

**2022 ASAP
NATIONAL TRAINING CONFERENCE**

What's New in FOIA Case Law

Richard Huff



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Procedural Issues

Should FOIA Benefit Non-Profit Requesters

Amer. Ctr. for Law and Justice v. DHS, No. 21-1364,
2021 WL 5231939 (Nov. 10, 2021)



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Procedural Issues

**Possible Policy for Handling Large
Requests**

White v. Dep't. of Justice, No. 21-1229, 2021 WL
4931348 (7th Cir. Oct. 22, 2021)



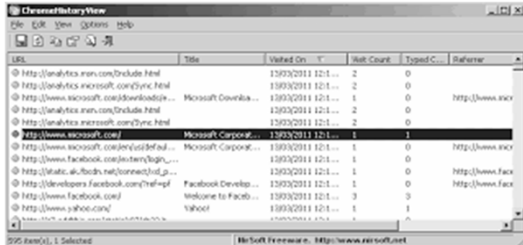
3

Procedural Issues

Agency Records? Browser Histories?

Cause of Action Inst. v. OMB, No. 20-5006

(D.C. Cir. Aug. 20, 2021)



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Exemption 1

Age of Classified Records

ACLU v. CIA, No. 18-2268, 2022 WL

303280 (2nd Cir. Feb. 2, 2022)



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Exemption 3

Statutes Enacted After 2009 Must
Reference FOIA's Exemption 3 in Order
to Qualify Under the 2009 Open FOIA Act

Ctr. for Invest. Reporting, v. Dep't of Justice, No. 18-
17356, 2021 WL 4314789 (9th Cir. Sept. 23, 2021)

Everytown for Gun Safety Support Fund v. BATF, 984
F.3d 30 (2nd Cir. 2020)



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Exemption 4

How to Determine What is “Confidential”
After *Food Marketing Institute*

WP Co., v. SBA, No. 20-1240, 2021 WL
5881972 (D.D.C. Dec. 13, 2021)

Zirvi v. NIH, No. 20-7648, 2022 WL 1261591 (D.
N.J. Apr. 28, 2022)



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Exemption 5

Consultant Corollary

Rojas v. FAA, 989 F. 3d 666 (9th Cir. 2021), *cert. denied*, No. 21-133 (Jan. 10, 2022)

Jobe v. NTSB, 1 F. 4th 396 (5th Cir. 2021), *cert. denied*, No. 21-469 (Jan. 10, 2022)

Am. Oversight v. DOT, No. 18-1272, 2022 WL
103306 (D.D.C. Jan. 11, 2022)



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Exemption 5

Draft Press Releases

Transgender Law Ctr. v. ICE, No. 20-17416,
2022 WL 1494722 (9th Cir. May 12, 2022)



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Exemption 5

Issue of Foreseeable Harm

Reptrs. Comm. for Freedom of the Press v. FBI, 3 F. 4th 350 (D.C. Cir. 2021)

Selgjakaj v. EOUSA, No. 20-2145 (D.D.C. Aug. 6, 2021)



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Exemption 6

Is There a Privacy Interest?

Is There a Cognizable Public Interest?

Transgender Law Ctr. v. ICE, No. 20-17416, 2022 WL 1494722 (9th Cir. May 12, 2022)

Hammond v. DOD, No. 16-421, 2021 WL 6049886 (D.D.C. Dec. 21, 2021)

DHS email domain: @dhs.gov



Medical record

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Exemption 7(C)

Survivor Privacy Interest

Weighing Privacy Interest Against Public Interest

McWatters v. ATF, No. 20-1092, 2022 WL 990689 (D.D.C. Mar. 31, 2022)

EPIC v. Dep't of Justice, No. 20-5364, 2021 WL 5571135 (D.C. Cir. Nov. 30, 2021)



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Exemption 7(E)

Foreseeable Harm Test Inapplicable to
Exemption 7(E)

Rptrs. Comm. for Freedom of the Press v.
FBI, No. 17-1701 (D.D.C. July 12, 2021)