 627 F.2d 365, 371 (D.C. Cir. 1980) (discovery appropriate to inquire into adequacy of document search); Schaffer v. Kissinger, 505 F.2d 389, 391 (D.C. Cir. 1974) (permitting discovery on question of whether classification procedures were in accord with executive order); American Broadcasting Cos. v. USIA, 599 F. Supp. 765, 768-70 (D.D.C. 1984) (agency head ordered to submit to deposition on issue of whether transcripts of tape recorded telephone calls constitute "personal records" or "agency records"); Exxon Corp. v. FTC, 384 F. Supp. 755, 760 (D.D.C. 1974) (discovery limited to adequacy of search for identifiable records); but see Local 3, Int'l Bhd. of Elec. Workers v. NLRB, 845 F.2d 1177, 1179 (2d Cir. 1988) (discovery may be permitted to determine whether complete disclosure was made and whether exemptions properly applied). Discovery also may be appropriate where plaintiff can raise sufficient question of the agency's good faith in processing or its search. See, e.g., Van Strum v. EPA, 680 F. Supp. 349, 350-51 (D. Or. 1987) (discovery appropriate when documents received by anonymous source raise "valid concerns" of affiant's credibility and good faith of search).

Such factual issues can properly arise, if at all, only after the government moves for summary judgment and submits its supporting affidavits and memorandum of law; discovery should not be permitted until the government is provided the opportunity to do so. See, e.g., Farese v. Department of Justice, No. 83-0938, slip op. at 6 (D.C. Cir. Aug. 12, 1987) (unpublished memorandum) (affirming denial of discovery filed prior to affidavits because discovery "sought to short-circuit the agencies' review of the voluminous amount of documentation requested"), mem., 826 F.2d

129 (D.C. Cir. 1987); Simmons v. Department of Justice, 796 F.2d 709, 711-12 (4th Cir. 1986); Military Audit Project v. Casey, 656 F.2d 724, 750 (D.C. Cir. 1981); Stone v. FBI, Civil No. 87-1346, slip op. at 2 (D.D.C. Jan. 19, 1988); Ferri v. Department of Justice, Civil No. 86-1279, slip op. at 2 (D.D.C. Oct. 3, 1986); Citizens for Envtl. Quality, Inc. v. Department of Agric., Civil No. 83-3763, slip op. at 2 (D.D.C. May 24, 1984), summary judgment granted, 602 F. Supp. 534 (D.D.C. 1984); Murphy v. FBI, 490 F. Supp. 1134, 1137 (D.D.C. 1980); Diamond v. FBI, 487 F. Supp. 774, 777-78 (S.D.N.Y. 1979), aff'd on other grounds, 707 F.2d 75 (2d Cir. 1983), cert. denied, 465 U.S. 1004 (1984).

For example, one court entered a protective order barring discovery until the defendant had an opportunity to submit a second Vaughn affidavit, even after the court had found that the agency's affidavit was insufficient to establish the adequacy of the agency's search. Founding Church of Scientology v. Marshals Serv., 516 F. Supp. 151, 156 (D.D.C. 1980). But see Center for Nat'l Sec. Studies v. INS, Civil No. 87-2068, slip op. at 2 (D.D.C. July 27, 1988) (plaintiff permitted discovery on issue of due diligence even prior to filing of government's affidavits); Shurberg Broadcasting of Hartford, Inc. v. FCC, 617 F. Supp. 825, 832 (D.D.C. 1985) (court permitted discovery after receiving Vaughn affidavit and determining that there was a genuine issue as to thoroughness of agency's search); Exxon Corp. v. FTC, 384 F. Supp. 755, 758-60 (D.D.C. 1974) (court permitted discovery by interrogatories when affidavits raised questions regarding adequacy of search, but denied further discovery after answers to interrogatories, together with entire record in case, resolved such questions), remanded mem., 527 F.2d 1386 (D.C. Cir. 1976).

At least one court has afforded a higher standard for Exemption 1 cases, stating the "[i]t would be inappropriate to open this up to inadvertent statements by . . . a deponent in a national security area." McTigue v. Department of Justice, Civil No. 84-3583, slip op. at 8 (D.D.C. Dec. 3, 1985), aff'd mem., No. 86-5224 (D.C. Cir. Jan. 29, 1987). In any event, the "trial court has broad discretion . . . to stay discovery until preliminary questions that may dispose of the case are determined." Petrus v. Brown, 833 F.2d 581, 583 (5th Cir. 1987) (footnote omitted) (granting stay of discovery pending determination of proper party defendant).

A FOIA plaintiff should not in any case be permitted to extend his discovery efforts into the agency's thought processes for claiming particular exemptions. See Pearson v. Bureau of Alcohol, Tobacco & Firearms, Civil No. 85-0307, slip op. at 1-2 (D.D.C. Sept. 22, 1986); Murphy v. FBI, 490 F. Supp. at 1136 (citing United States v. Morgan, 313 U.S. 409, 422 (1941)). Moreover, discovery should not be permitted where a plaintiff seeks thereby to obtain the contents of withheld documents, the issue which lies at the very heart of a FOIA case. See, e.g., Local 3, Int'l Bhd. of Elec. Workers v. NLRB, 845 F.2d at 1179 (plaintiff not entitled to discovery which would be tantamount to disclosure of contents of exempt documents); Pollard v. FBI, 705 F.2d 1151, 1154 (9th Cir. 1983) (discovery denied where directed to substance of withheld documents at issue); Branch v. FBI, Civil No. 86-1643, slip op. at 1 (D.D.C. Aug. 10, 1987) (same); Moore v. FBI, Civil No. 83-1541, slip op. at 6 (D.D.C. Mar. 9, 1984) (court denied discovery requests which "would have to go to the substance of the classified materials" at issue, noting that "[t]his is precisely the case when the court can and should exercise its discretion to deny that discovery"), aff'd mem., 762 F.2d 138 (D.C. Cir. 1985); Laborers' Int'l Union v. Department of Justice, 578 F. Supp. 52, 56 (D.D.C. 1983) (objections to interrogatories sustained where answers would "serve to confirm or deny the authenticity of the document held by plaintiff"), aff'd, 772 F.2d 919 (D.C. Cir. 1984). Cf. Indiana Coal Council v.

Hodel, 118 F.R.D. 264, 265-66 (D.D.C. 1988) (discovery of legal research system barred as a request for law, not factual information). But cf. Washington Post Co. v. Department of State, 840 F.2d 26, 38-39 (D.C. Cir. 1988) (remand for discovery, including possible evidentiary hearing, as to agency's factual basis for asserting harm to third party) (petition for rehearing en banc pending); Public Citizen v. EPA, Civil No. 86-0316, slip op. at 7 (D.D.C. Oct. 16, 1986) ("While plaintiff has no right to material about deliberative processes, it at the least has a right . . . to know if the material it seeks justifies a deliberative process privilege."). Nevertheless, in one recent Exemption 4 case the court permitted the plaintiff's counsel to review the withheld records subject to a restrictive protective order. Lederle Laboratories v. HHS, Civil No. 88-0249, slip op. at 1 (D.D.C. May 2, 1988).

Discovery also should not be permitted where the plaintiff is plainly using the FOIA action as a means of questioning investigatory action taken by the agency or the reasons for making such investigations. See Donohue v. Department of Justice, Civil No. 84-3451, slip op. at 4 (D.D.C. May 16, 1986). Courts will refuse to "allow plaintiff to use this limited discovery opportunity as a fishing expedition [for] investigating matters related to separate lawsuits." Tannehill v. Department of the Air Force, Civil No. 87-1335, slip op. at 4 (D.D.C. Nov. 12, 1987) (footnote omitted) (discovery limited to determination of FOIA issues, not to underlying personnel decision); see also Morrison v. Department of Justice, Civil No. 87-3394, slip op. at 4 (D.D.C. Apr. 29, 1988) (court denied depositions and refused to "sanction a fishing expedition" where plaintiff argued newspaper article evidenced waiver of Exemption 5 protection but article actually "raise[d] precisely the opposite inference").

Because FOIA and discovery proceedings serve different purposes and are not coextensive in their production requirements, there is no inconsistency in handling requests for information in discovery and under FOIA on different grounds. See, e.g., Donohue v. Department of Justice, Civil No. 84-3451, slip op. at 7 (D.D.C. Dec. 23, 1987); but cf. North v. Walsh, Civil No. 87-2700, slip op. at 2 (D.D.C. Apr. 29, 1988) (appeal pending). Indeed, "it is not the purpose of the FOIA to benefit private litigants by serving as a supplement to the rules of discovery." Cleary v. FBI, 811 F.2d 421, 424 n.4 (8th Cir. 1987) (citing Parton v. Department of Justice, 727 F.2d 774, 772 (8th Cir. 1984)).

