

# Item 8

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IN THE STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

In the Matter of:

Attorney General File No. 13-021

OMLO No. 2013-\_\_\_\_\_

Mesquite Regional Business, Inc. /  
\_\_\_\_\_

**BACKGROUND**

This Open Meeting Law (OML) Complaint alleges that the Board of Directors for Mesquite Regional Business, Inc. (MRBI), a non-profit corporation holding 501(c)(6) status under Internal Revenue Code, has not complied with the OML. On October 23, 2012, MRBI contracted with the City of Mesquite (City) to provide professional economic development services. It is alleged the Board of Directors of MRBI does not post a public meeting notice and agenda in conformance with the OML. The issue is whether MRBI is a public body.

**FACTS**

The Mesquite City Council's (Council) consideration of privatization of economic development began in December 2011. At that time, the City employed a Director of Economic Development to guide the City's economic development, but when the position of the Director of Economic Development became vacant in 2011, the City Council considered privatizing its economic development office.<sup>1</sup> During its December 13, 2011 public meeting, the Council approved the creation of a technical steering committee to review privatization of the City's office. A private group of five citizens was appointed by the City Council from a list provided by city staff.

In late February 2012, the Technical Steering Committee (Committee) was informally organized. The Committee's function was to recommend future structure of economic

<sup>1</sup> Mesquite City Council's December 13, 2011 agenda item #15: "Discussion and possible action of privatizing the [City's] Economic Development Department" presented by Mesquite interim city manager Kurt Sawyer.

1 development, recommend funding sources, and develop a mission statement. Keeping  
2 economic development within the City government was one of the ideas to be considered. All  
3 meetings of the Committee were public and noticed under the OML.

4 In June of 2012, the Committee recommended that the economic development  
5 structure be organized as a public/private partnership and that funding sources be both public  
6 and private. It was recommended that the new organizational structure should be a private  
7 IRC 501(c)(6) nonprofit corporation. Following the presentation by the Committee, the Council  
8 approved a motion to receive the report from the Committee, and to provide possible direction  
9 to the Committee regarding implementation of its recommendations by moving forward in  
10 selection of a board of directors, and application for 501(c)(6) status. Upon approval of this  
11 motion the Committee was dissolved as a subcommittee of the Council. After approval of the  
12 motion to dissolve the Committee, Councilman Kraig Hafen asked the Committee who would  
13 carry forward the duties once the Committee was dissolved. Mr. George Gault, a Committee  
14 member, said that the former Committee members would move forward as a private group.  
15 Exhibit 1, Council Minutes, June 12, 2012, p.15.

16 Mesquite Regional Business Inc. (MRBI) was incorporated following the Council's June  
17 12th meeting as a nonprofit corporation under the Internal Revenue Code 501(c)(6). After the  
18 incorporation, MRBI drafted a proposed agreement in which MRBI would contract with the City  
19 of Mesquite as an independent contractor for the purpose of assisting and attracting regional  
20 economic development. Exhibit 2, the Agreement.

21 The agreement was approved during the Council's public meeting on October 23,  
22 2012, but not until the Council engaged in a lengthy discussion of the pros and cons of the  
23 proposed agreement including the subject of loss of control based on the new corporate  
24 structure because economic development would no longer be a government function.

25 Councilman Geno Withelder questioned the interim Director for Development and  
26 Redevelopment, Aaron Baker, regarding loss of a government organization. Councilman  
27 Withelder said, "Just because it would not be a city organization and it would be more of a  
28 quasi-private organization we would not have the fundamental right to control it as a

1 government entity." Mr. Baker responded saying that MRBI is a private organization, but that  
2 the City can control it through financing. Exhibit 3, Council Minutes, October 23, 2012, p. 37.

3 The terms of the agreement require the City of Mesquite to underwrite and fund MRBI  
4 as a startup nonprofit corporation. The City is paying for MRBI operations costs (including  
5 personnel and office space) and other eligible expenses that are defined in the agreement.  
6 The parties described the agreement's purpose as a public/private partnership meant to  
7 "reenergize regional economic development." The agreement also provides that MRBI will  
8 serve as the primary local contact for public and private sector entities in economic  
9 development matters and it will serve as the primary recommending agency to the City for  
10 programs and projects worthy of consideration and financial participation. MRBI will advise  
11 the Council about projects that the City may wish to participate in financially.

12 The Agreement indicates that public dollars are being committed based on "expected  
13 deliverables" or activities, not performance.<sup>2</sup> In response to a question from Councilman Allan  
14 "Al" Litman, Mr. Baker explained that "expected deliverables" meant assisting startup  
15 businesses and existing businesses, and providing business leads. MRBI will identify  
16 qualified business prospects, make site visits, and assist with relocation of businesses  
17 recruited to the area. Other MRBI activities, to be reported to the City Council on a semi-  
18 annual basis, include financing assistance through location of grants assisting businesses with  
19 research projects, import/export issues soliciting foreign direct investment and assisting  
20 businesses with rural development agency referrals and redevelopment.

21 Interim Director Aaron Baker told the Council that MRBI's activities or expected  
22 deliverables are standards, which are the same reporting standards utilized by the Las Vegas  
23 Regional Economic Development Council, and the same presently used by City of Mesquite.

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25 <sup>2</sup> Councilman Allan "Al" Litman questioned Director Aaron Baker's description of the proposed  
26 agreement as "performance based." He elaborated by rejecting Mr. Baker's characterization of the proposed  
27 agreement based on the definition, from federal sources (which he read into the record), of the term  
28 "performance based." He concluded by stating that the proposed agreement was not performance based,  
instead it was solely based on "expected deliverables," a term that describes activities, not output quality or  
outcomes. Interim Director for Development and Redevelopment Aaron Baker quickly agreed and apologized for  
incorrectly using the term "performance based." He stated that there are "expected deliverables" which will be  
reported to the Council on a semi-annual basis. Minutes of Mesquite City Council meeting, October 23, 2012,  
p. 34.

1 Mr. Baker explained to the Council that MRBI's goal was to recruit "value added" businesses  
2 to City of Mesquite which means "businesses that bring in outside money that can then go  
3 back into the region."

4 Discussion of the cost of privatizing of economic development efforts revealed that the  
5 City had historically spent an average of \$245,000 annually through its economic development  
6 office, whereas the agreement with MRBI proposed an average of \$160,000 annually for the  
7 same standards based work currently utilized by the City. The Council approved a motion to  
8 enter into the agreement with MRBI and directed the City Manager to work with MRBI to  
9 implement it. Exhibit 3, Council Minutes, October 23, 2012, p.40.

10 The Agreement requires MRBI to assume sole responsibility for any debts or liabilities it  
11 incurred. The agreement does not authorize MRBI to act as its agent or representative, or to  
12 incur any obligation on behalf of the City, but the agreement does require that MRBI act as the  
13 City's primary recommending agency for programs or projects worthy of consideration and  
14 financial participation. In return for economic development assistance, the City agreed to  
15 provide \$190,000 per year for 4 years and \$140,000 during the final year subject to the City's  
16 annual budgeting process and appropriation of funds by the Council. It was expected that  
17 private funds would supplant the City's support over time. The agreement expires in 2017.  
18 The agreement could be terminated with one-year notice to the other party. The City could  
19 alter MRBI's annual appropriation during its annual budgeting process.

20 MRBI physical property would remain with MRBI should it dissolve, but its intellectual  
21 property would go back to the City. MRBI agreed to indemnify the City for all causes of action  
22 or claims arising out of MRBI's performance of the agreement.

23 Prior to July 1st of each year, MRBI must provide to the City a work plan identifying its  
24 goals, objectives, and activities that it expects to accomplish during the contract period.  
25 Progress and performance reports are to be presented to the City Council semi-annually.  
26 MRBI's first progress report and work plan was presented to the Mesquite City Council on  
27 June 11, 2013.

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1 In its response to the complaint, MRBI asserts that because it is a nonprofit private  
2 corporation MRBI is not a public body and therefore should not be subject to the Open  
3 Meeting laws.<sup>3</sup>

4 **ISSUE**

5 Whether MRBI is not subject to the OML because it is a nonprofit corporation, or  
6 whether considering the totality of factors it is the functional equivalent of a public agency that  
7 is subject to the Open Meeting Law?

8 **DISCUSSION**

9 For more than ten years prior to 2012, regional economic development had been  
10 pursued by the City of Mesquite in its own Office of Economic Development and  
11 Redevelopment. In 2011, City of Mesquite decided to consider privatizing regional economic  
12 development. In 2012, it entered into an agreement with newly formed MRBI, a nonprofit  
13 corporation, to provide regional economic development assistance and services.

14 MRBI is a private nonstock nonprofit corporation, but it performs essentially the same  
15 activities that the City of Mesquite formerly did when economic development was within city  
16 government, and city employees directed the activities. MRBI's argument that it is not subject  
17 to the OML solely because it is a private non-profit corporation is a formalistic interpretation of  
18 the OML. However, other factors must be considered before determining whether public  
19 access and public disclosure laws apply to MRBI.

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26 <sup>3</sup> The minutes of the City of Mesquite's public meeting on September 24, 2013, reflect that Dave  
27 Ballweg, an MRBI Board member said that MRBI was a private company formed with his own money. Ballweg  
28 said, "We [MRBI] are a private company, we are not public. We have no requirement to publish. We are not  
traded. We are funded. We have other funding. This [City of Mesquite] isn't the only funding. We have a  
\$50,000 grant for operations from USDA that has allowed us to have a revolving fund for business growth in this  
town"

1           **A. What is a Public Body and what is the Attorney General's test for**  
2           **determining whether an entity is a public body?**

3           Nevada's statutory definition of "public body" is an administrative, advisory, executive,  
4 or legislative body of the state or a local government.<sup>4</sup> This office has interpreted the  
5 statutory definition to mean it must be a collegial body that: (1) owes its existence to and has  
6 **some relationship** with a state or local government; (2) be organized to act in an  
7 administrative, advisory, executive or legislative capacity; and (3) performs a governmental  
8 function. A public body must also expend or disburse, or be supported in whole or in part by,  
9 tax revenue, or advise or make recommendations to any entity which expends or disburses, or  
10 is supported in whole or in part by, tax revenue. OMLO 99-05 (January 12, 1999).

