

Index

ABORTION-TRACKING

State information and access laws,
27:31

ADMINISTRATIVE APPEALS

Freedom of Information Act, this
index

ADVISORY COMMITTEES

Federal Advisory Committee Act, this
index

AFFIDAVITS

Freedom of Information Act, this
index

AGENCY MEMORANDA EXEMPTION

Freedom of Information Act, this
index

ANTITRUST

Law enforcement records, FOIA
exemption, **17:45**

APPEALS

Freedom of Information Act, this
index
Privacy Act, this index

ARCHIVES

Freedom of Information Act, this
index

ATTORNEY-CLIENT PRIVILEGE

Agency memoranda exemption.
Freedom of Information Act,
this index

ATTORNEYS' FEES

Freedom of Information Act, this
index
Privacy Act, **22:44, 22:81**

BAD FAITH

Freedom of Information Act, this
index

BURDEN OF PROOF

Freedom of Information Act, this
index
Privacy Act, this index

BUSINESS INFORMATION

Confidential business information.
Freedom of Information Act,
this index

CENSUS

Privacy Act, **20:53**

CENTRAL INTELLIGENCE AGENCY

Privacy Act, CIA exemption, **21:40**
Statutes permitting withholding,
13:14

CIA EXCLUSIONS

Specific statutes permitting withhold-
ing, **13:25**

CLASS ACTIONS

FOIA exemption for law enforcement
records, **17:152**

COLLATERAL ESTOPPEL

FOIA litigation, **8:21**
Privacy Act litigation, **22:67**

CONFIDENTIAL BUSINESS INFORMATION

Freedom of Information Act, this
index

CONFIDENTIAL SOURCES

Law enforcement records. Freedom
of Information Act, this index

CONGRESS

Freedom of Information Act, this index
Privacy Act, this index
Records of Congress, **19:8**

CONSENT

Freedom of Information Act, this index
Privacy Act, this index

CORPORATIONS

Freedom of Information Act, this index

COSTS

Freedom of Information Act, this index

COURTS AND COURT RECORDS

Generally, **19:1 to 19:7**
Advisory bodies, **19:6**
Common law, **19:2**
Federal court records, FOIA unavailable, **19:1**
Freedom of Information Act, this index
Jury access, **19:5**
Litigation issues, **19:4**
Presentence reports, **19:3**
Privacy Act, this index
Sealing records, **19:7**

CRIMINAL CASES

Impacts of FOIA litigation, **8:173**
Open data legislation, **28:18**
Privacy Act, **22:84**

**CULTURAL PROPERTY
COMMITTEE MEETINGS**

Specific statutes permitting withholding, **13:24**

CYBERSECURITY

State legislation, **27:33**

DAMAGES

Freedom of Information Act, this index
Privacy Act, this index

DECLARATORY JUDGMENT

Private submitter of information litigation, **10:53**

DEFENSES

Freedom of Information Act, this index
Privacy Act, this index
State information and access laws, **27:14**

DELAY

Freedom of Information Act, this index

**DESTRUCTION OF AGENCY
RECORDS**

Freedom of Information Act (FOIA), this index
Privacy Act, agency defenses, **22:65**

DISCLOSURE

Freedom of Information Act, this index
Privacy Act, this index

DISCOVERY

Freedom of Information Act, this index
Privacy Act, this index

DISMISSAL

Abusive litigants, **8:185**

E-DISCOVERY TOOLS

Role in adequacy of Freedom of Information Act searches, **7:11**

**EDUCATIONAL DISCIPLINE
RECORDS**

State information and access laws, **27:28**

ELECTIONS

State election records, **19:12**

ELECTRONIC ACCESS

Internet and Other Methods of Federal Disclosure, this index

INDEX

ELECTRONIC RECORDS

Freedom of Information Act, this
index
State information and access laws,
27:12

ENVIRONMENTAL PROTECTION AGENCY

Freedom of Information Act, this
index

ESTOPPEL

Freedom of Information Act, this
index

FALSE CLAIMS ACT

Freedom of Information Act, this
index

FAMILY EDUCATIONAL RIGHTS TO PRIVACY ACT (FERPA)

College, school and university
records, **19:10**
Resolving disputes, **19:11**

FEDERAL ADVISORY COMMITTEE ACT

Generally, **24:1 et seq.**
Advisory committee, defined, **24:2**
Balance of committees, defined, **24:7**
Committees established to advise,
defined, **24:9**
Contractor panels, defined, **24:3**
Courts, defined, **24:4**
Courts and committees, **24:12**
Established groups, defined, **24:8**
Excluded groups, defined, **24:10**
FACA and FOIA, **24:13**
Operation of advisory committees,
24:11
Special situations, defined, **24:5**
Utilized committees, defined, **24:6**

FEDERAL OPEN DATA LEGISLATION

Open Data Legislation, this index

FEDERAL TRADE COMMISSION

Freedom of Information Act, this
index

FEES

Freedom of Information Act, this
index
Privacy Act, this index

FINANCIAL INFORMATION

Freedom of Information Act, this
index

FIRST AMENDMENT

Privacy Act, this index

FOOD AND DRUG ADMINISTRATION

Freedom of Information Act, this
index

FOREIGN GOVERNMENT EXCLUSION

Freedom of Information Act (FOIA),
11:40

FORESEEABLE HARM REQUIREMENT

Freedom of Information Act (FOIA),
7:31

FREEDOM OF INFORMATION ACT (FOIA)

Generally, **2:1 et seq.**
Access to records
defined, **4:44**
identifiable records, **4:30**
Adequacy of search. Records
searches, below
Administrative appeals
generally, **7:43 et seq.**
after denial of request, **7:43**
agency rules, effects on appeals,
7:53
constructive exhaustion, **7:47**
exhaustion of appeals, **7:46**
explanation of need as option for
requesters, **7:52**
fee waiver, denial, burden on
appeal, **7:73**
improvements in administrative
appeals process, **7:54**
negotiating access before litigation,
7:48

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Administrative appeals—Cont'd
 - opting to sue rather than appeal, **7:45**
 - partial disclosure or settlement, inducing, **7:44**
 - remands and deadlines, **7:49**
 - segregating and disclosing records, **7:51**
 - tactical aspects, **7:50**
- Administrative record
 - private submitter of information, rights of, below
 - rulemaking, **6:7**
- Affidavits
 - indexes and affidavits. De novo review, below
 - national security exemption, agency affidavits, **11:33**
- Affirmative publication and rule dissemination
 - generally, **6:1 et seq.**
 - access opportunities ((a)(1) and (a)(2)), where and how to use, **6:8**
 - administrative record of rulemaking, **6:7**
 - electronic FOIA archives, reaching, **6:15**
 - exceptions and exemptions, **6:4**
 - Federal Register publication, **6:2**
 - Federal Reports Act, **6:5**
 - general applicability norm, **6:3**
 - labor cases, **6:12**
 - manuals and policies, availability requirement, **6:6**
 - nonavailability
 - defenses, **6:10**
 - judicial action, **6:9**
 - other cases, **6:14**
 - practice suggestions, **6:16**
 - prison cases, **6:13**
 - special requirements of publication, **6:1**
 - tax cases, **6:11**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Agencies
 - attitudes of agencies, **3:3**
 - backlash against open information, **3:3**
 - Congress and support entities, exclusion, **4:12**
 - courts, exclusion for, **4:13**
 - covered agencies, **4:4, 4:7**
 - definitions, **4:2 et seq.**
 - exclusions from agency status, **4:5**
 - federal grantees and contractors, agency status, **4:10**
 - federally chartered entities, agency status, **4:9**
 - indexes and affidavits. De novo review, below
 - interpretations of act, no deference given, **8:35**
 - records in files outside agency control, **7:17**
 - records of agencies, below
 - requests to agencies, below
 - state and local entities, exclusion, **4:11**
 - types of agencies, **4:3**
- Agency memoranda exemption
 - generally, **15:1 to 15:106**
 - amendments of 2016, effect of, **15:105**
 - definitions, **15:3 to 15:6**
 - factual portions of records, **15:13 to 15:17**
 - legal privileges, **15:55 to 15:68**
 - litigation, **15:73 to 15:104**
 - on-line access, impact of, **15:106**
 - post decisional records, **15:48 to 15:54**
 - predecisional records, **15:18 to 15:47**
 - privileges, **15:7 to 15:12**
 - attorney-client privilege, above this group
 - work product privilege, below this group
 - waiver of privileges, **15:71, 15:72**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Agency responses to subpoenas, **7:86**

Already known records

arguing for disclosure, **7:84**

effects of prior release, **9:69**

Amendments

1974 amendments

generally, **3:8**

law enforcement records, **17:4**

national security exemption,
11:4

1976 amendments, **3:9**

1986 amendments

generally, **3:9**

law enforcement records, **17:5**,
17:7, 17:104

1996 amendments

generally, **3:10**

delays prior to amendments,
7:63

specific requests, **9:19**

2007 amendments

generally, **3:11**

attorneys' fees, below

settlement of agency defenses
under 2007 mediation
amendment, **8:29**

2016 amendments

defining foreseeable harm after,
3:13

proposals, **3:7**

Antitrust claims, law enforcement
records, **17:45**

Any person access claims

agency contractors, **4:37**

elements, **4:31**

motives, **4:32**

press, **4:38**

Appeals

administrative appeals, above

attorneys' fees, appellate review,
8:152

de novo decisions, appellate
review, **8:36**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Appeals—Cont'd

fees and parallel state actions,
8:188

issues on appeal, **8:178**

judicial review, below

procedural matters, **8:180**

Standards for FOIA access to
court-sealed records, **8:183**

stay of disclosure decisions, **8:181**

Supreme Court's contributions,
8:28, 8:182

Archives

electronic FOIA archives, reach-
ing, **6:15**

evolution of archiving require-
ment, **9:66**

Attorney-client privilege. Agency
memoranda exemption, above

Attorneys' fees

generally, **8:94 to 8:170**

amount of award, **8:141, 8:166**

appellate review, **8:152**

application of fee standards, **8:145**

applying factors, **8:140**

assessing court orders as relief
meriting fees, **8:154**

catalyst theory

applying, **8:143**

commercial requesters, **8:160**

cost awards, **8:151**

denial of fees

generally, **8:144, 8:163**

private-only benefits, **8:162**

dissemination of records as reason
for fees, **8:159**

Equal Access to Justice Act, **8:138**

faster processing, when rewarded
as success, **8:150**

in camera review, role in justifying
fee awards, **8:147**

indexing orders

not merits relief, **8:153**

insubstantial results argument,
8:149

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Attorneys' fees—Cont'd

interim fee awards, **8:146**

no FOIA jurisdiction, no fee awards, **8:165**

plaintiffs

pro se plaintiffs, eligibility for fee awards, **8:167**

private-only benefits, fees denied, **8:162**

procedural changes meriting fees, **8:161**

pro se plaintiff, **8:167**

pro se plaintiffs, eligibility for fee awards, **8:167**

public benefit, fee award based on, **8:157**

reasonable basis test for agency action, **8:142**

reasonableness of amount, **8:141**

routine voluntary release, **8:164**

sanctions against agencies and requesters, **8:168**

settlements, **8:139**

stipulations, **8:155**

substantially prevailed test, **8:158**

timing of fee requests, **8:148**

waiver of exemption, burden to show, **8:156**

Availability of record, **4:35**

Backlogs of delayed requests, dealing with, **7:56**

Bad faith

defenses, agency bad faith in asserting, **8:30**

index affidavit, bad faith charges, **8:48**

national security exemption, **11:30**

Balancing benefits and harms from disclosure, no general duty, **9:8**

Banking statutes permitting withholding, **13:23**

Burden of proof

adequacy of search, **7:18**

agency index, **8:46**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Burden of proof—Cont'd

agency memoranda exemption, above

fee waiver denial, appeal of, **7:73**

law enforcement records, below

litigation, **8:7**

national security exemption, **11:11, 11:23**

private submitter of information litigation, **10:44**

segregation and disclosure, **9:24**

withholding, burden on agency to justify, **9:5**

Business information

confidential business information, below

trade secrets, below

Certified copies, **7:68**

CIA, statutes permitting withholding, **13:14, 13:25**

Class actions, law enforcement records, **17:152**

Classified information. National security exemption, below

Collateral estoppel, **8:21**

Complaint, preparing, **8:8**

Complex requests, **9:15**

Computerized files, records in, **4:17**

Confidential business information

generally, **14:1 et seq.**

agencies' policies, **14:100 to 14:117**

competitive harm, **14:81 to 14:91**

confidential records. Privileged and confidential records, below

constitutional issues, **10:67, 14:119**

data entering agency, **14:118**

Environmental Protection Agency, below

Food and Drug Administration, below

harms, **14:72 et seq.**

competitive harm, above this group

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Confidential business information

