

Testimony of Tom Curley

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The Associated Press

On

"Advancing Freedom of Information
in the New Era of Responsibility"

Senate Judiciary Committee

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Chairman Leahy, Ranking Member Sessions and Members of the Committee on the Judiciary, thank you for your invitation to appear before you today as you continue your good work on behalf of open government with this hearing on Freedom of Information.

As it turns out, the timing is excellent. Just two days ago, advocates of open government worldwide celebrated International Right to Know Day. According to the last count I saw, nearly 70 countries have access laws at least partly inspired by our own FOIA. We can be proud of that leadership. But it would be false pride if we don't also remain determined to make FOIA live up to the ideals and values that these laws defend.

I salute this Committee for staying focused on these issues in a year when some thought a time might have arrived when we could take things easier. Many were tempted to believe that eight months after the President committed his administration to transparency, we would be knocking on open doors at federal agencies. After all, we've seen the restoration of FOIA's presumption of disclosure, new tools to make agency data more accessible through Data.gov, and the opening of a conversation about how agencies could be more transparent.

These are certainly welcome signs of good intentions from the top of the executive branch. But it's clear the federal agencies won't be turned so quickly or so easily.

Administrations come and go. This is no time for friends of open government in Congress to relax their efforts to make sure every citizen has the necessary tools for finding out what government is up to.

A federal shield law remains as important as ever, and I'm glad to see the strong effort toward its passage continuing. And I applaud you, Mr. Chairman, and Senator Cornyn, for your re-introduction in March of the OPEN FOIA Act to provide greater scrutiny for FOIA exemptions under FOIA section b(3), about which I'll say more in a moment.

But we need to press on. There's more work to be done. The secrecy reflex at some agencies remains firmly in place, and FOIA still contains relatively weak penalties for those that don't meet their disclosure obligations. Such penalties as there are don't even come into play unless a disappointed requester takes the agency to court, with all the delay and expense that this entails. Meanwhile, powerful interests pressure agencies to say "no," even when the President and his attorney general both have said clearly that transparency is the new watchword.

An example I'm sure you all remember was the flap last spring over the FAA's bird strike database, that collection of reports from airports and air carriers on potentially dangerous collisions between airplanes and birds.

AP reporters and many others started chasing that information in January after a flock of Canada geese near LaGuardia Airport forced an airliner to land in the Hudson River. The

journalists figured that a lot of people who fly in planes might want to know whether that kind of thing happens at airports near them. So they called the Federal Aviation Administration (FAA) and asked for the database. The agency stalled the reporters while it looked for a way to put all the information beyond the reach of FOIA by imposing a special regulation.

The FAA claimed to have two concerns about letting the public see where bird strikes have occurred. The first was that some locations and some airlines are better about reporting than others, so any safety comparisons between airports based on this data would be unreliable. The second was that since the reporting is voluntary, disclosing the data would punish the conscientious airports and might discourage them from reporting diligently in the future.

An agency accountable to the public for fostering safe, efficient air travel, was worrying instead that airline and airport executives might get mad if it started sharing safety information of deep and obvious interest to air travelers.

You may recall that in the end, the Transportation Secretary stepped in under public pressure and put a stop to the nonsense. We finally got the full picture from the bird strike database, and, as far as I can tell, the FAA's world is still spinning on its axis.

I wish I could say that it's now clear the agency is on board with the Obama administration's instructions not to play games in order to avoid disclosing even information that causes no harm except maybe some official embarrassment.

But such is not the case.

After the wraps came off the bird strike database, AP was interested in learning more about why the agency had been so determined to put it beyond the reach of FOIA requests. So we asked in April for correspondence on the subject among the top FAA executives who were involved. It's nearly October, and we're still asking.

The agency claims FOIA exemption b(5) – the one that says agencies don't have to release certain internal pre-decisional documents – allows it to keep the exchanges secret. The FAA is ignoring new Justice Department policy that says this argument should only be used when disclosure would cause *significant and specific* harm.

Why would FAA do this? I submit that this is what agencies are wired to do with requests for public information they consider too sensitive for the public.

As we see from the FAA example and others like it in recent months, notwithstanding the best intentions of the new administration, this Committee's ongoing vigilance is not only appropriate but essential. A FOIA advocate's work is never done.

So, turning to some of that work, I would like to highlight a few areas where FOIA needs our help, starting with the Office of Government Information Services which is only now taking shape in the National Archives and Records Administration, nearly two years after Congress approved its creation.

OGIS is potentially one of the most valuable FOIA amendments ever. A FOIA denial in the past left the requester with only one recourse -- an expensive federal lawsuit. Now citizens and other requesters can look forward to another choice -- advice and an opinion from an unbiased mediator who knows the law.

