

National Archives and Records Administration

NARA 1601
January 10, 2002

SUBJECT: Screening Federal Records for Information Covered by FOIA Exemptions

TO: Office Heads, Staff Directors, ISOO, NHPRC, OIG

Purpose of this transmittal memo. This transmits a new directive that outlines Freedom of Information Act (FOIA) exemptions most prevalent in NARA holdings and procedures that staff must use to screen Federal records for these exemptions before releasing records to the public.

Why are we issuing this directive? The Office of Records Services—Washington, DC (NW), the Office of Regional Records Services (NR), and the Office of Presidential Libraries (NL) have custody of Federal records requiring screening. This directive informs staff of measures that must be taken in order to ensure the proper screening of NARA holdings. In conjunction with the implementation of this directive, each office with responsibility for records screening must distribute to the appropriate staff lists of records requiring screening.

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Archivist of the United States

Attachment

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SUBJECT: Screening Federal Records for Information Covered by FOIA Exemptions

1601.1 What is the purpose of this directive?

This directive provides guidance to employees who are responsible for screening accessioned records created or maintained by the executive branch agencies of the Federal Government for information exempted from release under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. This includes procedures for NARA staff members in the Office of Records Services, Washington, DC (NW), the Office of Regional Records Services (NR), and the Office of Presidential Libraries (NL) to identify information that must be screened and withdrawn before releasing a series of records.

1601.2 What is the authority for this directive?

Authorities are 44 U.S.C. 2108; 5 U.S.C. 552; 5 U.S.C. 552, as amended; E.O. 12958; and E.O. 13142. The Privacy Act (5 U.S.C. 552a) is a separate statute and does *not* apply to access to our accessioned records.

1601.3 Definitions of terms

The following definitions apply for terms used in this directive.

- a. “Exempted information” refers to information that may be legitimately withheld under one or more of the nine exemptions of the FOIA (see subpar. 1601.5c).
- b. “Records” are materials defined in 44 U.S.C. 3301 that have been accessioned into the National Archives of the United States.
- c. “Redaction” is the process of removing exempted information from a copy of a record made for this purpose in order to release the remaining information to the public.
- d. “Review” is the process of determining if a document contains national security-classified information.
- e. “Screening” is the process of determining if a document contains exempted information that is not national security-classified.

PART 1. POLICY FOR NW, NR, AND NL ARCHIVAL STAFF

1601.4 Who is responsible for implementing this directive?

a. NW, with assistance from NR and NL, is responsible for coordinating a comprehensive program for screening Federal records in the National Archives of the United States before providing public access.

b. NARA employees must screen Federal records for information exempted from release under the FOIA.

1601.5 What are the exemptions to the FOIA?

a. The FOIA is an access statute with the purpose of making available to the public as much information as possible. Most accessioned records are open to the public in their entirety. However, NARA has a responsibility to screen some series of records to identify and withhold information that cannot be made available to the public. Records are screened under the provisions of the FOIA.

b. The FOIA requires that all information contained in the records of Executive Branch agencies of the Federal Government be made available to the public unless the information falls within one of the nine exemptions outlined in the Act. This is the basic guidance that informs all access decisions on the records of executive branch agencies.

c. We make information available unless it falls under one or more of the nine FOIA exemptions:

- (1) National security-classified information ((b)(1));
- (2) Information related solely to the internal personnel rules and practices of an agency ((b)(2));
- (3) Information that is specifically exempted from disclosure by statute ((b)(3));
- (4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential ((b)(4));
- (5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency (with NARA in this case) ((b)(5));
- (6) Personnel and medical files and similar files which, if released, would

cause a clearly unwarranted invasion of personal privacy ((b)(6));

(7) Information compiled for law enforcement purposes and could reasonably be expected to interfere with enforcement proceedings, deprive a person of a right to a fair trial or impartial adjudication, constitute an unwarranted invasion of personal privacy, disclose the identity of a confidential source, disclose sensitive techniques and procedures for law enforcement procedures, or endanger the lives or physical safety of any individual ((b)(7));

(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 ((b)(8)); or

(9) Geological and geophysical information and data, including maps, concerning wells ((b)(9)).

d. Several of the exemptions are more relevant to active, contemporary records than to historical materials. The exemptions that are most applicable to our historical records are (b)(1), (b)(2), (b)(3), (b)(4), (b)(6), and (b)(7). These are explained in more detail in Appendix A.

1601.6 How can I determine whether records require screening?

a. Remember that any withheld information must be compliant with one or more FOIA exemptions. Appendix A describes the exemptions most applicable to NARA holdings. Use Appendix A and the outline of factors to consider in Appendix B as starting points in your evaluation process.

b. Records that are over 75 years old do not require screening, unless they are specifically covered by a Federal statute.

c. In addition, many records that are less than 75 years old do not require screening because they are unlikely to contain exempted information or they have been made available to the public previously by the originating agency.

d. When records are transferred to NARA, we expect the originating agency to indicate on the Standard Form 258, Agreement to Transfer Records to the National Archives of the United States, whether any exempted information may be included in the accession (see 36 CFR §§ 1228.272 and 1228.274). If there is no indication on the SF 258 or other transfer documentation that such records are included in the accession, the records may not require screening. Exceptions to this rule are records series that we know contain exempted information (Appendix A) or meet the requirements described in Appendix B of this directive.

