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Description of document: Equal Employment Opportunity Commission (EEOC)
FOIA Tracking System sample paragraphs, letters and
exemptions, 2012

Requested date: 20-June-2012

Released date: 30-July-2012

Posted date: 18-September-2012

Source of document: FOIA request
Legal Counsel,
Office of Legal Counsel,
Assistant Legal Counsel,
FOIA Programs,
U.S. Equal Employment Opportunity Commission
131 M Street NE, Suite 5NW02E
Washington, D.C. 20507
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**U.S. Equal Employment Opportunity Commission
Office of Legal Counsel**

131 M Street NE
Washington, DC 20507
(202) 663-4500
(202) 663-7026 TTY
(202) 663-4679 FAX

JUL 30 2012

Re: FOIA No.: 820-2012-162878

Your Freedom of Information Act (FOIA) request, received in this office on June 20, 2012 has been processed. Our search began on June 20, 2012. All agency records in creation as of June 20, 2012 are within the scope of the EEOC's search for responsive records.


In your request you seek copies of EEOC's sample paragraphs, letters and exemptions contained in our FOIA Tracking System in digital format. Your request has been granted.

In the attached CD are the FOIA template letters and exemptions requested for your review. The exemptions provided are exemptions used by EEOC (exemptions 2,3,4,5,6,7A,7C-F). Exemptions 1, 8 and 9 are not utilized by EEOC and have not been provided. Listed below are the names of the letters in order on CD.

Appeal Acknowledgment Letter (1 page)
Appeal Determination Letter (2 pages)
Extension Letter (1 page)
Fee Waiver Letter (1 page)
FOIA Acknowledgment Letter (1 page)
FOIA Determination Letter (2 pages)
Misdirected Letter (1 page)
Toll Letter (1 page)
FOIA Requester Service Center Acknowledgment Letter (1 page)
List of Exemptions (5 pages)

We hope this information has been helpful to you.

Sincerely,


Stephanie D. Garner
Assistant Legal Counsel FOIA Programs



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

John Doe
123 My Avenue
Washington, D.C. 12345

Re: FOIA APPEAL No.: 820-2010-000000

Dear Mr. Doe:

[] Your appeal(s) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received by the Office of Legal Counsel on [date]: is assigned the above FOIA number. It will be processed by [Assignee Name] who can be reached at (202) 663-4500.

[] Your unperfected appeal(s) under the FOIA was received by the Office of Legal Counsel on [date]. The appeal(s) will **not** be assigned for processing until they are perfected by submitting to this office a copy of the district director's determination on your initial FOIA request. 29 C.F.R. § 1610.11(a). Failure to submit a copy of the district director's determination letter within 30 days of your receipt of this letter may result in the denial of your appeal. Upon receipt of this information, your appeal will be perfected and processing will begin. At that time your appeal will be acknowledged in a letter to you indicating the FOIA numbers assigned to your appeal, the name of the person reviewing your appeal and the date by when you may expect to receive a response from me.

EEOC will issue a determination on your request on or before [date]. FOIA and EEOC regulations provide 20 working days to issue a determination on a request, not including Saturdays, Sundays and federal holidays. In unusual circumstances, EEOC may extend the 20 working days by 10 additional working days or stop processing your request until you respond to our request for fee or clarifying information. Should EEOC take an extension or stop processing your request, notice will be issued prior to the expiration of the 20 working days.

You may contact the Requester Service Center for status updates on your request or for FOIA information by telephone to 202/663-4500, by fax to 202/663-4679, by e-mail to FOIA@eeoc.gov, or by mail to the EEOC, Requester Service Center, 131 M Street NE, Suite 5NW02E, Washington, D.C. 20507. If you filed your request via the EEOC internet site, you may check the status of your request at <https://egov.eeoc.gov/foia/>.

