



January 2021

FREEDOM OF INFORMATION ACT

Update on Federal Agencies' Use of Exemption Statutes

GAO@100 Highlights

Highlights of [GAO-21-148](#), a report to congressional requesters

Why GAO Did This Study

FOIA requires federal agencies to provide the public with access to government records and information based on the principles of openness and accountability in government. FOIA also specifies nine exemptions agencies may cite to withhold information when responding to FOIA requests. These exemptions cover information related to national defense or foreign policy; internal agency personnel rules and practices; certain nondisclosure provisions in other statutes; trade secrets and commercial information; privileged interagency or intra-agency memorandums; personal privacy; law enforcement; the regulation of financial institutions; and geological information. FOIA's exemption 3, also referred to as the (b)(3) exemption, specifically authorizes withholding information on the basis of another federal statute that prohibits disclosure of that information.

GAO was asked to review federal agency use of (b)(3) exemptions. This report describes the (b)(3) exemption statutes cited by agencies and the frequency of their use from fiscal years 2010 through 2019, and key statistics related to the use of (b)(3) exemption statutes from fiscal years 2017 through 2019.

GAO reviewed FOIA data reported by agencies for fiscal years 2010 through 2019; updated the catalog of (b)(3) statutes GAO reported in June 2018 to include fiscal years 2017 to 2019; reviewed relevant documentation; and interviewed Department of Justice officials.

View [GAO-21-148](#). For more information, contact Michelle Sager at (202) 512-6806 or SagerM@gao.gov.

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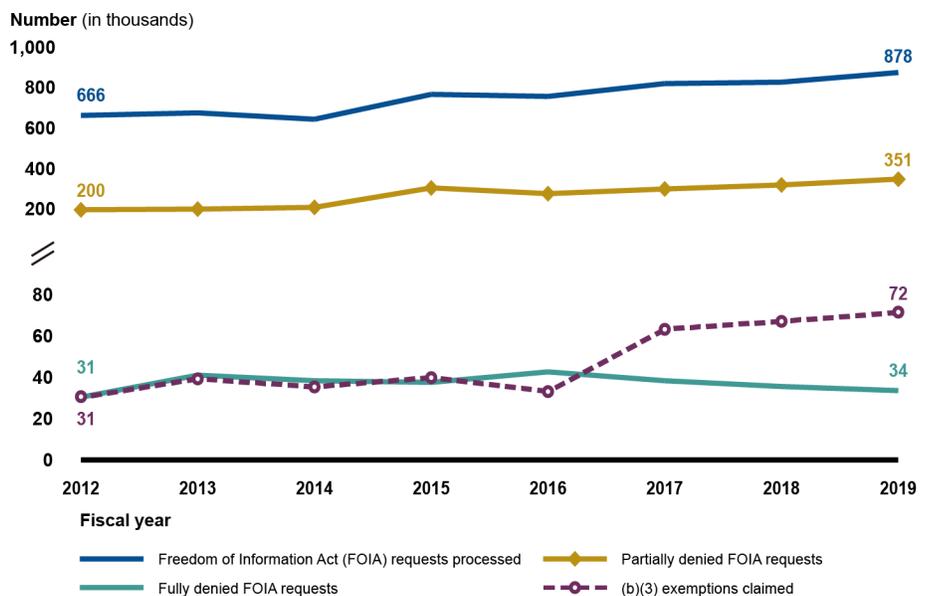
Update on Federal Agencies' Use of Exemption Statutes

What GAO Found

In fiscal years 2010 through 2019, federal agencies claimed a total of 256 statutes as the basis for withholding requested information using Freedom of Information Act (FOIA) exemptions known as (b)(3) exemptions. During this time, 91 agencies reported withholding information using at least one of the 256 statutes a total of more than 525,000 times. The most-commonly used statute related to withholding records pertaining to the issuance or refusal of visas to enter the United States (8 U.S.C. § 1202(f)).

Agencies' use of (b)(3) exemptions more than doubled from fiscal year 2012 to fiscal year 2019 while the number of FOIA requests processed increased 32 percent. At the same time, full denials of requests based on a statutory exemption increased by 10 percent and partial denials, when an agency provided the requester with some, but not all, of the information requested, increased by 76 percent.