1601.7 What should I do with records series containing national security-classified

information?

Refer record series that include national security-classified information to the Initial Processing and Declassification Division (NWMD) for review or coordination with the agencies that created the records. Contact NWMD immediately about individual records containing security-classification markings located among series previously thought to be unclassified or any marked records found in a nonsecured area. For NL, refer these records to the library archivist dealing with classified materials who must place the records containing classified information in the Library vault.

1601.8 What should I do with records series that contain other information exempt from release under the FOIA?

a. Records series containing other exempted information must be reviewed before release to the public (see Appendix A). Archival units responsible for the records (Life Cycle Control Unit [LICON] in NW, the archival operations staff in NR, and the archival staff in NL) must be aware of those files that may include exempted information and ensure that appropriate measures are in place to have the relevant files screened before release. Consult your office-specific list of records requiring screening for details.

b. Use Appendix B as a guideline for determining whether to screen a series of records.

1601.9 Whom can I contact with screening questions?

For any questions that cannot be resolved in your own unit, staff may contact the Special Access/FOIA LICON (NWCTF) or the FOIA/Privacy Act Officer (NGC). NL staff also may contact the Presidential Materials Staff (NLMS).

PART 2. ADDITIONAL POLICY FOR NW ARCHIVAL STAFF**1601.10 Who has screening responsibilities?**

a. NWMD evaluates the need to screen all newly arrived textual records series or microfilm during the accessioning process. NWMD takes action or recommends further action based on its initial review of the records. The Electronic and Special Media Records Services Division (NWME) evaluates the need to screen all newly arrived electronic series as well as textual records and databases in electronic format, during the accessioning process. NWME takes action or recommends further action based on its initial review of the records. If the electronic records contain classified information, NWME notifies NWMD who determines whether the records can be declassified. The Special Media Archives Services Division (NWCS) evaluates the need to screen all newly arrived non-textual records that are the responsibility of that unit, including still photographs, audio tapes, motion pictures, architectural drawings, and aerial photography. NWCS takes action or recommends further action based on its initial review of the records. If the non-textual records contain national security-classified

information, NWCS notifies NWMD who determines whether the records can be declassified.

b. When newly accessioned records require a systematic declassification review on a page-by-page basis, NWMD also screens the records for any nonclassified exempted information. No subsequent screening by the reference staff is needed.

c. When no declassification is needed or declassification by survey takes place, NWMD does not screen the newly accessioned records for nonclassified exempted information. NWMD alerts the LICON if there is any significant amount of nonclassified exempted information that must be screened before release. NWMD indicates this on the Archival Research Catalog (ARC) description forms, and attaches a "To be Screened" label on the boxes. These labels must be placed so that they do not obscure content or declassification labels. The subsequent screening is coordinated by the LICON and conducted by NWCTF.

d. When records in electronic format are found to contain exempted information, NWME alerts the LICON of this fact by annotating the ARC descriptive forms and annotating the copy of the technical documentation provided to the LICON.

e. When textual records are screened during initial or systematic review, entire records are withdrawn from the file and segregated if they contain information that cannot be released under FOIA. A withdrawal card containing certain identifying information is put in place of the withheld record in the open file. No redaction of exempted information from records is done as part of systematic review.

f. For accessioned records that were not screened by NWMD, LICON staff must follow the guidance in Appendixes A and B to determine whether records must be screened before being made available to researchers. Reference staff should recommend to NWCTF records series of high researcher interest that should be screened as a high priority. Other records that are less in demand are screened upon researcher request.

g. NWCTF conducts all screening of previously accessioned records at NARA in the Washington, DC, area.

1601.11 What happens to withheld items?

a. NARA must inform researchers when exempted information is withheld and why. When a record or file falls within one of the FOIA exemptions, the withheld item is removed from the file and replaced with a withdrawal card that provides a general description of the item (without revealing the exempted information), the date of review, and the reason for withholding. The reason for withholding must be a specific FOIA exemption. The reference unit notifies the requester in writing, that certain information is withheld under specific exemption(s) of the FOIA.

b. During the initial processing and declassification review conducted by NWMD, a record is usually pulled from the open file in its entirety, even if some pages contain no exempted information, to keep the integrity of the record intact. A copy of the entire record with portions redacted, or withdrawal cards indicating pages withheld, is then provided in the open file. The withdrawal cards NWMD uses do not indicate the specific reason for withholding the record(s) for national security reasons.

c. One withdrawal card usually covers one record, but if every page in a file folder is withdrawn, one withdrawal card is usually sufficient. In some cases, multiple contiguous records that were identified as requiring further review may be covered by one withdrawal card.

d. NWMD places all withheld material in a clearly marked folder or envelope and NWCTF stores the withheld material under the case number NWMD issues.

e. A subsequent researcher may request that information cited on a withdrawal card filed with open records be made available. At that point, LICON staff contact NWCTF and request that the material be re-reviewed.

f. An example of a completed withdrawal card is shown in Appendix C.

g. In the past, custodial units routinely screened their own records and put records containing exempted information in special envelopes in the same box as the open file. Any questions about the exemption status of specific withheld records found in envelopes scattered among boxes in open files must be referred to NWCTF.