11           This opinion seeks to clarify this office's longstanding interpretation of the definition of  
12 public body and the phrase "...owe[s] its existence to and have some relationship with a state  
13 or local government." OMLO 99-05. This opinion seeks to clarify what is meant by this

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15           <sup>4</sup> NRS 241.015(4):

16 Except as otherwise provided in NRS 241.016, "public body" means:

17           (a) Any administrative, advisory, executive or legislative body of the State or a local government consisting  
18 of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which  
19 advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part  
20 by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other  
21 subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a  
22 university foundation as defined in subsection 3 of NRS 396.405, if the administrative, advisory, executive or  
23 legislative body is created by:

19           (1) The Constitution of this State;

20           (2) Any statute of this State;

20           (3) A city charter and any city ordinance which has been filed or recorded as required by the applicable  
21 law;

21           (4) The Nevada Administrative Code;

22           (5) A resolution or other formal designation by such a body created by a statute of this State or an  
23 ordinance of a local government;

22           (6) An executive order issued by the Governor; or

23           (7) A resolution or an action by the governing body of a political subdivision of this State;

23           (b) Any board, commission or committee consisting of at least two persons appointed by:  
24           (1) The Governor or a public officer who is under the direction of the Governor, if the board, commission  
25 or committee has at least two members who are not employees of the Executive Department of the State  
26 Government;

25           (2) An entity in the Executive Department of the State Government consisting of members appointed by  
26 the Governor, if the board, commission or committee otherwise meets the definition of a public body pursuant to  
27 this subsection; or

27           (3) A public officer who is under the direction of an agency or other entity in the Executive Department of  
28 the State Government consisting of members appointed by the Governor, if the board, commission or committee  
has at least two members who are not employed by the public officer or entity; and

28           (c) A limited-purpose association that is created for a rural agricultural residential common-interest  
community as defined in subsection 6 of NRS 116.1201.

1 phrase and especially the meaning of "some relationship" within that phrase. The issue is the  
2 "public's fundamental right to scrutinize the performance of public services and the  
3 expenditure of public funds which must not be subverted by government or by private entity  
4 merely because the public duties have been delegated to a private contractor."  
5 OMLO 2003-01, April 17, 2003, quoting *Memphis Publishing Co. v. Cherokee Children &*  
6 *Family Services*, 87 S.W.3d 67, 78-79 (Tenn. 2002).

7 We believe that the solution developed and in current use by other jurisdictions – the  
8 functional equivalency test – is the superior means for determining whether a corporate entity  
9 is subject to public access laws. This test ensures that the public's right to scrutinize the  
10 expenditure of public funds and the performance of public duties is not subverted. It is the  
11 totality of factors in each context that should determine whether a corporate entity is the  
12 functional equivalent of a public agency subject to the Open Meeting Law.<sup>5</sup>

13 **B. City of Mesquite created MRBI**

14 In 2011, the Nevada Legislature amended the OML definition of public body. As a  
15 result a public body must be created by one of seven methods pursuant to  
16 NRS 241.015(4)(a)(1-7), it must have been created by the Governor, or a public entity, or  
17 public officer under the Governor's direction. NRS 241.015(4)(b). NRS 241.015(4)(a)(7) allows  
18 the governing body of a political subdivision of this State to create a public body by "[a]  
19 resolution or an action by the governing body of a political subdivision of this State." The  
20 Council took action within the meaning of NRS 241.015(a)(7) when it approved a motion that  
21 directed the City Manager to provide possible direction to the Committee regarding  
22 implementation of its recommendations by moving forward in selection of a board of directors,  
23 and application for 501(c)(6) status. We believe that even though no Council resolution was  
24 used to create MRBI, Council's direction to the City Manager on October 23, 2012 to  
25 implement the Committee's recommendation was more than sufficient to constitute action by  
26 the Council.

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28 <sup>5</sup> Washington, Op. Atty. Gen., 1991 No. 5 (The Washington Attorney General adopted the functional  
equivalency test to determine whether a particular organization constitutes an "agency" for purposes of Open  
Public Meetings Act and the public records provisions of Washington's Public Disclosure Act.)



1           **C.     Nonprofit can be the functional equivalent of public agency**

2           The definition of "public body" does not specifically address whether private nonprofit  
3 corporations are exempt or included, but we believe that in the appropriate context, and based  
4 on the totality of factors, a meeting of the Board of Directors of a nonprofit corporation may  
5 constitute an administrative, executive or advisory body of state or local government if the  
6 other statutory criteria is met.<sup>6</sup>

7           Formalistic dependence on private corporate structure as an exemption from public  
8 access laws has been rejected by federal and state courts. *News Journal Corporation v.*  
9 *Memorial Hospital-West Volusia, Inc.*, 695 So.2d 418 (Fla. Dist. Ct. App. 1997) (based on  
10 totality of factors, private non-profit corporation acting on behalf of governmental entity was  
11 subject to sunshine law); *Board of Trustees of Woodstock Academy v. Freedom of Information*  
12 *Commission*, 436 A.2d 266, 270 (Conn. 1980) (Court rejected formalistic argument resting on  
13 nominal status as private non-stock corporation as exemption from public access laws).

14           The Supreme Court of Connecticut expressed practical reasons for examining each  
15 case in light of its context. The Court, quoting federal authority, said:

16                     '[A]ny general definition [of any agency] can be of only limited  
17 utility to a court confronted with one of the myriad organizational  
18 arrangements for getting the business of the government done....  
19 The unavoidable fact is that each new arrangement must be  
20 examined anew and in its own context.' *Washington Research*  
*Project, Inc. v. Dept. of Health, Education & Welfare*, [(504 F.2d  
238, 245-46 (D.C.Cir. 1974), *cert. denied* 421 U.S. 963, 95 S.Ct.  
1951, 44 L.Ed.2d 450 (1975)].

21           *Woodstock Academy*, 436 A.2d at 270.<sup>7</sup>

22                     <sup>6</sup> The absence of specific reference to a corporation in the definition of public body does not necessarily  
23 mean that it cannot be subject to the law. Op.Atty.Gen.2003-01 (April 1, 2003) citing OML 2001-17, (April 12,  
24 2001) (corporate instrumentalities charged with performing public functions and exercising decision making  
25 authority bring the corporation within the ambit of the OML); See Op.Tenn.Atty.Gen. 03-063 (May 14, 2003)  
(meetings of nonprofit corporation are subject to OML where nonprofit was created pursuant to some action by  
the County Commission and the corporation members are authorized to make decisions or recommendations on  
policy or administration affecting public business).

26                     <sup>7</sup> Nevada's earliest version of the OML, enacted in 1960, applied the OML to "all meetings of public  
27 '*agencies*,' commissions, bureaus, departments, public corporations, municipal corporations and quasi-municipal  
28 corporations and political subdivisions." In 1977 the Legislature amended NRS chapter 241 deleting the  
definitional list to which the OML applied. "[*A*gencies", commissions, bureaus, departments, public  
corporations, municipal corporations and quasi-municipal corporations and political subdivisions" was deleted  
from statutory definition. In place of the list the Legislature substituted "*bodies*," apparently to enlarge the scope  
of application of the statute. The legislative history of AB 437 (1977) does not explain why the former list was

1 The definition of "agency" depends on the context in which it is used. For example, the  
2 en banc Supreme Court of Washington determined that the meaning of "agency" is dependent  
3 on the context of its use. *Graham v. Washington State Bar Association*, 86 Wash.2d 624, 548  
4 P.2d 310 (Wash.1976). Nevada statutes also define "agency" based on the context.  
5 NRS 233B.010 (definition of "agency" is limited to application to NRS 233B)<sup>8</sup>. And,  
6 California's Open Meeting Law, *The Ralph M. Brown Act*, includes within the ambit of its Open  
7 meeting law, a city, whether general law or chartered, or any "agency" thereof, or other local  
8 public agency. California Gov. Code, §54950 et seq.<sup>9</sup>

9 **D. Private nonprofits are subject to public access and public disclosure laws**

10 Whether private entities are subject to state public access and disclosure laws is an  
11 issue that courts have considered and continue to face because privatization of governmental  
12 functions is a feature of modern government. These decisions are based on the totality of  
13 factors and the individual context. No one factor is determinative, which is why a formalistic  
14 argument asserting that the OML is not applicable solely because of an entity's nonprofit  
15 corporate status is not dispositive. The City of Mesquite government had an Office of  
16 Economic Development for more than ten years; as a result it has become a function of local  
17 government. See *infra*. n. 15.

18 "Public agency" is not defined in the public records statutes, but "governmental entity"  
19 is defined and it includes an agency of a political subdivision of this State.<sup>10</sup> The Legislature's

20 deleted and simplified as "public bodies." Nevertheless, it is clear that "public body" still encompasses meetings  
21 of a public agency.

22 <sup>8</sup> **NRS 232B.010 "Agency" defined.** As used in NRS 232B.010 to 232B.100, inclusive, unless the  
23 context otherwise requires, "agency" means any public agency which the Legislature has designated to be the  
subject of a review by the Legislative Commission.  
(Added to NRS by 1979, 1838; A 2011, 2996)

24 <sup>9</sup> West's Ann.Cal.Gov.Code § 54951. The Brown Act defines "**local agency**" as a county, city, whether  
25 general law or chartered, city and county, town, school district, municipal corporation, district, political  
subdivision, or any board, commission or agency thereof, or other local public agency.

26 <sup>10</sup> **NRS 239.005 Definitions.**

- 27 5. "Governmental entity" means:  
28 (a) An elected or appointed officer of this State or of a political subdivision of this State;  
(b) An Institution, board, commission, bureau, council, department, division, authority or other unit of  
government of this State, including, without limitation, an agency of the Executive Department, or of a political  
subdivision of this State;  
(c) A university foundation, as defined in NRS 396.405; or

1 findings and declaration which preface the Public Records Chapter clearly indicate intent that  
2 records of public/private entities cannot be shielded from public scrutiny. NRS 239.001(4).<sup>11</sup>

3 The Legislature stated in NRS Chapter 239 that public records law must be liberally  
4 construed and any exemption be narrowly construed. This legislative statement is similar to  
5 the Nevada Supreme Court's view in *Dewey v. Redevelopment Agency of the City of Reno*,  
6 119 Nev. 87, 94, 64 P.3d 1070, 1075 (2003), that the Open Meeting Law be liberally  
7 construed and broadly interpreted.

8 The Open Meeting Law also does not define "public agency." But, NRS 239.005(6)  
9 and NRS 239.0103<sup>12</sup> provide recent evidence of Legislative intent that the public may access  
10 public records regardless of whether the entity holding the records is a private nonprofit  
11 corporation. The Open Meeting Law and Public Records Law may be construed *in pari*  
12 *materia* because both serve the same purpose of maintaining a record of the proceedings of  
13 public bodies and making those proceedings available to the public. *State ex rel. American*  
14 *Civil Liberties Union of Ohio, Inc. v. Cuyahoga County Board of Commissioners*, 128 Ohio  
15 St.3d 256, 264, 943 N.E.2d 553, 562 (Ohio, 2011). Although the Nevada Supreme Court has

16 (d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the  
17 assistance of public schools.

