

EXEMPTION 7(F)

the extent that they can be regarded as reflecting techniques or procedures, are entitled to categorical protection under Exemption 7(E)'s first clause.⁵² In addition, law enforcement guidelines that satisfy the broad "could reasonably be expected to risk circumvention of law" standard can be protected under Exemption 7(E)'s second clause.⁵³ (See the discussion of Exemption 2's overlapping "anti-circumvention" protection under Exemption 2, "High 2": Risk of Circumvention, above.)

EXEMPTION 7(F)

Exemption 7(F) permits the withholding of law enforcement-related information necessary to protect the physical safety of a wide range of individuals. This exemption provides broad protection to "any individual" when disclosure of information about him "could reasonably be expected to endanger [his] life or physical safety."¹

Prior to the 1986 FOIA amendments,² Exemption 7(F) by its former terms protected records that "would . . . endanger the life or physical safety of law enforcement personnel,"³ and it had been invoked to protect both federal and local law enforcement officers.⁴ Cases decided after the 1986

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tive research analysis in intelligence report properly withheld by FinCEN, Financial Crimes Enforcement Network of United States Department of the Treasury); see also Hammes, 1994 WL 693717, at *1 (protecting Customs Service criteria used to determine which passengers to stop and examine).

⁵² See Attorney General's 1986 Amendments Memorandum at 15-16 & n.27 (explaining that 1986 FOIA amendments eliminated requirement that law enforcement information be "investigatory" in order to be withheld under any subpart of Exemption 7); see also Smith, 977 F. Supp. at 501 ("Exemption 7(E) provides categorical protection to information related to law enforcement techniques.").

⁵³ See Attorney General's 1986 Amendments Memorandum at 17 & n.31.

¹ 5 U.S.C. § 552(b)(7)(F) (2000 & Supp. IV 2004).

² Pub. L. No. 99-570, § 1802, 100 Stat. 3207, 3207-48 to 3207-49 (1986).

³ Pub. L. No. 93-502, 88 Stat. 1561, 1563 (1974) (subsequently amended).

⁴ See, e.g., Maroscia v. Levi, 569 F.2d 1000, 1002 (7th Cir. 1977) (FBI Special Agents and also "other law enforcement personnel"); Barham v. Secret Serv., No. 82-2130, slip op. at 5 (W.D. Tenn. Sept. 13, 1982) (Secret Service agents); Docal v. Bennsinger, 543 F. Supp. 38, 48 (M.D. Pa. 1981) (DEA special agents, supervisory special agents, and local law enforcement officers); Nunez v. DEA, 497 F. Supp. 209, 212 (S.D.N.Y. 1980) (DEA special agents); Ray v. Turner, 468 F. Supp. 730, 735 (D.D.C. 1979) (U.S. Customs

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FOIA amendments continue this strong protection for law enforcement agents.⁵

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Service agent).

