

Guidance Defining Exemption Categories for 9/11 Commission Records

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Part 1 Scope of subpart.

This guidance applies only to the records of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) accessioned into the National Archives and Records Administration.

Part 2 Purpose of subpart.

The purpose of this subpart is to define the records exemption categories used during the processing of the Commission's records. NARA is processing the records of the 9/11 Commission under guidelines established by the Commission when the records were archived. As a legislative branch entity, the Commission was not subject to the provisions of the Freedom of Information Act (5 U.S.C. 552). These records retained their status as legislative branch records after they were accessioned into NARA custody. See 36 C.F.R. 1250.6. The nature and currency of the Commission's records require additional exemptions beyond NARA's General Restrictions (36 CFR 1256.10-18); however, several exemptions listed below mirror those General Restrictions.

Part 3 Personal Privacy

a) Records.

Records containing information about a living individual of a private or personal nature that could reasonably be expected to cause a clearly unwarranted invasion of privacy, including but not limited to information about the physical or mental health or the medical or psychiatric care or treatment of the individual, and that (1) contain personal information not known to have been previously made public, and (2) relate to events less than 75 years old. This information includes social security numbers, addresses and telephone numbers of those closely connected with the hijackers and not accused of complicity, and visa and immigration information not compiled for law enforcement purposes.

b) Restrictions.

Such records may be disclosed only to the subject individual or his/her duly authorized representative (the individual requesting access will be required to furnish reasonable and appropriate identification). However, the subject individual or his/her duly authorized

representative will not be granted access to records containing the following categories of information: (1) Investigatory material compiled for law enforcement purposes or if supplied under an expressed promise of confidentiality; (2) Security classified information; (3) Information exempt from disclosure by statute.

Part 4 Law Enforcement Privacy /Law Enforcement Sensitive

a) Records.

Records compiled for law enforcement purposes, such as records of the Federal Bureau of Investigation and records of the Bureau of Immigration and Customs Enforcement and its precursors. This includes records that reveal the name of undercover law enforcement personnel.

b) Restrictions.

Privacy: Such records may be disclosed only (1) if the release of the information would not constitute an unwarranted invasion of personal privacy, (2) if the release of the information would not endanger the safety of law enforcement personnel, (3) if, in the judgment of the Archivist of the United States, the passage of time is such that the public interest in disclosure outweighs the continued need for confidentiality.

Sensitive: Such records may be disclosed only (1) if the release of the information does not interfere with enforcement proceedings, and (2) if confidential sources and/or confidential information are not revealed, and (3) confidential investigative techniques are not described, and (4) if the release of the information would not endanger the safety of law enforcement personnel, and (5) if the release of the information would not disclose techniques or procedures that could reasonably be expected to risk circumvention of the law, or (6) if, in the judgment of the Archivist of the United States, the passage of time is such that: (i) the safety of persons is not endangered, and (ii) the public interest in disclosure outweighs the continued need for confidentiality.

Part 5 Working-level Employee

a) Records.

Records containing names or personal identifiers of working-level employees of the Department of State, the Bureau of Immigration and Customs Enforcement and its precursors, or private corporations who had direct contact with the hijackers or are working-level federal employees who were on duty on September 11, 2001

b) Restrictions.

The names of these employees or personal identifiers cannot be released unless the subject's contact with the hijackers is publicly known or the fact of the individual's duty status on that day is publicly known.

Part 6 First Responder/Family Privacy

a) Records.

Records that contain information concerning the events in New York City, the Pentagon, and within the hijacked airplanes on September 11, 2001.

b) Restrictions.

The 9-1-1 calls and gruesome details of deaths and injuries, unless otherwise publicly known, are withheld out of deference to the privacy of the first responders and the surviving family members of the victims of the terrorist attacks. Also withheld is information about victims or their families that has not previously been made public.

Part 7 Confidential Source

a) Records.

Records containing names or personal identifiers that would reveal the identity of a confidential source.

b) Restrictions.

Such records could be disclosed if they could not 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 investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source.

Part 8 Classified (National Security) Information

a) Records.

Records containing information regarding national defense or foreign policy classified under Executive Order 12958, as amended, or a previous Executive Order.

b) Restrictions.

Such records may be disclosed only in accordance with the provisions of such Executive order and its implementing directive.

Part 9 Closed by Statute

a) Records.

Records containing information which is specifically exempted from disclosure by statute.

b) Restrictions.

Such records may be disclosed only in accordance with 44 USC 2108.

Part 10 New York City Agreement

a) Records.

Memoranda for the record (MFRs) that describe the interviews with New York City firefighters and policemen whose oral histories were not released by New York City in the lawsuit filed by the *New York Times* (4 NY 3d 477).

b) Restrictions.

The MFRs of firefighters and policemen whose oral histories were not released as a result of the *New York Times* lawsuit are withheld under an agreement between the Commission and the New York City government.

Part 11 Agency Internal Matters

a) Records.

Records that contain sensitive internal agency information the disclosure of which would risk circumvention of legal requirements, i.e., protections to life or safety.

b) Restrictions.

Such records may be disclosed only if they do not compromise critical infrastructure information (as defined in 42 USC 5195c(e) (Supp III 2003)) employed to protect against incapacity of vital systems and assets, the loss of which would have a debilitating impact on security, national economic security, national public healthy or safety