18 6. "Privatization contract" means a contract executed by or on behalf of a governmental entity which  
19 authorizes a private entity to provide public services that are:

- 20 (a) Substantially similar to the services provided by the public employees of the governmental entity; and  
21 (b) In lieu of the services otherwise authorized or required to be provided by the governmental entity.

22 <sup>11</sup> **NRS 239.001 Legislative findings and declaration.** The Legislature hereby finds and declares  
23 that:

- 24 1. The purpose of this chapter is to foster democratic principles by providing members of the public with  
25 access to inspect and copy public books and records to the extent permitted by law;  
26 2. The provisions of this chapter must be construed liberally to carry out this important purpose;  
27 3. Any exemption, exception or balancing of interests which limits or restricts access to public books and  
28 records by members of the public must be construed narrowly; and  
29 4. The use of private entities in the provision of public services must not deprive members of the public  
access to inspect and copy books and records relating to the provision of those services.

(Added to NRS by 2007, 2061; A 2011, 2723)

<sup>12</sup> **NRS 239.005(6).** "Privatization contract" means a contract executed by or on behalf of a  
governmental entity which authorizes a private entity to provide public services that are: (a) Substantially similar  
to the services provided by the public employees of the governmental entity; and (b) In lieu of the services  
otherwise authorized or required to be provided by the governmental entity.

**NRS 239.0103 Privatization contracts open to inspection.** Any privatization contract executed by  
or on behalf of a governmental entity is a public record and must be open to public inspection during the regular  
business hours of the governmental entity.

(Added to NRS by 2011, 2723)

1 not construed the Public Records Act and the Open Meeting Law to be *in pari materia*, it has  
2 defined the context in which such use is appropriate. This is appropriate statutory  
3 construction when statutes involve the same class of persons or things, or seek to accomplish  
4 the same purpose or object.<sup>13</sup> When construed *in pari materia* the requirement of open and  
5 public meetings has the same purpose as the public records law – public access. In our view,  
6 based upon this authority, a non-profit corporation may be subject to both the OML and the  
7 State's Public Records Law if the totality of factors indicates it is the functional equivalent of a  
8 public agency.

9 **E. Totality of Factors test determines whether a private nonprofit is subject to**  
10 **public access and public disclosure laws**

11 The totality of factors test is widely followed by courts in other jurisdictions. The  
12 Connecticut Supreme Court, in a decision widely followed by other jurisdictions, adopted a  
13 four-factor test culled from federal case law to determine whether an entity is the functional  
14 equivalent of a public body. The factors are: (1) whether the entity performs a governmental  
15 function; (2) the level of government funding; (3) the extent of government involvement or  
16 regulation; and (4) whether the entity was created by government. *Woodstock Academy*,  
17 436 A.2d at 270-271. The *Woodstock* Court considered each factor, balancing the factors by  
18 giving appropriate weight to each one based on the context, a procedure followed by most  
19 states that have adopted the functional equivalency test. See *Domestic Violence Services. v.*  
20 *Freedom of Info. Commission*, 704 A.2d 827, 834 (Conn. 1998).

21 We believe the dispositive issue to resolve this complaint is whether, after considering  
22 the totality of factors, MRBI is the "functional equivalent of a public agency" (or public body)  
23 despite its corporate structure. This test more accurately accesses the factors that determine  
24 to what degree the nonprofit has a connection with state or local government. Resting the  
25 decision on whether the nonprofit has "some connection" with state or local government needs  
26 further clarification.

27  
28 <sup>13</sup> *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000)  
("Statutes are said to be '*in pari materia*' when they involve the same classes of persons or things or seek to  
accomplish the same purpose or object.").

1 We have not found a reported decision in Nevada that decided whether a private  
2 nonprofit corporation is the functional equivalent of a public agency so that the State's public  
3 access laws apply.

4 In 1999, this Office opined that the Economic Development Authority of Western  
5 Nevada (EDAWN), a non-profit corporation, was not subject to the OML. See OMLO 99-05  
6 (January 12, 1999). In that Opinion, this Office found that the receipt of money from a public  
7 body does not by itself transform a private corporation into a public body. The Opinion states  
8 that to hold otherwise would mean that every charity that receives grants, every government  
9 contractor that receives payment for services or products, and every trade group or common  
10 interest organization to which a government body belongs, would automatically become a  
11 public body under the OML.

12 EDAWN was organized as a private non-profit corporation; its organizers were seven  
13 private citizens. The Opinion did not find evidence that EDAWN was created by the order of  
14 or otherwise owed its existence to any state or local government public body, and there was  
15 no evidence that EDAWN was organized to act in an administrative, advisory, executive, or  
16 legislative capacity. Therefore, this Office's Opinion was that EDAWN was not subject to the  
17 OML.<sup>14</sup>

18 We did find decisions from other jurisdictions and a Nevada Attorney General's Opinion  
19 that have applied a totality of factors test, to determine whether a private non-profit  
20 corporation is subject to public access laws. See OMLO 2003-01 (April 17, 2003) (applying  
21 functional equivalent test to public records law); *News and Sun-Sentinel Co. v. Schwab, Twitty*  
22 *& Hanser Architectural Gr., Inc.*, 596 So.2d 1029 (Fla.1992) (the term "agency" was defined  
23 broadly to include any private entity acting on behalf of any public agency); *State of New*  
24 *Mexico v. City of Truth or Consequences*, 287 P.3d 364, 370 (N.M. Ct. App. 2012) (totality of  
25 factors test used to determine when private entity is subject to public disclosure laws);  
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27  
28 <sup>14</sup> The EDAWN opinion was issued years before the 2011 Legislative amendment to NRS Chapter 241  
that made the manner of creation of the entity of equal importance to the definition of public body used in the  
EDAWN opinion.

1 *Memorial Hospital-West Volusia*, 695 So.2d at 421 (high level of public funding was an  
2 important factor that convinced the court that the entity, a hospital lessee, was subject to  
3 public disclosure laws); *Raton Public Service Co. v. Hobbes*, 417 P.2d 32, 35 (N.M.1966)  
4 (corporate instrumentalities for accomplishing public ends, whether governmental or  
5 proprietary, must be considered governmental agencies); and *Telford v. Thurston County*  
6 *Board of Commissioners*, 974 P.2d 886, 893-894 (Wash App. 1999) (four factor balancing test  
7 applies in determining whether entity is a public agency).

8 This office opined in OMLO 2003-01 (April 13, 2003) that the best way to determine if a  
9 nonprofit was the functional equivalent of a public agency was to apply a totality of factors  
10 test. Our opinion cited the Tennessee Supreme Court's adoption of a multiple part test for  
11 public records access. *Memphis Publishing Co. v. Cherokee Children & Family Services*, 87  
12 S.W.3d 67 (Tenn. 2002). The Tennessee Court explained why a multiple part totality of  
13 factors test was necessary to ensure transparency.

14 Our review of authority from other jurisdictions persuades us that  
15 the functional equivalency approach described above provides a  
16 superior means for applying public records laws to private entities  
17 which perform "contracted out" governmental services. As the facts  
18 of these cases demonstrate, private entities that perform public  
19 services on behalf of a government often do so as independent  
20 contractors. Nonetheless, the public's fundamental right to  
21 scrutinize the performance of public services and the expenditure  
22 of public funds should not be subverted by government or by  
23 private entity merely because public duties have been delegated to  
24 an independent contractor. When a private entity's relationship  
25 with the government is so extensive that the entity serves as the  
26 functional equivalent of a governmental agency, the accountability  
27 created by public oversight should be preserved.

22 *Id.* at 78-79.

23 Therefore, the totality of factors test is used to determine just how extensive the  
24 Council's relationship with MRBI is, and whether the State's Open Meeting Law applies to  
25 its meetings.

26 Federal Courts have held that the key to determining whether a corporate nonprofit is a  
27 government agency or merely a contractor with the government is whether the government is  
28 really involved in the core planning or execution of the program, or whether by contrast the

1 entity retains its private character in bona fide fashion. *Forsham v. Califano*, 587 F.2d 1128,  
2 1138-1139 and n.19, (D.C.Cir. 1978), aff'd, 445 U.S. 169, (1980); *Domestic Violence Services*  
3 *of Greater New Haven v. FOIC*, 704 A.2d 827, 832 (Conn. App. Ct. 1988). We think that  
4 MRBI has not retained its bona fide private character because the City of Mesquite was  
5 instrumental in the execution of the nonprofit and is almost entirely responsible for its funding.  
6 In our view, these facts represent an extensive involvement with MRBI.

7 The action taken by Mesquite City Council on October 23, 2012, which approved the  
8 independent contractor agreement with MRBI and gave explicit direction to the City Manager  
9 to move to implement the Committee's recommendation to privatize regional economic  
10 development in a corporate structure, removing it from city government structure, indicated  
11 that the Council created a public body within the meaning of NRS 241.015(4)(7). Liberally  
12 construing and broadly interpreting the action, giving due consideration to NRS 241.015(4)(7)  
13 as the Nevada Supreme Court requires, the Council's action on October 23, 2013, created a  
14 public body.

15 MRBI performs a governmental function<sup>15</sup> and it serves an advisory role to the Council.  
16 Section Three of the Agreement between the City of Mesquite and MRBI describes the  
17 services to be provided under the agreement. MRBI will serve as the primary local contact for  
18 public and private sector entities in economic development matters and it will serve as the  
19 primary recommending agency for programs and projects worthy of consideration and  
20 financial participation by the City.

21 MRBI's Board of Directors are local business leaders, some of whom may have served  
22 on the Committee that recommended MRBI's private corporate structure. The City of  
23 Mesquite did not seek privatization proposals from the private sector. MRBI did not exist until  
24 the Council decided to accept the recommendation of the Technical Steering Committee to  
25

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26  
27 <sup>15</sup> Economic development and redevelopment had been carried on within city government until it was  
28 decided to privatize them. See also *Domestic Violence Services of Greater New Haven, Inc. v. Freedom of*  
*Information Commission et al.*, 704 A.2d 827, 832 (Conn. App.Ct.1998) (where government provided services to  
victims of domestic violence, a recent phenomenon with no historical antecedent, it constituted evolution into a  
government function).