—Cont'd

litigation, **14:49 to 14:71**

overview, **14:1 to 14:4**

pandemic influence on decisions,
14:30

partial disclosures, segregating
business data, **9:33**

presubmission procedures to
justify exempt status, **14:99**

private sector origin of data
requested, **14:42 to 14:46**

private sector origin of data
requested. Information
“obtained from a person,”
above

privileged and confidential records,
14:21 to 14:41

proposed changes to exemption 4,
14:126

reverse FOIA cases, protection for
confidential business
statistics, **10:66**

technology, developments in,
14:125

trade secrets, **14:5 to 14:20**

trade secrets, below

types of records, **14:47, 14:48**

Confidentiality

business information. Confidential
business information, above

law enforcement records, below

promises of confidentiality

generally, **9:51, 9:71**

law enforcement records, **17:83,**
17:114

rights of private submitter,
confidentiality marking and
filing procedures, **10:6**

Confidential sources. Law enforce-
ment records, below

Confirming or denying existence of
record. Refusal to confirm or
deny existence of record, below

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Congress

agency exclusion, Congress and
support entities, **4:12**

congressional disclosure, effect of,
9:61

congressional requests, **4:39**

law enforcement records,
disclosure to, **17:181**

records of Congress, **19:8**

role in FOIA implementation, **5:2**

subpoenas, **8:184**

variable roles, **3:5**

Consent

law enforcement records, **17:191**

Constitutional issues, confidential
business information, **10:67**

Content of FOIA request, **7:2**

Contracting statutes permitting with-
holding, **13:22**

Contractors

agency status, federal contractors,
4:10

any person access, **4:37**

private submitter of information,
rights of, below

Control of agency, records outside,
7:17

Core values debate, **9:75**

Corporations

law enforcement records, business
and corporate privacy claims,
17:82

requests by corporations, **4:34**

Costs of litigation, awards, **8:151**

Costs of requests

generally, **7:70 to 7:80**

electronic files searching costs, fee
waiver and, **7:74**

exhaustion of remedies, fees and,
7:76

fee waiver

denial

burden on appeal, **7:72**

judicial review, **7:79**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Costs of requests—Cont'd
 - fee waiver—Cont'd
 - denial—Cont'd
 - procedures, **7:73**
 - upheld, **7:77**
 - electronic files searching costs, **7:74**
 - public interest, **7:78, 7:80**
 - processing requests, fees for, **7:70**
 - refusal to pay as justification for refusal to process request, **7:75**
 - statutory amendments, effect on timing, **7:71**
 - Counterintelligence claims, law enforcement records, **17:46**
 - Courts and court records
 - generally, **19:1 to 19:7**
 - agency exclusion, **4:13**
 - discretion of court, below federal court records, FOIA unavailable, **19:1**
 - law enforcement records, role of district court, **17:159**
 - Criminal cases, impacts of FOIA litigation, **8:173**
 - Criminal investigations, **17:53**
 - Criticisms, **3:1**
 - Cultural property committee meetings, **13:24**
 - Cutoff dates, records searches, **7:21**
 - Damages
 - private submitter of information litigation, **10:58**
 - Death, privacy after
 - law enforcement records, **17:92, 17:131**
 - Declaratory judgment, private submitter of information litigation, **10:53**
 - Defenses
 - generally, **8:13 to 8:33**
 - bad faith in asserting defenses, **8:30**
 - collateral estoppel, **8:21**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Defenses—Cont'd
 - destruction/retention of agency records, **8:14**
 - fugitives barred from litigating for access, **8:32**
 - judicial estoppel, **8:22**
 - mootness, **8:23**
 - nonavailability, affirmative publication and rule dissemination, **6:10**
 - nonexistence of responsive records, **8:13**
 - policy or practice of noncompliance, **8:16**
 - prior adjudications, effect of, **8:17**
 - prior exemption claims, effects of, **8:27**
 - private data, disclosure of, successful defenses, **10:33**
 - relitigation of claims, applying rules against, **8:26**
 - res judicata, **8:20**
 - responding to agency defenses, **7:69**
 - search disputes, examples of successful defenses, **7:13**
 - settlement of agency defenses under 2007 mediation amendment, **8:29**
 - spoliation claims, **8:33**
 - Supreme Court Sturgell decision, effect of, **8:28**
 - waiver of defenses for failure to assert early, **8:31**
- Definitions
 - generally, **4:1 et seq.**
 - access to record, **4:44**
 - agency, **4:2 et seq.**
 - agency memoranda exemption, above
 - any person access, **4:31 et seq.**
 - availability of record, **4:45**
 - consolidated online request portal, **4:51**
 - fees, **4:46**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Definitions—Cont'd

- identifiable records, **4:30**
- law enforcement records, below
- legislative changes of 2016, **4:49**
- newer technology, how FOIA interacts with, **4:54**
- nonresponsive, **4:47**
- personal non-agency files, **4:20, 4:26, 4:27**
- personnel files, **16:3**
- proactive disclosures through records management, **4:52**
- record definition revised, **4:48**
- records, **4:15 et seq.**
- revised duties for Office of Government Information Services, **4:51**
- role of Native American tribal courts, **4:53**
- sources, **17:133 to 17:137**

Delay

- generally, **7:55 et seq.**
- acceptance of delays prior to 1996 amendments, **7:63**
- backlogs of delayed requests, dealing with, **7:56**
- expanded resources for FOIA offices, **7:58**
- expedited requests, **7:59**
- indexing, **8:45**
- judicial remedies, **7:61**
- legislative history background, **7:62**
- normal response times, what are, **7:57**
- pre-1996 controversies, **7:60**
- prompt disclosure, **7:64**
- time deadlines for agencies, **7:55**
- unusual or exceptional circumstances, **7:65, 7:66**

Deletions from records released

- generally, **7:67**
- redactions, below

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Denial of requests

- generally, **7:26 to 7:35**
- fee and cost issues, denial based on, **7:38**
- format of records, denials based on, **7:40**
- initial denial
 - generally, **7:26**
 - appeal procedures, **7:32**
- oral disclosure, **7:33**
- other responses to denials, **7:34**
- redactions from disclosed records, **7:35**
- refusal to confirm or deny existence of record, below
- stating reasons, **7:30**
- submitters' interests in records, denials relating to, **7:37**

De novo review

- generally, **8:34**
- affidavits. Indexes and affidavits, below this group
- agency interpretations, no deference given, **8:35**
- appellate review of de novo decisions, **8:36**
- bad faith charges in index affidavit, **8:49**
- discovery
 - denials of discovery, **8:67**
 - limited, **8:59, 8:64**
 - presidential documents, **8:68**
 - prior to summary judgment motions, **8:66**
- in camera judicial inspection
 - attorneys' fee awards, role of in camera review in justifying, **8:147**
 - discretion not to inspect, **8:42**
 - findings, **8:39**
 - policy, **8:37**
 - practical aspects, **8:38**
- indexes and affidavits
 - adequacy of search, index demonstrating, **8:52**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

De novo review—Cont'd

indexes and affidavits—Cont'd **attorneys' fees**

index orders, **8:153**

authorship, **8:44, 8:47**

bad faith charges in index affidavit, **8:49**

burden of proof, **8:46**

presumption of good faith in affidavits, **8:65**

reasons for rejecting index, **8:43**

segregable information, **8:51**

sufficient factual affidavits to support index, **8:50**

timing and delays, **8:45**

waiver issues, **8:54**

withheld records, indexing using sampling, **8:53**

interrogatories, **8:63**

intervention by affected persons, **8:58**

masters, pretrial practice, **8:56**

presumption of good faith in affidavits, **8:65**

private submitter of information litigation, **10:61**

rights of, **10:22**

protective orders, **8:62**

sealing the record, **8:41, 8:61**

secrecy and sealed files, **8:61**

segregable information, **8:51**

settlement negotiation, discretionary in-court, **8:40**

stipulations, **8:57**

Destruction of agency records

after request, **9:11**

defense, **8:14**

Disclosure

balancing benefits and harms from disclosure, no general duty, **9:8**

confidentiality promises, **9:51**

discretion to release, below

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Disclosure—Cont'd

inconsistent actions of other agencies, **9:54**

no restraints possible once records are released, **9:52**

opens records to all, **9:45 to 9:55, 17:184**

partial disclosure, below

person who is subject of agency file, rights of, **9:50**

presumption favoring, **9:1, 9:2**

prior release, below

private data. Private submitter of information, rights of, below
private enforcers of federal laws, **9:53**

selective disclosure not permitted, **9:45**

tort litigation discovery, FOIA and, **9:56**

withholding records, below

Discovery

civil discovery use of records, **9:10**

contrasted to litigation, **8:6**

de novo review, above

impacts of FOIA litigation on other cases, **8:171**

national security exemption, executive privilege issues, **11:9**

prior releases, **9:67**

private submitter of information litigation, **10:60**

summary judgment, below

tort litigation discovery, FOIA and, **9:56**

why unavailable, **9:56**

Discretion of court

in camera inspection, **8:42**

in-court settlement negotiation, **8:40**

Discretion to release

generally, **9:36 to 9:43**

exemptions, below

policy objections, **9:37**

public interest, **9:41**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Discretion to release—Cont'd

segregability, **9:40**

uses of agency discretion, **9:42**

waivers, **9:40**

Dismissal of abusive litigants, **8:185**

Disposal of records by agencies, **4:29**

Disputes over searches. Records
searches, below

E-discovery tools, role in search ade-
quacy, **7:11**

Electronic records

generally, **7:81**

fee waiver and electronic files

searching costs, **7:74**

reaching electronic FOIA archives,
6:15

searches, **7:82**

Electronic tracking of FOIA requests,
7:7

Employment. Labor and employ-
ment, below

Enforcement of federal laws, private,
9:53

Equal Access to Justice Act,
attorneys' fees, **8:138**

Errors in search processes, **7:23**

Estoppel

collateral estoppel, **8:21**

judicial estoppel, **8:22**

Evolution. Origins and evolution,
below

Excisions from records released, **7:67**

Exclusions from searches, **7:20**

Executive orders

national security exemption, below

private submitter of information,
rights of, below

Executive privilege. National security
exemption, below

Exemptions

agency memoranda exemption,
above

claiming exemption, no explana-
tion needed, **9:38**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Exemptions—Cont'd

