

## What Must NRC Make Publicly Available If *No FOIA Request Has Been Filed?*

The FOIA requires the NRC to affirmatively make available adjudicatory opinions, policy statements, certain staff manuals, and some other information. The NRC may choose to make more available, but is not legally required to in the absence of a FOIA request.

Prior to 9/11, the Commission chose to make a large amount of information publicly available, even though, strictly speaking, the FOIA did not require it. Today, the Commission is choosing to limit the amount of information it voluntarily makes available by removing sensitive information from ADAMS, the public website, and the PDR.

The Sensitive Information Screening Project (SISP) is designed to limit the amount of information in ADAMS, the public website, and the PDR that could reasonably be useful to a potential adversary.

## What Must NRC Make Publicly Available If *a FOIA Request Has Been Filed?*

Once a request has been filed, the FOIA requires the NRC to disclose all information that is not exempt. The FOIA exemptions are defined by statute and cannot be expanded by the NRC.

The SISP criteria are not equivalent to a FOIA exemption. "Information that could reasonably be expected to be useful to an adversary" is not a standard recognized by courts as a valid FOIA exemption. The SISP criteria are broader than FOIA exemptions and improper application of SISP criteria in response to a FOIA request could result in illegal over-withholding of information.

## How Do I Apply the SISP Criteria if I Receive a FOIA Request?

You may wish to use the SISP criteria as a compass, pointing you to information the NRC considers sensitive and would *prefer* to withhold. Once you've identified sensitive information, consider whether it can be withheld under a FOIA exemption.

If the information you identified using the SISP criteria does not fall within a FOIA exemption, it *must* be released. If the information you've identified using the SISP criteria falls within a FOIA exemption, it *may* be withheld.

If a document contains exempt information, the NRC must still disclose all reasonably segregable, non-exempt information.

## Which FOIA Exemptions Can Be Used to Withhold Sensitive Information?

There are a number of exemptions that may help protect sensitive information captured by a FOIA request. Whether a given exemption applies depends greatly on the specific circumstances. Contact OGC and/or your FOIA office with questions about the application of these exemptions:

### *Exemption 2*

Exemption 2 on its face only applies to internal personnel rules and practices of an agency. But the exemption can be used in some cases to withhold sensitive information through a  
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component known as "High 2" that has been defined by judicial caselaw.

Under "High 2," the NRC can withhold "predominantly internal" information—information that has not been disseminated outside the government—that would help wrongdoers circumvent the law if disclosed. The purpose of this exemption is to avoid benefitting those attempting to violate the law and avoid detection.

If release of the information you've identified would cause some sort of harm, and if the information is predominantly internal to the NRC, it may qualify for protection under "High 2."

#### *Exemption 4*

Exemption 4 protects trade secrets and commercial or financial information that is privileged or confidential. This exemption protects more than just proprietary information, and includes any information in which the submitter has a commercial interest.

Exemption 4 may be used to protect information submitted to the NRC if disclosure of the information would hinder the effectiveness of the regulatory program for which it was submitted. Application of exemption 4 in this manner has not been judicially tested, though the D.C. Circuit has hinted that such an application would be permissible.

#### *Exemption 7(f)*

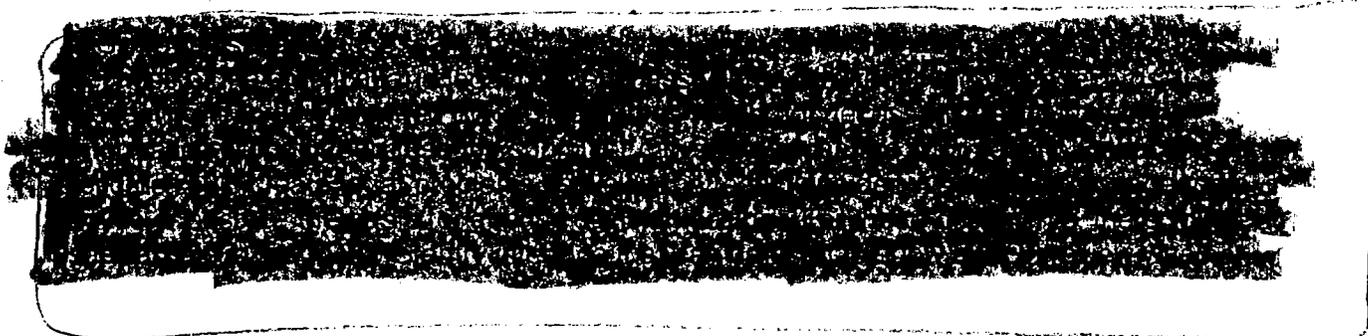
Exemption 7(f) protects records or information compiled for law-enforcement purposes that could reasonably be expected to endanger the life or physical safety of any individual.

This exemption is not limited to criminal law-enforcement information. It has recently been used to protect information compiled for homeland or national security purposes. For example, the exemption was used to protect inundation maps from disclosure because they might help terrorists decide which dams to target to cause the most harm.

Exemption 7 should only be relied on to withhold information related to NRC enforcement proceedings.

#### **Application of the SISF Criteria**

Generally speaking, newly-generated documents must undergo a SISF review prior to being entered into ADAMS. The document processing center requires that the person submitting the document to ADAMS check a box reflecting that the SISF review has been completed, or that the SISF review was unnecessary.





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