⁵ See, e.g., Rugiero v. U.S. Dep't of Justice, 257 F.3d 534, 552 (6th Cir. 2001) (protecting names of DEA agents), cert. denied, 534 U.S. 1134 (2002); Johnston v. U.S. Dep't of Justice, No. 97-2173, 1998 U.S. App. LEXIS 18557, at *2 (8th Cir. Aug. 10, 1998) (protecting names of DEA agents); Housley v. DEA, No. 92-16946, 1994 U.S. App. LEXIS 11232, at *4 (9th Cir. May 4, 1994) (finding Exemption 7(F) properly used to protect "physical safety"); Peter S. Herrick's Customs & Int'l Trade Newsletter v. U.S. Customs & Border Prot., No. 04-0377, 2006 WL 1826185, at *9 (D.D.C. June 30, 2006) (finding that disclosure of U.S. Customs officials' identities and information regarding seized contraband could endanger life or physical safety of both Customs officials and innocent bystanders); McCoy v. United States, No. 04-101, 2006 WL 463106, at *11 (N.D. W. Va. Feb. 24, 2006) (magistrate's recommendation) (finding that DEA properly withheld names of DEA Special Agents, Deputy U.S. Marshals, and state and local law enforcement officers); Blanton v. U.S. Dep't of Justice, 182 F. Supp. 2d 81, 87 (D.D.C. 2002) (acknowledging that disclosure of identities of FBI Special Agents could endanger their safety), aff'd, 64 F. App'x 787 (D.C. Cir. 2003); Rubis v. DEA, No. 01-1132, slip op. at 4, 7 (D.D.C. Sept. 30, 2002) (protecting identities of DEA agents who routinely deal with violators, because disclosure would place them in danger); Garcia v. U.S. Dep't of Justice, 181 F. Supp. 2d 356, 378 (S.D.N.Y. 2002) (protecting names of FBI Special Agents and other government agents); Amro v. U.S. Customs Serv., 128 F. Supp. 2d 776, 788 (E.D. Pa. 2001) (protecting names of DEA supervisory agents and other law enforcement officers); Hronek v. DEA, 16 F. Supp. 2d 1260, 1275 (D. Or. 1998) (protecting names and identities of DEA agents, supervisory agents, and other law enforcement officers), aff'd, 7 F. App'x 591 (9th Cir. 2001); Hazel v. Dep't of Justice, No. 95-01992, slip op. at 13 (D.D.C. July 2, 1998) (protecting correctional officers' names); Johnson v. DEA, No. 97-2231, 1998 U.S. Dist. LEXIS 9802, at *14 (D.D.C. June 25, 1998) (protecting DEA agents' names because disclosure could have detrimental effect on operations), aff'd in pertinent part, 1999 U.S. App. LEXIS 7332 (D.C. Cir. Mar. 2, 1999); Franklin v. U.S. Dep't of Justice, No. 97-1225, slip op. at 15 (S.D. Fla. June 15, 1998) (magistrate's recommendation) ("It is in the public interest not to disclose the identity of [DEA] Special Agents so that they may continue to effectively pursue undercover and investigative assignments."), adopted (S.D. Fla. June 26, 1998), aff'd per curiam, 189 F.3d 485 (11th Cir. 1999); McGhghy v. DEA, No. C 97-0185, slip op. at 12 (N.D. Iowa May 29, 1998) (finding that DEA "established a clear nexus between disclosure and harm to agents and officers"), aff'd per curiam, No. 98-2989 (8th Cir. July 19, 1999); Fedrick v. U.S. Dep't of Justice, 984 F. Supp. 659, 665 (W.D.N.Y. 1997) (magistrate's recommendation) (protecting names of DEA agents, supervisory agents, and other law enforcement personnel), adopted, No. 95-558 (W.D.N.Y. Oct. 28, 1997), aff'd sub nom. Fedrick v. Huff, 165 F.3d 13 (2d Cir.

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Under the amended language of Exemption 7(F), courts have applied the broader coverage now offered by the exemption, holding that it can afford protection of the "names and identifying information of . . . federal employees, and third persons who may be unknown" to the requester in connection with particular law enforcement matters.⁶ Withholding such infor-

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1998) (unpublished table decision); Jimenez v. FBI, 938 F. Supp. 21, 30-31 (D.D.C. 1996) (holding that disclosure of names of DEA special agents, supervisors, and local law enforcement officer could result in "physical attacks, threats, or harassment"; disclosure of DEA's investigative personnel would endanger lives of its agents and have "detrimental effect" on its operations); Badalamenti v. U.S. Dep't of State, 899 F. Supp. 542, 550 (D. Kan. 1995) (protecting names of law enforcement personnel); Almy v. Dep't of Justice, No. 90-362, slip op. at 26 (N.D. Ind. Apr. 13, 1995) (protecting names of DEA agents, supervisory agents, and other law enforcement personnel), aff'd, 114 F.3d 1191 (7th Cir. 1997) (unpublished table decision); Manchester v. DEA, 823 F. Supp. 1259, 1273 (E.D. Pa. 1993) (protecting names and identities of DEA special agents, supervisory special agents, and other law enforcement officers). But see Pub. Employees for Env'tl. Responsibility v. EPA, 978 F. Supp. 955, 964 (D. Colo. 1997) (finding no risk to agency investigators in disclosing EPA Inspector General guidelines).