Discovery should be denied altogether if the court is satisfied from the agency's affidavits that no factual dispute remains, Goland v. CIA, 607 F.2d 339, 352 (D.C. Cir. 1978), vacated in part, reh'g denied, 607 F.2d 367 (D.C. Cir. 1979), cert. denied, 445 U.S. 927 (1980), and defendant's affidavits are "relatively detailed" and submitted in good faith, Military Audit Project v. Casey, 656 F.2d at 751. In Military Audit Project, the trial court's refusal to permit discovery was upheld as the plaintiffs had failed to raise "substantial questions concerning the substantive content of the [defendants'] affidavits." Id.; see also Gardels v. CIA, 689 F.2d 1100, 1106 & n.5 (D.C. Cir. 1982); Murphy v. FBI, 490 F. Supp. at 1136-37.

In any event, curtailing discovery is particularly appropriate where the court takes in camera inspection. See Laborers' Int'l Union v. Department of Justice, 772 F.2d at 921. Finally, it should be noted that in appropriate cases, the government can conduct discovery against the requester, see Weisberg v. Department of Justice, 749 F.2d 864, 868 (D.C. Cir. 1984), but there is no jurisdiction under the FOIA to permit discovery against a pri-

vate citizen, see Kurz-Kasch, Inc. v. Department of Defense, 113 F.R.D. 147, 148 (S.D. Ohio 1986).

Waiver of Exemptions in Litigation

As noted above, the FOIA directs district courts to review agency actions de novo. 5 U.S.C. §552(a)(4)(B). Thus, an agency is not barred from asserting a particular exemption in litigation merely because that exemption was not cited in responding to the request at the administrative level. See, e.g., Farmworkers Legal Servs. v. Department of Labor, 639 F. Supp. 1368, 1370-71 (E.D.N.C. 1986); Illinois Inst. for Continuing Legal Educ. v. Department of Labor, 545 F. Supp. 1229, 1236 (N.D. Ill. 1982); Dubin v. Department of the Treasury, 555 F. Supp. 408, 412 (N.D. Ga. 1981), aff'd mem., 697 F.2d 1093 (11th Cir. 1983); see also Conoco Inc. v. Department of Justice, 521 F. Supp. 1301, 1306 (D. Del. 1981) (agency is not barred from asserting work-product claim under Exemption 5 merely because it had not acceded to plaintiff's demand for Vaughn index at administrative level), aff'd in part, rev'd in part & remanded, 687 F.2d 724 (3d Cir. 1982). But cf. AT&T Information Sys. v. GSA, 810 F.2d 1233, 1236 (D.C. Cir. 1987) (in "reverse"-FOIA context--where standard of review is "arbitrary [and] capricious" based on "whole" administrative record--agency may not initially offer at litigation stage its rationale for refusal to withhold material); Gilday v. Department of Justice, Civil No. 85-0292, slip op. at 5 (D.D.C. July 22, 1985) (agency rationale in litigation for denial of fee waiver cannot correct shortcomings of administrative denial).

Failure to raise an exemption at the outset of litigation at the district court level may result in a waiver. This is not to say, however, that the government is required to plead its exemptions in its answer. See, e.g., Berry v. Department of Justice, 612 F. Supp. 45, 47 (D. Ariz. 1985); Farmworkers Legal Servs. v. Department of Labor, 639 F.2d at 1371. The D.C. Circuit Court of Appeals has stated: "'[A]gencies [may] not make new exemption claims to a district court after the judge has ruled in the other party's favor,' nor may they 'wait until appeal to raise additional claims of exemption or additional rationales for the same claim.'" Senate of Puerto Rico v. Department of Justice, 823 F.2d 574, 580 (D.C. Cir. 1987) (quoting Holy Spirit Ass'n v. CIA, 636 F.2d 838, 846 (D.C. Cir. 1980), vacated in part as moot, 455 U.S. 997 (1982)); see also Fendler v. Parole Comm'n, 774 F.2d 975, 978 (9th Cir. 1985) (government barred from raising Exemption 5 on remand to protect presentence report because it was raised for first time on appeal); Ryan v. Department of Justice, 617 F.2d 781, 792 (D.C. Cir. 1980) (government barred from invoking Exemption 6 on remand because it was raised for first time on appeal); Jordan v. Department of Justice, 591 F.2d 753, 779-80 (D.C. Cir. 1978) (en banc) (appellate court refused to consider government's Exemption 7 claim first raised in a "supplemental memorandum" filed one month prior to appellate oral argument); Miller v. Sessions, Civil No. 77-C-3331, slip op. at 2 (N.D. Ill. May 2, 1988) ("misunderstanding" on part of government counsel of court's order to submit additional affidavits held insufficient to overcome waiver; motion for reconsideration denied); Nishnic v. Department of Justice, Civil No. 86-2802, slip op. at 2-3 (D.D.C. Oct. 20, 1987) (defendant's motion for reconsideration to present additional affidavits, exemptions and evidence under seal denied since defendant had "ample opportunity" to present all FOIA defenses at earlier stage of litigation); Powell v. Department of Justice, Civil No. C-82-0326, slip op. at 4 (N.D. Cal. June 14, 1985) (government may not raise Exemption 7(D) for documents declassified during pendency of case when only Exemption 1 raised at outset). Compare Washington Post Co. v. HHS, 795 F.2d 205, 208-09 (D.C. Cir. 1986) ("privilege" prong of Exemption 4 may not be raised for first time on remand, even

though "confidential" prong was previously raised, absent sufficient extenuating circumstances) with Lame v. Department of Justice, 767 F.2d 66, 71 n.7 (3d Cir. 1985) (new exemptions may be raised first on remand, as compared to raising new exemptions on appeal).

The effect of these holdings is somewhat mitigated by the D.C. Circuit's observation in Jordan that if the government "through pure mistake" failed to assert the proper exemption in district court and the information involved was of a very sensitive nature and was "highly likely" to be protected by an exemption, then the appellate court would have discretion under 28 U.S.C. §2106 to remand the case for such further proceedings "as may be just under the circumstances." 591 F.2d at 780. See also Oklahoma Publishing Co. v. HUD, Civil No. 87-1935-P, slip op. at 4 (W.D. Okla. June 17, 1988) (because Exemption 6 found applicable to material originally ordered disclosed, court held exemption not waived--to protect subject--but imposed sanctions on defendant and counsel); Washington Post Co. v. Department of Defense, Civil No. 84-2402, slip op. at 5 (D.D.C. Apr. 11, 1988) (permitting agency to raise new Exemption 1 claim for records previously ordered not protected by Exemption 5 where disclosure "could compromise the nation's foreign relations or national security") (citing Jordan v. Department of Justice, 591 F.2d at 780). But cf. Schanen v. Department of Justice, 798 F.2d 348, 349-50 (9th Cir. 1986) (although government's Rule 60(b) motion, based on procedural errors, was properly denied, government may withhold identities of informers and DEA agents due to possibility of imminent harm to those individuals; government subject to attorney fees, however).

Sometimes, changes in factual circumstances may dictate revisions in the government's defenses--for example, where an agency's Exemption 7(A) claim is rendered moot by intervening facts. See, e.g., Chilivis v. SEC, 673 F.2d 1205, 1209 (11th Cir. 1982) (where government's original exclusive reliance on Exemption 7(A) was rendered untenable by conclusion of underlying enforcement proceedings, government not subsequently barred from invoking other exemptions); Donovan v. FBI, 625 F. Supp. 808, 809 (S.D.N.Y. 1986) (same); accord Senate of Puerto Rico v. Department of Justice, 823 F.2d at 581 (making no "broad pronouncement" on whether conclusion of law enforcement proceedings used to justify Exemption 7(A) claim will always be sufficient factual change, court found based upon showing of good faith by agency that trial judge did not abuse discretion in allowing agency to advance other exemptions). But cf. Washington Post Co. v. HHS, 795 F.2d at 208 (fact that court recommended in previous decision, in dicta, that HHS raise new argument could not be considered "extraordinary circumstance" needed to justify actually raising argument on remand).

Similarly, an agency should be able to belatedly assert new defenses if there is "an interim development in applicable legal doctrine." Jordan v. Department of Justice, 591 F.2d at 780; see also Cotner v. Parole Comm'n, 747 F.2d 1016, 1018-19 (5th Cir. 1984) (new exemptions may be asserted when remand due to "fundamental" change in government's position "not calculated to gain any tactical advantage in this particular case"); Carson v. Department of Justice, 631 F.2d 1008, 1015 n.29 (D.C. Cir. 1980) (declining to preclude consideration of particular FOIA exemptions on remand where, in holding that presentence report was agency record of Parole Commission for purposes of FOIA, court was "embark[ing] upon previously uncharted territory"). But see Lykins v. Rose, 608 F. Supp. 693, 695 (D.D.C.) ("interim developments" justification for new exemptions does not include losses in instant case or rejection of alternative defense), on remand

from Lykins v. Department of Justice, 725 F.2d 1455 (D.C. Cir. 1984).