Some have wondered aloud why we need OGIS when the Justice Department's Office of Information Policy already has the job of helping agencies comply with FOIA. The answer should be obvious. OIP's job is to help agencies. And OIP answers to the Justice Department, which must defend agency decisions to deny disclosures under FOIA. OGIS, on the other hand, will be there to help requesters, a crucial difference.

The first year of OGIS operations is bound to contain some disappointments. In fact, it may take several tries to get OGIS right, and I urge the Committee to oversee its development closely and provide support wherever it can.

Miriam Nisbet's appointment as director strikes us as a strong first step. She appears to have a clear vision of what OGIS can be, along with the passion and energy it will take to realize those ambitions.

But she will be starting the journey with a staff of only six or seven, which makes OGIS smaller than some state open records offices. Pennsylvania's has 10, for example. Connecticut's has more than 20.

And the current OGIS budget of \$1 million is much smaller than what the Congressional Budget Office said the office would need to be effective.

But even with greater resources, success for OGIS would still depend in large part on its ability to engage agencies in mediation and identify improvements that lawmakers and agencies can put into practice. That will require cooperation from the Justice Department. If Justice as a whole doesn't help promote respect for FOIA among federal agencies, OGIS will have a much harder time persuading agencies to engage meaningfully in mediation discussions.

With patience and persistence, the office presents a huge opportunity to deliver more of the benefits of FOIA to the public. I salute the Committee for its continuing support of OGIS implementation.

There are other such opportunities of course, and I referred earlier to one that is already on your radar, the problem of the so-called b(3) exemptions.

As you know, these are provisions embedded in other laws that put certain very specific kinds of information beyond FOIA's reach. They are often inserted with little or no discussion and no public notice, and they now constitute a very large black hole in our open records law. The Sunshine in Government Initiative found about 250 b(3)'s on the books, and about 140 of these show up in agency denial letters in any given year.

In many cases these special exemptions protect information already covered under one or more of the other exemptions in FOIA's section (b). In other cases they are creating whole new categories of information not subject to disclosure.

But the real problem with these exemptions is that writing them into statute forecloses any chance for an impartial determination that a valid reason applies to all the information that's been effectively roped off. Whether or not a general FOIA exemption covers a particular information request is subject to court review. But a statutory exemption for particular information is not.

So, for example, the FAA has a b(3) exemption that lets it withhold information voluntarily submitted to aviation regulators regarding the safety and security of air travel. Yes, this is the b(3) exemption the FAA was planning to use as basis for its proposed new regulation that would have sealed up the bird strike data I mentioned earlier.

Also secret, in similar fashion, are the identities of watermelon growers, the identities of people who handle honey, and the ingredients in cigarettes. B(3) exemptions hide the

private sector advice that government trade representatives and congressional committees use to shape trade policy, and also the studies that chemical plants conduct to determine the impact of any worst-case accident on neighboring communities and the environment.

There may be valid arguments for putting a secrecy label on some of this stuff, although I'd sure like to hear what the watermelon growers and honey handlers have to say for themselves and their need to conceal their activities.

But the point is that whatever valid arguments there may be for secrecy in these areas have not been tested or challenged, or even discussed, in any public forum. And the b(3) exemptions mean that a disappointed FOIA requester will find it nearly impossible to challenge them in court.

Nobody knows exactly how many of these exemptions there are, but agencies use them all the time to stiff-arm our reporters. We're dealing with a couple of them right now that may lead to litigation, although we'll be limited to trying to prove the exemption doesn't actually apply to the particular information we're after. If the court says it does, we're out of luck.

We regarded the OPEN FOIA Act which you, Mr. Chairman, and Senator Cornyn introduced earlier this year as a good and much-needed first step toward reining in this alarming trend. Your proposed statute would make it possible for anyone who is

watching for b(3) exemptions in proposed legislation to spot them easily, since they would have to include a citation to paragraph b(3) of FOIA.

I hope you can keep the OPEN FOIA Act on track toward passage, and I hope Congress will then build on it with some additional steps.

One idea I've heard that's worth considering is legislation you might call a Secrecy Reduction Act, similar in concept to the Paperwork Reduction Act. Such a law would contain three major sections.

First, it would require anyone introducing a statute containing a b(3) exemption to declare it openly, much as earmarks are disclosed. Any b(3) would automatically sunset after a fixed term and be renewed if an extension were warranted. Committees with jurisdiction over FOIA would be given an opportunity to comment on the proposed exemption.

Second, a Secrecy Reduction Act would require the Office of Management and Budget (OMB) to review proposals from federal agencies for b(3) exemptions and limit their use and scope. As you know, Mr. Chairman, b(3) exemptions are often tucked into budget bills that Congress must pass. Defense and intelligence authorization bills are especially likely to contain them. OMB would only allow an agency to propose a b(3) exemption that:

- is essential for achievement of an important agency objective,
- includes provisions for oversight of its use,
- sunsets in five years or less, and

- is publicly disclosed upon introduction.

