



# **DOJ OIP Improper and Unlawful Standard Glomar Responses With Implicit (b)(1) & (b)(7)**

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# Introduction

Greetings!

I am coming to you today from the ancestral lands of proud, free, unified, inclusive **American** citizens. We The People of the **United** States of America.

The **FOIA Ombudsman** states, "The Classification Subcommittee is working on ideas pertaining to when agencies respond to requests for records by neither confirming nor denying the existence of records, known as the **"Glomar"** **response.**"

This presentation addresses DOJ/DOJ OIP Improper and Unlawful Standard Glomar Response combined with implicit (b)(1) (national security) and (b)(7) (law enforcement) Response, and it is directly related to the Committee's work.

Please consider words of proud American citizens: Gouverneur Morris, Abraham Lincoln and Martin Luther King.

**We The People**, enshrined in our Constitution, will not again be a house divided against ourselves no matter the rhetoric. In 1865, 165 years ago, we fought and

won a bloody war to advance equality of opportunity, not guaranteed equity of outcomes as we are all unique in our pursuit of our dreams. Messy as it sometimes is, that is Our history. The greatest nation in the history of the world.

Let us all be judged by the content of our character.

God bless the **United** States of America!

Thx. God bless.

# DOJ/DOJ OIP Improper Glomar Plus B1 & B7 Language

DOJ and DOJ OIP improperly/unlawfully include a standard Glomar response and implicit Exemption 1 (national security) and Exemption B7 (law enforcement) exemptions in all of FOIA Initial Determination Letters.

DOJ states:

“For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. ”

# What is a Glomar Response & When Appropriate

(Extracted from <https://foia.wiki/wiki/Glomer>)

A so-called "Glomar" response is one in which an agency refuses to confirm or deny the existence of responsive records.

## History of the Glomar Response

The term "Glomar" originates from a case related to the CIA's classified Glomar Explorer project, in which the agency sought to recover materials for military and intelligence purposes from a sunken Soviet submarine in the Pacific Ocean.<sup>[1]</sup> After a document describing the project was leaked, the CIA attempted to convince the news media not to publish the story, and a journalist submitted a FOIA request seeking records related to these attempts by the agency.<sup>[2]</sup> However, the court held the agency could classify the fact of the existence of responsive records itself.<sup>[3]</sup>

## Applicability

Courts have held that agencies "may refuse to confirm or deny the existence of records where to answer the FOIA inquiry would cause harm cognizable

under a[] FOIA exception.”<sup>[4]</sup>

In the context of litigation, an agency defending a Glomar response must provide the court with “a public affidavit explaining in as much detail as is possible the basis for its claim that it can be required neither to confirm nor to deny the existence of the requested records.”<sup>[5]</sup> It is difficult to overcome the high level of deference courts accord agencies in the context of Glomar responses.<sup>[6]</sup> In upholding the CIA’s issuance of a Glomar response to a request for CIA drone information, a court ruled that the standard to be applied was not whether it subjectively, wholly agreed with the agency’s evaluation of the harm in release, but whether “the Agency’s judgment objectively survives the **test of reasonableness**, good faith, specificity, and plausibility.”<sup>[7]</sup>

See [FOIA Update: OIP Guidance: Privacy "Glomarization" | OIP | Department of Justice](https://www.justice.gov/oip/blog/foia-update-oip-guidance-privacy-glomarization) (<https://www.justice.gov/oip/blog/foia-update-oip-guidance-privacy-glomarization> )

“Such an extraordinary response can be justified only when the confirmation or denial of the existence of responsive records would, in and of itself, reveal exempt information. *See FOIA Update*, Spring 1983, at 5.”

# What is Exemption (b)(1) & When Appropriate

(Extract from DOJ

[https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption1\\_0.pdf](https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption1_0.pdf) )

## **FOIA Exemption 1**

(b)(1) applies to information which is currently and properly classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations.  
(emphasis added)

## **The Relationship Between the FOIA and Classification**

When requested under the FOIA, information will be **withheld if it is currently and properly classified** pursuant to Section 1.4 of Executive Order 13526 (formerly E.O. 12958, as amended)



# What is Exemption (b)(7) & When Appropriate

(Extract from <https://www.justice.gov/oip/foia-guide-2004-edition-exemption-7>)