confidential business information,
above

discretion to invoke, **9:39, 9:46**

exempt record, defined, **4:43**

internal personnel rules exemption,
below

national security exemption, below

no inference of wrongdoing from
use of, **9:43**

not mandatory, **9:36**

partial disclosures, intertwining of
exempt portions, **9:29**

prior exemption claims, effect of,
8:27

specific statutes permitting with-
holding, exemption for, below

Exhaustion of administrative appeals,
7:46

Exhaustion of remedies, **7:76, 8:24**

Expanded resources for FOIA offices,
7:58

Expedited requests, delays, **7:59**

False Claims Act cases

effect of FOIA litigation, **8:172**

prior release, records use in FCA
actions, **9:70**

Federal Advisory Committee Act,
24:13

Federally chartered entities, agency
status, **4:9**

Federal Register publication, **6:2**

Federal Reports Act, **6:5**

Federal Trade Commission
statutes permitting withholding,
13:15

Fees

attorneys' fees, above

costs of requests, above

defined, **4:46**

Financial data, personalized, **16:12**

Financial statutes permitting with-
holding, **13:23**

Fishing expeditions, **9:14**

FOIA.GOV requests, **7:89**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Foreign government exclusion
 - national security exemption, **11:40**
- Foreign governments or representatives, specific statutes banning access by, **4:33**
- Foreign nations, access by agents of, **4:41**
- Foreseeable harm requirement, **7:31**
- Foreseeable harm standard, **9:74**
- Format of records, denials based on, **7:40**
- Formats of records, **4:16**
- Fugitives barred from litigating for access, **8:32**
- Geological exploration, exemption (b)(9), **18:3**
- Good faith in affidavits, presumption, **8:65**
- Government contractor actions.
 - Private submitter of information, rights of, below
- Grand jury materials, statutes permitting withholding, **13:12**
- Grantees
 - agency status, federal grantees, **4:10**
 - records, **4:23**
- Harassment
 - law enforcement records, **17:88**
- Historical background. Origins and evolution, below
- Homeland Security information, statutes permitting withholding, **13:21**
- Homeland security issues, **17:140**
- Immigration claims, law enforcement records, **17:43**
- Improper release, penalizing employee, **9:73**
- In camera judicial inspection
 - attorneys' fees, role of in camera review in justifying awards, **8:147**
 - de novo review, above
 - law enforcement records, **17:160**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- In camera judicial inspection
 - Cont'd
 - national security exemption, **11:21**
- Inconsistent actions of other agencies, **9:54**
- Independent counsel claims, law enforcement records, **17:49**
- Indexes. De novo review, above
- Inferences
 - exemptions, no inference of wrongdoing from use of, **9:43**
 - law enforcement records, inference of harm, **17:31**
 - partial disclosures, inferences and clues, **9:30**
- Information technologies, use in FOIA processing, **7:25**
- Initial denial of request, appeal procedures, **7:32**
- Injunctions
 - private submitter of information litigation, **10:47, 10:48**
- Internal memos, segregating, **9:31**
- Internal personnel rules exemption
 - generally, **12:1 et seq.**
 - agency manuals, **12:17**
 - background of (b)(2) exemption, **12:2**
 - circumvention of agency
 - exemption of matters that could aid circumvention
 - agency burdens, **12:12**
 - exclusions, **12:13**
 - pre-2011 cases no longer controlling law, **12:11**
 - elements of exemption (b)(2) case
 - generally, **12:3**
 - coverage, **12:4, 12:5**
 - markings and codes, **12:7**
 - restriction of (b)(2) coverage by Supreme Court, **12:5**
 - trivial matters, **12:3, 12:6**
 - internal personnel matters, **12:14**
 - nonexempt records, **12:8**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Internal personnel rules exemption—Cont'd
 - other issues under exemption, **12:18**
 - procedural issues, **12:10**
 - successful requests, **12:16**
- Supreme Court
 - importance of interpretations, **12:15**
 - restriction of (b)(2) coverage, **12:5**
 - trivial matters, **12:3, 12:6, 12:9**
- Internet, web postings and reduction of FOIA requests, **5:3**
- Interrogatories, de novo review, **8:63**
- Intersection with Federal Records Act, **7:87**
- Intervention
 - de novo review, **8:58**
 - private submitter of information litigation, **10:39**
- Invasion of privacy
 - law enforcement records, below
 - personal privacy exemption, below
- Investigations
 - law enforcement records, below
- Jail inmates, rights of, **17:81**
- Judicial estoppel, **8:22**
- Judicial review
 - appeals, above
 - de novo review, above
 - fee waiver denials, **7:79**
 - private submitter of information, rights of, below
- Jurisdiction
 - no FOIA jurisdiction, no fee awards, **8:165**
 - private submitter of information litigation, **10:35**
- Justice Department, role of, **3:4**
- Kennedy assassination files, **13:26**
- Labor and employment
 - affirmative publication and rule dissemination, labor cases, **6:12**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Labor and employment—Cont'd
 - employment statistical data after Chrysler, **10:69**
 - internal personnel rules exemption, above
 - law enforcement records, **17:44, 17:90, 17:205**
 - penalizing employee for improper release, **9:73**
 - records exemption in labor proceedings, **17:90**
- Law enforcement records
 - generally, **17:1 et seq.**
 - administrative claims, **17:47**
 - administrative hearing witnesses, **17:116**
 - admissions about criminal acts, **17:112**
- affidavits
 - brief following affidavits, **17:153**
 - new affidavits, submission of, **17:188**
- age
 - information acquired from source, **17:132**
 - records, **17:93**
- amendments, 1974 and 1986, **17:4, 17:5, 17:7, 17:104**
- anonymity
 - anonymous information, **17:84, 17:122**
 - privacy interests despite anonymity, **17:194**
- antitrust claims, **17:45**
- background checks, **17:108**
- background of exemption, **17:2**
- burdens of proof
 - confidential sources, withholding to protect (section (b)(7)(D)), **17:102**
 - interference with enforcement, withholding to avoid (section (b)(7)(A)), **17:18**
 - litigation, **17:144, 17:146**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
 burdens of proof—Cont'd
 waiver, other disclosures and leaks, **17:166**
 business and corporate privacy claims, **17:82**
 business sources, **17:135**
 categories
 categorical treatment, not balancing, of exclusions, **17:192**
 confidential sources, withholding to protect (section (b)(7)(D)), **17:117, 17:123**
 interference with enforcement, withholding to avoid (section (b)(7)(A)), **17:35, 17:52**
 invasion of privacy, unwarranted, withholding to avoid (section (b)(7)(C)), **17:77, 17:79**
 proof regarding, **17:147**
 civil proceedings, records exemption, **17:90**
 class actions, **17:152**
 conditional release disfavored, **17:172**
 confidential sources, withholding to protect (section (b)(7)(D))
 generally, **17:98 et seq.**
 administrative hearing witnesses, **17:116**
 admissions about criminal acts, **17:112**
 age of information acquired from source, **17:132**
 amendments (1986), effects of, **17:104**
 anonymous letters, **17:122**
 background checks, **17:108**
 burden of proof, **17:102**
 categorical cases, pre-Landano, **17:123**
 categorical exemptions, **17:117**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
 confidential sources, withholding to protect (section (b)(7)(D))
 —Cont'd
 comparing exemptions (b)(6) and (b)(7)(D), **17:107**
 connection to crime, **17:113**
 context of confidentiality, **17:118**
 death of source, effect of, **17:131**
 defining “confidential,” **17:100**
 defining “sources”
 generally, **17:133**
 business sources, **17:135**
 federal agencies, **17:134**
 foreign sources, **17:136**
 states and localities as sources, **17:137**
 future cooperation, **17:110**
 good news, **17:128**
 how agreement was made, **17:119**
 indirect harms, **17:103**
 informant codes, **17:120**
 jeopardy to future enforcement, **17:121**
 Landano decision, **17:105, 17:106**
 no balancing of interests, **17:101**
 non-crime based confidentiality, **17:129**
 persons, sources need not be, **17:130**
 police-FBI sharing, **17:124**
 policy of exemption (b)(7)(D), **17:99**
 presumed confidential test, **17:106**
 Privacy Act, relationship to, **17:109**
 programs of routine confidentiality, **17:115**
 promises of confidentiality, **17:114**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
confidential sources, withholding to protect (section (b)(7)(D))—Cont'd
reprisal fears, **17:127**
retaliation not basis for generic presumption, **17:111**
state parallels, **17:125**
victim information, **17:126**
waiver disfavored, **17:199**
Congress, disclosure to, **17:181**
context and confidentiality, **17:91, 17:118**
counterintelligence claims, **17:46**
criminal investigations, **17:53**
cross-examination of agency, **17:156**
death
privacy after, **17:92**
source, death of, **17:131**
definitions
generally, **17:6**
agency cases, **17:11**
compiled, **17:9**
effect of 1986 amendments, **17:7**
functional standards, **17:13**
information for law enforcement purposes, **17:6, 17:12**
law enforcement, **17:8**
pre-1986 case law, **17:14**
sources, **17:133 to 17:137**
delay in disclosure as settlement offer, **17:176**
discipline claims, **17:50**
disclosure opens records to all, **9:55**
district court, role of, **17:159**
Eighth Circuit analysis, exemption (7)(A) records, **17:155**
enforcement
interference with enforcement, withholding to avoid (section (b)(7)(A)), below