Third, a Secrecy Reduction Act would require agencies to report regularly on their use of all b(3)'s in denying FOIA requests, so we can learn more about the ones that are already on the books. It appears that nobody has tried before now to figure out how many there are. I have attached SGI's compilation to this testimony.

If I haven't quite worn out my welcome yet, I would like to draw the committee's attention to one additional problem area of long standing, the flawed application by the courts of FOIA's privacy exemptions.

The privacy exemptions are designed to protect information in which an individual has a privacy interest substantial enough to outweigh the public interest in disclosure. Congress intended this balancing test to favor disclosure. The public interest would always trump unless the infringement on the individual's privacy interest was significant. For example, private health information or certain kinds of information from a personnel file might rise to the necessary level.

Unfortunately, starting with the 1989 Supreme Court case *Department of Justice v. Reporters Committee for Freedom of the Press*, the courts have put their thumb on the privacy side of the scale. The presence in a public record of an individual's name alone can be enough to satisfy a court that the privacy interest in that record is substantial.

Meanwhile, the public interest in seeing private information has somehow come to be considered not substantial at all unless the FOIA requester can show reason to believe that disclosure will reveal government misconduct. When information about individuals is involved, the courts are finding that the public has no interest in seeing what its government is up to unless the requester already knows the government has done something wrong. In other words, the public has no substantial interest in seeing how government works on the presumably normal days when it's not lying, cheating or stealing.

Even where the private information has already been available for viewing in public files, courts have found that an agency can deny a request that the data be plucked from its "practical obscurity" and disclosed. Perfect. If they know you can't get to it, they say you can have it. But if they know you can get to it, they say you can't have it. Somebody once wrote a book about "catches" like that.

Many, many FOIA requests have been wrongly denied on the strength of the Supreme Court ruling in *Reporters Committee* and other decisions that have followed its reasoning. Earlier this year, The Associated Press lost two FOIA appeals in the 2nd Circuit, back to back, because of this deeply misguided interpretation of the privacy exemptions.

In the first, AP had asked for reversal of a district court's refusal to order release to AP of the commutation petition of John Walker Lindt, the so-called "American Taliban."

In the second, the Department of Defense won reversal of a district court ruling that AP was entitled to see names and other identifying information about Guantanamo detainees involved in cases of detainee abuse, either as perpetrators or victims, and to disclosure of information from certain detainees' correspondence with their families.

In each instance, the 2nd Circuit panel found that the mere presence of personal information could bring a document within the scope of FOIA privacy protection, and then dismissed AP's arguments that whatever privacy interest Lindh or the detainees might have was easily outweighed by the public interest in disclosure.

In the Lindh case, the court's dismissal was especially striking. AP had argued among other things that contents of a commutation petition would certainly shed light on an agency's operation since it contained a petitioner's firsthand assessment of the fairness of the government's exercise of its clemency powers.

But the court said AP had offered nothing that overcame the government's declaration that Lindh had not based his commutation plea on any claim of government misconduct. That ended the court's search for public interest in government handling of Lindh's claims that his sentence ought to be cut short.

What all this appears to mean is that the public isn't entitled to know what government is up to unless the government is up to no good. And if the government just says it's not

doing anything wrong, that's good enough for the courts, at least where records containing the least bits of information about private individuals are concerned.

Privacy interests and the public interest are both important, and FOIA calls for balancing them carefully. I urge the Committee to examine this issue and consider appropriate amendments to FOIA sections b(6) and b(7). Any such amendment should make it crystal clear that the public interest in disclosure of government-held information is presumed always to be strong, with no special extra tests required for public records that contain information about individuals. And the law must also make it clear that to outweigh the strong public interest, the privacy interest must be truly substantial, involving intimate facts of the kind all reasonable people would recognize as a serious intrusion into personal matters.

Mr. Chairman, Senator Sessions, members of the Committee, thank you very much for allowing me this opportunity to speak to you about these important issues today. And thank you again for your commitment to FOIA and to the liberties it does so much to protect.