In the district court, exemption claims should, of course, be substantiated by adequate Vaughn submissions (see discussion of Vaughn indices, supra). Failure to submit an adequate Vaughn affidavit, however, should not result in a waiver of exemptions and justify the granting of summary judgment against an agency. See Coastal States Gas Corp. v. Department of Energy, 644 F.2d 969, 982 (3d Cir. 1981) (abuse of discretion to refuse to consider revised index and instead award "partial judgment" to plaintiff, even though corrected index was submitted one day before oral argument on plaintiff's "partial judgment" motion). But see Wilkinson v. FBI, Civil No. 80-1048, slip op. at 3 (C.D. Cal. June 17, 1987) (after providing government 30 days to further justify exemptions, and after reviewing those subsequent declarations, court found same faults with new declarations as with original ones and ordered in camera review); Carroll v. IRS, Civil No. 82-3524, slip op. at 28 (D.D.C. Jan. 31, 1986) (holding affidavits insufficient and affording agencies no further opportunities to re-assert their claims; "[a]fter years of litigation, the suit must be resolved"). Notwithstanding the ruling in Coastal States, and particularly in light of the court's ruling in Carroll, the most prudent practice for agency defendants is to ensure that their initial Vaughn indices contain detailed justifications of every exemption planned to be asserted on the basis of all known facts. See Coastal States Gas Corp. v. Department of Energy, 644 F.2d at 981 (suggesting that agencies might be held to waive exemptions in future cases); see also American Broadcasting Cos. v. USIA, 599 F. Supp. 765, 768 (D.D.C. 1984) (flatly denying government's request to first litigate "agency record" issue and to raise other exemptions only if threshold defense fails). (See discussion of "Vaughn" Index, supra.)

By the same token, courts also have held that they will not consider issues raised for the first time on appeal by FOIA plaintiffs. See, e.g., Curran v. Department of Justice, 813 F.2d 473, 477 (1st Cir. 1987) (in camera inspection of records not considered when raised for first time on appeal); Wightman v. Bureau of Alcohol, Tobacco & Firearms, 755 F.2d 979, 983 (1st Cir. 1985) (appointment of counsel not considered when raised for first time on appeal); Bush v. Webster, No. 85-4262, slip op. at 2-3 (5th Cir. Feb. 10, 1986) (government's lack of expeditious handling of case raised for first time on appeal); Kimberlin v. Department of the Treasury, 774 F.2d 204, 207 (7th Cir. 1985) (issue of deletions taken pursuant to FOIA exemptions raised for first time on appeal). But see Carter v. Department of Commerce, 830 F.2d 388, 390 n.8 (D.C. Cir. 1987) (appellate court sua sponte considered new theories of public interest in its Exemption 6 balancing not raised by plaintiff at district court); Farese v. Department of Justice, No. 86-5528, slip op. at 9-10 (D.C. Cir. Aug. 12, 1987) (unpublished memorandum), mem., 826 F.2d 129 (D.C. Cir. 1987) (plaintiff not estopped from challenging use of specific exemptions at appellate stage where he merely argued at trial level that agency failed to meet its burden of establishing documents exempt).

Attorney Fees and Litigation Costs

The FOIA's attorney fees provision permits the trial court to award reasonable attorney fees and litigation costs if the plaintiff has "substantially prevailed" in litigation. 5 U.S.C. §552(a)(4)(E). This provision, added as part of the 1974 FOIA Amendments, requires courts to engage in a two-step substantive inquiry: (1) Is the plaintiff eligible for an award of fees and/or costs? (2) If so, is the plaintiff entitled to them? The award of fees is discretionary with the court, once the threshold

of eligibility has been crossed. See, e.g., Weisberg v. Department of Justice, 745 F.2d 1476, 1495 (D.C. Cir. 1984).

As a preliminary matter, it should be noted that 5 U.S.C. §552(a)(4)(E) provides for the assessment of fees and costs reasonably incurred in litigating an action under the FOIA. Accordingly, fees and other costs may not be awarded for services rendered at the administrative level. See Newport Aeronautical Sales v. Department of the Navy, Civil No. 84-0120, slip op. at 8 (D.D.C. Apr. 17, 1985); cf. Kennedy v. Andrus, 459 F. Supp. 240, 244 (D.D.C. 1978) (no fees for services rendered at administrative level under Privacy Act of 1974), aff'd mem., 612 F.2d 586 (D.C. Cir. 1980). But see Mahler v. IRS, Civil No. 79-3238, slip op. at 1 (D.D.C. Mar. 28, 1980) (one-page order granting pro se requester's unopposed motion for attorney fees for work done at administrative level). Similarly, fees are not recoverable for services rendered in related rulemaking proceedings. See Newport Aeronautical Sales v. Department of the Navy, slip op. at 8; see also Nichols v. Pierce, 740 F.2d 1249, 1252-54 (D.C. Cir. 1984) (no fees awarded where plaintiff was successful in APA rule-making action in which FOIA had not been referenced or primarily relied upon).

The vast majority of the courts which have considered the question have held that this provision does not authorize the award of fees to pro se litigants. See, e.g., Carter v. VA, 780 F.2d 1479, 1481 (9th Cir. 1986); DeBold v. Stimson, 735 F.2d 1037, 1041-43 (7th Cir. 1984); Wolfel v. United States, 711 F.2d 66, 68 (6th Cir. 1983); Clarkson v. IRS, 678 F.2d 1368, 1371 (11th Cir. 1982); Cunningham v. FBI, 664 F.2d 383, 384-88 (3d Cir. 1981); Barrett v. Bureau of Customs, 651 F.2d 1087, 1089 (5th Cir. 1981), cert. denied, 455 U.S. 950 (1982); Crooker v. Department of Justice, 632 F.2d 916, 920-21 (1st Cir. 1980); Burke v. Department of Justice, 432 F. Supp. 251, 253 (D. Kan. 1976), aff'd, 559 F.2d 1182 (10th Cir. 1977); cf. Crooker v. EPA, 763 F.2d 16, 17 (1st Cir. 1985) (pro se FOIA plaintiff may not collect fees under Equal Access to Justice Act). But see Crooker v. Department of the Treasury, 634 F.2d 48, 49 (2d Cir. 1980) (declining to award fees only for lack of showing that litigating suit forced plaintiff to divert time from income-producing activity, but noting that FOIA "was not enacted to create a cottage industry for federal prisoners"). The Second Circuit Court of Appeals made clear that its decision in Crooker v. Department of the Treasury is not limited to prisoners, but rather applies to all pro se FOIA plaintiffs. See Kuzma v. Postal Serv., 725 F.2d 16, 17 (2d Cir.), cert. denied, 469 U.S. 831 (1984).

Only the D.C. Circuit has approved the award of fees to pro se non-attorney litigants. See Cox v. Department of Justice, 601 F.2d 1, 5-6 (D.C. Cir. 1979); Holly v. Acree, 72 F.R.D. 115, 116 (D.D.C. 1976), aff'd mem. sub nom. Holly v. Chasen, 569 F.2d 160 (D.C. Cir. 1977). But compare Cazalas v. Department of Justice, 709 F.2d 1051, 1055-57 (5th Cir. 1983), and Cuneo v. Rumsfeld, 553 F.2d 1360, 1366 (D.C. Cir. 1977) (granting fee awards for pro se attorneys) with Rotondo v. FBI, No. 88-3035, slip. op. at 2 (6th Cir. Aug. 24, 1988) (unpublished order) (denying fee award for pro se attorney) and Falcone v. IRS, 714 F.2d 646, 647-48 (6th Cir. 1983), cert. denied, 466 U.S. 908 (1984) (same). Unlike attorney fees, however, the law is settled that costs of litigation can be reasonably incurred even by a pro se litigant who is not an attorney. See Carter v. VA, 780 F.2d at 1481-82; DeBold v. Stimson, 735 F.2d at 1043; Clarkson v. IRS, 678 F.2d at 1371; Crooker v. Department of Justice, 632 F.2d at 921-22. See also, e.g., Kuzma v. IRS, 821 F.2d 930, 931-34 (2d Cir. 1987) (finding that reimbursable costs included photocopying, postage, typing, parking and transportation expenses, in addition to filing costs and marshal's fees awarded at trial level). Of course,

if it prevails, even the government may recover its costs pursuant to Fed. R. Civ. P. 54(d). See, e.g., Donohue v. Department of Justice, Civil No. 84-3451, slip op. at 1-2 (D.D.C. Mar. 7, 1988) (granting government's bill of costs for reimbursement of reporter, witness and deposition expenses); see also Baez v. Department of Justice, 684 F.2d 999, 1005-06 (D.C. Cir. 1982) (en banc) (assessing costs of appeal against unsuccessful plaintiff).

