

# **General Overview of FOIA Exemptions and the Relationship between FOIA and the Privacy Act In Information Disclosure and Protection**

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- I. Freedom of Information Act (FOIA) (5 U.S.C. § 552) provides that any person has a right of access to federal agency records, unless one of nine exemptions applies.

FOIA exemptions protect from disclosure:

1. classified information;
2. information related solely to agency internal personnel rules and practices;
3. information specifically exempted from disclosure by another statute;
4. trade secrets or commercial or financial information which is privileged and confidential and obtained from a person;
5. internal federal government documents which are both pre-decisional and deliberative;<sup>1</sup>
6. information about individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
7. information compiled for law enforcement purposes, the

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<sup>1</sup> The attorney-work product privilege and the attorney-client privilege are incorporated into this exemption.

release of which:

- A. could reasonably be expected to interfere with law enforcement proceedings, *or*
  - B. would deprive a person of a right to a fair trial or an impartial adjudication, *or*
  - C. could reasonably be expected to constitute an unwarranted invasion of personal privacy, *or*
  - D. could reasonably be expected to disclose the identity of a confidential source, *or*
  - E. would disclose techniques, procedures, or guidelines for investigations or prosecutions, *or*
  - F. could reasonably be expected to endanger an individual's life or physical safety.
8. information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;
9. geological and geophysical information and data, including maps, about wells.
- II. The Privacy Act (PA) (5 U.S.C. § 552a) applies to the collection, maintenance, use and dissemination of personal information about U.S. citizens (and aliens lawfully admitted for permanent residence) by federal agencies. Records in a PA system of records may not be disclosed to third parties without the written consent of the individual to whom the records pertain, unless an exception applies.

Exceptions to the "no disclosure without consent" rule:

1. disclosure to officers and employees of the agency which maintains the record who have a need to know the information in the performance of their duties;
2. disclosure required by FOIA;
3. routine use (use of a record, published in the Federal Register, compatible with the purpose for which it is collected);
4. disclosure to the Bureau of the Census;
5. disclosure where the record will be used solely for statistical research;
6. disclosure to the National Archives and Records Administration;
7. disclosure to another agency or to an instrumentality of any government jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity;
8. disclosure under emergency circumstances upon showing of compelling circumstances affecting the health or safety of any individual;
9. disclosure to either house of Congress (any committee or subcommittee or any joint committee or subcommittee, for a matter within the jurisdiction thereof);
10. disclosure to GAO;
11. disclosure pursuant to the order of court of competent jurisdiction;
12. disclosure to a consumer reporting agency in accordance with the Debt Collection Act.