EXEMPTION 3 STATUTES Cited by Agencies 1998-2007	
Compiled by The Sunshine in Government Initiative	
Statute as standardized	Description
<i>Note: Quotation marks denote descriptions taken verbatim from agencies.</i>	
References to the United States Code	
2 USC 437g(a)(12)(A)	"Material regarding ongoing investigation of possible FECA [Federal Election Campaign Act] violations"
5 USC 552 Note	Protection of Certain Open Skies Treaty Information
5 USC 552a	Privacy Act of 1974
5 USC 574(f)	Administrative Dispute Resolution Act of 1996 regarding ombudsman procedures under the FOIA.
5 USC 638(f)(2)	"Contracts withheld data generated by contractors who elected to retain their rights in accordance with the retention period to under the contract."
5 USC 7114(b)(4)	"Civil Service Reform Act – Representation Rights and Duties, Labor Unions"
5 USC 7301 note	Records concerning a drug free workplace
5 USC App 7(b) (IG Act)	Protects the identity of employees who provide a complaint or information to the Inspector General
5 USC App 11	Federal Advisory Committee Act
5 USC App 102(f)	provides that most qualified trust information, as sought by the one request concerned, is nonpublic.
5 USC App 105	"Financial Disclosure Reports under the Ethics in Government Act"
5 USC App 107(a)(2)	Financial disclosure information
6 USC 133	"Agency withheld infrastructure information."
7 USC 8	Individual account statements
7 USC 12(a)	Business transactions or market positions of any person and trade secrets or names of customers, and any data or information concerning or obtained in connection with any pending investigation of any person.
7 USC 136h(d)	Manufacturing, processing, production, distribution, sale, and/or inventory information on pesticides
7 USC 136h(g)	"Federal Insecticide, Fungicide, and Rodenticide Act 7 USC 136 h, Section 10 (g): Analytical, health, environmental effects and efficacy data that prohibits registrants [sic] from disclosing information [sic] to foreign competitors."
7 USC 136i-1(b)	"FIFRA (Federal Insecticide, Fungicide & Rodenticide Act): Information that would reveal location where restructured pesticides are applied and/or identity of producers"
7 USC 499f(b)	"Perishable Agricultural Commodities Act: Names of individuals filing violations of the PACA"
7 USC 608d(2)	"Agricultural Marketing Act: Olive Handlers Information"
7 USC 1373(c)	Quantity of burley tobacco sold by producer
7 USC 1502(c)	"FCIC Crop Insurance Act Section 502(c) Personal information provided by the producer (policy info, yield data, etc.)"
7 USC 2018(c)	"Contents of applications or other information furnished by vendors in the Food Stamp Act business"

7 USC 2020(e)(8)	"Information obtained concerning administration or enforcement of the Food Stamp Act."
7 USC 2131 et seq.	Report on administration and enforcement activities.
7 USC 2276	"Identities of respondents and unaggregated survey data"
7 USC 2279b	Operation of Graduate School of Department of Agriculture as Nonappropriated Fund Instrumentality.
7 USC 2426	Application for plant variety protection
7 USC 4608(g)	List of Honey handlers
7 USC 4801-4819	Identity of challenger
7 USC 4908(c)	"Watermelon Research and Promotion Act: List of watermelon growers and handlers"
7 USC 5712(a)(2)	Section 602, Agricultural Act of 1978
7 USC 8401	Agents & Toxins which could be used as weapons of mass destruction
8 USC 1160(b)(6)	"Information on Special Agricultural workers"
8 USC 1186a(c)(4)(C)	Admission qualifications for alien's travel control of citizens and aliens
8 USC 1202(f)	Records pertaining to the issuance or refusal of visas to enter the United States; passport information.
8 USC 1226	Exclusion information
8 USC 1255a(c)(5)	"Legalization Applications"
8 USC 1304(b)	"Registration of Aliens"
8 USC 1367(a)(2)	"Battered spouse"
10 USC 128	"Unclassified Special Nuclear Weapons Information"
10 USC 130	"Unclassified Technical Data with Military or Space Application"
10 USC 130b	"Personnel in Overseas, Sensitive or Routinely Deployable Units"
10 USC 130c	"Certain Sensitive Information of Foreign Governments and International Organizations"
10 USC 424	"Protection of Organizational and Personnel Information for DIA, NRO, and NGA"
10 USC 455	"Maps, Charts, and Geodetic Data; Public Availability"
10 USC 457	"NGA Operational Files"
10 USC 613a(a)	"Promotion Selection Board Proceedings"
10 USC 1102	"Confidentiality of Medical Records"
10 USC 1506(f)	"Debriefing of a Missing Person Returned to U.S. Control During the Period Beginning on July 8, 1959, and ending on February 10, 1996."
10 USC 2305(g)	contractor proposals
10 USC 2371(f)	"Research Projects: Transactions Other Than Contracts and Grants"
10 USC 2485(h)	"Commissaries: Limitations on Release of Commercially Valuable Information"
10 USC 2640(h)	"Authority to Protect Safety-Related Information Voluntarily Provided by an Air Carrier"
12 USC 1829b	"Currency Transaction Reports, Foreign Bank Account Reports, Currency and Monetary Instrument Reports, Suspicious Activity Reports, and Registration of Money Services Businesses."
12 USC 1951-1959	"Currency Transaction Reports, Foreign Bank Account Reports, Currency and Monetary Instrument Reports, Suspicious Activity Reports, and Registration of Money Services Businesses."
12 USC 3403	"Confidentiality of Financial Records"