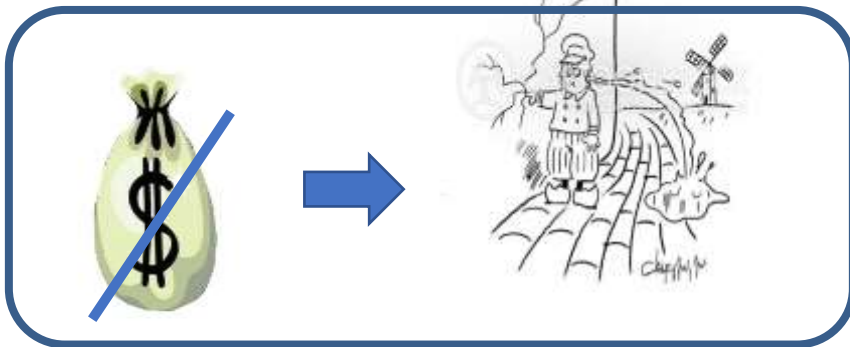
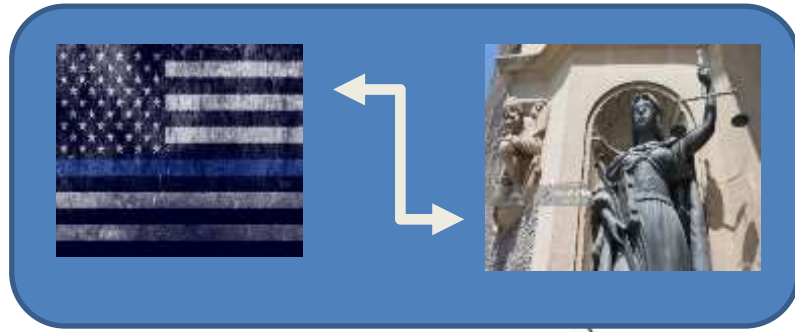
Exemption 7 of the FOIA, as amended, protects from disclosure "records or information compiled for law enforcement purposes, **but only to the extent** that the production of **such law enforcement records** or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual." <sup>(1)</sup>

# Why DOJ Standard Glomar + B1 + B7 is Improper/Unlawful

DOJ & DOJ OIP global/standard application is applied to every routine FOIA request, including those that have nothing whatsoever to do with national security or law enforcement or records currently and properly classified. Some of my routine FOIA requests to DOJ include:

- DOJ 18-A. Inquires from Congress and the Public. DOJ-2019-001220
- DOJ 18-B. DOD initial and final FY 2017 Annual FOIA Report
- DOJ 19-A. Records of Communications Hammond
- DOJ 19-C. DOD FY 2017 Annual FOIA Reports Records
- DOJ 19-D. DOD FY 2017 Chief FOIA Officer Report FY 2017
- DOJ 19-E. FOIA.gov extract of Agency names and FOIA email contacts
- DOJ 20-A. FOIA.gov User Guide
- DOJ 21-A. 2019 Annual FOIA Report Raw Data
- DOJ 21-B. Records of DOJ Inquiry of Sep 21, 2017 5.58 am
- DOJ 21-C. OIP Standard Operating Procedures
- DOJ 21-D. Privacy Waivers
- DOJ 21-E. OIP Compliance Inquiry re APPEAL DON-NAVY-2019-005596
- DOJ 21-F. FOIAonline Records
- DOJ 21-G.FOIA STAR
- DOJ 21-H. Talebian Performance Standards
- DOJ 21-I. Moot Appellate Determinations DOJ OIP
- DOJ 21-L. DOJ OIP 155 Moot Appellate Determinations
- DOJ 21-M. 2017 Complaine Inquiry Case Numbers

# Absent Oversight & \$\$, FOIA Dies in Darkness & Neglect



OGIS Budget. Not adjust for inflation or mandatory pay increases.	
	\$ in Thousands Requested
FY 2022	\$1,588 (Not funded.CR.)
FY 2021	\$1,289
FY 2020	\$1,212
FY 2019	\$1,317
FY 2018	\$1,012
FY 2017	\$1,114
FY 2016	\$1,094
FY 2015	\$913
FY 2014	\$1,074
<b>FY 2013</b>	<b>\$1,629</b>
FY 2012	\$1,529

- For OGIS, the situation is dire. OGIS is tasked with FOIA compliance and mediation. OGIS had **\$1.629M In 2013** with a mediation caseload of 300 –400 cases per year. That grew to over **4,600 cases in 2019** with only **\$1.2M by 2020**, despite inflation and mandatory pay raises. All the while, **NARA** got every dime that they asked for in 2019: **\$377.8M**.
- DOJ OIP similarly states a “lack of resources.”

# We The People. Declaration of Independence!

I am coming to you today from the ancestral lands of proud, free, unified, inclusive American citizens. **We The People of the United States of America.**

Thank you considering my oral comments and written public comments.

I would like to close with words of proud American citizens: Gouverneur Morris, Abraham Lincoln and Martin Luther King.

**We The People**, enshrined in our Constitution, will not again be a house divided against ourselves no matter the rhetoric. In 1865, 165 years ago, we fought and won a bloody war to advance equality of opportunity, not guaranteed equity of outcomes as we are all unique in our pursuit of our dreams. Messy as it sometimes is, that is Our history. The greatest nation in the history of the world.

**Let us all be judged by the content of our character.**

**God bless the United States of America!**

# The Declaration of Independence IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,  
When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed a design to

JULY 4, 1776.

United States of America