Sincerely,

Stephanie D. Garner
Assistant Legal Counsel FOIA Programs



**U.S. Equal Employment Opportunity Commission
Office of Legal Counsel**

131 M St. NE
Washington, D.C. 20507
(202) 663-4500
(202) 663-4679 FAX
(202) 663-7026 TTY

John Doe
123 My Avenue
Washington, D.C. 12345

Re: FOIA No.: 820-2010-000000

Dear Mr. Doe:

Your appeal under the Freedom of Information Act (FOIA) received on [date] has been processed. The paragraph(s) checked below apply:

- ☐ The initial determination issued on your request is completely reversed and your appeal is granted.
- ☐ The initial determination issued on your request is affirmed and your appeal is denied.
 - ☐ For administrative reasons further explained in an attachment to this letter.
 - ☐ Pursuant to the FOIA Exemptions cited in the initial denial of your request.
 - ☐ Pursuant to the FOIA Exemptions indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
- ☐ The initial determination issued on your request is partially affirmed/reversed/remanded and your appeal is granted/denied/remanded in part.
 - ☐ For administrative reasons further explained in an attachment to this letter.
 - ☐ Pursuant to the FOIA Exemptions cited in the initial denial of your request.
 - ☐ Pursuant to the FOIA Exemptions indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
- ☐ Your appeal has been remanded in its entirety. An attachment to this letter further explains the decision to remand your appeal.
- ☐ Your appeal has been closed for administrative reasons. An attachment to this letter further explains this closure.
- ☐ You must send a check for \$ made payable to the United States Treasurer to the above address. Manual search and review services are billed according to the personnel category of the person conducting the search. Fees for search services range from \$5.00 per quarter hour to \$20.00 per quarter hour. Direct costs are billed for computer searches and in certain other circumstances. Photocopying is billed at \$.15 per page. 29 C.F.R. § 1610.15. The attached Comments page will further explain any direct costs assessed.
- ☐ The records disclosed on appeal are enclosed. No fee is charged because the Commission shall not charge a fee ☐ for review at the administrative appeal level of an exemption already applied, or ☐ the cost of processing such fee equals or exceeds the amount of the fee. 29 C.F.R. §§ 1610.15 (a)(1) and (d).

- ☐ You should contact the District Office which responded to your request to obtain the documents disclosed on appeal. The District Director will determine whether fees will be assessed.
- ☐ If you are dissatisfied with this decision, you may file a civil action in the United States district court in the district where you reside or have your principal place of business, where the agency records are situated, or in the District of Columbia.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

*Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-600*

*E-mail: ogis@nara.gov
Telephone: (301) 837-1996
Fax: (301) 837-0348
Toll-free: 1-877-684-6448*

- ☐ See the attached Comments page for further information.

Sincerely,

Stephanie D. Garner
Assistant Legal Counsel/FOIA

Applicable Sections of the Freedom of Information Act, 5 U.S.C. § 552(b):

- | | |
|--|---|
| <input type="checkbox"/> (2) | <input type="checkbox"/> (6) |
| <input type="checkbox"/> (3)(A)(i) | <input type="checkbox"/> (7)(A) |
| <input type="checkbox"/> Section 706(b) of Title VII | <input type="checkbox"/> (7)(B) |
| <input type="checkbox"/> Section 709(e) of Title VII | <input type="checkbox"/> (7)(C) |
| <input type="checkbox"/> Section 107 of the ADA | <input type="checkbox"/> (7)(D) |
| <input type="checkbox"/> Section 207 of GINA | <input type="checkbox"/> Other (see attached) |
| <input type="checkbox"/> (3)(A)(ii) | |
| <input type="checkbox"/> 41 U.S.C. §253b(m) of the
National Defense Authorization Act | |
| <input type="checkbox"/> (4) | |
| <input type="checkbox"/> (5) | |

cc:



**U.S. Equal Employment Opportunity Commission
Office of Legal Counsel**

131 M Street NE
Washington, DC 20507
(202) 663-4500
(202) 663-7026 TTY
(202) 663-4679 FAX

John Doe
123 My Avenue
Washington, D.C. 12345

Re: FOIA No.: 820-2010-000000

Dear Mr. Doe:

This letter is in response to your request or appeal under the Freedom of Information Act (FOIA), received by our office on [date]. As provided in U.S.C. § 552(a)(6)(B) (2007), we hereby provide you with the required written notice that we are extending by ten (10) working days the time in which we shall respond. Such extension is necessary because of the following "unusual circumstances":

- [] (i) the need to search for and collect the requested records, if any exist, from field offices or other establishments that are separate from this office;
- [] (ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;
- [] (iii) the need for consultation with another agency, or two or more components of this agency, having a substantial interest in the determination of the request.

We will respond to your request by [date].