To be eligible for a fee award, the plaintiff must "substantially prevail" within the meaning of 5 U.S.C. §552(a)(4)(E). The determination of whether the plaintiff has substantially prevailed is "largely a question of causation." Weisberg v. Department of Justice, 745 F.2d at 1496; Church of Scientology v. Harris, 653 F.2d 584, 587 (D.C. Cir. 1981). Though a court order compelling disclosure is not a condition precedent to an award of fees, the plaintiff must prove that prosecution of the suit was reasonably necessary to obtain the requested records and that a causal nexus existed between the suit and the agency's disclosure of the records. See, e.g., Cox v. Department of Justice, 601 F.2d at 6 (citing Vermont Low Income Advocacy Council, Inc. v. Usery, 546 F.2d 509, 513 (2d Cir. 1976), and Cuneo v. Rumsfeld, 553 F.2d at 1366); cf. National Wildlife Fed'n v. Department of the Interior, Civil No. 83-3586, slip op. at 9-12 (D.D.C. Aug. 19, 1988) (fees denied where plaintiffs failed to prove that suit played "catalytic role" in prompting Congress to amend FOIA fee waiver provision).

It is clear, moreover, that the mere filing of the lawsuit and the subsequent release of records does not necessarily mean that the plaintiff substantially prevailed. See, e.g., Weisberg v. Department of Justice, 848 F.2d 1265, 1268-71 (D.C. Cir. 1988) (no causation where majority of records were released as result of administrative processing and not suits); Ostrer v. FBI, No. 83-0328, slip op. at 12 (D.C. Cir. Jan. 19, 1988) (unpublished memorandum) (no causation where release of records was due to change in factual circumstances during course of litigation), mem., 836 F.2d 1408 (D.C. Cir. 1988); Pyramid Lake Paiute Tribe of Indians v. Department of Justice, 750 F.2d 117, 119-21 (D.C. Cir. 1984) (release by senator of his letter to Attorney General held not caused by filing of FOIA suit); Public Law Educ. Inst. v. Department of Justice, 744 F.2d 181, 183-84 (D.C. Cir. 1984) (no causation where government exercised its discretion to release requested document in unrelated, non-FOIA suit); Murty v. OPM, 707 F.2d 815, 816 (4th Cir. 1983) ("telephone call of inquiry as to what had happened to his request . . . would have produced the same result as the law suit"); Alliance for Responsible CFC Policy, Inc. v. Costle, 631 F. Supp. 1469, 1470 (D.D.C. 1986) (fees denied where agency's "failure to disclose in timely fashion appears to be 'an unavoidable delay accompanied by due diligence in the administrative processes' and not the result of agency intransigence") (quoting Cox v. Department of Justice, 601 F.2d at 6); Lovell v. Department of Justice, 589 F. Supp. 150, 153-54 (D.D.C. 1984) (fees denied even though plaintiff waited three years before filing suit and records were released only several months thereafter); Simon v. United States, 587 F. Supp. 1029, 1032 (D.D.C. 1984) (fees denied where "routine administrative inertia or unavoidable delay in identifying and assembling the information requested was the reason for defendants' belated compliance"); Bubar v. FBI, 3 GDS ¶83,218, at 83,930 (D.D.C. 1983) (fees denied even though over 5,400 pages of records released pursuant to revised processing procedures after suit filed, because plaintiff "failed to meet his burden of showing that the filing of this lawsuit caused the release of the additional documents"); Liechty v. CIA, 3 GDS ¶82,482, at 83,193 (D.D.C. 1982) (fees denied where plaintiff "offer[ed] no evidence other than his conclusory allegations that the filing of this suit 'actually provoked' the release of the 424 documents provid-

ed by the CIA without an order of the court"). But see Des Moines Register & Tribune Co. v. Department of Justice, 563 F. Supp. 82, 85 (D.D.C. 1983) (delay of over three years from submission of request to date records were released held not reasonable).

The Sixth Circuit Court of Appeals has gone so far as to hold that an agency's disclosure in litigation--even after it has specifically denied disclosure at the initial and administrative appeal levels--cannot be construed as wrongful withholding because "agencies would be forced to either never disclose a document once withheld or risk being assessed fees." American Commercial Barge Lines Co. v. NLRB, 758 F.2d 1109, 1112 (6th Cir. 1985). But see Phoenix Newspapers, Inc. v. FBI, Civil No. 86-1199, slip op. at 4-5 (D. Ariz. Dec. 12, 1987) (fact that plaintiffs acquired documents independently does not preclude them from substantially prevailing; a "contrary determination is inconceivable as the government would be able to foreclose the recovery of attorney's fees whenever it chose to moot an action" by releasing records after having denied disclosure at administrative level); Harrison Bros. Meat Packing Co. v. Department of Agric., 640 F. Supp. 402, 405-06 (M.D. Pa. 1986) ("ludicrous" for government, after "suddenly and inexplicably" releasing records, to assert mootness to avoid paying fees after having denied disclosure at administrative level). Of course, if a requester unconditionally waives its right to fees as part of a settlement, it cannot go back on its agreement. See National Senior Citizens Law Center v. Social Sec. Admin., 849 F.2d 401, 402-03 (9th Cir. 1988).

A requester may be deemed not to have substantially prevailed where the records disclosed were "not significant in terms of the overall FOIA request." Weisberg v. Department of Justice, 848 F.2d at 1270-71; see Wayland v. NLRB, Civil No. 3-85-0553, slip op. at 3 (M.D. Tenn. May 19, 1986); Nuclear Control Inst. v. NRC, 595 F. Supp. 923, 926 (D.D.C. 1984); Braintree Elec. Light Dep't v. Department of Energy, 494 F. Supp. 287, 291 (D.D.C. 1980). But see Church of Scientology v. Harris, 653 F.2d at 589 ("no reason in law or logic to discount significance of" 108 envelopes and transmittal slips). Considering a contention that an agency's release of documents was so de minimis as to preclude an award of attorney fees, the D.C. Circuit recently stated that the "sheer volume of [a] release is not determinative," and remanded the case for the trial court to "explain why it believes the release of eleven pages [out of the 1,500 pages at issue] is of such substance and quality as to make [plaintiff] eligible for an attorney's fee award." Union of Concerned Scientists v. NRC, 824 F.2d 1219, 1226 (D.C. Cir. 1987); see also McTigue v. Department of Justice, Civil No. 84-3583, slip op. at 5 (D.D.C. Aug. 20, 1987) ("While it is true that a court must assess the quality of information released as well as the volume, the information obtained in this action was scant under either standard.") (citation omitted).

On the other hand, in some instances, a plaintiff might possibly be deemed to have substantially prevailed even if no records are released. See, e.g., Halperin v. Department of State, 565 F.2d 699, 706 n.11 (D.C. Cir. 1977) (suit caused agency to revise its manner of recording "off-the-record" briefings, even though litigation caused no records to be disclosed); Birkland v. Rotary Plaza, Inc., 643 F. Supp. 223, 225-26 (N.D. Cal. 1986) (suit necessary to force agency to comply with FOIA's subsection (a)(1) requirements); Ettlinger v. FBI, 596 F. Supp. 867, 879-82 (D. Mass. 1984) (suit obtained fee waiver); Bollen v. Smith, Civil No. 82-2424, slip op. at 3-4 (W.D. Pa. May 27, 1983) (suit was found necessary to force FBI to admit it had no records; during administrative process, it had refused to confirm or deny the

existence of the requested records); Exner v. FBI, 443 F. Supp. 1349, 1353 (S.D. Cal. 1978) (primary basis for awarding fees was plaintiff's success in obtaining court-ordered expedited processing), aff'd, 612 F.2d 1202 (9th Cir. 1980); see also Crooker v. Parole Comm'n, 776 F.2d 366, 367 (1st Cir. 1985) (suit ultimately resulted in disclosure of records by causing Solicitor General to abandon prior position that presentence reports were not "agency records" subject to FOIA).

Even if a plaintiff meets the eligibility test, a court must still exercise its equitable discretion in separately determining whether that plaintiff is entitled to an award. This discretion is generally guided by four criteria: (1) the public benefit derived from the case; (2) the commercial benefit to the complainant; (3) the nature of the complainant's interest in the records sought; and (4) whether the government's withholding had a reasonable basis in law. Fenster v. Brown, 617 F.2d 740, 742-45 (D.C. Cir. 1979); Cuneo v. Rumsfeld, 553 F.2d at 1364-66. "Because these factors are intended to foster multiple congressional goals, no single factor is dispositive." Republic of New Afrika v. FBI, Civil No. 78-1721, slip op. at 2 (D.D.C. Apr. 29, 1987) (denying plaintiff's motion for reconsideration).