1601.12 When are records redacted?

a. A FOIA-requested screening of records is not the same process as a systematic review. When a researcher requests a record under the FOIA, we must make available all segregable information from the record that does not fall within one of the specific exemptions. On the other hand, a systematic review consists of the review of full series of records rather than individually requested items or files. Generally, a systematic review does not involve the redacting of records. Records that include exempted information that is identified in a systematic review are withdrawn in their entirety unless the redaction is so minor that it can be accomplished quickly.

b. When redaction of a textual record is necessary, NWCTF scans the record into the Archives Document Review and Redaction System (ADRRES) and removes the exempted information from the **scanned copy only**. NWCTF must:

(1) Print the page(s) and place the printed version in the open portion of the file.

(2) Note the specific relevant FOIA exemption or exemptions [(b)(1), (b)(2), (b)(3), etc.] next to the deleted portion(s) on the scanned copy of the document to indicate the reason for withholding.

(3) Place the original page(s) and a copy of the redacted version in a clearly marked folder or envelope and file with other withheld documents.

c. For electronic data files, NWME recommends whether or not to create a public use extract and, if so, when that extract should be created.

d. For textual records in electronic format, NWCTF creates the redacted copy.

PART 3. ADDITIONAL POLICY FOR NR ARCHIVAL STAFF

1601.13 Who has screening responsibilities?

a. The director of archival operations for each region is responsible for overseeing the screening of records, approving screening procedures and decisions, and designating appropriate staff for this work. Screening must be done by archivists, not volunteers, interns, or contractors. Staff and volunteers who have research room responsibilities must refer requests for records requiring screening to the appropriate archivist.

b. Consult any written guidance (such as notice NS95-R47 for Record Groups 75 and 118) that is specific for particular records series as well as the screening guidance in Appendixes A and B of this directive. Contact NR, General Counsel Staff (NGC), NWCTF, or NWMD for assistance with any questions while screening.

c. During accessioning, evaluate the records for any pertinent FOIA exemptions. The SF 258 should indicate any applicable FOIA exemptions. If resources permit, screen any series requiring it during processing. Other series may be screened in part in response to public requests for specific records or files.

d. If necessary, contact NR for assistance with screening records in formats other than textual paper. NR may provide further guidance.

1601.14 What happens to withheld items?

a. We must inform researchers when exempted information is withheld and why. When a record or portion of it falls within one of the FOIA exemptions, remove the withheld item from the file and replace it with a withdrawal card that provides a general description of the item (without revealing the sensitive information), the date of review, and the reason for withholding. The reason for withholding must be a specific FOIA exemption. An example of a completed withdrawal card is shown in Appendix C. Put the withheld material in a clearly marked envelope and keep the exempted records in the same box as the original file.

b. Mark the outside of the box to alert staff to the presence of exempted material inside that must be removed before providing the box to a researcher.

c. If space permits, create a parallel file so that staff will not have to open boxes to remove exempted material.

1601.15 How are records redacted?

If resources permit, regions may redact copies of records when screening is performed during processing. All redacted information must be compliant with one or more exemptions of the FOIA. Generally, redaction occurs after the review of records in response to a FOIA request. When a researcher requests a record under the FOIA, we must make available all segregable information that does not fall within one of the exemptions. When a record must be redacted to remove exempted information, follow these steps:

- a. Make an electrostatic copy of the record.
- b. Mark out the exempted information on the copy with a black marker or cut out the text with a razor blade and annotate the redacted copy with the applicable FOIA exemption(s).
- c. Create an electrostatic copy of the marked copy and place it in the open file. (This can be shown to the researcher.)
- d. Put the original record in a separate file folder marked "Exempted" in red and which also contains the same markings as the original file.
- e. Put the "exempted" folder in the same box as the original file.
- f. Mark the outside of the box with a red dot or other prominent marking to alert staff that the box has been screened and that it also contains records that must be removed before providing the box to a researcher.
- g. "Exempted"-marked envelopes are left on the shelf in place of the box when the open file is given to a researcher to use.

h. If stack space permits, maintain the withheld and redacted items in a parallel file, meaning that steps in subpars. e through g are no longer necessary. Boxes containing the open file must be labeled as “screened.”

i. Researchers requesting to see the original record must file a FOIA request for a re-review of the exempted information. To assist researchers in understanding the FOIA process, refer them to our regulations at 36 CFR 1250, Public Availability and Use of Federal Records.