Sincerely,

District Director
District Office



**U.S. Equal Employment Opportunity Commission
Office of Legal Counsel**

131 M Street NE
Washington, DC 20507
(202) 663-4500
(202) 663-7026 TTY
(202) 663-4679 FAX

John Doe
123 My Avenue
Washington, D.C. 12345

Re: FOIA No.: 820-2010-000000

Dear Mr. Doe:

This letter responds to your request for a waiver of any fees associated with processing the above Freedom of Information Act (FOIA) request. A waiver of fees is available to a requester who satisfactorily demonstrates that disclosure of the requested records is in the "public interest" because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that disclosure is not primarily in the "commercial interest" of the requester. 5 U.S.C. 552 § (4)(A)(iii).

☐ Your FOIA request provided sufficient information upon which to determine whether the grant of your request is appropriate.

☐ Your FOIA request provided insufficient information upon which to determine whether the grant of your request is appropriate. If you are still interested in a fee waiver, please forward information to my attention within five (5) days of receipt of this letter. The information you submit should demonstrate how the public interest benefits from EEOC's grant of your fee waiver request. Include information concerning your knowledge of EEOC and its mission to enforce the laws prohibiting employment discrimination, how you propose to distribute the disclosed requested information to the public at large, and whether the requester will be compensated in any way for developing a report from the disclosed records that will be published and disseminated to the public. After receiving your statement certified as true and correct, EEOC will review your information according to the following factors, it will grant or deny your request: 1) whether the FOIA request specifically concerns identifiable operations or activities of EEOC; 2) whether the disclosed records are likely to contribute to the public's understanding of specific EEOC operations or activities; 3) will the disclosed records contribute significantly to the understanding of the public at large; 4) will the disclosed records significantly enhance the level of public understanding of EEOC operations or activities; 5) will the disclosed records further the commercial interest of the requester; and 6) whether the public interest in the disclosed records is superior to any commercial interest of the requester.

☐ Your request a waiver of fees is ☐ denied ☐ granted as it ☐ has ☐ has not been found to be in the public interest

☐ You may appeal this decision by writing within thirty days of receipt of the denial of your request for a fee waiver to the Office of Legal Counsel, Equal Employment Opportunity Commission, 131 M Street, N.E., Washington, D.C. 20507.

Sincerely,

District Director
District Office



**U.S. Equal Employment Opportunity Commission
Office of Legal Counsel**

131 M Street NE
Washington, DC 20507
(202) 663-4500
(202) 663-7026 TTY
(202) 663-4679 FAX

John Doe
123 My Avenue
Washington, D.C. 12345

Re: FOIA No.: 820-2010-000000

Dear Mr. Doe:

Your request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received by the Office of Legal Counsel on [date] is assigned the above FOIA number. It will be processed by [Assignee Name] who can be reached at (202) 663-4500.

EEOC will issue a determination on your request on or before [date]. FOIA and EEOC regulations provide 20 working days to issue a determination on a request, not including Saturdays, Sundays and federal holidays. In unusual circumstances, EEOC may extend the 20 working days by 10 additional working days or stop processing your request until you respond to our request for fee or clarifying information. Should EEOC take an extension or stop processing your request, notice will be issued prior to the expiration of the 20 working days.

You may contact the Requester Service Center for status updates on your FOIA request or for FOIA information by telephone to (202) 663-4500, by fax to (202) 663-4679, by e-mail to FOIA@eeoc.gov, or by mail to the EEOC, Requester Service Center, 131 M Street NE, Suite 5NW02E, Washington, DC 20507. Additionally, you may monitor the status of your FOIA request online at <https://egov.eeoc.gov/foia/>.

Cordially,

District Director
District Office



**U.S. Equal Employment Opportunity Commission
Office of Legal Counsel**

131 M Street NE
Washington, DC 20507
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(202) 663-7026 TTY
(202) 663-4679 FAX

John Doe
123 My Avenue
Washington, D.C. 12345

Re: FOIA No.: 820-2010-000000

Dear Mr. Doe:

Your Freedom of Information Act (FOIA) request, received in this office on [date] has been processed. Our search began on [date]. All agency records in creation as of [date] are within the scope of the EEOC's search for responsive records. The paragraph(s) checked below apply:

☐ A portion of your request is neither granted nor denied because: ☐ Your request does not reasonably describe the records you wish disclosed or ☐ No records fitting the description of the records you seek disclosed exist or could be located after a thorough search. The remainder of your request is:

☐ Granted

☐ Denied pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.