The "public benefit" factor "'speaks for an award [of attorney fees] where the complainant's victory is likely to add to the fund of information that citizens may use in making vital political choices.'" Fenster v. Brown, 617 F.2d at 744 (quoting Blue v. Bureau of Prisons, 570 F.2d 529, 534 (5th Cir. 1978)); see Guam Contractors Ass'n v. Department of Labor, 570 F. Supp. 163, 168 (N.D. Cal. 1983) ("[m]erely incidental or inevitable public benefits of disclosure from a FOIA suit . . . will not automatically satisfy [the requirement of 552(a)(4)(E)]"); see also, e.g., Brainerd v. Department of the Navy, Civil No. 87-C-4057, slip op. at 6 (N.D. Ill. Apr. 21, 1988) ("[Though] disclosure of the requested information could conceivably benefit the plaintiff's co-workers. . . , this does not strike the Court as the kind of disclosure which FOIA was intended to facilitate."); Sage v. NLRB, Civil No. 85-0943-CV-W-6, slip op. at 6 (W.D. Mo. Nov. 4, 1987) (finding insufficient public benefit where suit "was essentially one to assist a private litigant with discovery problems in a related [unfair labor practices] suit for damages"). Accordingly, a pertinent consideration is "the degree of dissemination and likely public impact that might be expected from a particular disclosure." Blue v. Bureau of Prisons, 570 F.2d at 533; see Republic of New Afrika v. FBI, 645 F. Supp. 117, 121 (D.D.C. 1986).

The second factor requires an examination of whether the plaintiff had an adequate private commercial incentive to litigate its FOIA demand even in the absence of an award of attorney fees. See, e.g., Fenster v. Brown, 617 F.2d at 742-44 (fees denied to law firm which obtained disclosure of government auditor's manual used in reviewing contracts of the type entered into by firm's clients); Chamberlain v. Kurtz, 589 F.2d 827, 842-43 (5th Cir.) (plaintiff who faced a $1.8 million deficiency claim for back taxes and penalties "needed no additional incentive" to bring FOIA suit against IRS for documents relevant to his defense), cert. denied, 444 U.S. 842 (1979); Isometrics, Inc. v. Orr, Civil No. 85-3066, slip op. at 9 (D.D.C. Feb. 27, 1987) (bidder's commercial benefit advanced considerably more than public interest when it received competitor's winning bid). But see Aronson v. HUD, Civil No. 86-0333-S, slip op. at 9 (D. Mass. Mar. 3, 1988) (discounting plaintiff's commercial benefit in obtaining "unpaid distributive share records" for use in "tracing service" because of "public interest served by plaintiff's action" and fact that "commercial interests . . . are not exclusively personal to him") (appeal pending).

The third factor, often evaluated in tandem with the second factor, militates against awarding fees in cases where the plaintiff had an adequate personal incentive to seek judicial relief. See, e.g., Adams v. United States, 673 F. Supp. 1249, 1259 (S.D.N.Y. 1987) (fees denied where "private self-interest motive" and "[potential] pecuniary benefit" to plaintiff were sufficient inducement to bring suit); Republic of New Afrika v. FBI, 645 F. Supp. at 121 (purely personal motives of plaintiff--to exonerate its members of criminal charges and to circumvent civil discovery--dictated against award of fees), reconsideration denied, Civil No. 78-1721 (D.D.C. Apr. 29, 1987); Simon v. United States, 587 F. Supp. 1029, 1033 (D.D.C. 1984) (use of FOIA as substitute for civil discovery "is not proper and this court will not encourage it by awarding fees"); Guam Contractors Ass'n v. Department of Labor, 570 F. Supp. at 169 (fee award improper where plaintiff "used the FOIA as a 'headstart' for discovery"). But see Crooker v. Parole Comm'n, 776 F.2d at 368 (third factor found to favor plaintiff where "interest was neither commercial nor frivolous; instead his interest was to ensure that the Parole Commission relied on accurate information in making decisions affecting his liberty"). Indeed, it is "logical" to read the second and third factors together "where a private plaintiff has pursued a private interest." Church of Scientology v. Postal Serv., 700 F.2d 486, 494 (9th Cir. 1983).

The fourth factor counsels against a fee award where the agency "had a reasonable basis in law for concluding that the information in issue was exempt and that it had not been recalcitrant in its opposition to a valid claim or otherwise engaged in obdurate behavior." Cuneo v. Rumsfeld, 553 F.2d at 1365-66; see Fenster v. Brown, 617 F.2d at 744; see also Blue v. Bureau of Prisons, 570 F.2d at 534 (factor points in favor of fee award "if an agency's nondisclosure was designed to avoid embarrassment or thwart the requester"). In general, an agency's legal basis for withholding is "reasonable" if any pertinent authority exists to support the claimed exemption. See Adams v. United States, 673 F. Supp. at 1259-60; see also American Commercial Barge Lines Co. v. NLRB, 758 F.2d at 1112-14; Republic of New Afrika v. FBI, 645 F. Supp. at 122; cf. United Ass'n of Journeymen & Apprentices, Local 598 v. Department of the Army Corps of Eng'rs, 841 F.2d 1459, 1462-64 (9th Cir. 1988) (withholding held unreasonable where agency relied on one case that was "clearly distinguishable" and where "strong contrary authority [was] cited by the [plaintiff]"); Core v. Postal Serv., Civil No. 82-0280-A, slip op. at 7 (E.D. Va. May 2, 1984) (agency's refusal to disclose records in contravention of Department of Justice's guidelines as published in FOIA Update held to raise "a question as to the reasonable basis in law" for the withholding).

However, the mere inadvertent withholding of records should not be considered unreasonable for purposes of this factor. See, e.g., Ridley v. Director, Secret Serv., 2 GDS ¶82,176, at 82,536 (D.D.C. 1982), aff'd mem., No. 82-1252 (D.C. Cir. Oct. 22, 1982). It should also be noted that where the delay in releasing records, rather than the agency's substantive claim of exemption, is challenged, this factor does not favor a fee award so long as the agency has not engaged in "obdurate behavior or bad faith." Republic of New Afrika v. FBI, 645 F. Supp. at 122; see Alliance for Responsible CFC Policy, Inc. v. Costle, 631 F. Supp. at 1471; Simon v. United States, 587 F. Supp. at 1032 ("[W]hile an agency's failure to meet deadlines is not to be condoned, it does not warrant an award of fees in and of itself. . . . [W]ithout evidence of bad faith, the court declines to impose a fee award to sanction sluggish agency response."); Guam Contractors Ass'n v. Department of Labor, 570 F. Supp. at 170. But see Miller v. Department of State, 779 F.2d 1378, 1390 (8th Cir. 1985) ("While

these reasons [for delay] are plausible, and we do not find them to be evidence of bad faith . . . they are practical explanations, not reasonable legal bases."); United Merchants & Mfrs. v. Meese, Civil No. 87-3367, slip op. at 3 (D.D.C. Aug. 10, 1988) ("[un]necessary for plaintiff to show that defendant was obdurate in order to prevail" where there was "no reasonable basis for defendant to have failed to process plaintiff's application for nearly a year").

If a court decides to make a fee award, its next task is to determine an appropriate fee amount. The starting point in this endeavor is to multiply the number of hours reasonably expended by a reasonable hourly rate. See Copeland v. Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980) (en banc) (Title VII case). Not all hours expended will be deemed to have been "reasonably" expended. For example, courts have directed attorneys to subtract hours spent "litigating claims upon which the party seeking the fee did not ultimately prevail." Copeland v. Marshall, 641 F.2d at 891-92; see Hensley v. Eckerhart, 461 U.S. 424, 434-40 (1982) (42 U.S.C. §1988 case). In such a case, a distinction has been made between a loss on a legal theory where "the issue was all part and parcel of one [ultimately successful] matter," Copeland v. Marshall, 641 F.2d at 892 n.18; see National Ass'n of Concerned Veterans v. Secretary of Defense, 675 F.2d 1319, 1327 n.13 (D.C. Cir. 1982) (as modified), reh'g en banc denied, Nos. 81-1364, 81-1424 (D.C. Cir. Aug. 26, 1982); National Ass'n of Atomic Veterans, Inc. v. Director, Defense Nuclear Agency, Civil No. 81-2662, slip op. at 7 (D.D.C. July 15, 1987) (because plaintiff "clearly prevailed" on its only claim for relief, it is "entitled to recover fees for time expended on the few motions upon which it did not prevail"), and a rejected claim that is "truly fractionable" from the rest of the case, see, e.g., Weisberg v. Webster, Civil Nos. 78-0322, 78-0420, slip op. at 3 (D.D.C. June 13, 1985); Newport Aeronautical Sales v. Department of the Navy, slip op. at 10-11; see also Weisberg v. Department of Justice, 745 F.2d at 1499 (no award for issues in which plaintiff did "not ultimately prevail" and for "non-productive time"); Steenland v. CIA, 555 F. Supp. 907, 911 (W.D.N.Y. 1983) (award for work performed after release of records, where all claims of exemptions subsequently upheld, "would assess a penalty against defendants which is clearly unwarranted"); Agee v. CIA, Civil No. 79-2788, slip op. at 1 (D.D.C. Nov. 3, 1982) ("plaintiff is not entitled to fees covering work where he did not substantially prevail"); Dubin v. Department of the Treasury, 555 F. Supp. 408, 413 (N.D. Ga. 1981) (fees awarded "should not include fees for plaintiffs' counsel for their efforts after the release of documents by the Government . . . since they failed to prevail on their claims at trial"), aff'd mem., 697 F.2d 1093 (11th Cir. 1983). But see Badhwar v. Department of the Air Force, Civil No. 84-0154, slip op. at 3 (D.D.C. Dec. 11, 1986) ("[D]efendants' attempts to decrease [fees] on the grounds that the plaintiffs did not prevail as to all issues raised . . . are not persuasive. [The FOIA] requires only that the plaintiff should have 'substantially prevailed.'").

It should be remembered, however, that where attorney fees are awarded, the hours expended litigating the fee award are also generally compensable. See, e.g., Painting & Drywall Work Preservation Fund, Inc. v. Department of the Navy, Civil No. 84-0066, slip op. at 10 (N.D. Cal. July 19, 1985).

Courts will accept affidavits from local attorneys to support hourly rates, but they should be couched in terms of specific market rates for particular types of litigation and they should be well documented. See National Ass'n of Concerned Veterans v. Secretary of Defense, 675 F.2d at 1325. The most recent discussion of the proper rate standard, at least in the D.C.

Circuit Court of Appeals, was set forth in Save Our Cumberland Mountains, Inc. v. Hodel, ___ F.2d ___, ___ (D.C. Cir. Sept. 16, 1988) (en banc) (overruling Laffey v. Northwest Airlines, 746 F.2d 4 (D.C. Cir. 1984), cert. denied, 472 U.S. 1021 (1985), and holding that "prevailing market rate method heretofore used in awarding fees to traditional for-profit firms and public interest legal services organizations shall apply as well to those attorneys who practice privately and for profit but at reduced rates reflecting non-economic goals") (Surface Mining Control and Reclamation Act case).

Finally, the "lodestar" fee (hours reasonably expended multiplied by a reasonable hourly fee) may be adjusted up or down depending upon the quality of representation and the results obtained. See Copeland v. Marshall, 641 F.2d at 892-94. In addition, an adjustment may be appropriate as compensation for the risk in a contingency fee arrangement. See Weisberg v. Department of Justice, 848 F.2d at 1272-73 (remanding case for determination of whether private market compensates attorneys in contingent fee arrangements differently or if plaintiff could have obtained counsel absent contingency fee enhancement). Such adjustments should, however, be the exception and not the rule. See Hensley v. Eckerhart, 461 U.S. at 433 (product of reasonable hours times a reasonable rate usually yields reasonable attorney fee); National Ass'n of Atomic Veterans, Inc. v. Director, Defense Nuclear Agency, slip op. at 12 ("The lodestar figure is 'presumptively a reasonable attorney's fee,' and should be adjusted only in the unusual case where the applicant has made a 'specific claim' for upward adjustment supported by 'specific evidence.'") (quoting Murray v. Weinberger, 741 F.2d 1423, 1428 (D.C. Cir. 1984)); Newport Aeronautical Sales v. Department of the Navy, slip op. at 15-17 (only the most exceptional cases will warrant an increase in lodestar). See generally Pennsylvania v. Delaware Valley Citizens' Council For Clean Air, 478 U.S. 546, 565 (1985) (lodestar figure to be increased only in "rare" and "exceptional" cases, supported by both "specific evidence" in record and detailed findings by lower court) (Clean Air Act case). Except in Powell v. Department of Justice, Civil No. C-82-0326, slip op. at 22-23 (N.D. Cal. Sept. 19, 1985), a multiplier has never been granted in a FOIA case.

A majority of courts have denied, absent extenuating circumstances, "interim" attorney fees sought before the conclusion of a suit. See, e.g., Irons v. FBI, Civil No. 82-1143-G, slip op. at 9-10 (D. Mass. June 26, 1987) (no interim fees where government has not "resisted actively, or through egregious delay, compliance with a proper document request"); Shanmugadhasan v. Arms Control & Disarmament Agency, Civil No. 84-3033, slip op. at 2 (D.D.C. Aug. 9, 1985) (interim fees denied as "premature"); Hydron Laboratories, Inc. v. EPA, 560 F. Supp. 718, 722 (D.R.I. 1983) (court refused to deal "piecemeal" with questions concerning entitlement to attorney fees); Letelier v. Department of Justice, 1 GDS ¶80,252, at 80,631 (D.D.C. 1980) (such an award "would likely result in duplication of effort, as fees might be requested at successive stages"); see also Biberman v. FBI, 496 F. Supp. 263, 265 (S.D.N.Y. 1980) (interim attorney fees are the exception and "because of the inefficiency of such a procedure, such an award ought to be made only in those cases in which it is necessary to the continuance of the litigation which has proven to be meritorious at the time of the application"). But see also Powell v. Department of Justice, 569 F. Supp. 1192, 1200 (N.D. Cal. 1983) (four factors to be considered, in court's discretion, for award of interim fees: degree of hardship on plaintiff and counsel; existence of unreasonable delay by government; length of time case already pending; length of time required before litigation is concluded).

Finally, it should be noted that in a case decided under Title VII, but logically applicable to the FOIA as well, the Supreme Court has held that, absent an express waiver, a private party cannot recover interest against the federal government. Library of Congress v. Shaw, 478 U.S. 310, 314 (1986). Indeed, a fee enhancement to compensate counsel for delay in receiving fees was deemed "interest" and, accordingly, was recently denied in Weisberg v. Department of Justice, 848 F.2d at 1272.

Sanctions

The FOIA provides that, in certain narrowly prescribed circumstances, agency employees who act arbitrarily or capriciously in withholding information may be subject to disciplinary action. Subsection (a)(4)(F), as amended, provides:

> Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel [of the Merit Systems Protection Board] shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding.

Thus, there are three distinct jurisdictional prerequisites to the commencement of a Special Counsel investigation under the FOIA: (1) the court must order the production of agency records found to be improperly withheld; (2) it must award attorney fees and litigation costs; and (3) it must issue a specific "written finding" of suspected arbitrary or capricious conduct. 5 U.S.C. §552(a)(4)(F). See, e.g., Simon v. Department of Labor, Civil No. 83-3780, slip op. at 2-3 (D.D.C. Mar. 21, 1984) (court refused to issue "sanctions" finding where all requested records had been produced in their entireties, because it could not order production of any records); Emery v. Laise, 421 F. Supp. 91, 93 (D.D.C. 1976) (same), aff'd sub nom. Emery v. Reinhardt, No. 76-1973 (D.C. Cir. Oct. 26, 1977); see also Wilder v. IRS, 601 F. Supp. 241, 243 (M.D. Ala. 1984) (although disclosure delayed, no sanctions imposed because all material released); Idaho Wildlife Fed'n v. United States Forest Serv., 3 GDS ¶83,271, at 84,058 (D.D.C. 1983) (no sanctions where agency records not improperly withheld). In Miller v. Webster, Civil No. 77-C-3331, slip op. at 6-7 (N.D. Ill. Oct. 27, 1983), the court found that the circumstances surrounding the withholding of small portions of three documents did "suggest that the agency decision was arbitrary and capricious." Despite having ordered disclosure of this information and awarding attorney fees, however, the court refused to refer the "alleged violation" to the Merit Systems Protection Board, citing the common law maxim of "de minimis non curat lex" (the law does not take notice of trifling matters). Id. at 7. Nevertheless, the viability of this sanction provision in the FOIA should not be overlooked. See FOIA Update, Summer 1983, at 5.

The Special Counsel also is authorized by a provision of the Civil Service Reform Act, 5 U.S.C. §1206(e)(1)(C) (1982), to investigate allegedly arbitrary or capricious withholding of information requested under the FOIA, except in cases involving foreign intelligence or counterintelligence information the disclosure of which is prohibited by law or executive order. A sig-

nificant distinction between this provision and subsection (a)(4)(F) is that the former does not require a judicial finding --indeed, no lawsuit need even be filed to invoke §1206(e)(1)(C). See H.R. Rep. No. 1717, 95th Cong., 2d Sess. 137 (1978) ("[T]his provision is not intended to require that an administrative or court decision be rendered concerning withholding of information before the Special Counsel may investigate allegations of such a prohibited practice.").