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
enforcement—Cont'd
techniques, withholding to protect (section (b)(7)(E)), **17:139**
evolution of (b)(7) exemption, **17:3**
fact-specific balancing, **17:157**
fair adjudication for accused, withholding to protect (section (b)(7)(B)), **17:58**
false claims and criminal arrest information, **17:209**
federal employee identities, **17:87**
file subject, sharing with, **17:203**
foreign proceedings, interference with, **17:36**
foreign sources, **17:136**
future of exemption, **17:207**
Glomar option, neither confirming nor denying records exist, **17:63**
good news, **17:128**
harassment, prevention of, **17:88**
harm diminished by broad disclosure of records, **17:174**
homeland security issues, **17:140**
identity
federal employee identities, **17:87**
requester identity, **17:30, 17:151**
immigration claims, **17:43**
in camera review, **17:160**
independent counsel claims, **17:49**
indexing, **17:150, 17:161**
interference with enforcement, withholding to avoid (section (b)(7)(A))
generally, **17:15 to 17:57**
administrative claims, **17:47**
antitrust claims, **17:45**
background, **17:16**
burdens of proof, **17:18**
categorical coverage, **17:35**
categories, **17:52**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
interference with enforcement,
withholding to avoid (section
(b)(7)(A))—Cont'd
chilling effects, **17:32**
closed files, **17:25**
coercion of employees, **17:26**
conclusion of case, exemption
after, **17:57**
concrete investigations, **17:34**
concrete proceedings, **17:21**
conflicts of claims, **17:38**
counterintelligence claims,
17:46
criminal investigations, **17:53**
deference, **17:29**
discipline claims, **17:49**
employees, coercion of, **17:26**
evasion, disclosure would cause,
17:27
exemption after case conclusion,
17:57
foreign proceedings, effects on,
17:36
future enforcement, effects on,
17:33
history, **17:22**
identity of requester, **17:30**
immigration claims, **17:43**
independent counsel claims,
17:49
inference of harm, **17:31**
interference, describing, **17:37**
interference, what constitutes,
17:20
labor claims, **17:44**
misconduct by agency, **17:24**,
17:39
operation of exemption, **17:17**
outcome not determinative,
17:51
policy, **17:15**
publicity, effects of, **17:54**
rulemaking, **17:56**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
interference with enforcement,
withholding to avoid (section
(b)(7)(A))—Cont'd
summary judgment, **17:55**
Supreme Court's views, **17:23**
tax enforcement claims, **17:48**
timing, **17:19**
tort enforcement, **17:56**
invasion of privacy, unwarranted,
withholding to avoid (section
(b)(7)(C))
generally, **17:59**
age of records, consideration,
17:93
anonymous information, **17:84**
balancing of interests for and
against disclosure, **17:62 et**
seq.
business and corporate privacy
claims, **17:82**
civil proceedings, records
exemption, **17:90**
context gives rise to
confidentiality, **17:91**
contrasts to exemption (b)(6),
17:73
death, privacy after, **17:92**
degree, balancing by, **17:66**
denials of exemption (b)(7)(C)
status, **17:89**
disclosure, balances favoring,
17:65
exempted categories, **17:77**
exemption because of linkages,
17:78
federal employee identities,
17:87
Glomar option, neither confirm-
ing nor denying records
exist, **17:63**
harassment, prevention of, **17:88**
individual need of requester not
controlling, **17:69**
informants, **17:94**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
invasion of privacy, unwarranted,
withholding to avoid (section
(b)(7)(C))—Cont'd
investigated persons, privacy
rights, **17:80**
jail inmates, interests of, **17:81**
labor proceedings, records
exemption, **17:90**
linkages, exemption because of,
17:78
motives of requester, **17:68**
neither confirming nor denying
records exist, Glomar
option, **17:63**
payment records, **17:95**
policy, **17:60**
pre-1989 categorization of
exempt classes, **17:80**
privacy, defined, **17:61**
privacy interests not overridden,
17:67
procedural issues in (b)(7)(C)
cases, **17:90**
promises, effect of, **17:83**
redaction and deletion, **17:89**
Reporters Committee, signifi-
cance of, **17:64**
source confidentiality and its
limits, **17:90**
statutory purposes of FOIA,
17:71
stigma problem with disclosure,
17:76
Supreme Court decisions, **17:70**,
17:97
third party names in investiga-
tive files, **17:85**
types of records protected by
exemption (b)(7)(C), **17:78**
unions, effect on, **17:86**
unwarranted disclosure, **17:72**
waivers, **17:74**
witnesses, **17:96**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
investigated persons, privacy
rights, **17:80**
investigations, **17:34**, **17:53**
investigative files, third party
names, **17:85**
jail inmates, rights of, **17:81**
labor claims and proceedings,
17:44, **17:90**, **17:205**
late exemption claims, **17:200**
law enforcement purpose
court rejection of claims, **17:12**
definitions, **17:6**
leaks. Waiver, other disclosures
and leaks, below
litigation
generally, **17:144 to 17:163**
agency witnesses, **17:163**
brief must follow affidavits,
17:153
burdens of proof, **17:144**,
17:146
categories, proof regarding,
17:147
class actions, **17:152**
cross-examination of agency,
17:156
district court, role of, **17:159**
Eighth Circuit analysis, exemp-
tion (7)(A) records, **17:155**
elements of proof, **17:145**
fact-specific balancing, **17:157**
in camera review, **17:160**
indexing, **17:150**, **17:161**
other litigation, use of exemp-
tion, **17:206**
presumptions, **17:146**
public need, consideration of,
17:162
requester identity, **17:151**
specific cases and status, proof
as to, **17:154**
standard of review, **17:149**
summary judgment, **17:55**,
17:148

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
 litigation—Cont'd
 timing, **17:158**
 Vaughn index orders, **17:161**
 waiver, other disclosures and leaks, below
 loss of confidentiality, **17:143**
 motives of requester, **17:68**
 multiple persons' privacy, protection of, **17:201**
 national security cases, **17:138**
 neither confirming nor denying records exist, **17:63, 17:142**
 news media coverage, effect of, **17:187**
 non-crime based confidentiality, **17:129**
 once publicly disclosed, must be open, **17:184**
 other litigation, use of exemption, **17:206**
 partial disclosure not waiver, **17:189**
 payment records, **17:95**
 police-FBI sharing, **17:124**
 presumptions
 litigation, **17:146**
 retaliation not basis for generic presumption, **17:111**
 privacy
 anonymity, privacy interests despite, **17:194**
 express waiver of privacy rights, **17:197**
 invasion of privacy, unwarranted, withholding to avoid (section (b)(7)(C)), above
 multiple persons' privacy, protection of, **17:201**
 private proceeding, disclosure not waiver, **17:177**
 promises of confidentiality, **17:83, 17:114**
 publicity, effects of, **17:54, 17:196**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
 public need, consideration of, **17:162**
 redaction and deletion, **17:89**
 reprisal, retribution and retaliation, **17:111, 17:127, 17:141**
 sealed court records, **17:198**
 searches and individual privacy issues, **17:208**
 segregable portions disclosable, **17:165**
 segregating, **9:32**
 sharing with file subject, **17:203**
 sources. Confidential sources, withholding to protect (section (b)(7)(D)), above
 standard of review, **17:149**
 state openness laws, effect of, **17:186**
 statutes permitting withholding, **13:13**
 stays pending adjudication of (b)(7) cases, **17:204**
 stigma problem with disclosure, **17:76**
 summary judgment
 interference with enforcement, withholding to avoid (section (b)(7)(A)), **17:55**
 proof, **17:148**
 tax enforcement claims, **17:48**
 third party names in investigative files, **17:85**
 timing
 interference with enforcement, withholding to avoid (section (b)(7)(A)), **17:19**
 litigation, **17:158**
 types of records covered, **17:10**
 unions, effect on, **17:86**
 Vaughn index orders, **17:161**
 victim information, **17:126**
 waiver, other disclosures and leaks
 generally, **17:164 to 17:203**
 accidents, effect of, **17:180**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
waiver, other disclosures and leaks
—Cont'd
affidavits, new, submission of,
17:188
agency need not solicit waivers,
17:183
anonymity, privacy interests
despite, **17:193**
burden of proof, **17:166**
categorical treatment, not
balancing, of exclusions,
17:192
conditional release disfavored,
17:172
confidentiality, **17:143**
Congress, disclosure to, **17:181**
criminal cases, **17:171**
criminal record files, **17:178**
criminal status irrelevant,
17:182
delay in disclosure as settlement
offer, **17:176**
disfavored in (b)(7)(D), **17:199**
dissimilar records, no waiver,
17:170
exceptional nature of waiver,
17:193
express waiver of privacy rights,
17:197
file subject, sharing with, **17:203**
harm diminished by broad
disclosure of records,
17:174
interviewed person consents,
17:191
invasion of privacy, unwar-
ranted, withholding to
avoid (section (b)(7)(C)),
17:74
late exemption claims, **17:200**
leaks, **17:167**
multiple persons' privacy,
protection of, **17:201**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Law enforcement records—Cont'd
waiver, other disclosures and leaks
—Cont'd
news media coverage, effect of,
17:187
once publicly disclosed, must be
open, **17:184**
only agency, not one employee,
can waive, **17:195**
other enforcers, sharing with,
17:202
partial disclosure not waiver,
17:189
plaintiff's knowledge, effect of,
17:185
private proceeding, disclosure
not waiver, **17:177**
protected person, waiver by,
17:173
publicity by source, effects of,
17:196
record, reference to, not waiver
of exemption, **17:169**
sealed court records, **17:198**
source, waiver by, **17:175**
speculation inadequate, **17:190**
state openness laws, effect of,
17:186
trial testimony, effect of, **17:168**
witness speculation, **17:179**
witnesses
administrative hearing wit-
nesses, **17:116**
agency witnesses, **17:163**
speculation by witnesses,
17:179
unwarranted invasion of privacy,
withholding to avoid, **17:96**
Law of the case applied to previous
decision being relitigated, **7:90**
Leaked records
arguing for disclosure, **7:84**
law enforcement records, above
private submissions, effects of
leaks, **10:81**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Licensing proceedings, disclosure of privately submitted information, **10:82**
- Likelihood of success, private submitter of information litigation, **10:42**
- Limitations on searches. Records searches, below
- Litigation
 - generally, **8:1 et seq.**
 - agency memoranda exemption, above
 - appeals, above
 - attorneys' fees, above
 - burden of proof, **8:7**
 - complaint, preparing, **8:8**
 - confidential business information, above
 - defenses, above
 - de novo review, above
 - discovery (civil)
 - contrasted, **8:6**
 - impacts of FOIA litigation on other cases, **8:171**
 - foreseeable harm, agency must establish, **8:9**
 - jurisdiction, **8:2**
 - law enforcement records, above
 - limits on judicial constraints affecting one person, **10:55**
 - mediation contrasted, **8:6**
 - other cases, impacts of FOIA litigation
 - administrative adjudications, **8:175**
 - civil discovery, **8:171**
 - criminal cases, **8:173**
 - False Claims Act cases, **8:172**
 - personal privacy exemption, below
 - pleadings, **8:5**
 - preliminary injunctions, **8:12**
 - prior adjudications, below
 - private submitter of information, below
 - purpose of FOIA litigation, **8:1**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Litigation—Cont'd
 - relief, **8:10**
 - settlement, below
 - standing, **8:4**
 - statute of limitations, **8:11**
 - summary judgment, below
 - venue, **8:3**
- Local entities
 - confidential source, locality as, **17:137**
 - exclusion as "agency," **4:11**
- Manuals and policies
 - availability requirement, **6:6**
 - internal personnel rules exemption, **12:17**
- Masters, pretrial practice, **8:56**
- Mediation
 - contrasted to litigation, **8:6**
 - private submitter of information disputes, **10:52**
- Medical statutes, **13:28**
- Memoranda. Agency memoranda exemption, above
- Misconduct
 - law enforcement records, **17:24, 17:39**
- Mistaken disclosure, remedies after, **10:63, 10:64**
- Mootness
 - agency's defense, **8:23**
 - private submitter of information litigation, **10:43**
- Motive
 - any person access, **4:32**
 - disregarding motivation of requesters, **9:3**
 - irrelevance of requester's motive, **9:49**
 - law enforcement records, motives of requester, **17:68**
- National security exemption
 - generally, **11:1 et seq.**
 - agency affidavits, **11:33**
 - amendments (1974), **11:4**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

National security exemption—Cont'd
applying executive orders, **11:12, 11:14, 11:19**
bad faith claims of exemption 1
status, **11:30**
balancing, **11:32**
burdens of proof, **11:11**
challenges to exemption (b)(1)
claims
generally, **11:22**
burden of proof, **11:23**
content of agency presentation,
11:25
executive order, use of, **11:24**
potential impact of disclosure,
11:26
CIPA availability in FOIA litigation,
11:29
classification of records, effects of,
11:16
classified secrets, applying current
executive order, **11:12**
compliance with executive order,
11:34
controlled unclassified information
(Executive Order 13556),
11:13
coordination with other exemp-
tions, **11:41**
diplomatic position papers, **11:27**
discovery, executive privilege
issues, **11:9**
effects of 1995 executive order,
11:14
executive privilege issues
generally, **11:6**
background, **11:8**
discovery, **11:9**
political considerations, **11:10**
state secrets, **11:7**
foreign government exclusion,
11:40
future of (b)(1) exemption, **11:38**
history and development
amendments (1974), **11:4**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