PART 4. ADDITIONAL POLICY FOR NL ARCHIVAL STAFF

1601.16 Who has screening responsibilities?

a. The supervisory archivists are responsible for overseeing the screening of Federal records. At the Ronald Reagan Library (NLRR), the archives team leader, in conjunction with the assistant director, has this responsibility.

b. Presidential libraries are required to review records on a page-by-page basis because of the high policy level of most of the holdings except when libraries accession Federal records known to be previously screened at the agency of origin or open without restriction. When questions arise during review or screening, consult with NL who may refer you to NGC, NWMD, or NWCTF for additional guidance.

c. Consult your library’s procedures manual for information specific to screening your holdings as well as the screening guidance in Appendixes A and B of this directive. Any national security-classified information must be reviewed for declassification before researchers may see the records. Contact NL who may refer you to NWMD for assistance. In addition to FOIA exemption (b)(1), the most frequently used exemptions in the libraries are (b)(3), (b)(6), and (b)(7)(C).

d. Generally, when a library accessions Federal records, the SF 258 should indicate any applicable FOIA exemptions. If there is a FOIA request for the records soon after accessioning, screen the records as part of processing. As time permits, screen other series after accessioning.

e. Contact NL for assistance on screening records in formats other than textual paper. NL may provide further guidance.

1601.17 What happens to withheld items?

a. We must inform researchers when exempted information is withheld and why. Use your library’s item-level Presidential library withdrawal sheet to account for records removed from open files. The withdrawal sheets provide the date of the document, who it is

from and to, and may provide general information on the record's subject. Note the relevant FOIA exemption(s) and the date of review. Leave completed withdrawal sheets in the front of the pertinent folders in the open files. Place the withheld items in a parallel file.

b. If items are returned to the open file, remove the corresponding entry from the withdrawal sheet--cross out the information, and initial and date the withdrawal sheet.

1601.18 How are records redacted?

When a researcher requests a record under the FOIA, we must make available all segregable information that does not fall within one of the exemptions. When a record must be redacted to remove exempted information, follow these steps:

- a. Make an electrostatic copy of the record.
- b. Mark out the exempted information on the copy with a black marker or cut out the text with a razor blade and annotate the redacted copy with the applicable FOIA exemption(s).
- c. Create an electrostatic copy of the marked copy and place it in the open file. (This can be shown to the researcher.)
- d. Put the original record in a separate file folder marked "Exempted" in red and which also contains the same markings as the original file.
- e. Put the "exempted" folder in the same box as the original file.
- f. Mark the outside of the box with a red dot or other prominent marking to alert staff that the box has been screened and that it also contains records that must be removed before providing the box to a researcher.
- g. "Exempted"-marked envelopes are left on the shelf in place of the box when the open file is given to a researcher to use.
- h. If stack space permits, maintain the withheld and redacted items in a parallel file, meaning that steps in subpars. e through g are no longer necessary. Boxes containing the open file must be labeled as "screened."
- i. Researchers requesting to see the original record must file a FOIA request for a re-review of the exempted information. To assist researchers in understanding the FOIA process, refer them to our regulations at 36 CFR 1250, Public Availability and Use of Federal Records.

**Screening Guidelines for Record Series That Are Likely to Contain Some
National Security-Classified or Other Exempted Information**

National Security Information – FOIA Exemption (b)(1)

- (1) **Records:** National security information can be found in a wide range of record groups, both military and civilian.

Records Likely to Contain Security-Classified Information

Military/Intelligence Records	Civilian Records
Department of Defense	Agency for International Development
Defense Intelligence Agency	Office of Management and Budget
Combined military commands	Department of Justice
Joint Chiefs of Staff	Department of State and Foreign Service Posts
U.S. Army	Drug Enforcement Administration
U.S. Navy	Federal Bureau of Investigation (FBI)
U.S. Air Force	International Trade Administration
U.S. Marines	Peace Corps
Central Intelligence Agency	U.S. Secret Service
National Security Agency	Department of Energy
National Reconnaissance Office	Nuclear Regulatory Commission
	Department of Treasury
	National Aeronautics and Space Administration

- (2) **Restrictions:** NARA may disclose records containing national security-classified information only in accordance with the provisions of Executive Order 12958. We cannot release any classified information but will process all requests for declassification and see that the appropriate review is carried out.

- (3) **Screening Guidelines:** National security-classified records are usually clearly identified by the transferring agency. We store these series in properly secured areas and carry out the appropriate declassification review. To ensure that no classified information was inadvertently included in unclassified files, archivists in NR, NL, and the civil and military LICONs, must spot-check any series dealing with military, intelligence, and foreign policy issues before making the records available to researchers. Archival staff must also be familiar with the special requirements concerning screening for information relating to nuclear weapons. Direct questions regarding potentially classified information to the Director of NWMD (for NW and NR) or to NL (for the Presidential libraries).