1 privatize efforts to create regional economic development. We learned during our investigation  
2 that the Council did not seek requests for proposals from the private sector, because it wanted  
3 local business leaders to be responsible for regional economic development. The Committee  
4 submitted its recommendation to the Council and the Council voted to approve it. Not until  
5 then did Dave Ballweg, a member of the Committee, incorporate MRBI with his own money.

### 6 CONCLUSION

7 The Open Meeting Law is broadly interpreted by the Nevada Supreme Court so that  
8 citizens are not deprived of the opportunity to witness their government in action.  
9 Our Supreme Court in *Dewey v. The Redevelopment Agency of the City of Reno*,  
10 119 Nev. 87, 94, 64 P.3d 1070, 1075 (2003), citing an Attorney General's Opinion, said that "a  
11 statute promulgated for the public benefit such as a public meeting law, should be liberally  
12 construed and broadly interpreted to promote openness in government."<sup>16</sup>

13 Determination of whether MRBI is a public body or a pure corporate body not subject to  
14 the OML, is made more difficult because of commingling of both public and private  
15 characteristics. The totality of factors test is the best method to determine if public access  
16 laws like the Open Meeting Law should apply.

17 MRBI is a non-profit corporation, but after balancing the totality of factors we believe  
18 MRBI is the functional equivalent of a public agency. MRBI performs an advisory function to  
19 the Mesquite Council because it is the primary recommending agency for programs and  
20 projects worthy of consideration and financial participation by the City. It performs a  
21 governmental function previously carried out within city government by city employees. It was  
22 created by the action of the City of Mesquite's Council on October 23, 2012 when the Council  
23 approved an agreement that removed economic development from city government and  
24 directed the City Manager to implement the Committee's recommendation that a nonprofit  
25 corporation be formed to pursue regional economic development. MRBI's Board of Directors  
26 must annually submit MRBI's budget and business plan to the City Council. Council reserved  
27

28 <sup>16</sup> Op. Nev. Att'y Gen. No. 85-19 (Dec. 17, 1985)



1 a contractual right to revise appropriated funding dollars. The Council's power to alter each  
2 year's financial appropriation, without any restriction, is strong evidence of Council's extensive  
3 control and relationship with MRBI. Furthermore, Council's level of funding for MRBI is almost  
4 total, which is used to support MRBI's operating costs.


5 The totality of factors test is necessary to unravel MRBI's commingling of public and  
6 private characteristics. The right of the public to analyze the expenditure of public funds and  
7 to protect public's right to scrutinize the manner in which MRBI conducts public business is at  
8 stake.

9 MRBI is subject to the Open Meeting Law.

10 DATE this 13<sup>th</sup> day of February 2014.

11 Sincerely,

12 CATHERINE CORTEZ MASTO  
13 Attorney General

14 By:   
15 GEORGE H. TAYLOR  
16 Senior Deputy Attorney General  
17 Open Meeting Law  
18 Tele: (775) 684-1230

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 13th day of February 2014, I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing Open Meeting Law Opinion, Attorney General File No. 13-021, via United States Mail addressed as follows:

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11 West Pioneer Boulevard, Suite A  
Mesquite, Nevada 89027

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Dan Wright, Board Member  
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GAYE Stockman, President & CEO  
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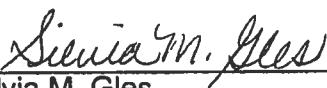
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# Item 17

## CHAPTER 239 - PUBLIC RECORDS

### IN GENERAL

- [NRS 239.001](#) Legislative findings and declaration.  
[NRS 239.005](#) Definitions.  
[NRS 239.008](#) Designation of records official for certain state agencies; forms and procedures applicable to requests for public records.
- [NRS 239.010](#) Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be prepared by governmental entity and provided in medium requested. [Effective until the date that the provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance are ratified by the President and the United States deposits its instrument of ratification or July 1, 2015, whichever is sooner.]
- [NRS 239.010](#) Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be provided in medium requested. [Effective on the date that the provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance are ratified by the President and the United States deposits its instrument of ratification and through June 30, 2015.]
- [NRS 239.010](#) Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be provided in medium requested. [Effective on July 1, 2015, until the date that the provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance are ratified by the President and the United States deposits its instrument of ratification.]
- [NRS 239.010](#) Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be prepared by governmental entity and provided in medium requested. [Effective on July 1, 2015, or the date that the provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance are ratified by the President and the United States deposits its instrument of ratification, whichever is later.]
- [NRS 239.0103](#) Privatization contracts open to inspection.  
[NRS 239.0105](#) Confidentiality of certain records of local governmental entities.  
[NRS 239.0107](#) Requests for inspection or copying of public books or records: Actions by governmental entities.  
[NRS 239.011](#) Application to court for order allowing inspection or copying, or requiring that copy be provided, of public book or record in legal custody or control of governmental entity for less than 30 years.
- [NRS 239.0113](#) Burden of proof where confidentiality of public book or record is at issue.  
[NRS 239.0115](#) Application to court for order allowing inspection or copying of public book or record in legal custody or control of governmental entity for at least 30 years; rebuttable presumption; exceptions.
- [NRS 239.012](#) Immunity for good faith disclosure or refusal to disclose information.  
[NRS 239.013](#) Confidentiality of records of library which identify user with property used.  
[NRS 239.015](#) Removal, transfer and storage of records authorized if necessary; copies to be provided upon request.  
[NRS 239.020](#) Provision of certified copies of public records to federal Department of Veterans Affairs without charge.  
[NRS 239.030](#) Furnishing of certified copies of public records.

### REPRODUCTION OF RECORDS

- [NRS 239.051](#) Requirements before destruction.  
[NRS 239.052](#) Fees: Limitations; waiver; posting of sign or notice.  
[NRS 239.053](#) Additional fee for transcript of administrative proceedings; money remitted to court reporter; posting of sign or notice.
- [NRS 239.054](#) Additional fee for information from geographic information system.  
[NRS 239.055](#) Additional fee when extraordinary use of personnel or resources is required; limitation.  
[NRS 239.070](#) Use of microfilm or digital images by county recorder for recording; Division to provide microfilming, digital imaging or similar service; requirements; sale of duplicate; disposition of money.

### DISPOSAL OF OBSOLETE RECORDS

- [NRS 239.073](#) Committee to Approve Schedules for the Retention and Disposition of Official State Records: Creation; composition; meetings; rules and regulations.  
[NRS 239.077](#) Committee to Approve Schedules for the Retention and Disposition of Official State Records: Duties.  
[NRS 239.080](#) State records: Schedules for retention and disposition.  
[NRS 239.085](#) State records: Disposition by Department of Transportation.  
[NRS 239.090](#) State records: Preservation of obsolete and noncurrent records by Division; right to control records.

- [NRS 239.110](#) Judicial records: Destruction; reproductions. [Effective through December 31, 2014, and after that date unless the provisions of Senate Joint Resolution No. 14 (2011) are approved and ratified by the voters at the 2014 General Election.]
- [NRS 239.110](#) Judicial records: Destruction; reproductions. [Effective January 1, 2015, if the provisions of Senate Joint Resolution No. 14 (2011) are approved and ratified by the voters at the 2014 General Election.]
- [NRS 239.121](#) Local governmental records: Definitions.
- [NRS 239.123](#) Local governmental records: Submission to Division; accounting; return or reclamation.
- [NRS 239.124](#) Local governmental records: Exclusive procedures for destruction.
- [NRS 239.125](#) Local governmental records: Program for management; regulations of State Library and Archives Administrator.

### RESTORATION OF LOST OR DESTROYED RECORDS

- [NRS 239.130](#) Rerecording of instrument if county records lost or destroyed.
- [NRS 239.140](#) Certain deeds prima facie evidence of regularity of proceedings after destruction or loss of records.
- [NRS 239.150](#) Restoration of liens, mortgages and judgments if records lost or destroyed; procedure; limitations.
- [NRS 239.160](#) Proceeding to establish contents and record of lost or destroyed deed or will; parties defendant.
- [NRS 239.170](#) Procedure to establish contents of lost or destroyed deed or will: Complaint; summons; hearing; decree.
- [NRS 239.180](#) Character of evidence which court may admit.
- [NRS 239.190](#) Proceedings brought in county where property is situated.
- [NRS 239.200](#) Where proceedings are brought when county divided after destruction of records.
- [NRS 239.210](#) Limitations affecting restored records.
- [NRS 239.220](#) Restored records validated.
- [NRS 239.230](#) Restoration of judicial records not affecting real property or water rights: Procedure.
- [NRS 239.240](#) Restoration of judicial records not affecting real property or water rights: Contents of affidavit filed with court.
- [NRS 239.250](#) Court to issue citation upon filing of affidavit.
- [NRS 239.260](#) Service of citation on parties residing outside of county or State.
- [NRS 239.270](#) Counter-affidavits; hearing; decree.
- [NRS 239.280](#) Limitation of record of judgment which has been restored.
- [NRS 239.290](#) Taxation of costs.

### PENALTIES

- [NRS 239.300](#) Stealing, altering or defacing records, documents or instruments.
- [NRS 239.310](#) Removing, injuring or concealing public records and documents.
- [NRS 239.320](#) Injury to, concealment or falsification of records or papers by public officer.
- [NRS 239.330](#) Offering false instrument for filing or record.

### IN GENERAL

**NRS 239.001 Legislative findings and declaration.** The Legislature hereby finds and declares that:

1. The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law;
  2. The provisions of this chapter must be construed liberally to carry out this important purpose;
  3. Any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly; and
  4. The use of private entities in the provision of public services must not deprive members of the public access to inspect and copy books and records relating to the provision of those services.
- (Added to NRS by [2007, 2061](#); A [2011, 2723](#))

**NRS 239.005 Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Actual cost" means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.
2. "Agency of the Executive Department" means an agency, board, commission, bureau, council, department, division, authority or other unit of the Executive Department of the State Government. The term does not include the Nevada System of Higher Education.
3. "Committee" means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.
4. "Division" means the Division of State Library and Archives of the Department of Administration.
5. "Governmental entity" means:
  - (a) An elected or appointed officer of this State or of a political subdivision of this State;
  - (b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State, including, without limitation, an agency of the Executive Department, or of a political subdivision of this State;
  - (c) A university foundation, as defined in [NRS 396.405](#); or
  - (d) An educational foundation, as defined in [NRS 388.750](#), to the extent that the foundation is dedicated to the assistance of public schools.

6. "Privatization contract" means a contract executed by or on behalf of a governmental entity which authorizes a private entity to provide public services that are:

- (a) Substantially similar to the services provided by the public employees of the governmental entity; and
- (b) In lieu of the services otherwise authorized or required to be provided by the governmental entity.