☐ Granted in part and denied in part. Portions not released are being withheld pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.

☐ Your request is granted.

☐ Your request is denied pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.

☐ Your request is granted in part and denied in part. Portions not released are being withheld pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.

☐ You must send a check for \$[] made payable to the United States Treasurer by mail to the above address. Manual search and review time is billed per quarter hour based on the personnel category of the person conducting the search. Fees for search services range from \$5.00 per quarter hour to \$20.00 per quarter hour. Direct costs are billed for computer searches and in certain other circumstances. Photocopying is billed at \$.15 per page. 29 C.F.R. §1610.15. The attached Comments page will further explain any direct costs assessed. The fee has been computed as follows:

☐ Commercial use requests: [] pages of photocopying; [] quarter hour(s) of [] review time; and [] quarter hour(s) of [] search time; Direct costs are billed in the amount of [] for [].

☐ Requests by educational or noncommercial scientific institutions or representatives of the news media: [] pages of photocopying. The first 100 pages are provided free of charge.

☐ All other requests: ☐ pages of photocopying and ☐ quarter hour(s) of ☐ search time. Direct costs are billed in the amount of ☐ for ☐. The first 100 pages and 2 hours of search time are provided free of charge.

- ☐ The disclosed records are enclosed. No fee is charged because the cost of collecting and processing the chargeable fee equals or exceeds the amount of the fee. 29 C.F.R. § 1610.15(d).
- ☐ The disclosed records are enclosed. Photocopying and search fees have been waived pursuant to 29 C.F.R. § 1610.14.
- ☐ You may appeal this decision by writing within thirty days of receipt of this letter to the Office of Legal Counsel, FOIA Programs, Equal Employment Opportunity Commission, 131 M Street, N.E., Suite 5NW02E, Washington, D.C. 20507. Your appeal will be governed by 29 C.F.R. § 1610.11.
- ☐ See attached Comments page for further information.

Sincerely,

District Director
District Office

Applicable Sections of the Freedom of Information Act, 5 U.S.C. § 552(b):

- | | |
|--|---|
| <input type="checkbox"/> (2) | <input type="checkbox"/> (6) |
| <input type="checkbox"/> (3) (A)(i) | <input type="checkbox"/> (7)(A) |
| <input type="checkbox"/> Section 706(b) of Title VII | <input type="checkbox"/> (7)(B) |
| <input type="checkbox"/> Section 709(e) of Title VII | <input type="checkbox"/> (7)(C) |
| <input type="checkbox"/> Section 107 of the ADA | <input type="checkbox"/> (7)(D) |
| | <input type="checkbox"/> Other (see attached) |
| <input type="checkbox"/> (3)(A)(ii) | |
| <input type="checkbox"/> 41 U.S.C. §253b(m) of the
National Defense Authorization Act | |
| <input type="checkbox"/> (4) | |
| <input type="checkbox"/> (5) | |



**U.S. Equal Employment Opportunity Commission
Office of Legal Counsel**

131 M Street NE
Washington, DC 20507
(202) 663-4500
(202) 663-7026 TTY
(202) 663-4679 FAX

John Doe
123 My Avenue
Washington, D.C. 12345

Re: FOIA No.: 820-2010-000000

Dear Mr. Doe:

This is in response to your request under the Freedom of Information Act (FOIA), 5 U.S.C. 522(a) (2007) received by this office on [date]. The paragraphs checked below apply:

- ☐ Your request is neither granted nor denied as it does not reasonably describe the records you wish disclosed. 5 U.S.C. § 552(a)(3)(A). A record is "reasonably described" if the description enables a professional agency employee to locate the record with a reasonable amount of effort.
- ☐ Your request is neither granted nor denied. A thorough search was conducted for records that fit the description of the records you seek disclosed. No such records exist or could be located.
- ☐ Your request was misdirected to this office and has been forwarded to the [Office Name] of the EEOC on [date] for response.
- ☐ You may appeal the denial or partial denial of your request by writing within thirty days of receipt of this letter to the Legal Counsel, Equal Employment Opportunity Commission, 131 M Street, N.E., Suite 5NW02E, Washington, D.C. 20507. Your appeal will be governed by 29 C.F.R. § 1610.11.
- ☐ See the attached Comments page for further information.