Information About Internal Personnel Rules and Practices of an Agency and Protection Against Terrorist Attack and Potential Targets – FOIA Exemption (b)(2)

- (1) Records: This information may be found in a wide range of record formats.
- (2) Restrictions: Records that contain information on substantial internal matters of agencies that could risk circumvention of a legal requirement, such as a statute or an agency regulation, may be withheld from disclosure. This exemption is applicable to internal administrative and personnel matters, including law enforcement manuals, which if disclosed would impede the effectiveness of an agency's law enforcement activities. The Department of Justice has stated that exemption (b)(2) also protects the release of information that assesses an agency's vulnerability to some form of outside interference or harm by identifying those programs, systems, or facilities deemed most sensitive and describing specific measures that can be used to counteract such vulnerabilities.
- (3) Screening Guidelines: This exemption allows for the protection of information relating to critical systems, such as computer security plans or law enforcement or other sensitive communications systems, plans detailing the physical security of a Government building or facility, law enforcement training manuals or investigative manuals used by agencies, agency litigation strategy and tactics, and other information that would facilitate the circumvention of a statute or agency regulation. Current information relating to Federal buildings, bridges, dams, and other structures that could be vulnerable to terrorist attack should be protected. This is most likely to be found among architectural and engineering plans, textual records relating to construction, and aerial photographs. When you have questions about whether historical information is still current, contact NWCTF who may be able to provide assistance in making contacts with the agency of origin.

Information Exempted from Disclosure by Federal Statute – FOIA Exemption (b)(3)

- (1) Records: Only Federal statutes govern access to Federal records. Statutory restrictions on Federal records are imposed by Federal law, not regulation or state or local law. Some statutory restrictions apply to certain records of a specific agency, such as the population census records of the Bureau of the Census. Other statutory restrictions apply to specific types of information wherever it occurs, such as Restricted Data and Formerly Restricted Data (atomic energy information), which may be found in military and civilian records, including those of the Department of Energy, the Nuclear Regulatory Commission, and Department of Defense components.
- (2) Types of Statutory Restrictions:
 - a) Grand Jury Information
 - I. Types of Records: Documents that identify the exact investigative

focus of the grand jury or show the inner workings of the grand jury, such as transcripts of grand jury testimony, lists of grand jury witnesses or jurors, grand jury subpoenas, marked grand jury exhibits, and electronic indices to these types of records.

II. Restriction: Closed under rule 6(e) of the Federal Rules of Criminal Procedure in perpetuity unless opened by court order, and exempt from disclosure under 5 U.S.C. 552(b)(3).

b) Tax Return Information

I. Types of Records: Federal tax returns and documents that incorporate tax return information.

II. Restriction: Closed under 26 U.S.C. 6103 (Internal Revenue Code) and exempt from disclosure under 5 U.S.C.552(b)(3).

c) Electronic Surveillance Records

I. Types of Records: Transcripts of wiretaps, documents that include information gathered from wiretaps, and logs of and subpoenas authorizing wiretaps.

II. Restriction: Closed under 18 U.S.C. 2510 and exempt from disclosure under 5 U.S.C.552(b)(3).

d) Atomic Energy Information

I. Types of Records: Records containing information about weapons of mass destruction.

II. Restriction: Closed under 42 U.S.C. 2162 and exempt from disclosure under 5 U.S.C. 552(b)(3).

e) Intelligence Sources and Methods

I. Types of records: Records containing information about intelligence sources and methods, the names of intelligence agents, the names of certain agency personnel, and agency budgets.

II. Restriction: Closed under 50 U.S.C. 403g and 50 U.S.C. 402 note and exempt from disclosure under 5 U.S.C. 552(b)(3).

f) Historic, archeological, and other protected sites

I. Types of records: Records containing information pertaining to the location of protected sites of historic, archeological, or other value the disclosure of which might harm the resource or impede its use.

II. Restrictions: Closed under the Archeological Resources Protection Act (16 U.S.C. 470), the National Historic Preservation Act (16 U.S.C. 470), or comparable provision. Such restrictions must be specified on the SF 258 by the originating agency.

g) Information collected by the Census Bureau under authority of Title 13

I. Types of records: Records containing demographic or economic

information collected during the Decennial Censuses or period surveys of economic establishments.

II. Restrictions: Only sworn Census Bureau employees may have access under 13 U.S.C. 9; as such, the records are exempt from disclosure under 5 U.S.C. 552(b)(3).

h) Other (b)(3) Statutes

I. Types of Records: Occasionally, an agency transfers records containing information exempt under a less common (b)(3) statute.

II. Restriction: The accessioning documentation (such as the SF 258) must reflect such a restriction and provide the proper citation for the statute. Contact NWCTF or NGC to determine if the statute qualifies as a (b)(3) statute and for screening guidance.

(3) Screening Guidelines: Agencies often cite on the SF 258 or accompanying transfer documentation when records contain information that is restricted by statute and which statute applies. This is the most important source for guidance on this category of restriction. Investigative and intelligence records often contain grand jury, taxpayer, and wiretap information. NWCTF can provide further guidance on what to look for and where.

Trade Secrets and Commercial or Financial Information – FOIA Exemption (b)(4)

(1) Records: Records containing trade secrets and commercial or financial information are typically found in the records of the Departments of Treasury and Commerce, regulatory agencies such as the Food and Drug Administration and other agencies that regulate food processing, drugs, or other manufacturing activities. Independent Counsel records occasionally contain records with this information. In addition, the Cost of Living Council and other agencies established during the Nixon administration to control wages and prices often include such information.