13 USC 9	"prohibits the use, publication, or examination of any information collected by the Census Bureau, other than for the statistical purposes for which the information was supplied."
13 USC 301(g)	prohibits the disclosure of Shippers' Export Declarations, submitted by shippers to the Census Bureau, unless the Secretary of Commerce determines that nondisclosure would be contrary to the national interest."
15 USC 1 note	Year 2000 Information Readiness and Disclosure Act
15 USC 18a(h)	"Information submitted in connection with the premerger notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976"
15 USC 46(f)	"prohibits the disclosure of 'any trade secrets or any commercial or financial information which is obtained from any person and which is privileged or confidential.'"
15 USC 57b-2(b)	"prohibits the disclosure of any materials received pursuant to compulsory process in a law enforcement investigation."
15 USC 57b-2(f)	Submitted voluntarily to FTC in lieu of compulsory process
15 USC 78m(f)(3)	Confidential portion of Form 13F filed by individual
15 USC 78q(h)(5)	Broker-Dealer Examination Records
15 USC 78s(d)	Records from Foreign Authorities
15 USC 80a-30(c)	Investment Company Examination Records
15 USC 80b-10(b)	"Investment Advisors Examination Records"
15 USC 278n(d)(5)	Certain joint ventures
15 USC 1314(g)	"Documentary material, answers to written interrogatories or transcripts of oral depositions submitted in response to a Civil Investigative Demand (CID)"
15 USC 1335a	Cigarette additive information
15 USC 2055(a)(2)	"Trade secret and other confidential business information."
15 USC 2055(b)(1)	"Information that identifies a particular brand-name of consumer product."
15 USC 2055(b)(5)	"Information submitted under statutory reporting requirement for certain potentially unsafe consumer products."
15 USC 2055(e)(1)	"Information submitted under statutory reporting requirement for certain consumer products involved in product liability actions."
15 USC 2074(c)	"Information that identifies injured persons or those treating injured persons, absent consent."
15 USC 3705(e)(E)	"Centers for Industrial Technology - Reports of Technology Innovations"
15 USC 3710a(c)(7)	prohibits the release of confidential commercial information obtained from a private sector partner.
15 USC 4305(d)	Information submitted under the National Cooperative Research and Production Act of 1993
16 USC 35	"Endangered Species Act, 16 USC 35, cited in error, to protect a survey relating to spotted owls."
16 USC 470hh(a)	"Archaeological Resources Protection Act (1979): Archaeological and Historic sites"
16 USC 470w-3	"National Historic Preservation Act of 1966: Location and nature of historic sites"
16 USC 1533(a)(3)	cited (incorrectly) "to protect the specific location of pygmy-owls in Organ Pipe National Monument."
16 USC 1533(b)(2)	cited (incorrectly) "to protect the specific location of pygmy-owls in Organ Pipe National Monument."
16 USC 1881a	Information concerning fish hauls
16 USC 3844(b)	Administrative requirements for conservation programs

16 USC 4304	"Federal Cave Resources Protection Act of 1988: Information concerning the specific location of any significant cave"
16 USC 5937	"Used to withhold the location of endangered plant species, map locations for paleontological objects, a plan for parkwide eradication proposal and analysis for Point Reyes National Park, and narrative descriptions of objects and their locations."
17 USC 101 et seq.	"to withhold official court transcripts."
17 USC 705	documents pursuant to the Copyright Act of 1976
17 USC 706(b)	Exempts Copies or reproductions of deposited articles retained under the control of the Copyright Office from disclosure
18 USC 208	prohibits release of financial disclosure forms/personal financial interest
18 USC 471-472	Reproduction of currency
18 USC 504	Copies of Food Stamps
18 USC 701	"Official Badges, identification cards. Prohibits the reproduction of official identification media. Used to withhold copies of the IRS employee identification badges and pocket commissions."
18 USC 798(a)	"Communications Intelligence"
18 USC 923 note	"Information required to be maintained by Federal Firearms Licenses and information maintained in the ATF Firearms Tracing System"
18 USC 1461	"Prohibition on Mailing of Obscene Material"
18 USC 1905	Trade secrets
18 USC 2423(a)	Information pertaining to transportation of minors
18 USC 2517	"Intercepted Communications Wiretaps"
18 USC 2703(d)	Electronic communication
18 USC 2721	Driver's License Photograph
18 USC 3123	"Pen register orders"
18 USC 3153(c)(1)	"Retrial services"
18 USC 3509	Information the disclosure of which would identify children involved in criminal proceedings
18 USC 3521	"Witness security information"
18 USC 4208	"Pre-sentence reports"
18 USC 4305(d)	"Information submitted under the National Cooperative Research and Production Act of 1993"
18 USC 5038	"Interviews of Juveniles in Criminal Defense"
19 USC 1337(n)	"confidential business information"
19 USC 1677f	"confidential business information"
19 USC 2155	Advisory Committee Report
20 USC 1232g	Student records (Family Educational Rights & Privacy Act (FERPA))
21 USC 355 note	"exempts any information or documentary material that may have been filed pursuant to the pharmaceutical agreement notification."
21 USC 842	Information acquired during an inspection concerning any method or process which is a trade secret or is confidential business information