Finally, as in all civil cases, courts may exercise their discretion to impose sanctions on FOIA litigants and counsel who have violated court rules or shown disrespect for the judicial process. See, e.g., Schanen v. Department of Justice, 798 F.2d 348, 350 (9th Cir. 1986) (although exemption claims ultimately upheld, government ordered to pay plaintiff's attorney fees and costs for government counsel's failure to competently defend claims); Oklahoma Publishing Co. v. HUD, Civil No. 87-1935-P, slip op. at 7 (W.D. Okla. June 17, 1988) (attorney fees assessed against government when counsel failed to comply with scheduling and disclosure orders); Hill v. Department of the Air Force, Civil No. 85-1485-JB, slip op. at 7 (D.N.M. Sept. 4, 1987) (because of unreasonable delay in processing FOIA request, documents ordered processed at no further cost to plaintiff), aff'd on other grounds, No. 86-2418 (10th Cir. Mar. 30, 1988); see also Van Bourg, Allen, Weinberg & Roger v. NLRB, 762 F.2d 831, 833 (9th Cir. 1985) (warning that sanctions will be imposed if plaintiff's counsel again "fails to inform us about material facts or procrastinates in obeying our orders"); cf. Center for Nat'l Sec. Studies v. INS, Civil No. 87-2068, slip op. at 2 (D.D.C. July 27, 1988) (discovery ordered against government for failure to comply with previous estimates of processing time and to explain discrepancies in time estimates). In determining whether to impose sanctions on plaintiffs, district courts review the number and content of court filings and their effect on the courts as indicia of frivolousness or harassment. See, e.g., In re Powell, 851 F.2d 427, 431-34 (D.C. Cir. 1988) (per curiam). "[M]ere litigiousness alone does not support the issuance of an injunction" against filing further lawsuits. Id. at 434 (footnote omitted). For example, as a sanction under Federal Rule of Civil Procedure 11, a frequent FOIA requester who filed more than 49 FOIA lawsuits over eight years and who routinely failed to oppose motions to dismiss, was ordered to justify in any subsequent lawsuits why the principle of res judicata did not bar the intended suit. Crooker v. Marshals Serv., 641 F. Supp. 1141, 1143 (D.D.C. 1986).

Considerations on Appeal

As a threshold matter, particularly in view of the exceptionally high percentage of FOIA cases decided by means of summary judgment, it should always be remembered that not all orders granting judgment to a party on a FOIA issue are immediately appealable. See, e.g., Center for Nat'l Sec. Studies v. CIA, 711 F.2d 409, 413-14 (D.C. Cir. 1983) (no appellate jurisdiction to review district court order granting summary judgment to defendant on only one of twelve counts in complaint because district court order did not affect "predominantly all" merits of case and plaintiffs did not establish that denial of relief under 28 U.S.C. §1292(a)(1) would cause them irreparable injury); see also Hinton v. FBI, 844 F.2d 126, 129-33 (3d Cir. 1988) (form of Vaughn order not appealable); In re Motion to Compel Filed by Steele, 799 F.2d 461, 464-65 (9th Cir. 1986); Metex Corp. v. ACS Indus., Inc., 748 F.2d 150, 153 (3d Cir. 1984); Green v. Department of Commerce, 618 F.2d 836, 839-41 (D.C. Cir. 1980); but see John Doe Corp. v. John Doe Agency, 850 F.2d 105, 107-08 (2d Cir. 1988) (order denying disclosure of records, Vaughn index or answers to interrogatories appealable); Irons v. FBI, 811 F.2d 681,

683 (1st Cir. 1987) (allowing government to appeal motion for partial summary judgment for plaintiff, stating that appellate jurisdiction vests at time order is made for government to turn over records).

Once a case is on appeal, it is necessary for the government to obtain a stay of any trial court disclosure order. The government's motion for such a stay should be granted as a matter of course in FOIA cases, as denial would destroy the status quo and would cause irreparable harm to the government appellant by mooting the issue on appeal, whereas granting such a stay causes relatively minimal harm to the appellee. See, e.g., Providence Journal Co. v. FBI, 595 F.2d 890, 890 (1st Cir. 1979); Antonelli v. FBI, 553 F. Supp. 19, 25 (N.D. Ill. 1982). But see Powell v. Department of Justice, Civil No. C-82-0326, slip op. at 5 (N.D. Cal. June 14, 1985) (denying stay of decision ordering release of, inter alia, classified information because of governmental delay and "obfuscation"), stay denied, No. 85-1918 (9th Cir. July 18, 1985), stay denied, No. A-84 (U.S. July 31, 1985) (Rehnquist, J., Circuit Justice) (undocketed order).

In reviewing FOIA decisions, appellate courts most commonly determine "(1) whether the district court had an adequate factual basis for its determination and (2) assuming an adequate factual basis, whether the court's determination was clearly erroneous." See, e.g., Spannaus v. Department of Justice, 813 F.2d 1285, 1288 (4th Cir. 1987); Villanueva v. Department of Justice, 782 F.2d 528, 530 (5th Cir. 1986); Lame v. Department of Justice, 767 F.2d 66, 69-70 (3d Cir. 1985); International Bhd. of Elec. Workers v. HUD, 763 F.2d 435, 435-36 (D.C. Cir. 1985); Currie v. IRS, 704 F.2d 523, 528 (11th Cir. 1983); see also Payne Enters. v. United States, 837 F.2d 486, 494 (D.C. Cir. 1988) (abuse of discretion standard); DeBold v. Stimson, 735 F.2d 1037, 1040 (7th Cir. 1984) (trial court's factual finding that all requested records had been produced was not clearly erroneous and would therefore not be reversed on appeal).

Arguably, however, the legal standard of review for cases in which the district court awarded summary judgment should be more akin to de novo review. See Aronson v. HUD, 822 F.2d 182, 188 (1st Cir. 1987); 10 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure, Civil 2d §2716, at 96 (1987 Supp.); see also Kaganove v. EPA, ___ F.2d ___, ___ (7th Cir. Sept. 1, 1988) (appellate review de novo on question of law). Nevertheless, a trial court decision refusing to allow discovery will be reversed only if the court abused its discretion. See Meeropol v. Meese, 790 F.2d 942, 960 (D.C. Cir. 1986); Northrop Corp. v. McDonnell Douglas Corp., 751 F.2d 395, 399 (D.C. Cir. 1988). Furthermore, a reverse-FOIA case must be reviewed to determine whether the trial judge acted in a manner that was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," based upon the "whole [administrative] record." See AT&T Information Sys. v. GSA, 810 F.2d 1233, 1236 (D.C. Cir. 1987).

It is noteworthy that, in routine FOIA cases where the merits and law of a case are so clear as to justify expedited action, summary affirmance or reversal may be appropriate. See, e.g., Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980). Other procedures are available for discharging the appellate court's functions in special situations. See, e.g., Constangy, Brooks & Smith v. NLRB, 851 F.2d 839, 842 (6th Cir. 1988) (inappropriate to vacate district court order, after fully complied with, when attorney fees issue pending; proper procedure to dismiss appeal); Larson v. Executive Office for U.S. Attorneys, No. 85-6226, slip op. at 4 (D.C. Cir. Apr. 6, 1988)

(where only issue on appeal mooted, initial lower court order vacated without prejudice and case remanded).

Finally, Rule 39(a) of the Federal Rules of Appellate Procedure is applied to award costs to the government when it is successful in the FOIA appeal; the D.C. Circuit has held that the presumption in Rule 39(a) favoring such awards of costs is fully applicable in FOIA cases. See Baez v. Department of Justice, 684 F.2d 999, 1005-07 (D.C. Cir. 1982) (en banc).

XV. REVERSE FOIA

A reverse FOIA action is one in which the submitter of information--usually a corporation or other business entity that has supplied an agency with data on its policies, operations or products--seeks to prevent the agency from releasing the information to a third party in response to a FOIA request. The landmark case in the reverse FOIA area is Chrysler Corp. v. Brown, 441 U.S. 281, 292-317 (1979), in which the Supreme Court held that jurisdiction for a reverse FOIA action cannot be based on the FOIA or the Trade Secrets Act, 18 U.S.C. §1905, but that such actions can be brought under the Administrative Procedure Act (APA), 5 U.S.C. §§701-06. Accordingly, reverse FOIA plaintiffs generally argue that an agency's contemplated release would violate §1905 and thus would "not be in accordance with law" or would be "arbitrary and capricious" within the meaning of the APA. See Acumenics Research & Technology v. Department of Justice, 843 F.2d 800, 804 (4th Cir. 1988); General Elec. Co. v. NRC, 750 F.2d 1394, 1398 (7th Cir. 1984).