(2) Restrictions: Information in Federal agency records in two broad categories is covered by this exemption: (1) trade secrets; and (2) information that is commercial or financial in nature and obtained from a person and is privileged or confidential. This exemption protects the interests of the Government and submitters of information. Information may be closed under the Trade Secrets Act if the transferring agency cited the Act on transfer documents. In records less than ten years old, FOIA exemption (b)(4) can apply even if the Trade Secrets Act was not cited when the records were transferred.

The courts have ruled that the Trade Secrets Act does not meet the test of a (b)(3) statute. The applicability of the statute to information in Federal records should be weighed under exemption (b)(4). Under this exemption, the protection afforded to information tends to erode as time passes. We have generally interpreted this erosion to take place after 10 years, but this decision should be made on a case-by-case basis, as trade secrets can require much longer protection.

(3) Screening Guidelines: Information that meets the standard of a trade secret includes any secret, commercially valuable plan, formula, process or device that is used in making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. Trade secret protection has been recognized for product manufacturing and design information. Information is commercial or financial if it relates to commerce. Examples of items generally regarded as commercial or financial include business sale statistics, research data, technical designs, overhead and operating costs, and information on financial condition. This category of information may be disclosed if, in the judgment of the Archivist, enough time (usually 10 years) has passed that release of the information would not result in substantial competitive harm. In the case of records less than 10 years old, we must notify the party that provided the information of its potential release and must weigh the party's views in the decision to withhold or release the information. If you have questions concerning the application of exemption (b)(4), contact NGC.

Information that would invade the privacy of an individual – FOIA Exemption (b)(6)

(1) Records: Privacy information can be found in the records of many agencies. It is more likely to be in case files that are name retrievable than in other types of records such as policy files. This type of record might include medical information, personal financial data, Social Security numbers, intimate details of an individual's personal or family life, or similar personal data. The privacy information may relate to the subject of the file or to other individuals mentioned in the records.

(2) Restrictions: Screen records if there is a reasonable chance that they may contain information about a living individual that reveals details of a highly personal nature, which if released would constitute a clearly unwarranted invasion of privacy. Withhold such information from files before disclosure if it has not been officially released previously or if it relates to individuals less than 75 years old or events that occurred less than 75 years before the date of screening.

Under limited circumstances (such as researchers conducting statistical studies), you may make available unredacted privacy information to authorized researchers. The information in some cases may also be made available to the person who is the subject of the file. The authorization must be in writing from NARA's Access Review Committee (see 36 CFR 1256.4(c)(2)). Records may be disclosed to staff of the agency that originated the information in the records in the performance of their official duties (see 36 CFR 1256.16(b)(2)).

The Privacy Act (5 U.S.C. 552a) must not be confused with the (b)(6) exemption of the FOIA that covers personal privacy. The Privacy Act is a separate statute and does *not* apply to access to our accessioned records.

(3) Screening Guidelines:

a) If the SF 258 warrants it, you must screen records less than 30 years old concerning living individuals on a page-by-page or record-by-record basis.

b) Similarly, you must spot-check records between 30 years and 75 years old concerning individuals to determine the sensitivity of the information or the likelihood that individuals may be deceased. Sample random containers or containers whose subjects appear to contain potentially exempted information. The majority of the current case law states that the privacy of the dead is not protected. In a few very limited situations, such as for the families of the astronauts killed in the Apollo 1 fire or the Space Shuttle Challenger, we have extended privacy protection to the families of the decedents. If you locate sensitive information during spot-checking, screen the records more carefully.

c) We consider some personal information less sensitive if it concerns individuals who are well-known nationally, regionally, or locally (e.g., politicians and celebrities) because individuals in the public eye generally have less claim to privacy than private citizens. Screening of this kind can be relatively subjective. If you have questions regarding specific cases of what may constitute “in the public eye,” consult with your supervisor, or if appropriate, NWCTF (for NW and NR) or NL (for the Presidential libraries).

d) The protection afforded by personal privacy is limited to living, specifically identifiable, persons. The FOIA’s personal privacy exemptions do not protect actions of corporations, associations, or Governments.

e) Social Security numbers of living persons are exempt from disclosure under FOIA. We screen records that are name retrievable or that have been requested under FOIA for Social Security numbers. We generally do not screen records for Social Security numbers if the records are not name retrievable. For example, if records are arranged chronologically or by subject, such as military operations reports, screen them for Social Security numbers only if otherwise screening. We also do not screen for Social Security numbers in records that have previously been made available to the public by the originating agency.

Information Relating to Law Enforcement Investigations – FOIA Exemption (b)(7)

(1) Records: Records compiled for law enforcement purposes may be found in accessions from the Department of Justice and its components (including the FBI, U.S. Marshals, and U.S. Attorneys), the Judge Advocates General of the military agencies, the Office of Personnel Management, the Bureau of Indian Affairs, National Park Service police, Inspectors General in any agency, the Internal Revenue Service, Independent Counsels, and the General Counsel in any agency.