(Added to NRS by 1977, 455; A 1979, 179; 1983, 1298; 1985, 126; 1993, 209, 1538; 1995, 511; 1997, 2385; 2001, 936; 2011, 2723, 2948; 2013, 2267)

**NRS 239.008 Designation of records official for certain state agencies; forms and procedures applicable to requests for public records.**

1. The head of each agency of the Executive Department shall designate one or more employees of the agency to act as records official for the agency.

2. A records official designated pursuant to subsection 1 shall carry out the duties imposed pursuant to this chapter on the agency of the Executive Department that designated him or her with respect to a request to inspect or copy a public book or record of the agency.

3. The State Library and Archives Administrator, pursuant to NRS 378.255 and in cooperation with the Attorney General, shall prescribe:

(a) The form for a request by a person to inspect or copy a public book or record of an agency of the Executive Department pursuant to NRS 239.0107;

(b) The form for the written notice required to be provided by an agency of the Executive Department pursuant to paragraph (b), (c) or (d) of subsection 1 of NRS 239.0107; and

(c) By regulation the procedures with which a records official must comply in carrying out his or her duties.

4. Each agency of the Executive Department shall make available on any website maintained by the agency on the Internet or its successor the forms and procedures prescribed by the State Library and Archives Administrator and the Attorney General pursuant to subsection 3.

(Added to NRS by 2013, 2267)

**NRS 239.010 Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be prepared by governmental entity and provided in medium requested. [Effective until the date that the provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance are ratified by the President and the United States deposits its instrument of ratification or July 1, 2015, whichever is sooner.]**

1. Except as otherwise provided in this section and NRS 1.4683, 1A.110, 49.095, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 130.312, 159.044, 172.075, 172.245, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.440, 281A.470, 281A.550, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275, 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264, 392.271, 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885, 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320, 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720, 453.1545, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 598.0964, 598A.110, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.353, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.212, 634.214, 634A.185, 635.158, 636.107, 637.085, 637A.315, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.280, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.420, 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 710.159, 711.600, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public

books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in [NRS 239.030](#), shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

[1:149:1911; RL § 3232; NCL § 5620]—(NRS A 1963, 26; 1965, 69; [1993, 1230, 2307, 2623, 1995, 503, 716, 1997, 2386, 1999, 1210, 2007, 2062, 2013, 321, 2268](#))

**NRS 239.010 Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be provided in medium requested. [Effective on the date that the provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance are ratified by the President and the United States deposits its instrument of ratification and through June 30, 2015.]**

1. Except as otherwise provided in this section and [NRS 1.4683, 1A.110, 49.095, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 130.312, 130.712, 159.044, 172.075, 172.245, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.440, 281A.470, 281A.550, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275, 388.528, 388.5315, 388.750, 389.015, 391.035, 392.029, 392.147, 392.264, 392.271, 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885, 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320, 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720, 453.1545, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.583, 584.655, 598.0964, 598A.110, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.353, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.212, 634.214, 634A.185, 635.158, 636.107, 637.085, 637A.315, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.280, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.420, 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 710.159, 711.600, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.](#)

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

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FOIA

NOTES OF DECISIONS (6564)

- GENERALLY
- PUBLICATION IN FEDERAL REGISTER
- EXEMPTIONS GENERALLY
- NATIONAL DEFENSE AND FOREIGN POLICY SECRETS
- STATUTORY EXEMPTIONS
- TRADE SECRETS AND COMMERCIAL OR FINANCIAL INFORMATION
- INTERAGENCY OR INTRAAGENCY MEMORANDA

Part § 552. Public information; agency rules, opinions, orders, records, and proceedings  
United States Code Annotated Title 5. Government Organization and Employees Effective: October 28, 2009 (Approx. 12 pages)

United States Code Annotated  
Title 5. Government Organization and Employees (Refs & Annos)  
Part I. The Agencies Generally  
Chapter 5. Administrative Procedure (Refs & Annos)  
Subchapter II. Administrative Procedure (Refs & Annos)

Proposed Legislation

Return to list 1 of 49 results Search term Effective: October 28, 2009

5 U.S.C.A. § 552

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

Currentness

<Notes of Decisions for 5 USCA § 552 are displayed in two separate documents. Notes of Decisions for subdivisions I to VII are contained in this document. For Notes of Decisions for subdivisions VIII to end, see second document for 5 USCA § 552.>

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;



reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and--

(A) the investigation or proceeding involves a possible violation of criminal law, and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include--

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(I) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), the number of occasions on which each statute was relied upon, a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median and average number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;





U.S. Department of Justice

Office of Information Policy

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Washington, DC 20530-0001

January 2014

**Statutes Found to Qualify under Exemption 3 of the FOIA**

Exemption 3 of the Freedom of Information Act incorporates certain nondisclosure provisions contained in federal statutes other than the FOIA. To assist agencies in properly processing FOIA requests and in preparing their Annual FOIA Reports, the Office of Information Policy has compiled a list of statutes currently in effect that courts have found to qualify as Exemption 3 statutes. This chart does not include statutes which have been found not to qualify under Exemption 3, nor does it include any statute which has not yet been considered by a court as a possible Exemption 3 statute. In addition, on occasion a statutory provision has been found to qualify under Exemption 3 by one court and found not to qualify by another. Those statutes are marked with asterisks.

Statute/Rule	Type of Information Withheld	Case Citation
2 U.S.C. § 437g(a)(12)(A)* (Federal Election Campaign Act)	Any notification or investigation made under this section of the Federal Election Campaign Act pertaining to federal campaign funds	<u>Citizens for Responsibility and Ethics in Washington v. FEC</u> , No. 04-1672, slip op. at 5 (D.D.C. May 16, 2005).
5 U.S.C. §§ 7114(b)(4), 7132 (Civil Service Reform Act)	Defining agencies' and representatives' duty to negotiate in good faith to include disclosure of certain labor relations training and guidance materials and limiting the issuance of certain subpoenas	<u>Dubin v. Dep't of Treasury</u> , 555 F. Supp. 408, 412 (N.D. Ga. 1981) (5 U.S.C. § 7114(b)(4)), <u>aff'd</u> , 697 F.2d 1093 (11th Cir. 1983) (unpublished table decision); <u>NTEU v. OPM</u> , No. 76-695, slip op. at 3-4 (D.D.C. July 9, 1979) (5 U.S.C. § 7114(b)(4) and 5 U.S.C. § 7132).

<p>5 U.S.C. app. § 107(a) (Ethics in Government Act of 1978)</p>	<p>Financial disclosure information pertaining to certain government employees</p>	<p><u>Meyerhoff v. EPA</u>, 958 F.2d 1498, 1500-02 (9th Cir. 1992); <u>Seife v. NIH</u>, 874 F. Supp. 2d 248, 254 (S.D.N.Y. 2012); <u>Concepcion v. FBI</u>, 606 F. Supp. 2d 14, 33 (D.D.C. 2009), <u>renewed motion for summary judgment granted in part on other grounds</u>, 699 F. Supp. 2d 106 (D.D.C. 2010); <u>Glascoe v. DOJ</u>, No. 04-0486, 2005 WL 1139269, at *1 (D.D.C. May 15, 2005).</p>
<p>7 U.S.C. § 12 (Commodity Exchange Act)</p>	<p>"[D]ata and information that would separately disclose the business transactions of any person" and trade secrets or names of customers gathered in the course of the Commission's investigations under the Commodity Exchange Act</p>	<p><u>Hunt v. Commodity Futures Trading Comm'n</u>, 484 F. Supp. 47, 49 (D.D.C. 1979).</p>
<p>7 U.S.C. § 136i-1 (Federal Insecticide, Fungicide, and Rodenticide Act)</p>	<p>Data "that would directly or indirectly reveal the identity of individual producers [of certain pesticides]"</p>	<p><u>Doe v. Veneman</u>, 380 F.3d 807, 818 (5th Cir. 2004).</p>
<p>7 U.S.C. § 2018(c)</p>	<p>Information obtained pursuant to chapter 51 of title 7 of the United States Code, which concerns the handling of information submitted by applicants to the Supplemental Nutrition Assistance Program</p>	<p><u>Argus Leader Media v. USDA</u>, 900 F. Supp. 2d 997, 1006 (D.S.D. Sept. 27, 2012).</p>

<p>7 U.S.C. § 2276(a)(2) (Food Security Act of 1985)</p>	<p>"[I]nformation furnished under a provision of law referred to in subsection (d) of this section . . . unless such information has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information"</p>	<p><u>Strunk v. U.S. Dept. of Interior</u>, 752 F. Supp. 2d 39, 44 (D.D.C. 2010).</p>
<p>7 U.S.C. § 8791</p>	<p>"[I]nformation provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the Department" and certain "geospatial information . . . maintained by the Secretary"</p>	<p><u>Ctr. for Biological Diversity v. USDA</u>, 626 F.3d 1113, 1118 (9th Cir. 2010); <u>Zanoni v. USDA</u>, 605 F. Supp. 2d 230, 237-38 (D.D.C. 2009).</p>
<p>8 U.S.C. § 1202(f) (Immigration and Nationality Act)</p>	<p>Certain records pertaining to the issuance or refusal of visas to enter the United States</p>	<p><u>Medina-Hincapie v. Dep't of State</u>, 700 F.2d 737, 741-42 (D.C. Cir. 1983); <u>DeLaurentiis v. Haig</u>, 686 F.2d 192, 194 (3d Cir. 1982); <u>Beltranena v. U.S. Dep't of State</u>, 821 F. Supp. 2d 167, 177-78 (D.D.C. 2011); <u>Badalamenti v. U.S. Dep't of State</u>, 899 F. Supp. 542, 547 (D. Kan. 1995); <u>Jan-Xin Zang v. FBI</u>, 756 F. Supp. 705, 711-12 (W.D.N.Y. 1991); <u>Smith v. DOJ</u>, No. 81-CV-813, 1983 U.S. Dist. LEXIS 10878, at *13-14 (N.D.N.Y. Dec. 13, 1983); <u>Holy Spirit Ass'n for Unification of World Christianity, Inc. v. U.S. Dep't of State</u>, 526 F. Supp. 1022, 1031 (S.D.N.Y. 1981).</p>

