

## ***FREEDOM OF INFORMATION ACT (FOIA)***

Enacted by Congress in 1966, and expanded in 1996 to cover electronic records,<sup>1</sup> the United States Freedom of Information Act (FOIA)<sup>2</sup> generally provides that any person has the right to obtain access to information contained in the records of federal agencies, unless such information is specifically protected from disclosure by FOIA. With a goal of ensuring an informed citizenry, capable of holding the government accountable, FOIA effectively establishes a statutory right of public access to executive branch information, requiring that virtually every record held by a federal agency be provided to individuals upon request.<sup>3</sup>

FOIA does have limited exemptions and exclusions to the broad disclosure requirements. One example is personal information covered by FOIA Exemption 6. Exemption 6 states that information about individuals in "personnel and medical files and similar files" can be withheld from disclosure by federal agencies when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy."<sup>4</sup> In order to warrant protection under Exemption 6, the information at issue must first meet the threshold requirement of falling into one of three categories – personnel files, medical files and similar files. The Supreme Court found that Congress intended these categories to be interpreted broadly and to protect information that "applies to a particular individual."<sup>5</sup> Once it has been established that the information meets this threshold, the focus shifts to whether the disclosure of such information would be an unwarranted invasion of privacy. This requires balancing the public's right to disclosure of the information against the individual's right to privacy. After determining that a protectable privacy interest exists, the public's interest in disclosure of the information will be weighed against the individual's privacy interest in not disclosing the information.

The landmark Supreme Court decision in *United States Department of Justice v. Reporters Committee for Freedom of the Press*<sup>6</sup> governs how privacy interests under Exemption 6 are determined and balanced with public interest in the information. First, the Court clarified that a substantial privacy interest may exist in information that has already been released to the public at some point. Second, the Court held that the identity of the individual or party requesting the information may not be taken into consideration when determining if information should be released and "has no bearing on the merits of his or her FOIA request."<sup>7</sup> When considering the public interest in disclosing the information, the Court ruled that the determination should be based on the nature of the requested information and its relationship to the public interest generally, and not solely the purpose for which

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<sup>1</sup> Electronic Freedom of Information Amendment Acts of 1996, Pub. L. No. 104-231, 110 Stat. 3048 (1996) (codified as amended at 5 U.S.C. 552).

<sup>2</sup> Freedom of Information Act, 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007.

<sup>3</sup> U.S. Dep't of Justice, *Freedom of Information Act Guide* (2004), available at [http://www.justice.gov/oip/introduc.htm#N\\_2\\_](http://www.justice.gov/oip/introduc.htm#N_2_).

<sup>4</sup> 5 U.S.C. § 552(b)(6).

<sup>5</sup> See *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982).

<sup>6</sup> 489 U.S. 749 (1989).

<sup>7</sup> *Id.* at 771.

the request is made. Finally, the Court narrowed the scope of the public interest to the kind of interest to information which will “shed light on an agency’s performance of its statutory duties.”<sup>8</sup>

In addition, Exemption Three protects information if it is “specifically exempted from disclosure by statute, provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.”<sup>9</sup> An example of a statute that may prevent disclosure or discovery of information contained in a registry under FOIA Exemption Three would be the Patient Safety Quality Improvement Act of 2005 if the information met the PSQIA requirements.

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<sup>8</sup> *Id.* at 773.

<sup>9</sup> 5 U.S.C. § 552(b)(3).