(2) Restrictions: Investigative records from criminal, civil, or administrative (including background) investigations or information compiled during these investigations may be exempt from disclosure but *only* to the extent that such records or information could:

- a) Reasonably be expected to interfere with ongoing enforcement proceedings;
- b) Deprive a person of a right to a fair trial or an impartial adjudication;
- c) Reasonably be expected to constitute an unwarranted invasion of personal privacy;
- d) Reasonably be expected to disclose the identity of a confidential source or information furnished by a confidential source;
- e) Disclose confidential law enforcement techniques; or
- f) Reasonably be expected to endanger the life or physical safety of any individual.

(3) Screening Guidelines: Law enforcement records less than 75 years old require a page-by-page or record-by-record review. The age and the sensitivity of the particular investigation are especially pertinent in screening law enforcement records. Some matters that were extremely sensitive upon the creation of a file become much less so with the passage of time. Other files may retain their sensitive nature for a much longer time, such as files that pertain to investigations of organized crime, espionage, terrorism, or those in which a foreign Government provides an agency with assistance or information.

You may withhold information in law enforcement files under exemption (b)(7)(C) about a living person that reveals details of a highly personal nature. Law enforcement files often contain information about witnesses and confidential sources in addition to the subject of the file. Privacy concerns apply to all individuals in a file. Such personal information may include, but is not limited to, medical records or information, financial data, discussions of legally or socially forbidden behavior, and unproven allegations of wrongdoing. These decisions are very subjective, but generally, drug use, excessive drinking/alcoholism, prostitution, sexually transmitted diseases, and other issues are recognized as “socially forbidden behavior.” Whether the person discussed is a private citizen or a public figure makes a difference in how we treat the information. Information of this nature is more sensitive in 1970 than in 1930, as an example of how time lessens sensitivity to certain information. (The parties are more likely to still be living if the information was obtained in 1970.) You may withhold this kind of information under (b)(6), but in this case it is the circumstance of an investigation that yields this information, which may or may not be true, so it is exempt under (b)(7)(C) as well. You may withhold information under both exemptions if the information meets the requirements of both exemptions. Screening of this kind can be relatively subjective. If you have questions, consult

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with your supervisor, or if appropriate, NWCTF (for NW and NR) or NL (for the Presidential libraries).

We must withhold under exemption (b)(7)(D) the identities of sources who received promises of confidentiality. We also must withhold the information confidential sources provided, if the information would serve to identify them. This can occur in cases where only one individual or very few people knew the information and the identity of the source(s) can be determined through a process of elimination. We provide this protection to individuals, state, local and foreign authorities, or private institutions that have been promised confidentiality.

We withhold under exemption (b)(7)(E) the discussion of sophisticated law enforcement techniques whose use outside the Government is basically unknown. Use the guidelines listed below:

a) Investigative techniques, such as wiretapping, physical surveillance, fingerprint evaluation, mail covers, body wires, and other types of information collection, are generally well known to the public and mentions or discussions of these techniques in general would not be sensitive.

b) A discussion of these techniques in more detail, such as how wiretaps are installed, the methods and personnel used to conduct a mail cover, or a detailed description of the type of body wire used for different types of surveillance, may be sensitive and subject to protection.

c) In addition, we must protect commonly known information or publicly available information about these matters when, according to the Department of Justice, “the circumstances of their usefulness...may not be widely known,” or “their use in concert with other elements of an investigation and in their totality directed toward a specific investigative goal constitute a ‘technique’ which merits protection.” In these cases, the context of investigative techniques is exempted from release.

d) In the rare case where b) or c) may occur, consult with NWCTF or NGC. These consultations will determine whether additional consultations are needed with a component of the Department of Justice.

Please note that investigative techniques that are detailed in older Government records are not likely to require protection from disclosure.

Additionally, blueprints and drawings that contain sensitive information regarding Federal or other buildings or facilities that still exist may be withheld under (b)(7)(E) and (b)(2).

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Other FOIA Exemptions

NARA's holdings have not contained information protected under exemptions (b)(5), (b)(8), and (b)(9), making guidance for these exemptions unnecessary. Contact NWCTF or NGC for assistance if exempted information is suspected in any records series.

**Factors for Determining Whether to Screen a Series of Records
Before Providing to a Researcher**

A. Age

How old are these records? If they are more than 75 years old, do not screen them unless you know they are withheld under a specific Federal statute.

B. Availability

Were these records open before they came to NARA? If so they are open at NARA. An exception to this may be records protected under exemption (b)(2). See paragraph D below.

C. National Security Classification

While agencies usually inform us when they are transferring records that are national security-classified, occasionally a classified file or record is transferred inadvertently or without proper notification. Classified files bear “Top Secret”, “Secret”, or “Confidential” markings and come from agencies with national security or foreign policy responsibilities, or from offices within the Executive Office of the President. Classified files may also include markings that say “Restricted Data” or “Formerly Restricted Data.” These records include information relating to nuclear weapons. Older records from these agencies may bear markings that say “For Official Use Only” or “Limited Official Use.” These records may contain information that is now considered classified and should be carefully screened to determine if declassification review is necessary. Some records, especially documents created by the White House that are sometimes found in agency files, may bear the marking “Eyes Only.” These records are often unclassified but should be screened in case there is classified information that was not properly identified when the records were created. See subparagraphs 1 through 4 below for more information. Records, especially older records, with no apparent connection to national security sometimes bear a “confidential” stamp. Unless they are from one of the agencies described above, examine these records to establish whether this marking is for purely administrative purposes. Some markings that you may find on older records are:

1) “Eyes Only” is a marking on records used to designate information that was very sensitive at the time, limited for use only by the addressee and immediate staff. This marking is very common on White House documents that may appear in agency files. The information is often unclassified but politically or administratively confidential. Records with this marking must be screened.