10 U.S.C. § 130	Certain "technical data with military or space application in the possession of, or under the control of, the Department of Defense"	<u>Newport Aeronautical Sales v. Dep't of the Air Force</u> , 684 F.3d 160, 165 (D.C. Cir. 2012); <u>Chenkin v. Dep't of the Army</u> , No. 93-494, 1994 U.S. Dist. LEXIS 20907, at *8 (E.D. Pa. Jan. 14, 1994), <u>aff'd</u> , 61 F.3d 894 (3d Cir. 1995) (unpublished table decision).
10 U.S.C. § 130b	Personally identifiable information pertaining to members of the armed forces assigned to "routinely deployable unit[s]" and certain employees of DOD and DHS	<u>Hall v. CIA</u> , No. 04-00814, 2012 WL 3143839, at * 16 (D.D.C. Aug. 3, 2012); <u>Hiken v. DOD</u> , 521 F. Supp. 2d 1047, 1062 (N.D. Cal. 2007); <u>O'Keefe v. DOD</u> , 463 F. Supp. 2d 317, 325 (E.D.N.Y. 2006); <u>Windel v. United States</u> , No. A02-306, 2005 WL 846206, at *2 (D. Alaska Apr. 11, 2005).
10 U.S.C. § 130c	Certain "sensitive information of foreign governments" and certain international organizations	<u>Nat'l Inst. of Military Justice v. DOD</u> , 404 F. Supp. 2d 325, 335-37 (D.D.C. 2005), <u>aff'd on other grounds</u> , 512 F.3d 677 (D.C. Cir. 2008); <u>ACLU v. DOD</u> , 389 F. Supp. 2d 547, 554 (S.D.N.Y. 2005); <u>Gerstein v. DOD</u> , No. 03-5193, slip op. at 8 (N.D. Ca. Dec. 21, 2004).
10 U.S.C. § 424	Organization or any function of, and certain information pertaining to, employees of the Defense Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency	<u>Physicians for Human Rights v. DOD</u> , No. RDB-08-273, 2011 WL 1495942, at *7 (D.D.C. Apr. 19, 2011); <u>Miller v. DOJ</u> , 562 F. Supp. 2d 82, 112 (D.D.C. 2008); <u>Wickwire Gavin, P.C. v. Def. Intelligence Agency</u> , 330 F. Supp. 2d 592, 602 (E.D. Va. 2004).

<p>10 U.S.C. § 1102 (National Defense Authorization Act for Fiscal Year 1987)</p>	<p>Medical quality assurance records</p>	<p><u>Goodrich v. Dep't of the Air Force</u>, 404 F. Supp. 2d 48, 50-51 (D.D.C. 2005); <u>Dayton Newspapers, Inc. v. Dep't of the Air Force</u>, 107 F. Supp. 2d 912, 917 (S.D. Ohio 1999).</p>
<p>10 U.S.C. § 2305(g)</p>	<p>Certain contractor proposals</p>	<p><u>Roman v. NSA</u>, Nos. 09-2947, 09-4281, 09-3344, 09-2504, 09-5633, 2012 WL 569747, at *7 (E.D.N.Y. Feb. 22, 2012); <u>Margolin v. NASA</u>, No. 09-CV-00421-LRH-VPC, 2011 WL 1303221, at *6 (D. Nev. Mar. 31, 2011).</p>
<p>13 U.S.C. §§ 8(b), 9(a) (Census Act)</p>	<p>Certain census data</p>	<p><u>Baldrige v. Shapiro</u>, 455 U.S. 345, 355 (1982).</p>
<p>13 U.S.C. § 301(g) (Collection and Publication of Foreign Commerce Act)</p>	<p>Shippers' export declarations or successor documents</p>	<p><u>Afr. Fund v. Mosbacher</u>, No. 92 Civ. 289, 1993 WL 183736, at *5 (S.D.N.Y. May 26, 1993); <u>Young Conservative Found., Inc. v. U.S. Dep't of Commerce</u>, No. 85-3982, 1987 WL 9244, at *2-3 (D.D.C. Mar. 25, 1987).</p>
<p>15 U.S.C. §§ 46(f), 57b-2 (Federal Trade Commission Act)</p>	<p>"[A]ny trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" and certain investigative materials received by the FTC and "provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process"</p>	<p><u>A. Michael's Piano, Inc. v. FTC</u>, 18 F.3d 138, 143-44 (2d Cir. 1994) (15 U.S.C. § 57b-2); <u>Carter, Fullerton &amp; Hayes, LLC v. FTC</u>, 637 F. Supp. 2d 1, 9 (D.D.C. 2009) (15 U.S.C. § 57b-2); <u>National Educ. Ass'n v. FTC</u>, No. 79-959-S, 1983 WL 1883, at *1 (D. Mass. Sept. 26, 1983) (15 U.S.C. § 57b-2); <u>Doherty v. FTC</u>, No. 80-0513, 1981 WL 2094, at *3 (D.D.C. June 24, 1981) (15 U.S.C. § 46(f)).</p>

<p>15 U.S.C. § 1314(g) (Antitrust Civil Process Act)</p>	<p>"Any documentary material, answers to written interrogatories, or transcripts of oral testimony" provided pursuant to certain civil investigative demands pertaining to antitrust investigations</p>	<p><u>Motion Picture Ass'n of Am. v. DOJ</u>, No. 80 Civ. 6612, slip op. at 1 (S.D.N.Y. Oct. 6, 1981).</p>
<p>15 U.S.C. §§ 2055(a)(2), 2055(b)(1), 2055(b)(5) (Consumer Product Safety Act)</p>	<p>Certain information reported to, or otherwise obtained by, the Consumer Product Safety Commission which either contains or relates to a trade secret or is "subject to section 552(b)(4) of Title 5"</p>	<p><u>Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.</u>, 447 U.S. 102, 122 (1980) (15 U.S.C. § 2055(b)(1)); <u>Mulloy v. Consumer Prods. Safety Comm'n</u>, No. 85-3720, 1986 WL 17283, at *1 (6th Cir. July 22, 1986) (per curiam) (unpublished disposition) (15 U.S.C. § 2055(a)(2) and 15 U.S.C. § 2055(b)(5)); <u>Reliance Elec. Co. v. Consumer Prod. Safety Comm'n</u>, No. 87-1478, slip op. at 16-17 (D.D.C. Sept. 19, 1989) (15 U.S.C. § 2055(b)(5)); <u>Mulloy v. Consumer Prod. Safety Comm'n</u>, No. C-2-85-645, 1985 U.S. Dist. LEXIS 17194, at *2-6 (S.D. Ohio Aug. 2, 1985) (15 U.S.C. § 2055(a)(2) and 15 U.S.C. § 2055(b)(5)).</p>

<p>15 U.S.C. § 3710a(c) (Federal Technology Transfer Act)</p>	<p>"[T]rade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of Title 5, which is obtained in the conduct of research or as a result of activities under this chapter," which pertains to cooperative research and development agreements for the purpose of technological and industrial innovation</p>	<p><u>Pub. Citizen Health Research Group v. NIH</u>, 209 F. Supp. 2d 37, 43, 51 (D.D.C. 2002); <u>DeLorme Pub. Co., Inc. v. NOAA</u>, 917 F. Supp. 867, 871-72 (D. Me. 1996), <u>appeal dismissed per stipulation</u>, No. 96-1601 (1st Cir. July 8, 1996).</p>
<p>15 U.S.C. § 6801 (Gramm-Leach-Bliley Act)</p>	<p>Nonpublic personal information of customers of financial institutions</p>	<p><u>Hodes v. HUD</u>, 532 F. Supp. 2d 108, 117 (D.D.C. 2008).</p>
<p>15 U.S.C. § 7306(d) (National Construction Safety Team Act)</p>	<p>"[A]ny information . . . receive[d] in the course of an investigation under this chapter if the Director finds that the disclosure of that information might jeopardize public safety"</p>	<p><u>Quick v. Dep't of Commerce</u>, 775 F. Supp. 2d 174, 180-81 (D.D.C. 2011).</p>
<p>16 U.S.C. § 470hh (Archaeological Resources Protection Act of 1979)</p>	<p>Information pertaining to the nature and location of certain archaeological resources</p>	<p><u>Hornbostel v. U.S. Dep't of the Interior</u>, 305 F. Supp. 2d 21, 30 (D.D.C. 2003), <u>summary affirmance granted</u>, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004).</p>



<p>16 U.S.C. § 5937 (National Parks Omnibus Management Act)</p>	<p>Information pertaining to: "endangered, threatened, rare, or commercially valuable" National Park System resources; "mineral or paleontological objects within units of the National Park System"; or "objects of cultural patrimony within units of the National Park System"</p>	<p><u>Hornbostel v. U.S. Dep't of the Interior</u>, 305 F. Supp. 2d 21, 30 (D.D.C. 2003), <u>summary affirmance granted</u>, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004); <u>Sw. Ctr. for Biological Diversity v. USDA</u>, 170 F. Supp. 2d 931, 945 (D. Ariz. 2000), <u>aff'd</u>, 314 F.3d 1060, 1062 (9th Cir. 2002); <u>Pease v. U.S. Dep't of Interior</u>, No. 1:99CV113, slip op. at 2, 4 (D. Vt. Sept. 17, 1999).</p>
<p>18 U.S.C. § 208(d)(1)</p>	<p>Providing that "a copy of any determination granting an exemption under subsection (b)(1) or (b)(3) [from application of penalties for acts affecting personal financial interests determined to constitute bribery, graft, or conflicts of interest] shall be made available to the public," but exempting from this disclosure requirement "any information contained in the determination that would be exempt from disclosure under section 552 of title 5"</p>	<p><u>Seife v. NIH</u>, 874 F. Supp. 2d 248, 256 (S.D.N.Y. 2012).</p>

<p>18 U.S.C. § 701</p>	<p>Establishes penalties for: manufacturing, selling, or possessing "any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof"; and photographing, printing, making, or executing "any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or any colorable imitation thereof"</p>	<p><u>Jones v. IRS</u>, No. 06-CV-322, 2008 WL 1901208, at *3-4 (W.D. Mich. Apr. 25, 2008).</p>
<p>18 U.S.C. § 798 (Espionage Act)</p>	<p>Certain classified information pertaining to the communication intelligence and cryptographic devices of the United States or any foreign government</p>	<p><u>Larson v. Dep't of State</u>, 565 F.3d 857, 868-69 (D.C. Cir. 2009); <u>ACLU v. ODNI</u>, No. 10-4419, 2012 WL 1117114, at *4 (S.D.N.Y. Mar. 30, 2012); <u>Adejumobi v. NSA</u>, No. 07-1237, 2007 WL 4247878, at *3 (M.D. Fla. Dec. 3, 2007), <u>aff'd per curiam</u>, 287 F. App'x 770 (11th Cir. 2008); <u>Gilmore v. NSA</u>, No. C 92-3646, 1993 U.S. Dist. LEXIS 7694, at *26-27 (N.D. Cal. May 3, 1993); <u>Winter v. NSA</u>, 569 F. Supp. 545, 546-48 (S.D. Cal. 1983).</p>