National security exemption—Cont'd
history and development—Cont'd
judicial interpretations, **11:5**
preenactment, **11:2**
through Watergate, **11:3**
in camera review, **11:21**
judicial deference, **11:31**
judicial interpretations, **11:5**
law enforcement records, national
security cases, **17:138**
military recommendations classi-
fied, **11:42**
mosaic puzzle arguments, **11:19**
no implied agreements, **11:20**
obsolescence issues, **11:36**
official acknowledgement doctrine,
11:43
physical protection of classified
data, **11:18**
pirated records, **11:39**
political considerations, executive
privilege issues, **11:10**
procedure issues, **11:11**
segregable portions of disclosure,
11:28
state secrets, executive privilege
issues, **11:7**
timing claims of exemption, **11:37**
tying executive order to exemp-
tion, **11:15**
types of confidential information
protected, **11:17**
types of records withheld, **11:35**
waiver issues, **11:36**
Negotiating access before litigation,
7:48
Neither confirming nor denying.
Refusal to confirm or deny exis-
tence of record, below
New record, no duty to create, **4:28**
Nonexistence of records
generally, **9:16**
agency defense, **8:13**
Notification rights under Executive
Order 12,600. Private submitter

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- of information, rights of, below
- Obama administration
 - standards, **3:12**
- Official acknowledgement, **7:88**
- Oral disclosure, **7:33**
- Origins and evolution
 - generally, **2:1, 3:1 et seq.**
 - agency attitudes, **3:3**
 - amendments, above
 - backlash against open information, **3:3**
 - Congress, variable roles, **3:5**
 - courts, problems in, **3:6**
 - criticisms, **3:1**
 - development (1960-1964), **2:3**
 - DOJ, role of, **3:4**
 - expectations, **3:1**
 - groundwork (1955-1960), **2:2**
 - passage (1965-1967)
 - generally, **2:4**
 - role of press, **2:5**
 - political perspective, **2:6**
 - role of press in passage, **2:5**
 - uses of new act, **3:2**
- Other agencies, inconsistent actions, **9:54**
- Other cases, impacts of FOIA litigation
 - administrative adjudications, **8:175**
 - civil discovery, **8:171**
 - criminal cases, **8:173**
 - False Claims Act cases, **8:172**
- Other nations, access by agents of, **4:41**
- Parole records, statutes permitting withholding, **13:13**
- Partial disclosures
 - generally, **9:20 to 9:34**
 - administrative appeals inducing partial disclosure, **7:44**
 - agency function in segregating disclosable portions, **9:22**
 - burdens of proof, segregation and disclosure, **9:24**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Partial disclosures—Cont'd
 - business data, segregating, **9:33**
 - Glomar responses, disclosures not used for, **9:26**
 - inferences and clues, **9:30**
 - internal memos, segregating, **9:31**
 - intertwining of exempt portions, **9:29**
 - law enforcement records
 - not waiver, **17:189**
 - segregating, **9:32**
 - personal privacy records, segregating, **9:35**
 - procedural issues in segregability for release, **9:27**
 - reasonably segregable portion of exempt records, duty to disclose, **9:20, 9:21**
 - special classes, **9:28**
 - specific statutory powers, segregation and, **9:34**
 - when segregation not possible, **9:25**
- Parties, private submitter of information litigation, **10:37**
- Passage of act (1965-1967)
 - generally, **2:4**
 - role of press, **2:5**
- Past requested records, reprocessing, **7:85**
- Penalizing employee for improper release, **9:73**
- Personal non-agency files
 - generally, **4:20**
 - agency possession of records, **4:27**
 - record retention, **4:26**
- Personal privacy exemption
 - generally, **16:1 et seq.**
 - agency defenses, meeting. Litigation, below this group
 - applying exemption, **16:67 to 16:79**
 - law enforcement exemption, relationship to, **16:67**
 - mailing lists, below this group

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Personal privacy exemption—Cont'd
 - balancing of interests under exemption (b)(6)
 - generally, **16:25 et seq.**
 - business-related activities
 - generally, **16:7**
 - background, **16:10**
 - financial data, personalized, **16:12**
 - medical files, **16:8**
 - other categories, **16:15**
 - sensitive data, **16:11**
 - similar files, **16:9 et seq.**
 - union list, **16:14**
 - clearly unwarranted, **16:23**
 - consequences arising from disclosure, **16:20**
 - court and agency views, comparing, **16:19**
 - coverage
 - generally, **16:3 to 16:15**
 - business-related activities, above this group
 - exempt status, considerations favoring, **16:6**
 - medical files, **16:8**
 - personnel files, **16:3 to 16:5**
 - exempt status, considerations favoring, **16:6**
 - expectations of privacy, **16:19**
 - Federal Certificates of Confidentiality, **16:58**
 - financial data, personalized, **16:12**
 - history, **16:2**
 - invasion of personal privacy
 - generally, **16:17 to 16:24**
 - clearly unwarranted, **16:24**
 - consequences arising from disclosure, **16:21**
 - court and agency views, comparing, **16:19**
 - records whose release invades privacy, **16:18**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Personal privacy exemption—Cont'd
 - invasion of personal privacy—Cont'd
 - sufficient invasions of privacy, **16:22**
 - waiver and disclosure, **16:23**
 - law enforcement exemption, relationship to, **16:67**
 - litigation, **16:80 to 16:96**
 - medical files, **16:8**
 - overview, **16:1**
 - personnel files
 - definitions, **16:3**
 - examples, **16:4**
 - files not deemed personnel files, **16:5**
 - records whose release invades privacy, **16:18**
 - segregable portions, **9:35**
 - sensitive data, **16:11**
 - similar files
 - generally, **16:9 et seq.**
 - denial of exemption, **16:13**
 - other categories, **16:15**
 - union list, **16:14**
 - sufficient invasions of privacy, **16:22**
 - unions and union lists, **16:14**
 - waiver and disclosure, **16:23**
- Personnel rules. Internal personnel rules exemption, above
- Physical objects not FOIA records, **4:21**
- Policy objections, discretion to release, **9:37**
- Political aspects of FOIA advocacy
 - generally, **5:1 to 5:4**
 - access, politics of, **5:1**
 - Congress, role in FOIA implementation, **5:2**
 - disputed access, use of political channels, **5:3**
 - origins of act, political perspective, **2:6**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Postal statutes permitting withholding, **13:19**
- Preservation of agency records, **9:72**
- President
 - agency status of staff, **4:6**
 - discovery of presidential documents, denial, **8:68**
 - records, presidential, **4:24**
- Presidential tweets, **7:88**
- Press
 - any person access, **4:38**
 - role in passage of act, **2:5**
- Presumptions
 - favoring disclosure, **9:1**
 - good faith in affidavits, **8:65**
 - historical rationale for pro-disclosure presumption, **9:2**
 - law enforcement records, **17:146**
- Prior adjudications
 - applying rules against relitigation of claims, **8:26**
 - collateral estoppel, **8:21**
 - effect of, **8:17**
 - judicial estoppel, **8:22**
 - prior exemption claims, effect of, **8:27**
 - res judicata, **8:20**
- Prior release, effects of
 - generally, **9:57 to 9:76**
 - already public records, **9:69**
 - archiving requirement, evolution, **9:66**
 - confidentiality promises, effects of, **9:71**
 - congressional disclosure, **9:61**
 - core values debate, **9:75**
 - discovery regarding releases, **9:67**
 - False Claims Act “qui tam”
 - actions, records use in, **9:70**
 - foreseeable harm standard, **9:74**
 - identical record, disclosure of, **9:62**
 - improper release, penalizing employee, **9:73**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Prior release, effects of—Cont'd
 - litigation use and waiver, **9:68**
 - official acknowledgment of disclosure, what is, **9:60**
 - official disclosure, waiver requires, **9:58**
 - preservation of agency records, **9:72**
 - prior disclosures and current requests, **9:57**
 - privilege claims, waiver, **9:76**
 - releases not amounting to disclosure, **9:59**
 - state statutes, parallels in, **9:77**
 - types of disclosures, **9:65**
 - understanding prior disclosure, **9:64**
 - voluntary and specific disclosure by agency, **9:63**
- Prisons and prisoners
 - affirmative publication and rule dissemination, prison cases, **6:13**
 - jail inmates, rights of, **17:81**
 - requests by prisoners, **4:35**
- Privacy Act and FOIA
 - generally, **20:59 to 20:63**
 - background prior to 1984 amendments, **20:62**
 - balance of interests, **20:63**
 - confidential sources, **17:109**
 - law since 1984 amendment, **20:59**
 - prior law, **20:61**
 - suing under both acts, **20:60**
- Privacy exemption. Personal privacy exemption, above
- Privacy impact statements, **8:186**
- Private enforcers of federal laws, **9:53**
- Private person records not FOIA-accessible, **19:9**
- Private records becoming agency records, **4:8**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Private submitter of information, rights of
 - generally, **10:1 et seq.**
 - administrative record for review
 - generally, **10:18 to 10:24**
 - de novo review, **10:22**
 - how much is needed, **10:19**
 - submitter's prima facie case, **10:20**
 - voluntariness standard, applying, **10:24**
 - voluntary submission, effect of, **10:23**
 - weakness of agency support, **10:21**
- business information, future outlook for protection of, **10:85**
- business statistics, protection for, **10:66**
- confidentiality marking and filing procedures, **10:6**
- constitutional issues, disclosure of private business data, **10:67**
- contractors. Government contractor actions, below this group
- disclosure opens records to all, **9:50**
- distorted disclosures problem, **10:76**
- doubtful adverse effects from disclosure, agency claims, **10:78**
- doubtful secrecy in private submissions, agency claims, **10:77**
- employment statistical data after Chrysler, **10:69**
- Executive Order 12,600, using
 - generally, **10:7 to 10:17**
 - notification rights
 - generally, **10:8**
 - agency decisions, **10:16**
 - conditions for notification, **10:14**
 - efficient processes, **10:9**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