⁶ Luther v. IRS, No. 5-86-130, slip op. at 6 (D. Minn. Aug. 13, 1987); see also Johnston, 1998 U.S. App. LEXIS 18557, at *2 (protecting names of DEA personnel, local law enforcement personnel, and third parties); Herrick's Newsletter, 2006 WL 1826185, at *9 (holding that the release of information concerning seized contraband and Customs' officials could reasonably be expected to endanger the physical safety of those officials and "innocent third parties located in the vicinity of Customs' officials, activities, or seized contraband"); McQueen v. United States, 264 F. Supp. 2d 502, 521 (S.D. Tex. 2003) (protecting identities of informants and undercover agents participating in plaintiff's criminal investigation), aff'd, 100 F. App'x 964 (5th Cir. 2004); Brady-Lunny v. Massey, 185 F. Supp. 2d 928, 932 (C.D. Ill. 2002) (finding that release of list of detainees' names would endanger life and physical safety given security risks that always are present in inmate populations); Garcia, 181 F. Supp. 2d at 378 (protecting "names and/or identifying information concerning private citizens and third parties who provided information" to FBI); Hidalgo v. Bureau of Prisons, No. 00-1229, slip op. at 4 (D.D.C. June 6, 2001) (withholding information about inmate-plaintiff's "separates"), summary affirmance granted, No. 01-5257 (D.C. Cir. Aug. 29, 2002); Bartolotta v. FBI, No. 99-1145, slip op. at 5-6 (D.D.C. July 13, 2000) (protecting identities of inmate-plaintiff's "separates"); Willis v. FBI, No. 99-CV-73481, slip op. at 20-21 (E.D. Mich. July 11, 2000) (magistrate's recommendation) (protecting names and identifying information of federal employees and third parties), adopted (E.D. Mich. Sept. 29, 2000); Russell v. Barr, No. 92-2546, slip op. at 11-12 (D.D.C. Aug. 28, 1998) (protecting identities of individuals who cooperated in investigation and prosecution involving spousal murder when agency demonstrated requester's reputation for
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mation can be necessary in order to protect such persons from possible harm by a requester who has threatened them in the past.⁷ Indeed, many

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violent behavior); Isley v. Executive Office for U.S. Attorneys, No. 96-0123, slip op. at 8-9 (D.D.C. Mar. 27, 1997) (upholding agency's nondisclosure of identifying information about individuals who provided information during murder investigation when there was reasonable likelihood that disclosure would threaten their lives), appeal dismissed, No. 97-5105 (D.C. Cir. Sept. 8, 1997); Anderson v. U.S. Marshals Serv., 943 F. Supp. 37, 40 (D.D.C. 1996) (protecting identity of individual who required separation from incarcerated requester when disclosure could endanger his safety); Sanders v. U.S. Dep't of Justice, No. 91-2263, 1992 WL 97785, at *4 (D. Kan. Apr. 21, 1992) (finding that disclosing identities of medical personnel who prepared requester's mental health records would endanger their safety, in view of requester's mental difficulties); Pfeffer v. Dir., Bureau of Prisons, No. 89-899, slip op. at 4 (D.D.C. Apr. 18, 1990) (holding that information about smuggling weapons into prisons could reasonably be expected to endanger physical safety of "some individual" and therefore is properly withheld). But see Long v. U.S. Dep't of Justice, 450 F. Supp. 2d 42, 80 (D.D.C.) (finding government's assertion that disclosure of "program category" information "will increase the chances that third parties will be harmed in some way" to be conclusory), amended by 457 F. Supp. 2d 30 (D.D.C. 2006), amended further on reconsideration, Nos. 00-0211 & 02-2467, 2007 WL 293508 (D.D.C. Feb. 2, 2007), stay granted (D.D.C. Feb. 13, 2007); Maydak v. U.S. Dep't of Justice, 362 F. Supp. 2d 316, 320 (D.D.C. 2005) (ordering release of psychological testing data and list of prison staff to inmate requester because such information ordinarily is released to public); Trupej v. Huff, No. 96-2850, 1998 WL 8986, at *4 (D.D.C. Jan. 7, 1998) (finding government's concern for safety of individuals whose identities are unknown to requester to be "conclusory," warranting only Exemption 7(C) protection); Linn v. U.S. Dep't of Justice, No. 92-1406, 1995 WL 631847, at *9 (D.D.C. Aug. 22, 1995) (finding that the agency "has not established even a minimal nexus" between the withheld information and harm to persons discussed in the file).