<p>18 U.S.C. §§ 2510-20 (Title III of the Omnibus Crime Control and Safe Streets Act)</p>	<p>Wiretap requests and the contents of any wire, oral, or electronic communication obtained through wiretaps</p>	<p><u>Mendoza v. DEA</u>, No. 07-5006, 2007 U.S. App. LEXIS 22175 (D.C. Cir. Sept. 14, 2007) (per curiam); <u>Lam Lek Chong v. DEA</u>, 929 F.2d 729, 733 (D.C. Cir. 1991); <u>Payne v. DOJ</u>, No. 96-30840, slip op. at 5-6 (5th Cir. July 11, 1997).</p>
<p>18 U.S.C. § 3123(d) (Pen Register Act)</p>	<p>Certain court "order[s] authorizing or approving the installation and use of a pen register or a trap and trace device"; information pertaining to "the existence of the pen register or trap and trace device or the existence of the investigation"</p>	<p><u>Brown v. FBI</u>, 873 F. Supp. 2d 388, 401 (D.D.C. 2012); <u>Jennings v. FBI</u>, No. 03-1651, slip op. at 11-12 (D.D.C. May 6, 2004); <u>Manna v. DOJ</u>, 815 F. Supp. 798, 812 (D.N.J. 1993), <u>aff'd on other grounds</u>, 51 F.3d 1158 (3d Cir. 1995).</p>
<p>18 U.S.C. § 3509(d) (Federal Victims' Protection and Rights Act)</p>	<p>Certain records containing identifying information pertaining to children involved in criminal proceedings</p>	<p><u>Tampico v. EOUSA</u>, No. 04-2285, slip op. at 8 (D.D.C. Apr. 29, 2005).</p>
<p>18 U.S.C. § 3521(b)(1)(g) (Witness Security Reform Act of 1984)</p>	<p>"[T]he identity or location of the person relocated or protected, or any other matter concerning the person or the program after weighing [various factors]," subject to certain exceptions</p>	<p><u>Bonadonna v. DOJ</u>, 791 F. Supp. 2d 269, 270 (D. Mass. 2010), <u>aff'd</u>, No. 10-1595, 2011 WL 4770189 (1st Cir. Jan. 7, 2011).</p>
<p>18 U.S.C. § 4208(c) (Parole Commission and Reorganization Act)</p>	<p>Certain records pertaining to parole determination proceedings</p>	<p><u>DOJ v. Julian</u>, 486 U.S. 1, 9 (1988).</p>
<p>19 U.S.C. § 1677f (Tariff Act)</p>	<p>Certain "information submitted to the administering authority or the [United States International Trade] Commission which is designated as proprietary by the person submitting the information"</p>	<p><u>Mudge Rose Guthrie Alexander &amp; Ferdon v. U.S. Int'l Trade Comm'n</u>, 846 F.2d 1527, 1530 (D.C. Cir. 1988).</p>

<p>19 U.S.C. §§ 2605(h), 2605(i) (Convention on Cultural Property Implementation Act)</p>	<p>Certain records pertaining to Cultural Property Advisory Committee proceedings where "it is determined by the President or his designee that the disclosure of matters involved in the Committee's proceedings would compromise the Government's negotiating objectives or [certain] bargaining positions"; certain "information (including trade secrets and commercial or financial information which is privileged or confidential) submitted in confidence by the private sector to officers or employees of the United States or to the [Cultural Property Advisory] Committee"</p>	<p><u>Ancient Coin Collectors Guild v. U.S. Dep't of State</u>, 641 F.3d 504, 511 (D.C. Cir. 2011) (19 U.S.C. § 2605(h)); <u>Ancient Coin Collectors Guild v. U.S. Dep't of State</u>, 866 F. Supp. 2d 28, 32 (D.D.C. 2012) (19 U.S.C. § 2605(i)).</p>
<p>21 U.S.C. § 331(j) (Food, Drug, and Cosmetic Act)</p>	<p>Certain information "concerning any method or process which as a trade secret is entitled to protection"</p>	<p><u>Anderson v. HHS</u>, 907 F.2d 936, 950-51 (10th Cir. 1990).</p>
<p>22 U.S.C. §§ 1461, 1461-1a (Foreign Affairs Reform and Restructuring Act)</p>	<p>Certain program information prepared by the United States Information Agency</p>	<p><u>Essential Info., Inc. v. USIA</u>, 134 F.3d 1165, 1168 (D.C. Cir. 1998).</p>
<p>22 U.S.C. § 2778(e) (Arms Export Control Act)</p>	<p>Certain information pertaining to export license applications</p>	<p><u>Council for a Livable World v. U.S. Dep't of State</u>, No. 96-1807, slip op. at 11 (D.D.C. Jan. 21, 1998), <u>amended</u> (D.D.C. Nov. 23, 1998).</p>
<p>22 U.S.C. § 3104(c) (International Investment Survey Act)</p>	<p>Records and reports provided pursuant to subsection (b)(2) of the section of the statute which pertains to certain "surveys and studies" regarding international investment and trade</p>	<p><u>Young Conservative Found., Inc. v. U.S. Dep't of Commerce</u>, No. 85-3982, 1987 WL 9244, at *3-4 (D.D.C. Mar. 25, 1987).</p>

<p>26 U.S.C. §§ 6103, 6105 (Internal Revenue Code)</p>	<p>Certain tax return information, to include Taxpayer Identification Numbers of third parties, and certain tax convention information</p>	<p><u>Church of Scientology v. IRS</u>, 484 U.S. 9, 15 (1987) (26 U.S.C. § 6103); <u>Pac. Fisheries, Inc. v. IRS</u>, 395 F. App'x. 438, 440 (9th Cir. 2010) (unpublished disposition) (26 U.S.C. §§ 6103, 6105); <u>Leonard v. U.S. Dep't of Treasury</u>, No. 10-6625, 2013 WL 4517912, at *2 (D.N.J. Aug. 26, 2013) (26 U.S.C. § 6103); <u>Tax Analysts v. IRS</u>, 217 F. Supp. 2d 23, 27-29 (D.D.C. 2002) (26 U.S.C. § 6105).</p>
<p>28 U.S.C. § 652(d)</p>	<p>"[C]onfidential dispute resolution communications"</p>	<p><u>Yelder v. DOD</u>, 577 F. Supp. 2d 342, 347-48 (D.D.C. 2008).</p>
<p>31 U.S.C. § 5319 (Bank Secrecy Act)</p>	<p>Reports pertaining to monetary instruments transactions filed under subchapter II of chapter 53 of title 31 and records of those reports</p>	<p><u>Hulstein v. DEA</u>, No. 10-4112, 2011 U.S. Dist. LEXIS 25788, at *7-8 (N.D. Iowa Mar. 11, 2011); <u>Council on Am.-Islamic Relations, Cal. v. FBI</u>, 749 F. Supp. 2d 1104, 1117 (S.D. Cal. 2010); <u>Berger v. IRS</u>, 487 F. Supp. 2d 482, 496-97 (D.N.J. 2007), <u>aff'd on other grounds</u>, 288 F. App'x 829 (3d Cir. 2008); <u>Sciba v. Bd. of Governors of the Fed. Reserve Sys.</u>, No. 04-1011, 2005 WL 3201206, at *6 (D.D.C. Nov. 4, 2005).</p>
<p>35 U.S.C. § 122 (Patent Act)</p>	<p>Applications for patents; certain information pertaining to applications for patents</p>	<p><u>Irons &amp; Sears v. Dann</u>, 606 F.2d 1215, 1219-21 (D.C. Cir. 1979).</p>

38 U.S.C. § 5701	"All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of present or former members of the Armed Forces, and their dependents, in the possession of [VA]"	<u>Ashton v. VA</u> , No. 99-6018, 1999 WL 753331, at *1 (2d Cir. Sept. 3, 1999) (unpublished disposition).
38 U.S.C. § 5705	Records created by VA as part of its medical quality-assurance program; certain other information pertaining to VA's medical quality-assurance program	<u>Schulte &amp; Sun-Sentinel Co. v. VA</u> , No. 86-6251, slip op. at 3-4, 12 (S.D. Fla. Feb. 2, 1996).
38 U.S.C. § 7332	Records of patients being treated for certain conditions	<u>Palmer v. Derwinski</u> , No. 91-197, slip op. at 3-4 (E.D. Ky. June 10, 1992).
39 U.S.C. § 410(c)(2) (Postal Reorganization Act)	Commercial information which would not be disclosed under good business practice	<u>Wickwire Gavin, P.C. v. USPS</u> , 356 F.3d 588, 589, 597 (4th Cir. 2004); <u>Am. Postal Workers Union, AFL-CIO v. USPS</u> , 742 F. Supp. 2d 76, 81-83 (D.D.C. 2010); <u>Reid v. USPS</u> , No. 05-294, 2006 WL 1876682, at *5-9 (S.D. Ill. July 5, 2006); <u>Robinett v. USPS</u> , No. 02-1094, 2002 WL 1728582, at *5 (E.D. La. July 24, 2002).