Sincerely,

District Director
District Office

cc: Office Name
123 Your Avenue
Washington, D.C. 12345



**U.S. Equal Employment Opportunity Commission
Office of Legal Counsel**

131 M Street NE
Washington, DC 20507
(202) 663-4500
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(202) 663-4679 FAX

John Doe
123 My Avenue
Washington, D.C. 12345

Re: FOIA No.: 820-2010-00000

Dear Mr. Doe:

This letter is to notify you that additional information is needed from you in order to complete the processing of your Freedom of Information Act (FOIA) request, received in this office on [date]. The information or records requested are described below. The 20 working days provided in the FOIA to respond to your request are being tolled from the date of this letter until the date that this office receives your written response to our request. 5 U.S.C. § 552(6)(a)(1).

[Description of records]

Thank you for your attention to this request.

Sincerely,

District Director
District Office



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

John Doe
123 My Avenue
Washington, D.C. 12345

Re: FRSC No. 820-2010-000000

Dear Mr. Doe:

Your letter received by the Office of Legal Counsel on [date] is assigned the above number. It will be processed by [Assignee Name] who can be reached at (202) 663-4500.

You may contact the Requester Service Center for status updates regarding your inquiry or for FOIA information by telephone to 202/663-4500, by fax to 202/663-4679, by e-mail to FOIA@eeoc.gov, or by mail to the EEOC, Requester Service Center, 131 M Street NE, Suite 5NW02E, Washington, D.C. 20507. Additionally, you may monitor the status of your FRSC inquiry or FOIA request online at <https://egov.eeoc.gov/foia/>.

Sincerely,

District Director
District Office



**U.S. Equal Employment Opportunity Commission
Office of Legal Counsel**

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Exemption (b)(2)

The second exemption to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(2) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, permits withholding documents "related solely to the internal personnel rules and practices of an agency." This exemption also applies to internal administrative and personnel matters, to the extent that disclosure would risk circumvention of an agency regulation or statute or impede the effectiveness of an agency's law enforcement activities. E.g., *Hardy v. ATF*, 631 F.2d 653, 656 (9th Cir. 1980); *Caplan v. AFT*, 587 F.2d 544, 547 (2d Cir. 1978); *Wilder v. IRS*, 607 F. Supp. 1013, 1015 (M.D. Ala. 1985).

Exemption (b)(3)(A)(i)

The third exemption to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(3) (2006) (emphasis added), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, states that disclosure is not required for a matter

specifically exempted from disclosure by statute . . . if that statute

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue;

Sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(b), 2000e-8(e) (1982), are part of such a statute. Section 706(b) provides that:

Charges shall not be made public by the Commission Nothing said or done during and as a part of [the Commission's informal endeavors at resolving charges of discrimination] may be made public

Section 709(e) of Title VII provides:

It shall be unlawful for any officer of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section [to investigate charges of discrimination and to require employers to maintain and submit records] prior to the institution of any proceeding under this title involving such information.

Section 107 of the Americans with Disabilities Act (ADA) adopts the procedures of Sections 706 and 709 of Title VII.

See *Equal Employment Opportunity Commission v. Associated Dry Goods Co.*, 449 U.S. 590 (1981); *Frito-Lay v. EEOC*, 964 F. Supp. 236, 239-43 (W.D. Ky. 1997); *American Centennial Insurance Co. v. United States Equal Employment Opportunity Commission*, 722 F. Supp. 180 (D.N.J. 1989); and *EEOC v. City of Milwaukee*, 54 F. Supp. 2d 885, 893 (E.D. Wis. 1999).

Exemption (b)(4)

The fourth exemption to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, permits withholding documents containing "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information is "confidential" for purposes of the exemption if disclosure of the information is likely "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). If a document contains "confidential" information that can be withheld, the agency is obligated to disclose all remaining nonconfidential portions. Additionally, the term "commercial" in the context of exemption 4 has been interpreted to include all information "pertaining or relating to or dealing with commerce." *American Airlines, Inc. v. National Mediation Board*, 588 F.2d 863, 870 (2d Cir. 1978).