Freedom of Information Act Requests Processed, Partial Denials, Full Denials, and Use of (b)(3) Exemptions, Fiscal Years 2012-2019



Source: GAO analysis of FOIA.gov data. | GAO-21-148

Several of the most-used (b)(3) exemption statutes showed large increases in use in fiscal years 2017 through 2019. For example, agencies increased their use of a section of the Bank Secrecy Act, which exempts information pertaining to reportable financial transactions (31 U.S.C. § 5319), by 235 percent—from 958 times in fiscal year 2016 to 3,209 times in fiscal year 2017. Further, agencies cited 19 additional statutes to withhold information in fiscal years 2017 through 2019 that had not been used in fiscal years 2010 through 2016. Four of these statutes had been enacted or amended since 2016.

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Abbreviations

DHS	Department of Homeland Security
DOD	Department of Defense
EEOC	Equal Employment Opportunity Commission
FOIA	Freedom of Information Act
DOJ	Department of Justice

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January 12, 2021

Congressional Requesters

The Freedom of Information Act (FOIA) is one of several laws focused on improving the public's access to government information.¹ Each year, individuals and entities file hundreds of thousands of FOIA requests for information on numerous topics that contribute to the understanding of government actions. These topics have included, among others, the disclosure of waste, fraud, and abuse; conditions such as unsafe consumer products and harmful drugs; as well as information related to agencies' responses to the Coronavirus Disease 2019 (COVID-19) pandemic. FOIA requires federal executive branch agencies to provide the public with access to government records and information based on the principles of openness and accountability in government.²

FOIA specifies nine exemptions agencies may cite to withhold information when responding to requests. Exemptions can be applied to portions of records or the entire record. Agencies can apply these nine exemptions to withhold classified information, commercial or financial information that is privileged or confidential, or information related to law enforcement and investigations, among other things.

FOIA requires agencies to report annually on their FOIA activities to the Department of Justice (DOJ), including the number of requests processed, the disposition of requests, and the reason for denials. In fiscal year 2019, federal agencies reported that they processed nearly 878,000 FOIA requests, fully denied approximately 34,000 requests (4 percent) based on exemptions, and partially denied more than 351,000

¹We recently reported on another of these federal efforts to increase government transparency. See GAO, *Open Data: Agencies Need Guidance to Establish Comprehensive Data Inventories; Information on Their Progress is Limited*, [GAO-21-29](#) (Washington, D.C.: Oct. 8, 2020). The Open, Public, Electronic and Necessary Government Data Act of 2018, which is Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435, 132 Stat. 5529 (Jan. 14, 2019), and the Digital Accountability and Transparency Act, Pub. L. No. 113-101, 128 Stat. 1146 (May 9, 2014), among other efforts, have sought to improve the availability, transparency, and quality of federal data.

²5 U.S.C. § 552.

requests (40 percent).³ For example, in fiscal year 2019, DOJ reported it used an exemption that permits the withholding of classified national defense and foreign relations information based on an executive order, resulting in full or partial denials in response to FOIA requests.⁴

Of the nine exemptions authorized by FOIA, only one—exemption 3, also referred to as the (b)(3) exemption—specifically authorizes withholding information under FOIA on the basis of another federal statute that prohibits disclosure of that information.⁵ In 2018, we reported on the use of (b)(3) exemption statutes by federal agencies from fiscal years 2010 through 2016.⁶

At your request, we reviewed federal agencies' use of (b)(3) exemptions. This report provides information on (1) the (b)(3) exemption statutes cited by agencies and the frequency of their use to withhold information in response to FOIA requests from fiscal years 2010 through 2019, and (2) key statistics related to the use of (b)(3) exemption statutes from fiscal years 2017 through 2019.

To address these objectives, we analyzed data that agencies reported to DOJ and which DOJ publishes on its FOIA.gov website. Specifically, we analyzed data on agencies' use of FOIA exemptions and the statutes cited as the basis for (b)(3) exemptions for fiscal years 2010 through 2019.⁷ We also analyzed data that agencies reported on their FOIA

³The number of full denials reflects withholding all of the requested information based on a FOIA exemption. DOJ uses the disposition category of "partial grant/partial denial" when an agency provides the requester with some, but not all, of the information requested. This typically, but not always, means that an agency used exemptions in its response. Agencies may also deny FOIA requests for procedural reasons such as determining that they do not have responsive records or to close duplicate requests submitted from the same requester.

⁴5 U.S.C. § 552(b)(1).

⁵5 U.S.C. § 552(b)(3).

⁶GAO, *Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed*, [GAO-18-365](#) (Washington, D.C.: June 25, 2018).

⁷As we reported in 2018, in accordance with the Office of Management and Budget *Open Government Directive*, agencies began providing their annual FOIA reports in a uniform open format in 2010. Accordingly, FOIA.gov does not include all agency FOIA data for years prior to 2010.

requests processed and denials for fiscal years 2012 through 2019.⁸ To assess data reliability, we reviewed relevant documentation, electronically tested the data for outliers and missing values, and interviewed relevant DOJ officials. We found the data to be sufficiently reliable for the purposes of these objectives.