⁷ See, e.g., Brunetti v. FBI, 357 F. Supp. 2d 97, 109 (D.D.C. 2004) (approving the withholding of the identities of individuals who cooperated with the FBI, given the "violent nature of the La Cosa Nostra organization"); Orloff v. U.S. Dep't of Justice, No. 98-2819, slip op. at 10 (D.D.C. Mar. 22, 2002) (finding the withholding of the "name of one witness who was identified as being potentially subject to future harm" proper, given plaintiff's conviction for violent acts); Shores v. FBI, 185 F. Supp. 2d 77, 85 (D.D.C. 2002) (approving the nondisclosure of names of, and identifying information about, three cooperating witnesses when information obtained from one of those witnesses led to plaintiff's murder conviction and "prompted [p]laintiff to attempt to have a member of that witness' [sic] family murdered"); Blanton, 182 F. Supp. 2d at 87 (protecting identities of FBI Special Agents and non-law enforcement personnel assisting in investigation, because "[e]ven though [requester] is incarcerated, his threats against persons responsible

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courts have held that the very expansive language of "any individual" encompasses the protection of the identities of informants.⁸

Significantly, Exemption 7(F) protection has been held to remain applicable even after a law enforcement officer subsequently retired.⁹ Moreover, it has been held that Exemption 7(F) can be employed to protect even

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for his arrest and now his conviction make it possible that these individuals could be targets of physical harm"); Burke v. U.S. Dep't of Justice, No. 96-1739, 1999 WL 1032814, at *9 (D.D.C. Sept. 30, 1999) (finding that disclosing identities of "agents, other agencies' personnel and sources could expose [them] to violent retaliation," given requester's violent history); Anderson v. U.S. Dep't of Justice, No. 95-1888, 1999 U.S. Dist. LEXIS 4731, at *10-11 (D.D.C. Mar. 31, 1999) (finding that releasing witnesses' names could subject them to harassment and threats, given requester's history of carrying firearms); Crooker v. IRS, No. 94-0755, 1995 WL 430605, at *5 (D.D.C. Apr. 27, 1995) (protecting confidential informants when requester has history of harassing, intimidating, and abusing witnesses); Manna v. U.S. Dep't of Justice, 815 F. Supp. 798, 810 (D.N.J. 1993) (finding that releasing FBI reports would endanger life or physical safety of associates of requester in organized crime case), aff'd on other grounds, 51 F.3d 1158 (3d Cir. 1995); Author Servs. v. IRS, No. 90-2187, slip op. at 7 (C.D. Cal. Nov. 14, 1991) (withholding identities of third parties and handwriting and identities of IRS employees in view of previous conflict and hostility between parties). But see Homick v. U.S. Dep't of Justice, No. 98-557, slip op. at 33-34 (N.D. Cal. Sept. 16, 2004) (ordering disclosure of information that would identify FBI informants despite evidence of requester's violent nature), reconsideration denied (N.D. Cal. Oct. 27, 2004), appeal dismissed, No. 04-17568 (9th Cir. July 5, 2005).

⁸ Housley v. FBI, No. 87-3231, 1988 WL 30751, at *3 (D.D.C. Mar. 24, 1988) (protecting identities of informants); see also Butler v. U.S. Dep't of Justice, 368 F. Supp. 2d 776, 786 (E.D. Mich. 2005) (protecting information that could endanger lives of individuals who provided information to DEA); Bartolotta, No. 99-1145, slip op. at 5-6 (D.D.C. July 13, 2000) (protecting name of, and identifying information about, confidential inmate-source); Pray v. FBI, No. 95-0380, 1998 WL 440843, at *3 (S.D.N.Y. Aug. 3, 1998) (protecting names of sources); Jimenez, 938 F. Supp. at 30-31 (protecting names and identifying information furnished by confidential sources); Bruscino v. Fed. Bureau of Prisons, No. 94-1955, 1995 WL 444406, at *11 (D.D.C. May 12, 1995) (protecting investigatory information obtained from sources whose lives would be endangered by disclosure, especially in view of "rough justice" to be rendered upon informants should identities be disclosed), summary affirmance granted in pertinent part, vacated & remanded in part, No. 95-5213, 1996 WL 393101 (D.C. Cir. June 24, 1996).

⁹ See Moody v. DEA, 592 F. Supp. 556, 559 (D.D.C. 1984).

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the identities of individuals who testified at the requester's criminal trial.¹⁰ And one court approved a rather novel, but certainly appropriate, application of this exemption to a description in an FBI laboratory report of a homemade machine gun because its disclosure would create the real possibility that law enforcement officers would have to face "individuals armed with homemade devices constructed from the expertise of other law enforcement people."¹¹

When Exemption 7(F) was broadened by the 1986 FOIA amendments, that action created a broader potential for the exemption that obviously had yet to be fully realized.¹² Notably, it expanded the set of individ-

¹⁰ See Linn v. U.S. Dep't of Justice, No. 92-1406, 1997 U.S. Dist. LEXIS 9321, at *17 (D.D.C. May 29, 1997) (protecting witnesses who testified) (Exemptions 7(C) and 7(F)), appeal dismissed voluntarily, No. 97-5122 (D.C. Cir. July 14, 1997); Beck v. U.S. Dep't of Justice, No. 88-3433, 1991 U.S. Dist. LEXIS 1179, at *10-11 (D.D.C. July 24, 1991) (finding that exemption was not necessarily waived when information revealed at public trial); Prows v. U.S. Dep't of Justice, No. 87-1657, 1989 WL 39288, at *2 (D.D.C. Apr. 13, 1989) (finding, as under Exemption 7(C), DEA agents' identities protectible even though they testified at trial), aff'd, No. 89-5185 (D.C. Cir. Feb. 26, 1990). But see Myers v. U.S. Dep't of Justice, No. 85-1746, 1986 U.S. Dist. LEXIS 20058, at *6 (D.D.C. Sept. 22, 1986) (declining to protect law enforcement personnel who testified) (Exemptions 7(C) and 7(F)).

¹¹ LaRouche v. Webster, No. 75-6010, 1984 WL 1061, at *8 (S.D.N.Y. Oct. 23, 1984); accord FOIA Post, "New Attorney General FOIA Memorandum Issued" (posted 10/15/01) (discussing use of Exemption 2 to protect critical systems, facilities, stockpiles, and other assets from security breaches and harm given their potential for use as weapons of mass destruction in and of themselves); see also Pfeffer, No. 89-899, slip op. at 4 (D.D.C. Apr. 14, 1990) (approving withholding of information on smuggling of weapons into prison); cf. FOIA Post, "Guidance on Homeland Security Information Issued" (posted 3/21/02) (instructing agencies to take appropriate action to safeguard information related to America's homeland security by giving careful consideration to all applicable FOIA exemptions, such as Exemption 2); Lawyers Comm. for Human Rights v. INS, 721 F. Supp. 552, 571 (S.D.N.Y. 1989) (declining to identify individuals listed in INS Lookout Book on basis of "ideological exclusion" provision other than by occupation and country, because "some individuals could be placed in grave danger in their own countries if it were learned that the American government suspects them of being affiliated with terrorist organizations") (Exemption 7(C)).