21 USC 853	Criminal forfeiture information
21 USC 863	Drug paraphernalia information
21 USC 1175	Drug Abuse Prevention/Rehabilitation
22 USC 1461	Smith-Mundt Act
22 USC 1644	Names of claimants in Holocaust Survivors Claims Program
22 USC 2571	Arms Control and Disarmament Amendments Act of 1989
22 USC 2751 et seq.	"Technical data withheld according to regulations establishing lists or categories of technical data that may not be exported, under the Arms Export Control Act."
22 USC 2778(e)	"Control of Arms Export"
22 USC 4004	Places restrictions on the release of work performance information of Foreign Service employees.
23 USC 403 note	"The identity of individuals in highway traffic accident or research reports."
23 USC 409	Discovery and admission as evidence of certain reports and surveys
25 USC 450 et seq.	Indian Self Determination and Education Assistance Act, to protect sensitive information regarding the tribe's economic development plans and the natural geophysical characteristics of their aboriginal base
25 USC 2103(c)	Indian Mineral Development Act of 1982 Used to withhold information regarding the Energy Mineral Development Project on the Crow Reservation and subsequent correspondence from the Crow Tribe Chairman to the Rocky Mountain Regional Director.
25 USC 2716(a)	except as provided in subsection (b), of this section, the Commission shall preserve any and all information received pursuant to this chapter as confidential pursuant to the provisions of paragraph (4) and (7) of section 552(b) of Title 5.
26 USC 6103	"United States Internal Revenue Code" (from report): "Places restrictions on the release of tax return information."
26 USC 6103(a)/(b)(2)/(e)(7)	"Firearm data collected for tax enforcement purposes"
26 USC 6105	"Confidentiality of information arising under treaty obligations."
28 USC 534	information included in rap sheets
28 USC 592(e)	Applications to court for appointment of an independent counsel
28 USC 652(d)	"Mediation agreements from U.S. v. Paul D. Zimmerman"
28 USC 1651	A complaint filed under seal
29 USC 181	Redacted confidential client information from the records in order to maintain the confidentiality of the mediation process.
29 USC 464(a)	Section 304(a) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) protects the identity of a complainant in a union trusteeship investigation.
29 USC 491-492	employment statistical information concerning individuals
29 USC 657(f)(1)	withheld the names of complainants who reported safety and health violations
29 USC 664	disclosure of trade secrets
29 USC 666(f)	disclosure of advance notice of safety inspections
29 USC 801	Information about a subscriber to a post-office box
29 USC 1343(f)	"Information submitted to PBGC as part of a notice of a reportable event"

29 USC 4010(c)	Information submitted by pension plan sponsors to PBGC
30 USC 813(g)(1)	Federal Mine Safety and Health Act of 1977, section 103(g)(1)
30 USC 872(b)	Coal mine maps
31 USC 3729(d)	"False Claims Act Civil Action for False Claims against the U.S."
31 USC 3730(b)(2)	Civil Actions for False Claims
31 USC 3733(k)	Responses to civil investigative demands
31 USC 5311-5331	Financial crimes information
31 USC 5318(g)	"Office of Thrift Supervision Criminal Referral Form"
31 USC 5318(g)(3)	[WRONG IN ORIGINAL] "Used to withhold records used in Grand Jury proceedings. Regulates matters occurring before the Grand Jury."
31 USC 5319	Records on Monetary Instruments and Transactions
35 USC 122	patent applications
35 USC 181	Secrecy of certain inventions and withholding of patents
35 USC 202(c)(5)	"Utilization reports"
35 USC 205	"Confidentiality of Inventions Information"
35 USC 209	"Licensing of Patents: Detailed patent information."
38 USC 5701	"Records pertaining to any claim filed with the Department for names and addresses of present and former members of the Armed Forces and their dependents."
38 USC 5705	"Records created as part of a medical quality assurance program."
38 USC 7332	Certain medical information
38 USC 7451	Information collected by VA in surveys of rates of compensation for nurses and certain health-care personnel.
39 USC 410(c)(1)	"Records relating to names and addresses of postal customers"
39 USC 410(c)(2)	Commercial business information
39 USC 410(c)(3)	"Records relating to information prepared for use in negotiating collective bargaining agreements"
39 USC 410(c)(4)	"Records prepared for proceedings under 39 USC Chapter 36, relating to rates, classification, and service changes"
39 USC 410(c)(5)	"Reports and memoranda of consultants or independent contractors, except to the extent that they would be required to be disclosed if prepared within the Postal Service"
39 USC 410(c)(6)	"Investigatory files, whether or not considered closed, compiled for law enforcement purposes, except to the extent available by law to a party other than the Postal Service"
39 USC 412	"Records containing lists of postal customers"
41 USC 253b(m)	"Federal Property and Administrative Services Act" (from report): "Places restrictions on the release of proposal information submitted by a contractor in response to the requirements of a competitive solicitation."
41 USC 423(a)	Procurement Integrity Act places restrictions on the release of pre-award contractor bids, proposal information, and source selection information.
42 USC	
262a(b)(1)(C)/formerly 42 USC 300hh-12(c)	"Bioterrorism-related information"