- Private submitter of information, rights of—Cont'd
- Executive Order 12,600, using—Cont'd
 - notification rights—Cont'd
 - exclusions from notification, **10:12**
 - litigation by submitter, **10:17**
 - mechanics of notification, **10:15**
 - recognizing confidentiality, **10:10**
 - special considerations, **10:13**
 - timing and class determinations, **10:11**
- government contractor actions
 - generally, **10:71 to 10:74**
 - bid prices disclosure, **10:73**
 - debate over access to contract pricing data, **10:75**
 - rights of contractors, **10:71**
 - unit pricing remedies, **10:74**
 - withdrawal of contractor submissions, **10:72**
- Information Quality Act
 - effects, **10:84**
 - future outlook for protection of business information, **10:85**
 - role of, **10:83**
- judicial review, challenges to agency disclosure rules, **10:34**
- judicial review, decision to disclose private data
 - generally, **10:25 to 10:34**
 - consistency with prior decisions, **10:31**
 - critical mass decision, effects of, **10:30**
 - defenses, successful, **10:33**
 - deference, **10:27**
 - effects of executive order, **10:28**
 - form of review, **10:26**
 - limitations, **10:32**
 - standards of review, **10:25**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Private submitter of information,
rights of—Cont'd
judicial review, decision to dis-
close private data—Cont'd
support for agency decision to
disclose, **10:29**
licensing proceedings, disclosure
and, **10:82**
litigation
generally, **10:35 to 10:61**
burden of proof, submitter's,
10:44
damage awards prohibited,
10:58
declaratory judgment, **10:53**
de novo review, **10:61**
discovery, **10:60**
Executive Order 12,600, **10:17**
injunction standards, **10:47,**
10:48
intervention, **10:39**
irreparable harm to persons,
10:49
jurisdiction, **10:35**
likelihood of success, **10:42**
mandatory notice, **10:54**
mediation, **10:52**
mootness, **10:43**
no pending FOIA request, **10:45**
parties, **10:37**
protective orders, **10:51**
public interest, **10:50**
records, **10:40, 10:46**
remands, **10:59**
replevin of submitted docu-
ments, **10:57**
ripeness for review, **10:43**
scope of coverage of records,
10:46
sovereign immunity defenses,
10:38
standing, **10:41**
subpoenas, **10:56**
venue, **10:36**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Private submitter of information,
rights of—Cont'd
litigation—Cont'd
waiver, **10:61**
misplaced reliance on statutes by
submitters, **10:80**
mistaken disclosure, remedies
after, **10:63, 10:64**
nexus statute favoring release,
disclosure and role of, **10:79**
notification rights. Executive Order
12,600, using, above this
group
protective motive underlying
Chrysler v. Brown, **10:68**
purpose of reverse FOIA cases,
10:65
side effects of disclosure
generally, **10:76 to 10:81**
distorted disclosures problem,
10:76
doubtful adverse effects from
disclosure, agency claims,
10:78
doubtful secrecy in private
submissions, agency
claims, **10:77**
leaks of private submission,
effects of, **10:81**
licensing proceedings,
disclosure and, **10:82**
misplaced reliance on statutes
by submitters, **10:80**
nexus statute favoring release,
disclosure and role of,
10:79
submitters' rights within agency
generally, **10:2 to 10:6**
analyzing the disclosure, **10:5**
general statutes, **10:3**
specific statutes, **10:4**
technology, protection of, **10:65**
trade secrets legislation, scope of
exemption (b)(4) and section
1905, **10:70**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Privilege claims, waiver, **9:76**

Privileged records

agency memoranda exemption,
above

confidential business information,
above

Processing request within agency, **7:6**

Pro se plaintiffs, eligibility for fee
awards, **8:167**

Protective orders

de novo review, **8:62**

private submitter of information
litigation, **10:51**

Publication. Affirmative publication
and rule dissemination, above

Public interest

discretion to release, **9:41**

personal privacy exemption, above

private submitter of information
litigation, **10:50**

waiver of search fees, **7:78, 7:80**

Records

possession of records received
after request, **8:69**

Records of agencies

generally, **4:15**

access to “identifiable” records,
4:30

availability, **4:35**

computerized files, **4:17**

congressional requests, **4:39**

disposal of records, **4:29**

format of record disclosure, **7:41**

formats of records, **4:16**

grantees, **4:23**

new record, no duty to create, **4:28**

physical objects not FOIA records,
4:21

process of obtaining records, **4:36**

Records searches

adequacy of search

challenging, **9:18**

control of agency, records
outside, **7:17**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Records searches—Cont'd

adequacy of search—Cont'd

e-discovery tools, role in search
adequacy, **7:11**

inadequacy, **7:9**

index demonstrating, **8:52**

proof of search adequacy, **7:15**
to **7:19**

rebuttal of agency search affida-
vit, **7:16**

standards, **7:10**

affidavits

clarity, **7:15**

rebuttal of agency search affida-
vit, **7:16**

challengers and their burdens, **7:18**

control of agency, records in files
outside, **7:17**

cutoff dates, **7:21**

disputes and disagreements

generally, **7:8 to 7:14**

adequacy or inadequacy of
searches, **7:9, 9:18**

adequacy standards, **7:10**

challengers and their burdens,
7:18

improvements to search
processes, **7:12**

procedural standards, **7:19**

reasonable calculation to find
records, **7:14**

reasonableness, records search
disagreements, **7:8**

successful defenses of agency
searches, examples, **7:13**

electronic searches, **7:82**

errors in search processes, **7:23**

exclusions from searches, **7:20**

improvements to search processes,
7:12

inadequacy of searches, **7:9**

information technologies, use in
FOIA processing, **7:25**

limitations on searches

generally, **7:20 to 7:24**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Records searches—Cont'd

limitations on searches—Cont'd
background of FBI exclusion,
7:21

cutoff dates, **7:22**

errors in search processes, **7:23**

exclusions from searches, **7:20**
et seq.

information technologies, use in
FOIA processing, **7:25**

targeting search, **7:24**

timing, **7:22**

procedural standards, search
disagreements, **7:19**

reasonable calculation to find
records, **7:14**

successful defenses of agency
searches, examples, **7:13**

targeting search, **7:24**

timing, **7:22**

Redactions from disclosed records
generally, **7:35**

deletions and excisions, **7:67**

law enforcement records, **17:89**

Refusal to confirm or deny existence
of record

generally, **4:18, 7:36 to 7:39**

fee and cost issues, denial based
on, **7:38**

initial denial, **7:37, 7:39**

law enforcement records, **17:63,**
17:142

other denials, **7:39**

submitters' interests in records,
denials relating to, **7:37**

Regulations. Rulemaking, below

Release

disclosure, above

discretion to release, above

partial disclosures, above

prior release, above

Remand

private submitter of information
litigation, **10:59**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Remedies

delay, judicial remedies, **7:61**

mistaken disclosure of private
information, remedies after,
10:63, 10:64

sanctions against agencies and
requesters, **8:168**

Replevin of submitted documents,
10:57

Requests to agencies

generally, **7:1 et seq., 9:12 to 9:19**

administrative appeals, above

amendments (1996), effect of, **9:19**

complex requests, **9:15**

content of FOIA request, **7:2**

corporations, requests by, **4:34**

costs of requests, above

defined, **4:42**

delay, above

denial of requests, above

electronic tracking of FOIA
requests, **7:7**

failure of request's description of
records, **7:5**

fees. Costs of requests, above

fishing expeditions, **9:14**

following agency FOIA rule, **7:4**

handling requests, **7:6, 7:7**

making request, **7:1 to 7:5**

nonexistent records, **9:16**

options, requester's, **9:13**

past requested records, reprocess-
ing, **7:85**

prisoners, requests by, **4:35**

processing request within agency,
4:36, 7:6

questions and answers not allowed,
4:19, 9:17

records searches, above

refusal to confirm or deny exis-
tence of record, above

specifying records sought, **9:12**

successful requests, **7:1**

what is not a FOIA request, **7:3**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Res judicata defense, **8:20**

Retrospective and international views, **2:7**

Reverse FOIA cases. Private submitter of information, rights of, above

Ripeness for review, private submitter of information litigation, **10:43**

Rulemaking

affirmative publication and rule dissemination, above

Sanctions against agencies and requesters, **8:168**

Sealed records

de novo review, **8:41, 8:61**

law enforcement records, **17:198**

Searches. Records searches, above

Segregation of records

administrative appeals, **7:51**

de novo review, **8:51**

discretion to release, **9:40**

national security exemption, **11:28**

partial disclosures, above

personal privacy exemption, **9:35**

Settlement

administrative appeals inducing settlement, **7:44**

agency defenses, settlements under 2007 mediation amendment, **8:29**

attorneys' fees

generally, **8:139**

courts cannot fix compromises

beyond FOIA's limits, **8:177**

de novo review, discretionary in-court settlement negotiation, **8:40**

dismissal of abusive litigants, **8:185**

law enforcement records, delay in disclosure as settlement offer, **17:176**

privacy impact statements, **8:186**
terms, **8:176**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Social Security records, statutes permitting withholding, **13:11**

Sovereign immunity

private submitter of information litigation, **10:38**

Special responses. Refusal to confirm or deny existence of record, above

Specific statutes permitting withholding, exemption for generally, **13:1 et seq.**
background of (b)(3) exemption, **13:2**

banking statutes, **13:23**

changes after 1976, **13:4**

CIA records, **13:14**

contracting statutes, **13:22**

elements of (b)(3) case, **13:5**

exemption 3 coverage, statutes not triggering, **13:18**

exemption 3 norms, applying to other statutes, **13:20**

Federal Trade Commission records, **13:15**

financial statutes, **13:23**

general norms, cases applying, **13:7**

grand jury materials, **13:12**

history, **13:3**

Homeland Security information, **13:21**

law enforcement records, **13:13**

no discretionary release category, **13:8**

other statutes, **13:17**

parole records, **13:13**

particular criteria category, **13:9**

postal statutes, **13:19**

Privacy Act, **13:16**

procedural issues, **13:6**

Social Security records, **13:11**

tax records, **13:10**

Spoilation claims, **8:33**

Standards for FOIA access to court-sealed records, **8:183**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Standing, private submitter of information litigation, **10:41**

States

confidential source, state as, **17:137**

exclusion as “agency,” **4:11**

public records, **4:25**

state Information and Access Laws, this index

Stays

disclosure decisions, **8:181**

law enforcement records, stays pending adjudication of (b)(7) cases, **17:204**

Stipulations

attorneys’ fees, **8:155**

de novo review, **8:57**

Subpoenas, private submitter of information litigation, **10:56**

Successful requests, **7:1**

Summary judgment

generally, **8:70 to 8:93**

discovery

before summary judgment, **8:66**
motive of requester, irrelevance, **8:80**

Targeting search, **7:24**

Taxes

affirmative publication and rule dissemination, **6:11**

law enforcement records, tax enforcement claims, **17:48**

statutes permitting withholding, **13:10**

Timing

agency memoranda exemption, above

attorneys’ fee requests, **8:148**

deadlines for agencies, **7:55**

delay, above

indexing, **8:45**

law enforcement records, above
national security, timing claims of exemption, **11:37**

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Timing—Cont'd

records searches, **7:22**

Torts

FOIA and tort litigation discovery, **9:56**

Trade secrets

private submitter of information, scope of exemption (b)(4) and section 1905, **10:70**

Unions

access by unions, **4:40**

claims to access, **9:48**

law enforcement records, effect on unions, **17:86**

personal privacy exemption, union list, **16:14**

Venue, private submitter of information litigation, **10:36**

Victim information, law enforcement records, **17:126**

Voluntary release

attorneys’ fees, routine voluntary release, **8:164**

prior release, effects of, **9:63**

Waiver

actual release, **9:47**

attorneys’ fees, burden to show waiver of exemption has occurred, **8:156**

defenses, waiver by agency for failure to assert early, **8:31**

de novo review, affidavits and waiver issues, **8:54**

discretion to release, **9:40**

fee waiver. Costs of requests, above

law enforcement records, below
national security exemption, waiver issues, **11:36**

official disclosure, waiver requires, **9:58**

personal privacy exemption, **16:23**

prior release, litigation use and waiver, **9:68**

INDEX

FREEDOM OF INFORMATION

ACT (FOIA)—Cont'd

Waiver—Cont'd

private submitter of information
litigation, **10:62**

privilege claims, **9:76**

Web postings and reduction of FOIA
requests, **5:3**

Withholding records

balancing benefits and harms from
disclosure, n general duty, **9:7**

benefit of narrow withholding, **9:4**

burden on agency to justify, **9:5**

claims for withholding usually fail
unless exemptions apply, **9:6**

classes of documents, **9:23**

confidential business information,
above

court orders and statutes may
apply, **9:9**

indexing withheld records using
sampling, **8:53**

law enforcement records, above
national security exemption, types
of records withheld, **11:35**

no mandate to withhold, **9:36**

no withholding except as specifi-
cally stated, **9:44**

specific statutes permitting with-
holding, exemption for, below
unsuccessful agency reasons for
withholding, **9:7**

