

Major FOIA Cases

FOIA Case Law

- *Administrator, Federal Aviation Administration v. Robertson*, 422 U.S. 255 (1975)

The FAA was permitted to withhold analyses of performance of commercial airlines under a statute which gave the administrator the authority to withhold such information when he felt disclosure was not in the public interest. (Subsequent to this decision, Congress amended Exemption 3 requiring specific language requiring confidentiality.)

- *Baldrige v. Shapiro*, 455 U.S. 345 (1982)

Two sections of the Census Bureau Act (13 U.S.C. §§ 8(b) and 9(a)) qualify as Exemption 3 statutes and prevent the bureau from releasing information collected from respondents, including the addresses used by the bureau to conduct the census.

- *Chrysler Corporation v. Brown*, 441 U.S. 281 (1979)

Businesses that submit documents to the government may sue under the Administrative Procedures Act to challenge an agency's decision to release documents related to them when such documents are requested under FOIA.

- *Consumer Product Safety Commission v. GTE Sylvania*, 447 U.S. 102 (1980)

The Consumer Product Safety Act requires the CPSC to ensure the accuracy of information about consumer products, if the manufacturer can be identified, prior to releasing any information pursuant to a FOIA request. The CPSC accomplishes this by notifying the manufacturer and giving it an opportunity to correct or challenge any of the requested information.

- **Department of the Air Force v. Rose, 425 U.S. 352 (1976)**

Exemption 2 applies only to information in which there is little or no public interest and thus could not protect information about Ethics Code violations at the Air Force Academy. Furthermore, Exemption 6 requires an agency to balance the possible invasion of privacy against the public's interest in disclosure, and in this case the Court ordered disclosure of the information in a form which would not lead to any cadet being individually identified.

- **Department of the Interior v. Klamath Water Users Protective Association, 532 U.S. 1 (2001)**

The

federal government may not use Exemption 5 to withhold documents created as a result of communications with an outside consultant, when the consultant's relationship with the government has been predicated on the consultant's own interests, rather than the government's interests.

- **Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989)**

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balancing the public's interest in disclosure against the intrusion on personal privacy that would occur from disclosure, an agency can only consider the public's interest in knowing what the government is "up to." If records are not informative on the operations and activities of government, there is no public interest in their release. In applying the balancing test under Exemption 7(C), agencies may "categorically" weigh public interest and

privacy. Since criminal history rap sheets reveal nothing about the government, they may be withheld.

- **Department of Justice v. Tax Analysts, 492 U.S. 136 (1989)**

A two-pronged test determines whether material constitutes agency “records”: An agency must create or obtain the records and must have them in its possession because of the legitimate conduct of agency business.

- **Department of State v. Ray, 502 U.S. 164 (1991)**

The privacy interest of Haitian deportees in their names and addresses outweighs any public interest that might be served by disclosure to an attorney who hoped to learn if the Haitian government mistreated them on their return. The court refused to decide whether “derivative” uses of names and addresses — later uses for other purposes — could ever serve the public’s interest.

- **Department of State v. Washington Post, 456 U.S. 595 (1982)**

The “similar files” provision of Exemption 6 extends to any information of a “personal” nature, such as one’s citizenship.

- **Environmental Protection Agency v. Mink, 410 U.S. 73 (1973)**

An agency has no obligation to segregate and disclose non-classified portions of otherwise classified documents, and the court is not required to view the documents in camera whenever there is an allegation that pre-decisional materials contain factual information. (Subsequent to this case, FOIA was amended to require agencies to segregate non-exempt material from that which can be protected under an exemption.)

- **Federal Bureau of Investigation v. Abramson. 456 U.S. 615 (1982)**

Records compiled for law enforcement purposes do not lose their exempt status when they are incorporated into records compiled for purposes other than law enforcement.

- **Federal Open Market Committee v. Merrill, 443 U.S. 340 (1979)**

Exemption 5

incorporates a privilege for commercially sensitive documents that are generated by the government. This privilege is similar to the protection provided by Exemption 4 for the commercial information submitted by those outside the government.

- **Forsham v. Harris, 445 U.S. 169 (1980)**

Records in the possession of federal grantees or contractors are not accessible under FOIA, even if the documents relate to the grantee's contract with a federal agency.

- **Federal Trade Commission v. Grolier, 462 U.S. 19 (1983)**

Exemption 5 is not limited to information that would actually be privileged in any particular litigation, but rather extends to any information which would "routinely" or "normally" not be available to a party in litigation.

- **Grumman Aircraft Engineering Corporation v. Renegotiation Board, 421 U.S. 168 (1975)** **The**

executive privilege, incorporated through Exemption 5, can protect from disclosure reports prepared by the Renegotiation Board's Regional Board since they are not "final reports" but rather inter- or intra-agency memos. This ruling is based on the Court's finding that only the full Board has authority to issue final orders, and these Regional reports are simply used by the full Board to make that decision.

- **GTE Sylvania v. Consumers Union. 445 U.S. 375 (1980)**

GTE Sylvania sued the Consumer Product Safety Commission to stop its release of accident reports to Consumers Union. The district court issued an order restraining release of the information pending the court's ruling on the disclosability of the information. Meanwhile CU sued in a different court to compel disclosure. The Supreme Court ruled that while information is under a court order prohibiting disclosure, the agency has no authority to release it, and a requestor may not maintain a lawsuit to compel its disclosure.

- **Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136 (1980)**
FOIA

does not provide a means by which private citizens can sue to force public officials to return records that they have wrongfully removed from the agency.

- **National Archives and Records Administration v. Favish, 541 U.S. 157 (2003)**
Exemption

7(C) encompasses the personal privacy rights of a deceased individual as well as the related privacy rights of his or her surviving family members. When the public interest in a FOIA request reflects an attempt to show that government officials acted improperly in performing their duties, the requester must produce evidence of such impropriety sufficient to convince a reasonable person in order to overcome the personal privacy rights cited.

- **National Labor Relations Board v. Robbins Tire & Rubber Co., 437 U.S. 214 (1978)**

Exemption 7(A), allowing agencies to withhold investigatory records compiled for law enforcement purposes if disclosure would interfere with enforcement proceedings, does not require the agency to make a specific showing within the context of a particular case. Instead, the agency may demonstrate that disclosure of certain classes of documents (in this case witness statements filed as part of unfair labor practices complaints) would

have the effect of interfering with agency enforcement.

- **National Labor Relations Board v. Sears, Roebuck & Co., 421 U.S. 132 (1975)**

Exemption

5 can never apply to the final opinion of an agency, but the exemption does incorporate the attorney work product privilege protecting memos prepared by a government attorney in contemplation of litigation and setting strategy for the case.

- **Sims v. Central Intelligence Agency, 471 U.S. 159 (1985)**

The Director of the CIA has exclusive authority to designate intelligence sources and methods that can be protected from public disclosure under the National Security Act.

- **Taylor v. Sturgell, 128 S.Ct. 2161 (2008)**

Two parties with similar, but not legally related, interests can separately litigate the same claim without resulting in “virtual representation” of one party by the other.

- **United States v. Weber Aircraft Corp., 465 U.S. 792 (1984)**

Exemption 5 incorporates a privilege protecting witness statements given to military personnel in the course of military air crash safety investigations.

Revision #1

Created 18 April 2025 14:58:32 by Joseph

Updated 18 April 2025 14:59:22 by Joseph