In Chrysler, the Supreme Court held that the APA's predominant scope and standard of judicial review--review on the administrative record according to an arbitrary and capricious standard--should "ordinarily" apply to reverse FOIA actions. 441 U.S. at 318. Indeed, in National Org. for Women v. Social Sec. Admin., 736 F.2d 727, 745 (D.C. Cir. 1984) (per curiam) (McGowan & Mikva, JJ., concurring in result)--a decision that skirted the substantive questions left unanswered in Chrysler concerning the relationship between the Trade Secrets Act and Exemptions 3 and 4 of the FOIA--the D.C. Circuit strongly emphasized that judicial review in reverse FOIA cases should be based on the administrative record, with de novo review reserved for only those cases where an agency's administrative procedures were "severely defective." Accord Acumenics Research & Technology v. Department of Justice, 843 F.2d at 804-05; Burnside-Ott Aviation Training Center, Inc. v. United States, 616 F. Supp. 279, 282-84 (S.D. Fla. 1985); cf. Alcolac, Inc. v. Wagoner, 610 F. Supp. 745, 749 (W.D. Mo. 1985) (agency confidentiality determination upheld as "rational"). But see Artesian Indus. v. HHS, 646 F. Supp. 1004, 1005-06 (D.D.C. 1986) (court flatly rejected position advanced by both parties that it base its decision on the agency record according to an arbitrary and capricious standard).

More recently, in CNA Fin. Corp. v. Donovan, 830 F.2d 1132, 1162 (D.C. Cir. 1987), cert. denied, 108 S. Ct. 1270 (1988), the D.C. Circuit reaffirmed its position on the appropriate scope of judicial review in reverse FOIA cases, holding that the district court "behaved entirely correctly" when it confined its review to an examination of the administrative record. Of even greater significance, however, was the court's decision to finally resolve the two important issues left open by it in previous decisions, namely, the exact scope of the Trade Secrets Act, 18 U.S.C. §1905, and its relationship to Exemptions 3 and 4 of the FOIA. Id. at 1134.

Regarding §1905 and Exemption 3, the D.C. Circuit held that §1905 does not qualify as an Exemption 3 statute under either of that exemption's subparts, particularly since it acts only as a prohibition against "unauthorized" disclosures. Id. at 1141. (For a further discussion of the court's ruling on this point see Exemption 3, supra). Indeed, because "agencies conceivably could control the frequency and scope of its application through regulations adopted on the strength of statutory withholding authorizations which do not themselves survive the rigors of Exemption 3," the court found it inappropriate to classify §1905 as an Exemption 3 statute. Id. at 1139-40. The court also ruled that the scope of §1905 was not narrowly limited to that of its three predecessor statutes, and that instead, its scope was "at least co-extensive with that of Exemption 4." Id. at 1151. Accordingly, the court held that in the absence of a regulation authorizing disclosure--which would remove §1905's disclosure prohibition--§1905 prohibits the release of all information that falls within Exemption 4. Id. at 1151-52; see also FOIA Update, Summer 1985, at 3 (discussing §1905's bar to discretionary disclosure under Exemption 4). Moreover, the court found that there was no need to determine the "outer limits" of §1905 since the FOIA itself would provide the necessary authorization to release any information not falling within one of its exemptions. Id. at 1152 n.139.

Because judicial review in reverse FOIA cases is ordinarily based on a review of an agency's administrative record, it is vitally important that agencies take care to develop a comprehensive one. Not long ago, the Seventh Circuit Court of Appeals chastised an agency for failing to develop an adequate record in a reverse FOIA action. Although recognizing that procedures designed to determine the confidentiality of requested records need not be "as elaborate as a licensing," it found that the agency's one-line decision rejecting the submitter's position "validates congressional criticisms of the excessive casualness displayed by some agencies in resolving disputes over the application of exemption 4." General Elec. Co. v. NRC, 750 F.2d at 1403 (case remanded for elaboration of basis for agency's decision).

Likewise, two other recent reverse FOIA cases had to be remanded back to the agency for the development of a more complete administrative record before the court could conduct its review. In AT&T Information Sys. v. GSA, 810 F.2d 1233, 1236 (D.C. Cir. 1987), the D.C. Circuit reversed the decision of the district court, which had permitted an inadequate record to be supplemented in court by an agency affidavit, holding that because the agency had failed at the administrative level to give a reason for its refusal to withhold certain price information, it was precluded from offering a "post-hoc rationalization" for the first time in court. The D.C. Circuit emphasized that judicial review in reverse FOIA cases must be conducted on the basis of the "administrative record compiled by the agency in advance of litigation." Id. Similarly, in Occidental Petroleum Corp. v. SEC, 622 F. Supp. 496, 499 (D.D.C. 1987) (appeal pending), the case was remanded to the agency because the court was "not able to perform its role" in the absence of a complete administrative record. Of course, agency affidavits that do "no more than summarize the administrative record" are permissible. See, e.g., Hercules, Inc. v. Marsh, 839 F.2d 1027, 1030 (4th Cir. 1988).

Executive Order No. 12,600, 52 Fed. Reg. 23781 (June 25, 1987), requires all federal agencies to establish certain predisclosure notification procedures which will assist agencies in developing adequate administrative records. The Executive Order recognizes that submitters of proprietary information have certain procedural rights and it therefore mandates that notice be

given to submitters of confidential commercial information whenever the agency "determines that it may be required to disclose" the requested data. Id. at §1. Once submitters are notified, they must be given a reasonable period of time within which to object to disclosure of any of the requested material. Id. at §4. If that objection is not sustained by the agency, the submitter must be notified in writing and given a brief explanation. Id. at §5. This statement must be provided a reasonable number of days prior to a specified disclosure date, which gives the submitter an opportunity to seek judicial relief. Id. This Executive Order mirrors in many ways the policy guidance issued by the Department of Justice in June 1982, see FOIA Update, June 1982, at 3, and for most federal agencies it reflects what already was existing practice. See FOIA Update, Fall 1983, at 1.

In one recent decision, a court faced a challenge by a submitter seeking a declaratory judgment that an agency had acted improperly in releasing certain of its labor and material costs. In Federal Elec. Corp. v. Carlucci, 687 F. Supp. 1, 5 (D.D.C. 1988), the court declined to issue such a judgment, however, and ruled that because the submitter had failed to provide the agency with objections to disclosure, the agency could properly "assume that there was no objection to the release."

The procedures set forth in the Executive Order do not provide a submitter with a formal evidentiary hearing. This is entirely consistent with what has now become well-established law, i.e., that an agency's procedures for resolving a submitter's claim of confidentiality are not inadequate simply because they do not afford the submitter a right to an evidentiary hearing. See National Org. for Women v. Social Sec. Admin., 736 F.2d at 746; accord CNA Fin. Corp. v. Donovan, 830 F.2d at 1159. Similarly, the procedures in the Executive Order do not provide for an administrative appeal of an adverse decision on a submitter's claim for confidentiality. Although the lack of such an appeal right has not been specifically considered by the D.C. Circuit, the Fourth Circuit Court of Appeals had an opportunity to confront the issue in Acumenics Research & Technology v. Department of Justice, 843 F.2d at 805. There, in analyzing Department of Justice regulations which do not provide for an administrative appeal, the Fourth Circuit found that the procedures provided for in the regulations--namely, notice of the request, an opportunity to submit objections to disclosure, careful consideration of those objections by the agency, and issuance of a written statement describing the reasons why any objections were not sustained--in combination with a "face-to-face meeting that, in essence, amounted to an opportunity to appeal DOJ's tentative decision in favor of disclosure," were adequate. Id. The court, however, expressly declined to render an opinion as to whether the procedures implemented by the regulations alone would have been adequate. Id. at 805 n.4.

XVI. BASIC FOIA REFERENCES

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IV. OTHER U.S. CODE SECTIONS

5 U.S.C. §551: 2318.

5 U.S.C. §552a(j)(2): 102, 118, 385, 1132*, 1133*, 1230, 1471, 1677, 1719, 2079**, 2101*, 2330**, 2372, 2475, 2476, 2679**, 2769**, 2793*.

5 U.S.C. §552a(k)(2): 1230, 1471.

5 U.S.C. §552a(k)(5): 1988*.

5 U.S.C. §7114(b)(4): 814*, 1875, 1877.

5 U.S.C. §7132: 1875.

5 U.S.C. §8092: 1839*.

7 U.S.C. §12: 1318.

V. FEDERAL RULES

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice.

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