

# What are FOIA Exemptions

Not all records can be released under the FOIA. Congress established certain categories of information that are not required to be released in response to a FOIA request because release would be harmful to a government or private interest. These categories are called "exemptions" from disclosures. Still, even if an exemption applies, agencies may use their discretion to release information when there is no foreseeable harm in doing so and disclosure is not otherwise prohibited by law. There are nine categories of exempt information and each is described below.

**Exemption 1:** Information that is classified to protect national security.

**Exemption 2:** Information related solely to the internal personnel rules and practices of an agency.

**Exemption 3:** Information that is prohibited from disclosure by another federal law.

**Exemption 4:** Trade secrets or commercial or financial information that is confidential or privileged.

**Exemption 5:** Privileged communications within or between agencies, including:

1. Deliberative Process Privilege
2. Attorney-Work Product Privilege
3. Attorney-Client Privilege

**Exemption 6:** Information that, if disclosed, would invade another individual's personal privacy.

**Exemption 7:** Information compiled for law enforcement purposes that:

- 7(A). Could reasonably be expected to interfere with enforcement proceedings
- 7(B). Would deprive a person of a right to a fair trial or an impartial adjudication
- 7(C). Could reasonably be expected to constitute an unwarranted invasion of personal privacy
- 7(D). Could reasonably be expected to disclose the identity of a confidential source
- 7(E). Would disclose techniques and procedures for law enforcement investigations or prosecutions
- 7(F). Could reasonably be expected to endanger the life or physical safety of any individual

**Exemption 8:** Information that concerns the supervision of financial institutions.

**Exemption 9:** Geological information on wells.

### **What are exclusions?**

Congress has provided special protection in the FOIA for three narrow categories of law enforcement and national security records. The provisions protecting those records are known as “exclusions.” The first exclusion protects the existence of an ongoing criminal law enforcement investigation when the subject of the investigation is unaware that it is pending and disclosure could reasonably be expected to interfere with enforcement proceedings. The second exclusion is limited to criminal law enforcement agencies and protects the existence of informant records when the informant’s status has not been officially confirmed. The third exclusion is limited to the Federal Bureau of Investigation and protects the existence of foreign intelligence or counterintelligence, or international terrorism records when the existence of such records is classified. Records falling within an exclusion are not subject to the requirements of the FOIA. So, when an office or agency responds to your request, its response will encompass those records that are subject to the FOIA.