2) “For Official Use Only” is a marking on records and refers to records that normally should stay in U.S. Government channels. These records must be screened before

release.

3) “Limited Use Only” is similar to “For Official Use Only” and records with this marking must be screened before release.

4) “Restricted” refers to a security classification level that was revoked in 1954. Records bearing this marking must be referred to NWMD (for NW and NR) for declassification review. In NL, these records must be referred for review to the library archivist in charge of classified materials.

D. Information that Could Be Used for a Terrorist Attack

Records that contain detailed, current information that could be used in a terrorist attack must be evaluated for continued access, if already open, or for withholding if not yet available to the public. According to the Department of Justice, you can exempt from release records that assess an agency’s vulnerability to some form of outside interference or harm by identifying those programs, systems, or facilities deemed most sensitive and describing specific measures that can be used to counteract such vulnerabilities. When records discuss critical systems, such as computer security plans or law enforcement or other sensitive communications systems, plans detailing the physical security of a Government building or facility, law enforcement training manuals or investigative manuals used by agencies, agency litigation strategy and tactics, and other information that would facilitate the circumvention of a statute or agency regulation, this information must be protected.

Still-current information in architectural and engineering plans, textual records relating to construction, and aerial photographs of Federal buildings, bridges, dams, and other strategic structures vulnerable to terrorist attack must be protected. This is a judgment call and the emphasis should be on protecting information that is not easily observable in a publicly-available area. For example, an elevation (architectural plan showing doors, windows, etc., of the external view of one side) of a building in a publicly-available area that could be observed by anyone walking by does not require protection in the same way that detailed engineering plans of a building’s internal systems (e.g., HVAC, electrical) would. However, elevations and floor plans for buildings whose public access is tightly controlled are more likely to merit protection.

For more specific information about records of concern, consult your office.

E. Statutory Restrictions

The FOIA incorporates the disclosure prohibitions contained in certain other Federal statutes. We rely on the information provided by the transferring agency to be able to identify records containing information subject to these statutes. Review the SF 258 and other accessioning documents for guidance and consult with NWCTF for additional information. Pay particular

attention to investigative records where such prohibited information is likely to be found. Examples of this type of information include: grand jury, taxpayer, and wiretap information. Automatically screen any series, classified or not, which may contain information on weapons of mass destruction.

F. Commercial and Financial Information

The sensitivity of commercial and financial information is greatly diminished by the time we receive most archival material. The exceptions to this are those bodies of records, such as temporary commissions and independent counsels, that are accessioned immediately upon the closing of an office or investigation, and those agencies or offices in the Government, such as the Food and Drug Administration, with a responsibility for collecting commercial information from the private sector. If such an entity gathered financial or business data, review the records to protect any still sensitive information. This protection does not apply to commercial or financial information created by the Federal Government; rather this applies to information supplied to the Government by outside commercial entities.

G. Personal Privacy

We protect the privacy of living, identifiable, people. Death extinguishes almost all claims of privacy. Be particularly careful of series that can be retrieved by individual names. Screen series that may contain medical information, personal financial data, discussions of family life, or other information on an individual's personal life. In considering whether a series or a record should be screened, pay attention to the age of the individuals described in the series. For example, series such as Indian Boarding School records require screening for a much longer time than those that describe the activities of retirees.

Individuals are entitled to more information about themselves than are others. NARA may release additional information to first-party requesters and their duly authorized representatives. The Privacy Act (5 U.S.C. 552a) must not be confused with the (b)(6) exemption of the FOIA that covers personal privacy. The Privacy Act is a separate statute and does *not* apply to access to our accessioned records.

H. Law Enforcement Information

Screen all law enforcement records less than 75 years old. Law enforcement files include criminal, civil, and administrative or regulatory investigations. In addition to the files of the Department of Justice, U.S. Attorneys and Marshals, the Drug Enforcement Administration, the U.S. Secret Service and the Federal Bureau of Investigation, be alert to law enforcement activities in the records of other agencies. Screen files coming from an Inspector General, a Judge Advocate General, an Independent Counsel, a Bureau of Indian Affairs law enforcement authority, the U.S Park Police, an Administrative Law Judge, or records of a similar nature.

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Withdrawal Form Example

WITHDRAWN ITEM

RG: 449: Records of Independent Counsel Lawrence Walsh

Series: Master Inter-Office Correspondence

Box: 72

Folder: 1992: Volume 9

Date of Document: 6/1/1992

To: Walsh

From: Baker

Subject: Caspar Weinberger case

Reason for Withdrawal: (b)(3) [Rule 6(e) Federal Rules of Criminal Procedure]

Date of Review: