

## OVERVIEW LIST OF SELECTED FREEDOM OF INFORMATION ACT DECISIONS

The decisions listed below are suggested as basic reading for those who are new to Freedom of Information Act (FOIA) work or are in need of a refresher in the field. It is not intended to be a list of leading decisions. Rather, the purpose of the list is to provide a balanced introduction to the principal recurring issues in FOIA litigation. It should be remembered that there remain unresolved issues under the FOIA and that the interpretations set forth in the various decisions listed below are not in all instances universally accepted.

(b) (5), deliberative process	Access Reports v. DOJ, 926 F.2d 1192 (D.C. Cir. 1991).
(b) (1), E.O. 12065, E.O. 12356, (b) (5), deliberative process	Afshar v. Dep't of State, 702 F.2d 1125 (D.C. Cir. 1983).
(b) (3)	Am. Jewish Cong. v. Kreps, 574 F.2d 624 (D.C. Cir. 1978).
(b) (7)(C), "Glomar" denial	Beck v. DOJ, 997 F.2d 1489 (D.C. Cir. 1993).
(b) (6)	Bibles v. Or. Natural Desert Ass'n, 519 U.S. 355 (1997) (per curiam).
Personal records	Bureau of Nat'l Affairs, Inc. v. DOJ, 742 F.2d 1484 (D.C. Cir. 1984).
Reverse FOIA, (b) (6)	Campaign for Family Farms v. Glickman, 200 F.3d 1180 (8 <sup>th</sup> Cir. 2000).
Fee waiver (Reform Act)	Carney v. DOJ, 19 F.3d 807 (2d Cir. 1994), cert. denied, 513 U.S. 823 (1994).
(b) (4)	Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin., 244 F.3d 144 (D.C. Cir. 2001).
(b) (3), 50 U.S.C. §403(d) (3)	CIA v. Sims, 471 U.S. 159 (1985).
Reverse FOIA, (b) (3), 18 U.S.C. §1905, (b) (4), discretionary release	Chrysler Corp. v. Brown, 441 U.S. 281 (1979).
Reverse FOIA, (b) (3), 18 U.S.C. §1905, (b) (4)	CNA Fin. Corp. v. Donovan, 830 F.2d 1132 (D.C. Cir. 1987), cert. denied, 485 U.S. 977 (1988).
(b) (5), attorney-client privilege, attorney work-product privilege, deliberative process	Coastal States Gas Corp. v. DOE, 617 F.2d 854 (D.C. Cir. 1980).
(b) (6)	Core v. United States Postal Serv., 730 F.2d 946 (4 <sup>th</sup> Cir. 1984).
(b) (4)	Critical Mass Energy Project v. NRC, 975 F.2d 871 (D.C. Cir. 1992) (en banc), cert. denied, 507 U.S. 984 (1993).
(b) (2)	Crooker v. ATF, 670 F.2d 1051 (D.C. Cir. 1981) (en banc).
(b) (7)(A)	Crooker v. ATF, 789 F.2d 64 (D.C. Cir. 1986).
(b) (6)	DOD v. FLRA, 510 U.S. 587 (1994).
(b) (7)(D), assurance of confidentiality	DOJ v. Landano, 508 U.S. 165 (1993).

(b) (7)(C)	DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989).
Agency records, improper withholding	DOJ v. Tax Analysts, 492 U.S. 136 (1989).
(b) (5), inter- or intra-agency memoranda	Dep't of the Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1 (2001).
(b) (6)	Dep't of State v. Ray, 502 U.S. 164 (1991).
(b) (6)	Dep't of State v. Wash. Post Co., 456 U.S. 595 (1982).
(b) (2), (b) (6), reasonably segregable	Dep't of the Air Force v. Rose, 425 U.S. 352 (1976).
(b) (2)	Dirksen v. HHS, 803 F.2d 1456 (9 <sup>th</sup> Cir. 1986).
(b) (5), disclosure to Congress, inter- or intra-agency memoranda	Dow Jones & Co. v. DOJ, 917 F.2d 571 (D.C. Cir. 1990).
(b) (7), (b) (7)(C), law enforcement purpose	FBI v. Abramson, 456 U.S. 615 (1982).
(b) (5), commercial privilege	Fed. Open Market Comm. v. Merrill, 443 U.S. 340 (1979).
(b) (5), attorney work-product privilege	FTC v. Grolier Inc., 462 U.S. 19 (1983).
(b) (5), deliberative process, inter- or intra-agency memoranda	Formaldehyde Inst. v. HHS, 889 F.2d 1118 (D.C. Cir. 1989).
Agency, agency records	Forsham v. Harris, 445 U.S. 169 (1980).
(b) (3), Fed.R.Crim.P. 6(e), (b) (7)(C)	Fund for Constitutional Gov't v. NARS, 656 F.2d 856 (D.C. Cir. 1981).
(b) (3), 50 U.S.C. §403, "Glomar" denial	Gardels v. CIA, 689 F.2d 1100 (D.C. Cir. 1982).
(b) (1), Congressional records, duty to search	Goland v. CIA, 607 F.2d 339 (D.C. Cir. 1978), vacated in part & reh'g denied, 607 F.2d 367 (D.C. Cir. 1979), cert. denied, 445 U.S. 927 (1980).
(b) (1), E.O. 12356, deference to agency judgment	Goldberg v. Dep't of State, 818 F.2d 71 (D.C. Cir. 1987), cert. denied, 485 U.S. 904 (1988).
Improper withholding	GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375 (1980).
(b) (3), 50 U.S.C. §403, adequacy of agency affidavit, "mosaic," summary judgment	Halperin v. CIA, 629 F.2d 144 (D.C. Cir. 1980).
In camera inspection	Ingle v. DOJ, 698 F.2d 259 (6 <sup>th</sup> Cir. 1983).
Agency, improper withholding, personal records	Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136 (1980).
Adequacy of search, reasonably segregable	Krikorian v. Dep't of State, 984 F.2d 461 (D.C. Cir. 1993).
Waiver of exemption (unauthorized release)	Laborers' Int'l Union v. DOJ, 578 F. Supp. 52 (D.D.C. 1983), aff'd, 772 F.2d 919 (D.C. Cir. 1984).
(b) (1), E.O. 11652, (b) (2), (b) (7), (b) (7)(C), (b) (7)(D), belated classification, law enforcement purpose	Lesar v. DOJ, 455 F. Supp. 921 (D.D.C. 1978), aff'd, 636 F.2d 472 (D.C. Cir. 1980).
(b) (2)	Maricopa Audubon Soc'y v. United States Forest Serv., 108 F.3d 1082 (9 <sup>th</sup> Cir. 1997).

(b) (5), attorney work-product privilege	Martin v. Office of Special Counsel, 819 F.2d 1181 (D.C. Cir. 1987).
(b) (7) (A), waiver of exemption (failure to assert in litigation)	Maydak v. DOJ, 218 F.3d 760 (D.C. Cir. 2000), reh'g denied, No. 98-5492 (D.C. Cir. Oct. 30, 2000), stay granted (D.C. Cir. Nov. 29, 2000), cert. denied, 533 U.S. 950 (2001).
Fee waiver	McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282 (9 <sup>th</sup> Cir. 1987).
(b) (7) (C)	McCutchen v. HHS, 30 F.3d 183 (D.C. Cir. 1994).
Reverse FOIA, (b) (4)	McDonnell Douglas Corp. v. NASA, 180 F.3d 303 (D.C. Cir. 1999), reh'g denied, No. 98-5251 (D.C. Cir. Oct. 6, 1999).
(b) (7), law enforcement purpose	Mittleman v. OPM, 76 F.3d 1240 (D.C. Cir. 1996).
(b) (5), discretionary release, waiver of exemption	Mobil Oil Corp. v. EPA, 879 F.2d 698 (9 <sup>th</sup> Cir. 1989).
(b) (5), deliberative process, reasonably segregable	Montrose Chem. Corp. v. Train, 491 F.2d 63 (D.C. Cir. 1974).
(b) (6)	Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873 (D.C. Cir. 1989), cert. denied, 494 U.S. 1078 (1990).
(b) (7) (A)	NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214 (1978).
(a) (2) (A), (b) (5), deliberative process	NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975).
(b) (4)	Nat'l Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974).
Fee waiver	Nat'l Treasury Employees Union v. Griffin, 811 F.2d 644 (D.C. Cir. 1983).
(b) (2)	Nat'l Treasury Employees Union v. United States Customs Serv., 802 F.2d 525 (D.C. Cir. 1986).
Scope of request	Nation Magazine v. United States Customs Serv., 71 F.3d 885 (D.C. Cir. 1995).
(b) (4)	9 to 5 Org. for Women Office Workers v. Bd. of Governors of the Fed. Reserve Sys., 721 F.2d 1 (1 <sup>st</sup> Cir. 1983).
(b) (7) (A), FOIA as a discovery tool	North v. Walsh, 881 F.2d 1088 (D.C. Cir. 1989).
Waiver of exemption	North Dakota ex rel. Olson v. Dep't of the Interior, 581 F.2d 177 (8 <sup>th</sup> Cir. 1978).
Exhaustion of administrative remedies	Oglesby v. Dep't of the Army, 920 F.2d 57 (D.C. Cir. 1990).
(b) (6)	Painting & Drywall Work Pres. Fund v. HUD, 936 F.2d 1300 (D.C. Cir. 1991).
Injunction against improper agency practices, jurisdiction	Payne Enters. v. United States, 837 F.2d 486 (D.C. Cir. 1988).
(b) (5), reasonably segregable	Petroleum Info. Corp. v. Dep't of the Interior, 976 F.2d 1429 (D.C. Cir. 1992).