¹² See Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 18 (Dec. 1987) [hereinafter Attorney General's 1986 Amendments Memorandum] (discussing the amendments, and stating that agencies should consider the modifications of Exemption 7(F) as a signal to rely on it "whenever there is any reasonable likelihood of a FOIA disclosure endangering any person"); see also NARA v. Favish, 541 U.S.

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uals entitled to Exemption 7(F) protection from "law enforcement personnel" only, to begin with, to the all-encompassing formulation of "any person," without limitation.¹³ By removing that earlier limitation on which individuals merit protection, Congress authorized agencies to exercise their sound judgment in protecting "any person" whose life or safety is at risk in sensitive law enforcement records.¹⁴ As was pointedly observed in the Attorney General's implementation memorandum on the 1986 FOIA amendments at the time: "Exemption 7(F) is now available to provide necessary protection for the full range of persons whose personal physical safety can be at stake in sensitive law enforcement files."¹⁵

Now, in the current post-September 11, 2001 homeland security environment, Exemption 7(F) provides vital new avenues of protection for sensitive information that could prove deadly if obtained by those seeking to do harm to the public on a large scale.¹⁶ Indeed, Exemption 7(F) has now been found readily available to protect against disclosure of "inundation maps" that showed projected patterns in which downstream areas would be catastrophically flooded in the event of breaches in nearby dams.¹⁷ The

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157, 169 (evincing the Supreme Court's reliance on "the Attorney General's consistent interpretation of" the FOIA in successive such Attorney General memoranda), reh'g denied, 541 U.S. 1057 (2004).

¹³ See Freedom of Information Reform Act of 1986, §§ 1801-04 of Pub. L. No. 99-570, 100 Stat. 3207-48 (1986); Attorney General's 1986 Amendments Memorandum 18.

¹⁴ See, e.g., Garcia, 181 F. Supp. 2d at 378 ("In evaluating the validity of an agency's invocation of Exemption 7(F), the court should 'within limits, defer to the agency's assessment of danger.'" (quoting Linn, 1995 WL 631847, at *9)); see also Ctr. for Nat'l Security Studies v. U.S. Dep't of Justice, 331 F.3d 918, 926-27 (D.C. Cir. 2003) (recognizing in analogous context under Exemption 7(A), that agency's judgment in this respect is entitled to great deference from courts).

¹⁵ Attorney General's 1986 Amendments Memorandum 18; see also Favish, 541 U.S. at 169 (citing, with approval, "the Attorney General's consistent interpretation of" the FOIA in such Attorney General FOIA memoranda).

¹⁶ Cf. FOIA Post, "New Attorney General FOIA Memorandum Issued" (posted 10/15/01) (discussing the "need to protect critical systems, facilities, stockpiles, and other assets from security breaches and harm -- and in some instances from their potential use as weapons of mass destruction in and of themselves," as well as "any agency information that could enable someone to succeed in causing the feared harm").

¹⁷ Living Rivers, Inc. v. U.S. Bureau of Reclamation, 272 F. Supp. 2d 1313, 1321-22 (D. Utah 2003) (finding that disclosure of inundation maps could

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court reasoned that releasing such information in the face of current homeland security concerns "could increase the risk of an attack" on one dam over another, and on such dam targets overall, because terrorists would be able to use these maps to estimate the amount of damage and carnage caused by flooding.¹⁸

Courts have continued to address this and to find that Exemption 7(F)'s protective ambit broadly encompasses any unspecified individual whose safety could reasonably be endangered by a disclosure.¹⁹ This rationale was recently used to protect information regarding seized contraband, and information concerning U.S. Customs' employees involved in the