To develop a catalog of (b)(3) exemption statutes used by agencies during fiscal years 2010 through 2019, we first evaluated the list of 237 (b)(3) exemption statutes we developed for our 2018 report, which spanned fiscal years 2010 through 2016. We then identified additional statutes that agencies cited in fiscal years 2017 through 2019. We also reviewed DOJ guidance and reports, and interviewed DOJ officials. For additional details on our scope and methodology, see appendix I.

We conducted this performance audit from May 2020 to January 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

FOIA, enacted into law more than 50 years ago and recently revised in the FOIA Improvement Act of 2016, establishes a legal right of access to government information on the basis of the principles of openness and accountability in government.⁹ FOIA requires federal agencies to provide the public with access to government records and information based on these principles.

In responding to information requests, FOIA authorizes agencies to withhold information that falls under nine specific exemptions. These exemptions generally cover information related to (1) national defense or foreign policy; (2) internal agency personnel rules and practices; (3) certain nondisclosure provisions in other statutes; (4) trade secrets and commercial or financial information that is privileged or confidential; (5) privileged interagency or intra-agency memorandums or letters; (6)

⁸We used fiscal year 2012 at the starting point for analyses of FOIA requests processed and denials to be consistent with analyses presented in our prior work. [GAO-18-365](#) and [GAO, Freedom of Information Act: Federal Agencies' Recent Implementation Efforts, GAO-20-406R](#) (Washington, D.C.: Mar. 11, 2020).

⁹U.S.C. § 552 as amended by FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (June 30, 2016).

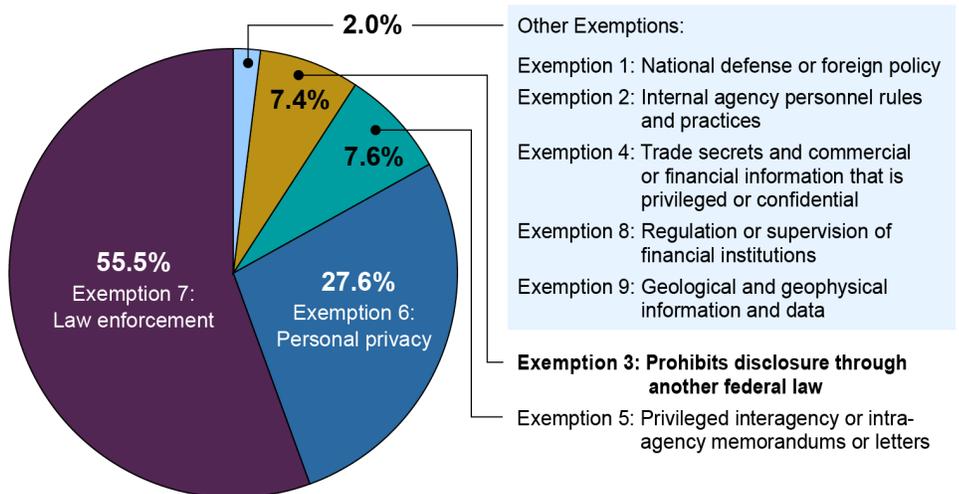
personal privacy; (7) law enforcement; (8) the regulation or supervision of financial institutions; and (9) geological and geophysical information and data. FOIA's statutory exemptions provide the basis for withholding information, except for exemption 3, which allows agencies to withhold information based on nondisclosure provisions contained in other federal statutes. Agencies may cite more than one exemption to deny a request. See appendix II for a description of the nine specific categories of information that are exempt from disclosure.

FOIA's (b)(3) exemption authorizes withholding information under FOIA on the basis of a federal statute, which:

- requires that matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld; and
- if enacted after October 28, 2009, specifically cites 5 U.S.C. § 552(b)(3).

In fiscal year 2019, agencies used FOIA's nine exemptions a total of nearly 970,000 times. Of this total, agencies cited the (b)(3) exemption nearly 72,000 times, which was 7.4 percent of exemptions used government-wide (see fig. 1).

Figure 1: Government-wide Use of Freedom of Information Act (FOIA) Exemptions in Fiscal Year 2019



Source: GAO analysis of FOIA.gov data. | GAO-21-148

FOIA requires agencies to report, among other things, their use of (b)(3) statutes during the previous fiscal year in their annual FOIA reports to DOJ.¹⁰ These reports must include:

- a list of all statutes that the agency relied on to withhold information under exemption (b)(3);
- a brief description of the types of information withheld under each statute listed;
- a description of whether a court has upheld the agency decision to withhold information under the statute relied upon; and
- the number of times the agency relied upon each statute.

