

Updates from the Courts: Developments in FOIA Case Law

American Society of Access Professionals National Training Conference

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Americans for Prosperity Foundation

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Procedural Issues

Reasonable Description / Request Validity / "Unduly Burdensome" Processing

Ctr. for Immigration Studies v. U.S. Citizenship & Immigration Servs., No. 22-0117, 2022 WL 4289561 (D.D.C. Sept. 16, 2022)

Anand v. Dep't of Health & Human Servs., No. 21-1635, 2023 WL 3600140 (D.D.C. May 23, 2023)

Judicial Watch, Inc. v. Dep't of Health & Human Servs., No. 22-3153, 2023 WL 315588 (D.D.C. Jan. 19, 2023)



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Procedural Issues

- Glomar Responses
- Schaerr v. Dep't of Justice, No. 21-5165, 2023 WL 3909471 (D.C. Cir. June 9, 2023)
- Redirecting Requests
- Am. Civil Liberties Union v. Dep't of Homeland Sec., No. 20-3204, 2023 WL 2733721 (D.D.C. Mar. 31, 2023)
- Policy-and-Practice Claims
- Am. Soc'y for the Prevention of Cruelty to Animals v. Animal & Plant Health Inspection Serv., 60 E.4th 16 (2d Cir. 2023) Cause of Action Inst. v. Dep'r of Commerce, No. 19-2698, 2022 WL 4130813 (D.D.C. Sept. 12, 2022)



| | Procedural Issues – Agency Control | | | | | THE W | HITE |
|---|--|-------------------------------|--|--|----------------|-----------------------|----------------------|
| | • Behar v. Dep't of Homeland Sec., 39 F.4th 81 (2d Cir. 2022) | a 2 4 | 1 | | ** | | |
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| | Responsiveness Review NBC 7 San Diego v. Dep't of Homeland Sec., No. 19-1149, 2022 WL 17820557 (D.D.C. Dec. 20, 2022) |
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| | Record Creation |
| Procedural | Am. Civil Liberties Union Immigrants' Rights Project v. Immigration & Customs Enf't, 58 F.4th 643 (2d Cir. 2023) |
| Issues (continued) | Waiver of FOIA Rights |
| | Barnes v. Fed. Bureau of Investigation 35 F.4th 828 (D.C. Cir. 2022) |
| | Litigation Negotiation |
| | Nat'l Ass'n of Minority Veterans v. Dep't of Veterans Affairs, No. 21-1298, 2022 WL 17082841 (D.D.C. Nov. 18, 2022) |

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Exemption 4

- Seife v. Food & Drug Admin., 43 F.4th 231 (2d Cir. 2022)
- Citizens for Responsibility & Ethics in Wash. v. Dep't of Justice, 58 F.4th 1255 (D.C. Cir. 2023)

Exemption 5 – Consultant Corollary

- Georgia v. Dep't of Justice, No. 21-3138, 2023 WL 2116375 (D.D.C. Feb. 20, 2023)
- Am. Oversight v. Dep't of Transp., No. 18-1272, 2022 WL 103306 (D.D.C. Jan. 11, 2022)

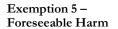


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Exemption 5 – Deliberative-Process Privilege

- Citizens for Responsibility & Ethics in Wash. v. Dep't of Justice, 45 F.4th 963 (D.C. Cir. 2022)
- Transgender Law Ctr. v. Immigration & Customs Enf't, 46 F.4th 771 (9th Cir. 2022)
- Nat'l Pub. Radio v. Dep't of Homeland Sec., No. 20-2468 2022 WL 4534730 (D.D.C. Sept. 28, 2022)

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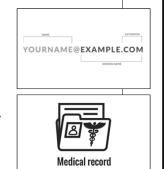


• Rocky Mountain Wild, Inc. v. U.S. Forest Serv., 56 F.4th 913 (10th Cir. 2022)



Exemption 6

- Transgender Law Ctr. v. Immigration & Customs Enf't, 46 F.4th 771 (9th Cir. 2022)
- Wash. Post Co. LLC v. Dep't of Def., No. 21-1025, 2022 WL 4119769 (D.D.C. Sept. 9, 2022)



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Exemption 7(C)

- McWatters v. Bureau of Alcohol, Tobacco, Firearms & Explosives, No. 20-1092, 2022 WL 3355798 (D.D.C. Aug. 15, 2022)
- BuzzFeed, Inc. v. Dep't of Justice, No. 21-5733, 2022 WL 2223124 (S.D.N.Y. June 21, 2022)



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Exemption 7(E)

• Xanthopoulos v. Internal Revenue Serv., 35 F.4th 1135 (8th Cir. 2022)