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reasonably be expected to place at risk lives of individuals in downstream areas that would be flooded by breach of dams by increasing risk of terrorist attacks on dams); see also Ctr. for Nat'l Sec. Studies v. U.S. Dep't of Justice, 215 F. Supp. 2d 94, 106, 108-09 (D.D.C. 2002) (holding that while Exemption 7(F) does not protect names of individuals detained after terrorist attack, or identities of their attorneys, it does protect dates and locations of their detention, arrest, and release), rev'd in other part, aff'd in part on other grounds & remanded, 331 F.3d 918 (D.C. Cir. 2003) (Exemption 7(A)).

¹⁸ Living Rivers, 272 F. Supp. 2d at 1321-22 (concluding that the requested FOIA disclosure could "aid in carrying out a terrorist attack").

¹⁹ See, e.g., L.A. Times Commcn's, LLC v. Dep't of the Army, 442 F. Supp. 2d 880, 898-900 (C.D. Cal. 2006) (applying Exemption 7(F) where disclosure of private security contractor company names could endanger the life or physical safety of many individuals); Herrick's Newsletter, 2006 WL 1826185, at *9 (finding that Exemption 7(F) encompasses the protection of innocent third parties located in the vicinity of Customs' officials, activities, or seized contraband); Brady-Lunny, 185 F. Supp. 2d at 932 (upholding use of Exemption 7(F) in order to protect against risk of violence on a broad range of unspecified individuals if information on prisoners was released); Ctr. for Nat'l Sec. Studies, 215 F. Supp. 2d at 108 (finding that disclosure of location of detention facilities holding suspects in September 11 attacks "would make detention facilities vulnerable to retaliatory attacks, and 'place at risk not only . . . detainees, but the facilities themselves and their employees'"), aff'd in part & rev'd in part on other grounds, 331 F. 3d 918 (D.C. Cir. 2003); see also LaRouche, 1984 WL 1061, at *8 (applying even the unamended form of Exemption 7(F) to an FBI laboratory report on home-made machine guns, because unknown current or future law enforcement officers could have to face "individuals armed with [such] home-made devices" if disclosure were compelled). But see ACLU v. DOD, 389 F. Supp. 2d 547, 578 (S.D.N.Y. 2005) (declining to apply Exemption 7(F) to withhold photographs depicting the treatment of detainees, in part because of the "education and debate [the] publicity [of the photographs] will foster").

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seizure, storage, and evaluation of the contraband.²⁰ Applying Exemption 7(F), the court reasoned that the release of this information could place at risk innocent third parties located in the vicinity of U.S. Customs' officials, activities, or the seized contraband.²¹ Similarly, Exemption 7(F) was used to protect the company names of private security contractors (PSC) operating in concert with U.S. military forces in Iraq.²² In that case, the court accepted the government's specific "assessment that disclosure of the PSC company names might very well be expected to endanger the life or safety of military personnel, PSC employees, and civilians of Iraq."²³

Although Exemption 7(F)'s coverage is in large part duplicative of that afforded by Exemption 7(C), it is potentially broader in that no balancing is required for withholding under Exemption 7(F),²⁴ so agencies should give careful consideration to the added measure of protection that it affords in all law enforcement contexts.²⁵ Indeed, it is difficult to imagine any circumstance in which the public's interest in disclosure could outweigh the personal safety of any individual.²⁶

²⁰ Herrick's Newsletter, 2006 WL 1826185, at *8-9.

²¹ Id. at 9 (citing Garcia, 181 F. Supp. 2d at 378).

²² L.A. Times, 442 F. Supp. 2d at 898-900.

²³ Id. at 900.