Witnesses

law enforcement records, above

Work product privilege. Agency
memoranda exemption, above

FUGITIVES

Agency defenses, **8:32**

GEOLOGICAL EXPLORATION

FOIA exemption (b)(9), **18:3**

GOVERNMENT IN SUNSHINE

Sunshine Act, this index

GRAND JURY

Statutes permitting withholding,
13:11

HOMELAND SECURITY

Exemption 7, **17:140**

Privacy Act exemption, **21:41**

Statutes permitting withholding,
13:21

IMMIGRATION

Law enforcement records, **17:43**

IN CAMERA REVIEW

Freedom of Information Act, this
index

Privacy Act, **22:43**

INJUNCTIONS

Freedom of Information Act, this
index

Privacy Act, **22:78**

INTERNATIONAL VIEWS

Freedom of Information Act (FOIA),
2:7

INTERNET AND OTHER

METHODS OF FEDERAL DISCLOSURE

Generally, **26:1 et seq.**

Agency-compelled private
disclosures, mandates for, **26:4**

Disclosure-related disputes, reme-
dies, **26:3**

Electronic access, rights to, **26:2**

Environmental and worker “right to
know,” **26:5**

Response sending requester to
website, **7:83**

Web postings and reduction of FOIA
requests, **5:4**

Websites, disclosure via, **26:1**

INTERROGATORIES

FOIA, de novo review, **8:63**

INTERVENTION

Freedom of Information Act, this
index

INTRODUCTION

Generally, **1:1**

Context for book, **1:2**

INTRODUCTION—Cont'd

How book is arranged, **1:3**

INVASION OF PRIVACY

Law enforcement records. Freedom of Information Act, this index

Personal privacy exemption. Freedom of Information Act, this index

Privacy Act, this index

INVENTORY AND CATALOGUE MANDATES

Open data legislation, **28:5**

JUDICIAL RECORD

Scope, **4:14**

JUDICIAL REVIEW

Freedom of Information Act, this index

State information and access laws, judicial review of access denials, **27:23**

JURISDICTION

Freedom of Information Act, this index

Privacy Act, **22:30**

JUSTICE DEPARTMENT

FOIA, role of DOJ, **3:4**

KENNEDY ASSASSINATION FILES

Specific statutes permitting withholding, **13:26**

LAW ENFORCEMENT

Freedom of Information Act, this index

Privacy Act, this index

MAILING LISTS

Personal privacy exemption. Freedom of Information Act (FOIA)

Privacy Act, **21:59**

MASTERS

FOIA pretrial practice, **8:56**

MCBURNEY DECISION

State information and access laws, **27:9**

MEDIATION

Freedom of Information Act, this index

MEDICAL RECORDS

State information and access laws, **27:26**

MEDICAL STATUTES

Freedom of Information Act (FOIA), **13:28**

MEMORANDA

Agency memoranda exemption. Freedom of Information Act, this index

MOOTNESS

Freedom of Information Act, this index

Privacy Act, **22:40**

MOTIVE

Freedom of Information Act, this index

NATIONAL SECURITY EXEMPTION

Freedom of Information Act, this index

NEGLIGENCE

Privacy Act, agency defenses, **22:63**

NOTICE

Privacy Act, this index

OLDER JUDICIAL AND PROSECUTORIAL RECORDS

Access, **19:13**

OPEN DATA LEGISLATION

Generally, **28:1 to 28:19**

Access to other data assets, **28:7**

Background, **28:1**

Confidential Information Protection and Statistical Efficiency Act of 2018, **28:8**

INDEX

OPEN DATA LEGISLATION

—Cont'd

- Confidentiality, **28:15, 28:16**
- Coordination and oversight of policies, **28:10**
- Criminal felony fines and penalties, **28:18**
- Definitions, **28:3, 28:9**
- Disclosure of statistical data or information, **28:17**
- Enforcement and penalties, **28:14**
- Implementation, **28:4**
- Inventory and catalogue mandates, **28:5**
- OPEN, **28:2**
- Other federal statutes, effect of, **28:12**
- Preemption of state law, **28:13**
- Privacy impacts, **28:19**
- Repository, **28:6**
- Roles of statistical agencies, **28:11**
- Scope, **28:9**

OPEN MEETINGS

- State information and access laws, **27:22**
- Sunshine Act, this index

ORGANIZATIONS

- Privacy Act, files about, **22:7**

PAROLE RECORDS

- Statutes permitting withholding, **13:13**

PERSONAL PRIVACY EXEMPTION

- Freedom of Information Act, this index

PREEMPTION

- Open data legislation, **28:13**
- State information and access laws, **27:24**

PRESENTENCE REPORTS

- Disclosure, **19:3**

PRESIDENT

- Freedom of Information Act, this index

PRESIDENTIAL TWEETS

- Freedom of Information Act (FOIA), **7:88**

PRESUMPTIONS

- Freedom of Information Act, this index

PRIVACY

- Open data legislation, **28:19**
- Personal privacy exemption.
 - Freedom of Information Act, this index
- State information and access laws, personal privacy, **27:16**

PRIVACY ACT

- Generally, **20:1 et seq.**
- Access rights
 - generally, **22:1 to 22:17**
 - appeal rights, notices, **22:12**
 - burden, plaintiff's, **22:14**
 - copying fees, **22:5**
 - defenses, agency's, **22:13**
 - discovery, **22:16**
 - extent of access, **22:6**
 - formats of records released, **22:17**
 - how access is obtained, **22:3**
 - identification of requester, **22:4**
 - medical records, **22:10**
 - organizations, files about, **22:7**
 - request, **22:8**
 - search fees, **22:9**
 - third party objections, **22:15**
 - timing, **22:11**
 - use of access, **22:2**
- Accuracy of records
 - generally, **21:11**
 - challenges, **22:52**
- Agency head, consent exceptions, **21:34**
- Agency responsibilities
 - generally, **21:1 et seq.**
 - collection of information, below

PRIVACY ACT—Cont'd

Agency responsibilities—Cont'd
 consent exceptions, below
 exemptions, below
 internal control requirements,
 21:37
 use of individual records, below
 Amendment and accounting, **22:82**
 Amendment and correction rights
 generally, **22:18 to 22:28**
 appeals in court, **22:25**
 denial of amendment requests,
 22:23
 exemptions, effect of, **22:26**
 expungement, **22:20**
 failed attempts at changing content
 of agency decisions, **22:24**
 opinion and fact distinctions in
 records content, **22:28**
 plaintiff-requester, rights of, **22:22**
 process for amendment, **22:19**
 rebuttal statements, placing in file,
 22:21
 union contracts, effect of, **22:27**
 Appeals
 access rights, notices of appeal
 rights, **22:12**
 amendment and correction rights,
 22:25
 standard of review, **22:32**
 Attorneys' fees, **22:44, 22:81**
 Background, **20:2**
 Balancing competing interests, direct
 collection of information, **21:7**
 Burden of proof
 generally, **22:54**
 access rights, plaintiff's burden,
 22:14
 exempt status, **22:62**
 use of individual records, **21:12**
 Causation, **22:53, 22:71**
 Census, **20:53**
 Changing content of agency deci-
 sions, failed attempts, **22:24**
 CIA exemption, **21:40**
 Collateral estoppel, **22:67**

PRIVACY ACT—Cont'd

Collection of information
 generally, **21:2 to 21:7**
 direct collection by agency
 generally, **21:5**
 balancing competing interests,
 21:7
 notices and informed consents,
 21:6
 lack of specific requirements, **21:3**
 Supreme Court decisions in Nelson
 and Chrysler, effects of, **21:4**
 Congress
 consent exceptions, **21:27**
 definitions, **20:8**
 Consent exceptions
 generally, **21:24 to 21:36**
 agency head, **21:35**
 CASES Act. effect, **20:64**
 Congress, **21:27**
 courts, **21:29**
 emergency disclosures, **21:28**
 exceptions and exemptions, **21:32**
 family disclosures, **21:28**
 FOIA disclosures, **21:26**
 intertwined portions withheld,
 21:33
 law enforcement, **21:31**
 notice to persons, **21:30**
 procedural issues, **21:36**
 routine uses, **21:25**
 unions, **21:34**
 Constitutional claims, **22:74**
 Copying fees, **22:5**
 Correction. Amendment and correc-
 tion rights, above
 Courts
 consent exceptions, **20:29**
 definitions, **20:7, 20:22**
 Coverage
 agency defenses, **22:61**
 exemptions, **21:54**
 Criminal action, **22:84**
 Damages
 generally, **22:78**
 agency defenses, **22:66**

INDEX

PRIVACY ACT—Cont'd

- Damages—Cont'd
 - elements of plaintiff's case, **22:57**
- Defendants, identifying, **22:35**
- Defenses, agency's
 - generally, **22:60 et seq.**
 - access rights, **22:13**
 - categorically exempted files, **22:69**
 - causation, **22:71**
 - collateral estoppel, **22:67**
 - constitutional claims, **22:74**
 - coverage, lack of, **22:61**
 - damages issues, **22:66**
 - destruction, **22:65**
 - disclosures, types of, **22:64**
 - exempt status, **22:62**
 - exhaustion of remedies, **22:70**
 - judicial deference, **22:68**
 - negligence, **22:63**
 - segregation of disclosable files, **22:72**
 - settlement, **22:73**
- Deference, judicial, **22:68**
- Definitions
 - generally, **20:5 et seq.**
 - agency, **20:5**
 - bankruptcy court, **20:11**
 - Congress, **20:8**
 - consent, **20:47**
 - courts, **20:7, 20:22**
 - disclosure, below
 - government corporations, **20:13**
 - individual, below
 - individual employees, **20:12**
 - law enforcement, **20:43**
 - personal data, **22:91**
 - President's office, **20:6**
 - private sector, **20:9**
 - record, below
 - routine use, below
 - states, **20:10**
- Denial of amendment requests, **22:23**
- Destruction, agency defenses, **22:65**
- Disclosure
 - generally, **20:48**

PRIVACY ACT—Cont'd

- Disclosure—Cont'd
 - consent as affected by CASES Act, **20:64**
 - disclosure, applied, **20:50**
 - litigation, **20:52**
 - not a disclosure, **20:49**
- Discovery
 - generally, **22:33**
 - access rights, **22:16**
- Elements of plaintiff's case
 - generally, **22:48 to 22:56**
 - accuracy challenges, **22:52**
 - adverse determinations, **22:58**
 - agency, **22:49**
 - burden of proof, **22:54**
 - causal effect of agency action, **22:53**
 - damages, **22:57**
 - exempt status, **22:51**
 - individual records, **22:50**
- Emergency disclosures, consent exceptions, **21:28**
- Enactment, **20:3**
- Exceptional cases, **22:46**
- Exemptions
 - generally, **21:38 to 21:58**
 - aspects not exempted, **21:47**
 - burden of proving exempt status, **22:62**
 - CIA exemption, **21:40**
 - coverage, **21:54**
 - exclusionary effects, **21:46**
 - history, **21:50**
 - Homeland Security exemption, **21:41**
 - law enforcement, **21:39, 21:52, 21:56**
 - legal standard, **21:42**
 - litigation exemption, **21:58**
 - narrowing effect, **21:53**
 - OMB guidance, **21:51**
 - pre-Act coverage, **21:43**
 - procedural aspects, **21:57**
 - reasons for exemption, **21:49**
 - regulations, **21:55**