42 USC 290dd-2	Mental Health & Drug Treatment Information ("confidentiality of patient records")
42 USC 300aa-12(d)(4)(A)	prohibits release of information submitted to a special master or court proceeding without the express consent of the person submitting the information
42 USC 300aa-25(c)	"Adverse reaction information submitted to a special master"
42 USC 1320e-9	prohibits release of data or information acquired by a professional review organization (PRO) in the exercise of its duties and functions
42 USC 1320d-6	Individually identifiable health information
42 USC 1396r-8(b)(3)(D)	Information disclosed by manufacturers and wholesalers' in a form which discloses' ,prices charged for drugs by such manufacturer or wholesaler
42 USC 1433(a)(3)	Community Water, systems concerning vulnerability assessments
42 USC 2000e-5(b)	Confidential conciliation- assistance information
42 USC 2000e-8(e)	Unlawful employment practices information
42 USC 2000g-2(b)	"Community Relations Service (CRS) Confidentiality Clause, CRS Confidential Information"
42 USC 2011 et seq.	"Agency withheld information that is classified as Restricted Data, Formerly Restricted Data, or Unclassified Controlled Nuclear Information."
42 USC 2162(a)	"Restricted Data (Atomic Energy), Atomic Energy Act of 1954"
42 USC 2167	Atomic energy information
42 USC 2168(a)(1)(C)	"Formerly Restricted Data (Atomic Energy), Atomic Energy Act of 1954"
42 USC 242m(d)	National Death Index, information regarding fatalities
42 USC 2454(b)	National Aeronautics and Space Act of 1958, as amended
42 USC 3537a	Funding information in advance of award
42 USC 3545	"HUD Reform Act"
42 USC 3601(a)	Fair Housing Enforcement: Person aggrieved; complaint; copy; investigations; informal proceedings; violation of secrecy; penalties.
42 USC 3601(d)	Information related to conciliation under the Fair Housing Act
42 USC 3789g	"Personally identifiable statistical and research data received by the Bureau of Justice Statistics"
42 USC 5413(h)	Inspections and investigations for promulgation or enforcement of standards or execution of other duties.
42 USC 7412	Offsite consequence analysis sections of risk management plans
42 USC 11137(b)	"Adverse reports of a physician's conduct or practice"
42 USC 12117	"107 of the ADA"
43 USC 1350-1352	Outer Continental Shelf Lands Act Amendments of 1978
44 USC 2204	Presidential Records
44 USC 3501 note	Identifiable form information acquired under a pledge of confidentiality for exclusively statistical purposes.
44 USC 3541 et seq.	Computer Security Act of 1987 (since supplanted by the Federal Information Security Management Act of 2002); this is a citation to that.
45 USC 362(d)	"disclosure of personally identifiable material"
45 USC 362(n)	"disclosure of medical records"

46 USC 3315(b)	Prohibits release of source of reports of defects and imperfections of vessels.
46 USC 4019	"Maritime Plans"
46 USC 7319	Records regarding issued merchant mariner documents
46 USC 70103	Prohibition on release of all information contained in maritime security plans
46 USC App 1705(f)	materials submitted with section 5 agreements filed confidentially pursuant to section 6(f) of the Shipping Act of 1984, as amended
46 USC App 1707(c)(2)	Service Contracts filed confidentially pursuant to section 8(c)(2) of the Shipping Act of 1984, as amended
46 USC App 1714	Minutes filed confidentially pursuant to section 15 of the Shipping Act of 1984, as amended
49 USC 114(s)	"Nondisclosure of Security Activities"
49 USC 1114(c)	"Any portion of a cockpit voice recording (CVR), or the portions of a transcript of a CVR that the Board did not find relevant to an investigation"
49 USC 1114(e) (drugs)	"Drug tests and medical information"
49 USC 1114(f) (previously 1114(e) (foreign aircraft accidents))	"Foreign aircraft accident investigation information."
49 USC 1136(d)	"Passenger lists"
49 USC 20109	Names of individuals providing information to the Federal Railroad Administration related to violations of the railroad safety laws and regulations.
49 USC 24301 note	"Bid proposals not incorporated in contracts."
49 USC 30305(c)(1)	"Certain information received pursuant to the National Driver Register Act of 1982."
49 USC 31143(b)	"IDs of motor carrier safety complainants."
49 USC 40110	"Contract offers to the FAA."
49 USC 40115	"Information harmful to U.S. international aviation negotiation or to any U.S. international air carrier."
49 USC 40119(b)	Open investigation documents
49 USC 40123(a)	"Aviation Safety Action Program voluntarily submitted information."
49 USC 46102(c)	"Aviation safety, when requested for national defense"
49 USC 46311	Information from air carrier records
49 USC 70114	"Restricted commercial space launch activities information"
50 USC 402	"Intelligence sources and methods"
50 USC 402 Note Sec 6	"NSA Functions and Information"
50 USC 403	Protects material regarding the nature of agency functions; prohibits release of documents that would endanger the intelligence gathering process.
50 USC 403(d)(3)	CIA intelligence sources and methods
50 USC 403-1(f)	"Intelligence Sources and Methods (Director of National Intelligence use only)"
50 USC 403-3(c)(6)	intelligence sources and methods
50 USC 403-3(c)(7)	protects from disclosure intelligence sources and methods.
50 USC 403c	CIA procurement information