Exemption (b)(5)

The fifth exemption to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(5) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, permits withholding documents that reflect the analyses and recommendations of EEOC personnel generated for the purpose of advising the agency of possible action. This exemption protects the agency's deliberative process, and allows nondisclosure of "inter-agency or intra-agency memorandums or letters which would not be available to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). The exemption covers internal communications that are deliberative in nature. *National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); *Hinckley v. United States*, 140 F.3d 277 (D.C. Cir. 1998); *Mace v. EEOC*, 37 F.Supp.2d 1144 (E.D. Mo. 1999). The purpose of the deliberative process privilege is to "allow agencies freely to explore alternative avenues of action and to engage in internal debates without fear of public scrutiny." *Missouri ex. rel. Shorr v. United States Corps of Eng'rs.*, 147 F.3d 708, 710 (8th Cir. 1998).

Records may be withheld under this exemption if they were prepared prior to an agency's decision, *Wolfe v. Department of Health and Human Services*, 839 F.2d 768, 775, 776 (D.C. Cir. 1988) (en banc) and for the purpose of assisting the agency decision maker. *First Eastern Corp. v. Mainwaring*, 21 F.3d 465, 468 (D.C. Cir. 1994). See also, *Greyson v. McKenna & Cuneo and EEOC*, 879 F. Supp. 1065, 1068, 1069 (D. Colo. 1995). Records may also be withheld to the extent they reflect "selective facts" compiled by the agency to assist in the decision making process. *A. Michael's Piano, Inc. v. Federal Trade Commission*, 18 F.3d 138 (2d Cir. 1994). An agency may also withhold records to the extent that they contain factual information already obtained by a requester through prior disclosure. See *Mapother, Nevas, et al. v. Dept of Justice*, 3 F.3d 1533 (D.C. Cir. 1993).

Exemption (b)(6)

The sixth exemption to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(6) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, permits withholding of information about individuals in "personnel and medical files and similar files" if its disclosure "would constitute a clearly unwarranted invasion of personal privacy." In addition to personnel records and medical files, the term "similar files" encompasses all information that "applies to a particular individual." *Department of State v. Washington Post Co.*, 456 U.S. 595, 599-603 (1982). This exemption requires that the privacy interests of the individual be balanced against the public interest in disclosure. *Department of the Air Force v. Rose*, 425 U.S. 352, 372 (1976). In examining whether there is a "public interest" in disclosure of certain information, the "public interest" must truly be in the interest of the overall public. In *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989), the Supreme Court explained that only "[o]fficial information that sheds light on an agency's performance of its statutory duties" merits disclosure under FOIA, and noted that "disclosure of information about private citizens that is accumulated in various governmental files" would "reveal little or nothing about an agency's own conduct."

Personal details pertaining to an individual are generally protected under this exemption. See, e.g., *DOD v. FLRA*, 510 U.S. 487, 500-502 (1994) (finding privacy interest in federal employees' home addresses even though they often are publicly available through sources such as telephone directories and voter registration lists); *Pons v. United States Customs Service*, No. 93-2094, 1998 U.S. Dist. LEXIS 6084 at **13-14 (D.D.C. April 27, 1998) (protecting identities of lower and mid-level agency employees who worked on asset forfeiture documents); *Barvick v. Cisneros*, 941 F. Supp. 1015 (D. Kan. 1996) (finding personal information such as home addresses and telephone numbers, social security numbers, dates of birth, insurance and retirement information, reasons for leaving prior employment, and performance appraisals protectable under Exemption Six). See also, *Rothman v. USDA*, 1996 Lexis 22716 (C.D. Cal. June 17, 1996) (disclosure of information in the applications of persons who failed to get a job may embarrass or harm them).

Exemption (b)(7)(A)

Exemption 7(A) to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(7)(A) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, authorizes the Commission to withhold:

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

The seventh exemption applies to civil and criminal investigations conducted by regulatory agencies. *General Electric Co. v. United States EPA*, 18 F.Supp.2d 138, 143 (D. Mass. 1998). Premature disclosure of records compiled during an agency investigation will allow requester to know the possible nature, scope, direction, and limits of the investigation. *J.P.Stevens & Co. v. Perry*, 710 F.2d 136, 143 (4th Cir. 1983); *Hambarian v. Commissioner of IRS*, No. CV 99-9000, 2000 WL 637347 (C.D. Cal. Feb. 16, 2000). Release of statements by witnesses creates the potential for witness intimidation that could deter their cooperation. *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214, 239 (1978); *Manna v. United States Dept. of Justice*, 51 F.3d 1158, 1164 (3d Cir. 1995). Exemption 7(A) applies "until . . . all reasonably foreseeable administrative and judicial proceedings are concluded." *Service Employees Int. Union, AFL-CIO v. GSA*, No. 97 Civ. 8509, 1998 WL 726000 (S.D.N.Y. Oct. 15, 1998); *Southern Baptist Hospital v. Equal Employment Opportunity Comm'n*, 28 Empl. Prac. Dec. 32,585 at 24,642, 1982 WL 209 (E.D. La. 1982).