(b) (2), reasonably segregable	PHE, Inc. v. DOJ, 983 F.2d 248 (D.C. Cir. 1993).
Exhaustion of administrative remedies	Pollack v. DOJ, 49 F.3d 115 (4th Cir. 1995), cert. denied, 516 U.S. 843 (1995).
(b) (7), law enforcement purpose	Pratt v. Webster, 673 F.2d 408 (D.C. Cir. 1982).
Cut-off date of request	Pub. Citizen v. Dep't of State, 276 F.3d 634 (D.C. Cir. 2002).
(b) (1), waiver of exemption	Pub. Citizen v. Dep't of State, 11 F.3d 198 (D.C. Cir. 1993).
In camera inspection	Quinon v. FBI, 86 F.3d 1222 (D.C. Cir. 1996).
(a) (2) (A), (b) (5)	Renegotiation Bd. v. Grumman Aircraft Eng'g Corp., 421 U.S. 168 (1975).
(b) (5), deliberative process	Russell v. Dep't of the Air Force, 682 F.2d 1045 (D.C. Cir. 1982).
(b) (5), agency, waiver of exemption (failure to assert in litigation)	Ryan v. DOJ, 617 F.2d 781 (D.C. Cir. 1980).
(b) (5), deliberative process	Schell v. HHS, 843 F.2d 933 (6 <sup>th</sup> Cir. 1988).
Selective disclosure	Schiffer v. DOJ, 78 F.3d 1405 (9 <sup>th</sup> Cir. 1996).
(b) (2)	Schwamer v. Dep't of the Air Force, 898 F.2d 793 (D.C. Cir. 1990).
(b) (3), Fed.R.Crim.P. 6(e), (b) (5), attorney work-product privilege, deliberative process	Senate of P.R. v. DOJ, 823 F.2d 574 (D.C. Cir. 1987).
(b) (6), waiver of exemption	Sherman v. Dep't of the Army, 244 F.3d 357 (5 <sup>th</sup> Cir. 2001).
(b) (5), deliberative process, incorporation by reference	Skelton v. United States Postal Serv., 678 F.2d 35 (5 <sup>th</sup> Cir. 1982).
(b) (7) (A), reasonably segregable	Solar Sources, Inc. v. United States, 142 F.3d 1033 (7 <sup>th</sup> Cir. 1998).
Agency, equitable discretion	Soucie v. David, 448 F.2d 1067 (D.C. Cir. 1971).
Statute of limitations	Spannaus v. DOJ, 813 F.2d 1285 (D.C. Cir. 1987).
(b) (6), (b) (7) (C), law enforcement purpose	Stern v. FBI, 737 F.2d 84 (D.C. Cir. 1984).
Burden of proof, Vaughn Index	Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).
(b) (5), FOIA as a discovery tool	Weber Aircraft Corp. v. United States, 465 U.S. 792 (1984).
Attorney's fees	Weisberg v. DOJ, 848 F.2d 1265 (D.C. Cir. 1988).
Agency records	Wolfe v. HHS, 711 F.2d 1077 (D.C. Cir. 1983).
(b) (5), deliberative process	Wolfe v. HHS, 839 F.2d 768 (D.C. Cir. 1988) (en banc).