

**FOIA Decoding - FOIA
Exemptions
7(A), 7(B), 7(C), 7(D), 7(E) & 7(F)**

*American Society of Access Professionals
FOIA-Privacy Act Training Workshop
September 4-6, 2019
Chicago, Illinois*

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**FOIA'S LAW ENFORCEMENT
TOOLS - EXEMPTION 7**

- Why are law enforcement records different?
 - ▶ Inherent sensitivity to subject
 - ▶ Disclosure of information could derail investigation

**EXEMPTION 7
THRESHOLD TEST**

- ▶ records or information compiled for law enforcement purposes
- ▶ disclosure could be expected to cause one of the harms outlined in the 6 subparts. 5 U.S.C. § 552(b)(7)
 - 1) Records or information
 - 2) Compiled for
 - 3) Law enforcement purposes

***THRESHOLD BROADER
THAN JUST
CRIMINAL LAW***

- ▶ Civil, criminal, administrative enforcement
- ▶ Personnel investigations involving specific allegations of misconduct
- ▶ National security/terrorism investigations
- ▶ Most agencies have some type of law enforcement mission

**FOIA DECODING-
FOIA EXEMPTIONS 7(A), 7(B), 7(C),
7(D), 7(E) & 7(F)**

**Exemption 7 Threshold:
Examples from Case Law
and Practice**

**EXEMPTION 7(A) -
ACTIVE INVESTIGATIONS**

- ▶ Threshold requirement
 - ▶ Protects information if disclosure could reasonably be expected to interfere with enforcement proceedings.
- 5 U.S.C. §552(b)(7)(A).

**TWO ELEMENTS OF
EXEMPTION 7(A)**

1. Active, pending or prospective investigation
2. Harm would result from disclosure

EXEMPTION 7(A)

- ▶ Not intended to last forever
- ▶ “Who gets to say 7(A)?”
- ▶ Fugitives and other issues
- ▶ Articulating the harm
- ▶ Expiration of 7(A)
- ▶ Exclusions

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**Exemption 7(A):
Examples from Case Law
and Practice**

**EXEMPTION 7(B) -
FAIR TRIAL**

- ▶ Purpose: Prevent prejudicial pretrial publicity that could impair a court proceeding
- ▶ Threshold requirement
- ▶ Disclosure would “. . . deprive a person of a right to a fair trial or impartial adjudication.” 5 U.S.C. §552(b)(7)(A)
 - ▶ Flip side of Ex. 7(A)

**EXEMPTION 7(D)
CONFIDENTIAL SOURCES**

- ▶ Confidential sources are critical to law enforcement
- ▶ Threshold requirement
- ▶ Covers records/information reasonably expected to disclose the identify of a confidential source, and in some cases information provided by a source.

**EXEMPTION 7(D)
CONFIDENTIAL SOURCES**

- ▶ Purpose: Ensures that confidential source is not lost:
 - ▶ through retaliation (physical, employment, etc.)
 - ▶ because of past information or fear of future disclosure

**EXEMPTION 7(D)
CONFIDENTIAL SOURCES**

- ▶ *Glomar*
- ▶ Do not disclose if you suspect coercion
- ▶ Verify identity of source/requester
- ▶ Physically safeguard information

**EXEMPTION 7(D)
WHO CAN BE A SOURCE?**

- ▶ Institutional sources
- ▶ Federal gov't employees can be sources
- ▶ *Landano* test:
 - ▶ Express grant of confidentiality
 - ▶ Implied grant of confidentiality
 - ▶ Waiver

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**Exemption 7(D):
Examples from Case Law
and Practice**

**EXEMPTION 7(E)
TECHNIQUES/PROCEDURES/
GUIDELINES**

- ▶ Threshold requirement
- ▶ Techniques and procedures for law enforcement investigations or prosecutions and
- ▶ Guidelines for law enforcement investigations or prosecutions if disclosure could reasonably be expected to risk circumvention of law
- ▶ 5 U.S.C. §552(b)(7)(E).

EXEMPTION 7(E)

- ▶ First Clause – Techniques & Procedures
 - ▶ Cannot be well known to the public
 - ▶ Articulating harm in release
 - ▶ Would disclosure nullify effectiveness?
- ▶ EXAMPLES
- ▶ *Glomar*

EXEMPTION 7(E)

- ▶ Second Clause – Guidelines
 - ▶ Harm standard is risk of circumvention
- ▶ EXAMPLES

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**Exemption 7(E):
Examples from Case Law
and Practice**

**EXEMPTION 7(F) -
ENDANGER LIFE OR
PHYSICAL SAFETY**

- ▶ Threshold requirement
- ▶ Disclosure would endanger life or physical safety of any individual. 5 U.S.C. §552(b)(7)(F)
- ▶ Lower threshold than (b)(7)(C)
 - ▶ no balancing test required
 - ▶ show reasonable likelihood of harm
 - ▶ deference to agency's harm assessment

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**Exemption 7(F):
Examples from Case Law
and Practice**