50 USC 403g	certain enumerated categories of information including CIA's organization, functions, names, official titles, salaries and/or number of personnel employed by the CIA.
50 USC 421	"Protection of Identities of U.S. Undercover Intelligence officers, agents, informants, and sources"
50 USC 435 Note Sec 1082	"Disclosure of Information Concerning US Personnel Classified as POW/MIA During Vietnam Conflict (McCain "Truth Bill")"
50 USC 1701 note	"Protects records on arbitration claims before the Iran-U.S. Claims Tribunal"
50 USC 1861	"Foreign Intelligence Surveillance Act (cited in the Patriot Act III litigation)"
50 USC 2170(c)	"Authority to review certain mergers, acquisitions and takeovers"
50 USC App 2170(c)	Section 721 (c) of the Defense Production Act protects documents filed with the Committee on Foreign Investment in the United States and its staff.
50 USC App 2411(c)(1)	Information relating to exporting license applications
Citation by Public Law Number	
P.L. 102-381	Agency withheld trade secret or commercial or financial information resulting from activities conducted by the United States Advanced Battery Consortium and the hybrid vehicle propulsion development program.
Citations to Code of Federal Regulations	
7 CFR 1219.63	Membership list of the Avocado Importers Association
7 CFR 272.1(c)	Information obtained concerning administration or enforcement of the Food Stamp Act.
15 CFR 746.2	Based on our embargo of Cuba, the information protected was covered by other laws or statutes that restrict the availability of the information.
28 CFR 16.81(a)(9)	USAO pre-trial diversion program files
29 CFR 70.26	Confidential business information (CFR Title 29, Labor)
42 CFR Part 2.13	Drug Treatment Information on individual under CSOSA supervision.
42 CFR Part 2.15	Drug Treatment Information-Individual Deceased - Prohibited from disclosure without consent of executor, administrator or other personal representative.
48 CFR 24.202(a)	cited (incorrectly) to withhold proposal submitted in response to a competitive solicitation
48 CFR Part 15.1001(c)(v)	Post award notices to unsuccessful offerors.
48 CFR Part 15.1003	Debriefing of unsuccessful offerors.
48 CFR Part 3.104-4	Ethics in Procurement and Procurement Integrity.
49 CFR 1520	OSHA "also withheld information pursuant to Title 49 CFR part 1520, which is enforced by the Transportation Security Administration"
Other Citations	
Executive Order 12600	Predisclosure notification procedures for confidential commercial information
FR Civil P 26(b)	Information not available in civil discovery
FRAP 11	Appellate record

FRCP 11	Scaled affidavit
FRCP 32/Local rule(s) of court pertaining to pre-sentence reports	Pre-sentence reports
FRCP 41(b)	Search warrants (cited with FRCP 57(b))
FRCP 6(e)	Grand Jury-related information
Mutual Legal Assistance Treaty with Belgium, January 1, 2000, Treaty Doc. 10016, 100th Cong., 2nd Sess., Exec. "Mutual Legal Assistance Treaty"	
FRCP 16	In camera discovery submissions
FRCP 16(b)	Access to criminal case file (similar to citation to "FRCP 16" above)
POSSIBLE ADDITIONAL EXEMPTION 3 STATUTES (4)	
49 USC 1114	certain information pertaining to accident investigations [may be a reference to already-cited exemptions at subsections (c), (e), or (f) - or could be a reference to yet-uncited exemptions at subsections (b) or (d).]
(none listed)	Referral from CIA on documents originating with Ex-Im. [thus, we have no way of knowing whether the (b)(3) statute cited is listed above]
(none listed)	(not listed) [in NEH FY98 report] [thus, we have no way of knowing whether the (b)(3) statute cited is listed above]
Food, Agriculture, Conservation, and Trade Act of 1990	Food, Agriculture, Conservation, and Trade Act of 1990 [could be to an exemption already listed; may not be]