²⁴ See Raulerson v. Ashcroft, 271 F. Supp. 2d 17, 29 (D.D.C. 2002) ("Unlike Exemption 7(C), which involves a balancing of societal and individual privacy interests, 7(F) is an absolute ban against certain information and, arguably, an even broader protection than 7(C)."); Shores, 185 F. Supp. 2d at 85 (stating that Exemption 7(F), while covering material that also may be subject to Exemption 7(C), "does not require any balancing test"); La-Rouche, 1984 WL 1061, at *8 (stating Exemption 7(F) was properly asserted after the danger to law enforcement personnel was identified); see also FOIA Update, Vol. V, No. 2, at 5. But see ACLU, 389 F. Supp. 2d at 578 (dicta) (rejecting the principle that once threat to life or safety is discerned, no balancing is required in Exemption 7(F) analysis).

²⁵ Accord Attorney General's Memorandum for Heads of All Federal Departments and Agencies Regarding the Freedom of Information Act (Oct. 12, 2001) [hereinafter Attorney General Ashcroft's FOIA Memorandum], reprinted in FOIA Post (posted 10/15/01) ("I encourage your agency to carefully consider the protection of all [applicable] values and interests when making disclosure determinations under the FOIA."); see also FOIA Post, "FOIA Officers Conference Held on Homeland Security" (posted 7/3/03) (identifying homeland security context as within realm of law enforcement for purposes of FOIA protection, and discussing Exemption 7(F) as basis for protecting sensitive homeland security-related information).

²⁶ See Colon v. Executive Office for U.S. Attorneys, No. 98-0180, 1998 WL (continued...)

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In sum, Exemption 7(F) has proven to be of great utility to law enforcement agencies, given the lessened "could reasonably be expected" harm standard now in effect.²⁷ It will apply whenever an agency determines that there is a reasonable likelihood that disclosure risks physical harm to anyone.²⁸

EXEMPTION 8

Exemption 8 of the FOIA protects matters that are "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."¹

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695631, at *6 (D.D.C. Sept. 29, 1998) (reiterating that it is not in public interest to disclose identities of law enforcement officers); Franklin, No. 97-1225, slip op. at 15 (S.D. Fla. June 15, 1998) (magistrate's recommendation) (finding that "it is in the public interest" to protect names of DEA agents), adopted (S.D. Fla. June 26, 1998).

²⁷ See, e.g., Spirko v. USPS, 147 F.3d 992, 994 (D.C. Cir. 1998) (protecting handwritten notes about suspects); Brady-Lunny, 185 F. Supp. 2d at 932 (recognizing risk to physical safety present in inmate populations, "given inmates' gang ties, interest in escape, and motive for violence against informants and rivals"; finding that disclosure of detainees' names could threaten security); L.A. Times, 442 F. Supp. 2d at 900 (finding that disclosure of private security contractor (PSC) company names could reasonably be expected to endanger lives of military personnel, PSC employees, and civilians in Iraq); Blanton, 182 F. Supp. 2d at 86 (withholding the identities of "non-law enforcement persons who assist the government in its criminal investigation (such as persons in the Witness Protection Program)"); Garcia, 181 F. Supp. 2d at 373 (protecting the personal information of any of the agents or other witnesses whose identities are contained in a file); Crompton, No. 95-8771, slip op. at 16 (C.D. Cal. Mar. 26, 1997) (finding withholding of agents' names, signatures, and identifying information proper).

²⁸ See Attorney General's 1986 Amendments Memorandum 18 & n.34 (Dec. 1987) (suggesting that Exemption 7(F) as amended be applied whenever there is any likelihood of harm); see also, e.g., Dickie v. Dep't of the Treasury, No. 86-649, slip op. at 13 (D.D.C. Mar. 31, 1987) (upholding application of Exemption 7(F) as amended based upon agency judgment of "very strong likelihood" of harm); see also FOIA Update, Vol. XV, No. 2, at 3; Attorney General Ashcroft's FOIA Memorandum, reprinted in FOIA Post (posted 10/15/01) (emphasizing federal government's commitment to enhancing effectiveness of law enforcement agencies).

¹ 5 U.S.C. § 552(b)(8) (2000 & Supp. IV 2004).