To assist agencies in asserting and accounting for their use of (b)(3) statutes, DOJ maintains a running list of all the statutes that courts have found to qualify as (b)(3) exemption statutes. In addition to these qualifying statutes, agencies may also use other federal statutes that they determine meet the requirements of (b)(3), but have not yet been subject to judicial review and identified by a court as a qualifying (b)(3) exemption.

In 2018, we reported that the statutes cited as the basis for (b)(3) exemptions fell in eight general categories of information related to (1) personally identifying information, (2) national security, (3) commercial or business information, (4) law enforcement and investigations, (5) internal agency rules or information, (6) financial regulation, (7) international affairs, and (8) environmental sites or resources.¹¹

¹⁰5 U.S.C. § 552(e)(1)(B)(ii).

¹¹[GAO-18-365](#).

Agencies Cited a Variety of (b)(3) Exemption Statutes, Relying on Some More Frequently Than Others

Federal agencies claimed a total of 256 statutes as the basis for withholding information under (b)(3) exemptions in fiscal years 2010 through 2019.¹² During this time, 91 agencies reported withholding information using at least one of the 256 (b)(3) statutes a total of more than 525,000 times. (See appendix III for a catalog of these 256 statutes.)

According to the list of qualifying statutes maintained by DOJ, 81 of the 256 statutes claimed have been subject to judicial review and identified by a court as qualifying (b)(3) statutes.¹³ If an agency uses a (b)(3) statute that is not identified in the qualifying list, DOJ guidance instructs the agency to include information about that statute in its annual report submission. DOJ reviews newly reported statutes and advises agencies on whether the statute meets the requirements for a (b)(3) exemption.

Agencies Generally Cited the Same (b)(3) Exemptions Identified in Our 2018 Report

The (b)(3) statutes agencies reported using most often from fiscal year 2010 through 2019 remained similar to the list of ten most-used statutes we reported in 2018. All ten of the most-used (b)(3) statutes during fiscal years 2010 through 2016 appear in the 15 most-used (b)(3) statutes for the time period covering fiscal years 2010 through 2019 (see table 1).

Table 1: Fifteen Most-Used Freedom of Information Act (b)(3) Exemption Statutes, Fiscal Years 2010-2019

(b)(3) Statute	Statutes on GAO's 2018 list ^a	Type of information withheld	Total number of reported uses by all agencies	Agency that used the statute the most	Total number of reported uses by top agency
8 U.S.C. § 1202(f)	✓	Records pertaining to the issuance or refusal of visas to enter the United States.	173,879	Department of Homeland Security (DHS)	99,326
26 U.S.C. § 6103	✓	Tax return information.	46,665	Department of the Treasury	23,610
49 U.S.C. § 114 ^b	✓	Air transportation security information.	41,206	DHS	41,194

¹²In fiscal year 2019, 118 agencies reported on their FOIA activities to DOJ. The number of agencies reporting varied from year to year with, for example, the creation of new agencies, such as the Consumer Financial Protection Bureau in 2010, or the closure of agencies, such as the Recovery Accountability and Transparency Board in 2015. In fiscal year 2010, DOJ received annual FOIA reports from 97 agencies.

¹³DOJ's list, last updated in September 2020, contains a total of 87 separate qualifying statutes. We found that agencies used 81 of the qualifying statutes, which appear in our catalog (see appendix III). DOJ also publishes an annual summary list of all the (b)(3) exemption statutes used by agencies in the previous fiscal year.