PRIVACY ACT—Cont'd

- Exemptions—Cont'd
 - remedies, **21:44**
 - specific exemptions, **21:45 et seq.**
 - statutory exemptions, **21:48**
- Exhaustion of remedies, **22:41, 22:70**
- Expungement, **22:20**
- Extent of access, **22:6**
- Family disclosures, consent exceptions, **21:28**
- Fees
 - copying fees, **22:5**
 - litigation, fee awards, **22:44**
 - search fees, **22:9**
- First Amendment rights
 - generally, **22:85 to 22:88**
 - additional information, **22:90**
 - defining what data is personal, **22:91**
 - definitions, **20:32**
- Family Educational Rights & Privacy Act, **22:89**
- individual records, use of, **21:14**
- law enforcement exceptions, **22:86**
- remedies, **22:87**
- scope of protections, **22:88**
- FOIA and Privacy Act
 - generally, **20:59 to 20:63**
 - background prior to 1984 amendments, **20:62**
 - balance of interests, **20:63**
 - confidential sources, **17:109**
 - consent exceptions, FOIA disclosures, **21:26**
 - law since 1984 amendment, **20:59**
 - prior law, **20:61**
 - suing under both acts, **20:60**
- Formats of records released, **22:17**
- Homeland Security exemption, **21:41**
- How access is obtained, **22:3**
- Identification of requester, **22:4**
- In camera review, **22:43**
- Individual, defined
 - generally, **20:14**
 - business relationships, **20:19**
 - citizenship required, **20:15**

PRIVACY ACT—Cont'd

- Individual, defined—Cont'd
 - criminal defendants and convicts, **20:16**
 - deceased persons, **20:20**
 - families, **20:17**
 - unions, **20:18**
- Informed consent, direct collection of information, **21:6**
- Injunctive relief, **22:78**
- Internal control requirements, **21:37**
- Intertwined portions withheld, **21:33**
- Jurisdiction, **22:30**
- Law enforcement
 - consent exceptions, **21:31**
 - definitions, **20:43**
 - exemptions, **21:39, 21:52, 21:56**
 - First Amendment rights, law enforcement exceptions, **22:86**
- Litigation
 - generally, **22:29 to 22:81**
 - agency affidavits and evidence, **22:42**
 - damages, **22:57**
 - defendants, identifying, **22:35**
 - defenses, agency's, above discovery, **22:33**
 - elements of plaintiff's case, above exceptional cases, **22:46**
 - exemption, **21:58**
 - exhaustion of remedies, **22:41**
 - fee awards, **22:44**
 - in camera review, **22:43**
 - jurisdiction, **22:30**
 - mootness, **22:40**
 - other causes of action, **22:47**
 - other statutes, effects of, **22:45**
 - remedies, below res judicata, **22:39**
 - standard of review, **22:32**
 - standing, **22:38**
 - statute of limitations, **22:36**
 - summary judgment of dismissal, **22:34**
 - timing, **22:35**

INDEX

PRIVACY ACT—Cont'd

- Litigation—Cont'd
 - venue, **22:31**
 - waiver, **22:37**
 - willful violations, **22:59**
- Mailing lists, **21:59**
- Matching files, **21:19**
- Medical records, **22:10**
- Mootness, **22:40**
- Need to know, **21:15**
- Negligence, agency defenses, **22:63**
- Non-pecuniary damages, **22:56**
- Notice
 - appeal rights, notices, **22:12**
 - consent exceptions, notice to persons, **21:30**
 - direct collection of information, **21:6**
- OMB guidance
 - exemptions, **21:51**
 - use of individual records, **21:10**
- Opinion and fact distinctions in records content, **22:28**
- Organizations, files about, **22:7**
- Other causes of action, **22:47**
- Other statutes, effects of, **22:45**
- Overview, **20:1**
- Post-adoption, **20:4**
- Process for amendment, **22:19**
- Publication
 - routine use, publication required, **20:37**
 - use of individual records, publication requirement, **21:23**
- Rebuttal statements, placing in file, **22:21**
- Record, defined
 - generally, **20:21**
 - about an individual, **20:26**
 - agency personnel documents, **20:27**
 - business-related records, **20:25**
 - courts, **20:22**
 - form of records, **20:23**
 - non-records, distinguishing, **20:24**

PRIVACY ACT—Cont'd

- Releases, use of individual records, **21:21**
- Remedies
 - generally, **22:76 to 22:83**
 - alternative claims, **22:79**
 - amendment and accounting, **22:82**
 - attorneys' fees, **22:81**
 - damages, above
 - data breach cases, **22:75**
 - exemptions, **21:44**
 - First Amendment rights, **22:87**
 - injunctions, **22:78**
 - procedure, **22:77**
 - unavailable remedies, **22:80**
 - use of individual records, **21:17**
 - when remedies denied, **22:83**
- Request, **22:8**
- Requester
 - amendment and correction rights, **22:22**
 - proper identification, **22:4**
- Res judicata, **22:39**
- Routine uses
 - generally, **20:36**
 - administrative implementation, **20:41**
 - background, **20:39**
 - compatibility, **20:44**
 - consent exceptions, **20:36**
 - examples, **20:46**
 - internal sharing within agency, **20:42**
 - judicial review of inclusion, **20:38**
 - law enforcement, **20:43**
 - litigation over routine use, **20:40**
 - publication required, **20:37**
 - union claims, **20:45**
- Safeguards, use of individual records, **21:18**
- Search fees, **22:9**
- Segregation of disclosable files, **22:72**
- Settlement, **22:73**
- Social Security numbers
 - generally, **20:54**

PRIVACY ACT—Cont'd

- Social Security numbers—Cont'd
 - criteria, **20:55**
 - implementation, **20:57**
 - litigation, **20:58**
 - statutory provisions, **20:56**
- Spoliation, **22:55**
- Standard of review, **22:32**
- Standing, **22:38**
- Statute of limitations, **22:36**
- Statutes permitting withholding, **13:16**
- Summary judgment of dismissal, **22:34**
- System of records, defined
 - generally, **20:28**
 - enforcement of Privacy Act rights, **20:34**
 - excluded systems, **20:31**
 - First Amendment rights protection, **20:32**
 - included systems, **20:30**
 - personnel supervision records, **20:33**
 - possibility of retrieval, **20:35**
 - reasons for inclusion, **20:29**
- Taxes, use of individual records, **21:22**
- Third party objections, **22:15**
- Timely records, **21:13**
- Timing
 - access rights, **22:11**
 - litigation, **22:35**
- Unions
 - amendment and correction rights, effect of union contracts, **22:27**
 - consent exceptions, **21:34**
 - individual, defined, **20:18**
 - routine use, **20:45**
- Use of access, **22:2**
- Use of individual records
 - generally, **21:8 to 21:23**
 - accuracy of records, **21:11**
 - burden of proof, **21:12**
 - completeness, **21:20**

PRIVACY ACT—Cont'd

- Use of individual records—Cont'd
 - First Amendment rights, **21:14**
 - individual records, **21:16**
 - matching files, **21:19**
 - necessity, **21:9**
 - need to know, **21:15**
 - OMB guidance, **21:10**
 - publication requirements, **21:23**
 - releases, **21:21**
 - relevance, **21:9**
 - remedies, **21:17**
 - safeguards, **21:18**
 - taxes, **21:22**
 - timely records, **21:13**
- Venue, **22:31**
- Waiver, **22:37**
- Willful violations, **22:59**

PRIVACY IMPACT STATEMENTS

- Freedom of Information Act (FOIA), **8:186**

PROTECTIVE ORDERS

- Freedom of Information Act, this index

PUBLICITY

- Adverse publicity quandary, solutions, **25:2**
- Federal agency publicity
 - generally, **25:1**
 - legal options, **25:3**
- FOIA, law enforcement records, **17:54, 17:196**

RELEASES

- Privacy Act, use of individual records, **21:21**

REPLEVIN

- Submitted documents, **10:57**

REPOSITORY

- Open data legislation, **28:6**

RES JUDICATA

- FOIA litigation, **8:20**
- Privacy Act, **22:39**

INDEX

RETROSPECTIVE VIEWS

Freedom of Information Act (FOIA),
2:7

SANCTIONS

FOIA sanctions against agencies and
requesters, 8:168

SCHOOL RECORDS

Family Educational Rights to Privacy
Act (FERPA), 19:10, 19:11

SEALED RECORDS

Generally, 19:7
Balancing rights of access, 19:14
Freedom of Information Act, this
index

SEARCHES

Records search. Freedom of Informa-
tion Act, this index

SETTLEMENT

Freedom of Information Act, this
index
Privacy Act, 22:73

SOCIAL SECURITY

Privacy Act, this index
Withholding statutes, 13:11

SOVEREIGN IMMUNITY

Freedom of Information Act, this
index

SPOILIATION

Privacy Act litigation, 22:55

STANDING

FOIA, private submitter of informa-
tion litigation, 10:41
Privacy Act, 22:38

STATE INFORMATION AND ACCESS LAWS

Generally, 27:1 et seq.
Abortion-tracking issues, 27:31
Access rights and policies
generally, 27:8
electronic records, 27:12
persons entitled to access, 27:10

STATE INFORMATION AND

ACCESS LAWS—Cont'd

Access rights and policies—Cont'd
procedures for access, 27:11
Biometric privacy and facial recogni-
tion, 27:30
Business data, confidential, 27:27
Commercial submissions, 27:15
Cybersecurity state legislation, 27:33
Definitions
public record, 27:3
required to be kept, 27:4
District of Columbia laws, 27:25
Educational discipline records, 27:28
Electronic records, access to, 27:12
Exemptions and exceptions
generally, 27:13
statutory classes, 27:19
Frontiers of state privacy statutes,
27:29
Internal agency records, 27:20
Judicial review, access denials, 27:23
Law enforcement, 17:125, 27:17
Litigation defenses, 27:14
McBurney decision, 27:9
Medical records, 27:26
Open meetings laws, 27:22
Personal privacy, 27:16
Persons entitled to access, 27:10
Preemption by federal statutes, 27:24
Privileges, legal, 27:21
Procedures for access, 27:11
Public agency, records of, 27:7
Rapid evolution of privacy legisla-
tion, 27:32
Special statutes, 27:18
Stat-federal cooperative agreements,
27:34
Statutory classes of exemption, 27:19
Statutory coverage
broad coverage, 27:5
records outside, 27:6
What should requesters do, 27:2

STATUTE OF LIMITATIONS

Privacy Act, 22:36

STIPULATIONS

Freedom of Information Act, this index

SUBPOENAS

Private submitter of information litigation, **10:56**

SUMMARY JUDGMENT

Freedom of Information Act, this index
Privacy Act, summary judgment of dismissal, **22:34**

SUNSHINE ACT

Generally, **23:1 et seq.**
Agency
defined, **23:2**
responsibilities, **23:5**
Enforcement litigation, **23:8**
Exemptions from open meetings, **23:6, 23:7**
Meeting, defined, **23:3**
Rights created, **23:4**
Special exemptions, **23:7**
State laws, **27:22**

TAXES

Freedom of Information Act, this index
Privacy Act, use of individual tax records, **21:22**

THIRD PARTIES

FOIA, third party names in investigative files, **17:85**
Privacy Act, third party objections, **22:15**

TRADE SECRETS

Freedom of Information Act, this index

UNIONS

Freedom of Information Act, this index
Privacy Act, this index

UNIVERSITY AND COLLEGE RECORDS

Family Educational Rights to Privacy Act (FERPA), **19:10, 19:11**

VENUE

Privacy Act, **22:31**

VICTIM INFORMATION

Law enforcement records, **17:126**

WAIVER

Freedom of Information Act, this index
Privacy Act, **22:37**

WORK PRODUCT PRIVILEGE

Agency memoranda exemption.
Freedom of Information Act, this index