

**Updates from the Courts:
Developments in
FOIA Case Law**

American Society of Access Professionals
National Training Conference

June 2023
New Orleans, Louisiana

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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
- Redirecting Requests
- Policy-and-Practice Claims

Schaerr v. Dep't of Justice, No. 21-5165,
2023 WL 3909471 (D.C. Cir. June 9, 2023)

Am. Civil Liberties Union v. Dep't of Homeland Sec.,
No. 20-3204, 2023 WL 2733721 (D.D.C. Mar. 31, 2023)

*Am. Soc'y for the Prevention of Cruelty to Animals v.
Animal & Plant Health Inspection Serv.*, 60 F.4th 16 (2d Cir. 2023)

Cause of Action Inst. v. Dep't of Commerce,
No. 19-2698, 2022 WL 4130813 (D.D.C. Sept. 12, 2022)



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Procedural Issues – Agency Control

- *Behar v. Dep't of Homeland Sec.*, 39 F.4th 81 (2d Cir. 2022)
- *Cause of Action Inst. v. Nat'l Oceanic & Atmospheric Admin.*, No. 19-1927, 2023 WL 3619345 (D.D.C. May 24, 2023)



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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)

Record Creation

Am. Civil Liberties Union Immigrants' Rights Project v. Immigration & Customs En'g, 58 F.4th 643 (2d Cir. 2023)

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)

Procedural Issues (continued)

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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)

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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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Exemption 5 – Foreseeable Harm

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



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