

Exemptions

Nine exemptions permit denying access to records.

- (b)(1) National defense of foreign policy matters required by Executive Order to be kept secret.
- (b)(2) Matters related solely to internal personnel rules and practices
- (b)(3) Matters specifically exempt by statute
 - 1. Absolute prohibition on disclosure – no agency discretion – no negotiable
 - 2. Limited prohibition – refers to particular matters to be withheld or statute provides specific criteria for withholding
- (b)(4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential
 - 1. National Parks established two-part test
 - a. impairment prong (will release impair Government's ability to obtain necessary info in the future)
 - b. Competitive harm prong (will release cause substantial harm to the competitive interest of the submitter)
 - 2. Critical Mass established a distinction between voluntary and required submissions
 - a. Voluntary submitted info is categorically protected if not "customarily" disclosed to the public (burden on the Government to prove otherwise)
 - b. What is voluntary? Is the submission required?
 - 3. Exemption 4 Decision Making
 - a. Was submission required – apply "impairment" prong and "competitive harm" prong
 - b. Was submission voluntary – apply "customary treatment" standard
 - 4. Submitter notice (predisclosure notification) requirements of E.O. 12600
 - a. Advise submitter of FOIA request
 - b. Afford reasonable time for submitter to object
 - c. Provide written notice of explanation and reasonable number of days prior to discloser date (to submitter)
- (b)(5) Inter-agency or intra-agency memos/letters which would not be available to a party in litigation with the agency
 - 1. Attorney-client privilege and attorney work-product privilege
 - 2. Analysis, evaluations, recommendations, advice, opinions

(b)(6) Personnel, medical and similar files – release of which would cause a clearly unwarranted invasion of personal privacy

Four Step Process:

1. Are easily identifiable – includes information about particular individuals
2. Identify and evaluate a privacy interest – age, date of birth, marital status, home address, phone, number and sex of dependents, school and year of graduation, home of record, overseas assignments, SSN, medical conditions
3. Identify and evaluate a public interest – shed light on an agency's performance of statutory duties, directly reveal agency conduct not that of individual employees, and interest by public at large (not just the requestor)
4. Balancing Test
 - a. No privacy interest – disclose
 - b. Privacy interest and no qualifying public interest – withhold
 - c. Both – determine which is greater (presumption favors disclosure)

(b)(7) Records or info compiled for law enforcement purposes

1. Could reasonably be expected to interfere with enforcement proceedings
2. Would deprive an individual of the right to a fair trial or impartial adjudication
3. Could reasonably be expected to constitute an unwarranted invasion of personal privacy

(b)(8) Examination reports related to financial institutions

(b)(9) Data related to maps and wells