<p>41 U.S.C. § 253b(m)(1) (currently at 41 U.S.C. § 4702)</p>	<p>Contractor proposals that are in the possession or control of an executive agency and that have not been set forth or incorporated by reference into contracts</p>	<p><u>Sinkfield v. HUD</u>, No. 10-885, 2012 U.S. Dist. LEXIS 35233, at *13-15 (S.D. Ohio Mar. 15, 2012); <u>Margolin v. NASA</u>, No. 09-CV-00421, 2011 WL 1303221, at *6 (D. Nev. Mar. 31, 2011); <u>Hornbostel v. U.S. Dep't of the Interior</u>, 305 F. Supp. 2d 21, 30 (D.D.C. 2003), <u>summary affirmance granted</u>, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004).</p>
<p>41 U.S.C. § 2102 (amending 41 U.S.C. § 423(a)(1))* (Procurement Integrity Act)</p>	<p>Contractor bid or proposal information; source selection information</p>	<p><u>Legal &amp; Safety Employer Research, Inc. v. U.S. Dep't of the Army</u>, No. Civ. S001748, 2001 WL 34098652, at *3-4 (E.D. Cal. May 4, 2001) (dictum).</p>
<p>42 U.S.C. § 300aa-12(d)(4)(A) (National Childhood Vaccine Injury Act of 1986)</p>	<p>"Except as provided in subparagraph (B), information submitted to a special master or the court in a proceeding on a petition [for compensation under the National Vaccine Injury Compensation Program] . . . without the express written consent of the person who submitted the information"</p>	<p><u>Long v. DOJ</u>, 778 F. Supp. 2d 222, 234 (N.D.N.Y. 2011).</p>
<p>42 U.S.C. § 405(r) (Social Security Act)</p>	<p>Death certificates and records pertaining to deaths provided to the Commissioner of Social Security under this subsection</p>	<p><u>Int'l Diatomite Producers Ass'n v. SSA</u>, No. 92-1634, 1993 WL 137286, at *3 (N.D. Cal. Apr. 28, 1993), <u>appeal dismissed per stipulation</u>, No. 93-16204 (9th Cir. Oct. 27, 1993).</p>

<p>42 U.S.C. §§ 2000e-5(b), 2000e-8(e) (Civil Rights Act of 1964)</p>	<p>Information pertaining to charges of unlawful employment practices; information obtained by the EEOC in investigating charges of unlawful employment practices</p>	<p><u>Frito-Lay v. EEOC</u>, 964 F. Supp. 236, 240-43 (W.D. Ky. 1997); <u>Am. Centennial Ins. Co. v. EEOC</u>, 722 F. Supp. 180, 184 (D.N.J. 1989).</p>
<p>42 U.S.C. § 2162 (Atomic Energy Act)</p>	<p>"Restricted Data" pertaining to atomic weapons and special nuclear material</p>	<p><u>Meeropol v. Smith</u>, No. 75-1121, slip op. at 53-55 (D.D.C. Feb. 29, 1984), <u>aff'd in relevant part &amp; remanded in part on other grounds sub nom.</u>; <u>Meeropol v. Meese</u>, 790 F.2d 942 (D.C. Cir. 1986).</p>
<p>42 U.S.C. §§ 2286d(a), 2286g(3) (Defense Nuclear Facilities Safety Board Act)</p>	<p>Defense Nuclear Facilities Safety Board recommendations</p>	<p><u>Nat. Res. Def. Council, Inc. v. Def. Nuclear Facilities Safety Bd.</u>, 969 F.2d 1248, 1249, 1251 (D.C. Cir. 1992).</p>
<p>42 U.S.C. § 3610(d) (Fair Housing Act)</p>	<p>Records pertaining to conciliation of disputes regarding allegations of unfair housing practices; information derived from housing discrimination investigations and any final investigative reports pertaining to such investigations</p>	<p><u>West v. Jackson</u>, 448 F. Supp. 2d 207, 212-13 (D.D.C. 2006), <u>summary affirmance granted &amp; motion to remand denied</u>, No. 06-5281, 2007 WL 1723362 (D.C. Cir. Mar. 6, 2007).</p>
<p>42 U.S.C. § 14132(b)(3)</p>	<p>Certain "stored DNA samples and DNA analyses"</p>	<p><u>Moore v. Nat'l DNA Index System</u>, 662 F. Supp. 2d 136, 140 (D.D.C. 2009).</p>
<p>45 U.S.C. § 362(d) (Railroad Unemployment Insurance Act)</p>	<p>Information obtained by the Railroad Retirement Board that reveals, in any manner, an employee's identity</p>	<p><u>Ass'n of Retired R.R. Workers v. U.S. R.R. Retirement Bd.</u>, 830 F.2d 331, 334 (D.C. Cir. 1987); <u>Nat'l Ass'n of Retired &amp; Veteran Ry. Employees v. R.R. Ret. Bd.</u>, No. 87-117, slip op. at 5 (N.D. Ohio Feb. 20, 1991).</p>



47 U.S.C. § 605 (Communications Act of 1934)	Certain information pertaining to interstate or foreign communication by wire or radio	<u>Reston v. FCC</u> , 492 F. Supp. 697, 699-700 (D.D.C. 1980).
49 U.S.C. § 114	Information obtained or developed in carrying out security under the authority of the Aviation and Transportation Security Act or under chapter 449 of this title	<u>Skurow v. DHS</u> , No. 11-1296, 2012 WL 4380895, at *9-10 (D.D.C. Sept. 26, 2012); <u>Tooley v. Bush</u> , No. 06-306, 2006 WL 3783142, at *19 (D.D.C. Dec. 21, 2006), <u>aff'd on other grounds</u> , 586 F.3d 1006 (D.C. Cir. 2009); <u>Gordon v. FBI</u> , 390 F. Supp. 2d 897, 900 (N.D. Cal. 2004).
49 U.S.C. § 1114(c) (Transportation Safety Act of 1974)	Certain "cockpit voice or video recorder recording[s] or transcript[s] of communications by and between flight crew members and ground stations pertaining to [] incident[s] investigated by the [National Transportation Safety] Board"	<u>McGilvra v. NTSB</u> , 840 F. Supp. 100, 102 (D. Colo. 1993).
49 U.S.C. § 40119(b) (Federal Aviation Act)	Certain information obtained or developed in ensuring transportation security if disclosure of that information would: constitute an invasion of personal privacy, reveal a trade secret or confidential commercial or financial information, or be detrimental to transportation safety	<u>Pub. Citizen, Inc. v. FAA</u> , 988 F.2d 186, 194 (D.C. Cir. 1993); <u>Gordon v. FBI</u> , 390 F. Supp. 2d 897, 900 (N.D. Cal. 2004).

<p>50 U.S.C. § 402 note (National Security Agency Act of 1959)</p>	<p>Information pertaining to the functions or organization of NSA; certain information pertaining to NSA employees</p>	<p><u>ACLU v. DOJ</u>, 681 F.3d 61, 72-75 (2d Cir. 2012); <u>Elec. Priv. Info. Ctr. v. NSA</u>, 678 F.3d 926, 931 (D.C. Cir. 2012); <u>Houghton v. NSA</u>, 378 F. App'x 235, 238-39 (3d Cir. 2010) (per curiam); <u>Lahr v. NTSB</u>, 569 F.3d 964, 985 (9th Cir. 2009); <u>Larson v. Dep't of State</u>, 565 F.3d 857, 868-69 (D.C. Cir. 2009); <u>Founding Church of Scientology v. NSA</u>, 610 F.2d 824, 827-28 (D.C. Cir. 1979); <u>Roman v. NSA</u>, No. 07-CV-4502, 2009 WL 303686, at *5-6 (E.D.N.Y. Feb. 9, 2009), summary affirmance granted, 354 F. App'x. 591 (2d Cir. 2009).</p>
<p>50 U.S.C. § 403-1(i)(1) (National Security Act of 1947)</p>	<p>Intelligence sources and methods</p>	<p><u>CIA v. Sims</u>, 471 U.S. 159, 167 (1985); <u>ACLU v. DOJ</u>, 681 F.3d 61, 72-75 (2d Cir. May 21, 2012); <u>ACLU v. DOD</u>, 628 F.3d 612, 619, 626 (D.C. Cir. 2011); <u>Berman v. CIA</u>, 501 F.3d 1136, 1137-38, 1140 (9th Cir. 2007).</p>
<p>50 U.S.C. § 403g (Central Intelligence Agency Act of 1949)</p>	<p>Intelligence sources and methods; certain information pertaining to Agency employees, specifically: "the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency"</p>	<p><u>ACLU v. DOJ</u>, 681 F.3d 61, 72-75 (2d Cir. 2012); <u>Larson v. Dep't of State</u>, 565 F.3d 857, 865 n.2 (D.C. Cir. 2009); <u>Berman v. CIA</u>, 501 F.3d 1136, 1137-38, 1140 (9th Cir. 2007); <u>Makky v. Chertoff</u>, 489 F. Supp. 2d 421, 442 (D.N.J. 2007), aff'd on other grounds, 541 F. 3d 205 (3d Cir. 2008).</p>

<p>50 U.S.C. § 431 (Central Intelligence Agency Information Act of 1984)</p>	<p>"[O]perational files of the Central Intelligence Agency"</p>	<p><u>CIA v. Sims</u>, 471 U.S. 159, 167, 174 n.19 (1985) (dictum); <u>Wolf v. CIA</u>, 569 F. Supp. 2d 1, 8 (D.D.C. 2008).</p>
<p>50 U.S.C. § 432a</p>	<p>Operational files of the National Reconnaissance Office</p>	<p><u>Aftergood v. National Reconnaissance Office</u>, 441 F. Supp. 2d 37, 46 (D.D.C. 2006).</p>
<p>50 U.S.C. § 1702(a)(1) (International Emergency Economic Powers Act)</p>	<p>Authorizes the President to "regulate . . . prevent or prohibit . . . importation or exportation of . . . any property in which any foreign country or a national thereof has any interest . . . by any person, or with respect to any property, subject to the jurisdiction of the United States"</p>	<p><u>Wis. Project on Nuclear Arms Control v. U.S. Dep't of Commerce</u>, 317 F.3d 275, 284 (D.C. Cir. 2003).</p>
<p>50 U.S.C. app. § 2411(c) (Export Administration Act of 1979)</p>	<p>Information pertaining to license applications under the Export Administration Act</p>	<p><u>Wis. Project on Nuclear Arms Control v. U.S. Dep't of Commerce</u>, 317 F.3d 275, 284 (D.C. Cir. 2003); <u>Times Publ'g Co. v. U.S. Dep't of Commerce</u>, 236 F.3d 1286, 1292 (11th Cir. 2001); <u>Lessner v. U.S. Dep't of Commerce</u>, 827 F.2d 1333, 1336-37 (9th Cir. 1987).</p>
<p>Fed. R. Crim. P. 6(e), enacted by Act of July 30, 1977, Pub. L. No. 95-78, 91 Stat. 319</p>	<p>Certain records pertaining to grand jury proceedings</p>	<p><u>Sussman v. USMS</u>, 494 F.3d 1106, 1113 (D.C. Cir. 2007); <u>Fund for Constitutional Gov't v. Nat'l Archives &amp; Records Serv.</u>, 656 F.2d 856, 867-68 (D.C. Cir. 1981); <u>Durham v. U.S. Atty. Gen.</u>, No. 06-843, 2008 WL 620744, at *2 (E.D. Tex. Mar. 3, 2008); <u>Cozen O'Connor v. U.S. Dep't of Treasury</u>, 570 F. Supp. 2d 749, 776 (E.D. Pa. 2008).</p>

Fed. R. Crim. P. 32, enacted by Act of July 31, 1975, Pub. L. 94-64, § 2, 89 Stat. 370	Presentence reports and recommendations	<u>DOJ v. Julian</u> , 486 U.S. 1, 9 (1988).
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