Exemption (b)(7)(C)

Exemption 7(C) to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(7)(C) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, authorizes the Commission to withhold:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy

The seventh exemption applies to civil and criminal investigations conducted by regulatory agencies. *Abraham & Rose, P.L.C. v. United States*, 138 F.3d 1075, 1083 (6th Cir. 1998). Release of statements and identities of witnesses and subjects of an investigation creates the potential for witness intimidation that could deter their cooperation. *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214, 239 (1978); *Manna v. United States Dept. of Justice*, 51 F.3d 1158, 1164 (3d Cir. 1995). Disclosure of identities of employee-witnesses could cause "problems at their jobs and with their livelihoods." *L&C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984).

The Supreme Court has explained that only "[o]fficial information that sheds light on an agency's performance of its statutory duties" merits disclosure under FOIA, and noted that "disclosure of information about private citizens that is accumulated in various governmental files" would "reveal little or nothing about an agency's own conduct." *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

Exemption (b)(7)(D)

Exemption 7(D) to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(7)(D) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, authorizes the Commission to withhold:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (D) could reasonably be expected to disclose the identity of a confidential source

The goal of this exemption is to protect the ability of law enforcement agencies to obtain the cooperation of persons having relevant information and who expect a degree of confidentiality in return for their cooperation. *McDonnell v. United States*, 4 F.3d 1227, 1258 (3d Cir. 1993).

Courts have recognized that the first clause of Exemption 7(D) safeguards not only such obviously identifying information as informants' names and addresses, see *Cuccaro v. Secretary of Labor*, 770 F.2d 355, 359-60 (3d Cir. 1985), but also information which would "tend to reveal" the source's identity, *Pollard v. F.B.I.*, 705 F.2d 1151, 1155 (9th Cir. 1983).

A source is considered "confidential" under Exemption 7(D) if he or she provides information "under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred." S. Rep. No. 1200, 93d Cong., 2d Sess. 13 (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 6267, 6291. See *Rosenfeld v. United States Dep't of Justice*, 57 F.3d 803, 814 (9th Cir. 1995) ("an express promise of confidentiality is virtually unassailable"); *Jones v. FBI*, 41 F.3d 238, 248 (6th Cir. 1994) (sources who spoke with express assurances of confidentiality are always "confidential" for FOIA purposes). An implicit promise of confidentiality may be discerned from the circumstances surrounding civil investigations. See, e.g., *Grand Cent. Partnership v. Cuomo*, 166 F.3d 473, 486 (2d Cir. 1999).

Exemption (b)(7)(E)

(b)(7)(E) permits the withholding of “records or information compiled for law enforcement purposes ...[that] would disclose techniques and procedures for law enforcement investigations or prosecutions” and protects “guidelines for law enforcement investigations or prosecutions if [their] disclosure could reasonably be expected to risk circumvention of the law. 5 U.S.C. §552(b)(7)(E) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, Stat. 2524.

Exemption (b)(7)(F)

Exemption (b)(7)(F) protects law enforcement information that “could reasonably be expected to endanger the life or physical safety of any individual.” 5 U.S.C. § 552 (b)(7)(F) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.

Exemption (7)(F) protects the safety of “any individual.” Courts have held that Exemption (7)(F) can protect the names and identifying information of non-law enforcement federal employees, local law enforcement personnel, and other third persons in connection with particular law enforcement matters. See, e.g. *Johnston v. DOJ*, No. 97-2173m, 1998 WL518529 at *1 (8th Cir. Aug. 10, 1998). Courts have also upheld the use of exemption (7)(F) to protect the identities of informants and sources. *Crooker v. IRS*, No. 94-0755, 1995 WL 430605, at *5 (D.D.C. Apr. 27, 1995).