(b)(3) Statute	Statutes on GAO's 2018 list^a	Type of information withheld	Total number of reported uses by all agencies	Agency that used the statute the most	Total number of reported uses by top agency
50 U.S.C. § 3507	✓	Information related to sources and methods of intelligence activities of the Office of the Director of National Intelligence and the Central Intelligence Agency.	25,030	Central Intelligence Agency	17,047
38 U.S.C. § 7332	✓	Certain confidential veterans' medical records.	24,842	Department of Veterans Affairs	24,840
42 U.S.C. § 2000e-5(b)	✓	Equal employment opportunity enforcement information.	24,752	Equal Employment Opportunity Commission (EEOC)	24,736
42 U.S.C. § 2000e-8(e)	✓	Equal employment opportunity investigation information.	24,752	EEOC	24,736
26 U.S.C. § 6105	✓	Information about tax agreements with foreign governments.	23,933	DHS	17,501
50 U.S.C. § 3024(i)(1)	—	Intelligence sources and methods information.	16,329	Department of Defense (DOD)	9,290
50 U.S.C. § 3605	✓	Information related to sources and methods of intelligence activities and personnel of the National Security Agency.	13,979	DOD	13,856
42 U.S.C. § 12117	✓	Information relating to employment discrimination on the basis of disability.	13,381	EEOC	13,381
31 U.S.C. § 5319	—	Information pertaining to reportable financial transactions.	11,107	Office of Personnel Management	6,653
18 U.S.C. § 798(a)	—	Classified information pertaining to a code, cryptographic system, or communication intelligence activity.	9,755	DOD	9,748
18 U.S.C. App. Fed. R. Crim. P. 6(e)	—	Information relating to grand jury proceedings.	7,842	Department of Justice	7,200
10 U.S.C. § 130b	—	Personally identifiable information pertaining to members of the armed forces assigned to sensitive or overseas units.	7,474	DOD	7,436

Legend: ✓ = On the 2018 list of the ten most-cited statutes; — = Not on the 2018 list of the ten most-cited statutes.

Source: GAO analysis of FOIA.gov data. | GAO-21-148

^aGAO, Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed, [GAO-18-365](#) (Washington, D.C.: June 25, 2018).

^bWe previously reported this statute as 49 U.S.C. § 114(r) in 2018.

During fiscal years 2010 through 2019, forty-six agencies reported using at least one of the fifteen most-commonly used (b)(3) statutes a total of nearly 465,000 times.

The most-used statute. A statute related to withholding records pertaining to the issuance or refusal of visas to enter the United States was the most-used statute.¹⁴ This is consistent with what we found in 2018 for fiscal years 2010 through 2016. Four agencies used this statute a total of more than 170,000 times.¹⁵ The agency that cited it most frequently was the Department of Homeland Security—a change from the Department of State for fiscal years 2010 through 2016.¹⁶

The statute used by the greatest number of agencies. Of the 15 most-used statutes, a statute related to the withholding of certain tax return information remained the statute used by the greatest number of agencies; 28 agencies reported using it a total of more than 46,000 times.¹⁷ Of all the (b)(3) statutes cited in fiscal years 2010 through 2019, the statute used by the greatest number of agencies was related to

¹⁴8 U.S.C § 1202(f).

¹⁵The four agencies that cited 8 U.S.C § 1202(f) are the Departments of Homeland Security, State, and Justice; and National Archives and Records Administration.

¹⁶[GAO-18-365](#).

¹⁷26 U.S.C. § 6103. The 28 agencies are the Departments of Treasury, Homeland Security, Justice, Veterans Affairs, Health and Human Services, Energy, Defense, Interior, Labor, Education, State, Agriculture, Commerce, and Transportation; the Social Security, Small Business, General Services, and National Archives and Records Administrations; the U.S. Agency for International Development; the Federal Maritime, Securities and Exchange, and the Occupational Safety and Health Review Commissions; the U.S. Trade and Development and Federal Housing Finance Agencies; Merit Systems Protection Board; the Overseas Private Investment and Pension Benefit Guaranty Corporations; and the United States Postal Service.

withholding privileged or confidential commercial information on contractor proposals—44 agencies cited it more than 3,000 times.¹⁸

Statutes only used by a single agency. A total of 159 statutes were cited by only a single agency. For example, the Department of Veterans Affairs used a statute related to withholding personally identifying claims information more than 6,600 times.¹⁹ Similarly, the Department of Agriculture used a statute that limits the disclosure of environmental information provided by an agricultural producer or owner of agricultural land concerning farming or conservation practices for the department's programs and related geospatial information approximately 3,000 times.²⁰

Four Categories Represent the Majority of (b)(3) Statutes

Consistent with what we found in 2018, the majority of cited (b)(3) statutes fell into four categories: personally identifying information, national security, law enforcement and investigations, and commercial categories. Of the 256 (b)(3) statutes cited by agencies in fiscal years 2010 through 2019, 194 statutes fell into these four categories (see fig. 2).

¹⁸41 U.S.C. § 4702. The 44 agencies are the Departments of Veterans Affairs, Health and Human Services, Homeland Security, Interior, Treasury, Agriculture, Housing and Urban Development, Commerce, Defense, Energy, Education, Transportation, Justice, State, and Labor; Equal Employment Opportunity Commission; U.S. Agency for International Development; Tennessee Valley Authority; Pension Benefit Guaranty, National Railroad Passenger, the Overseas Private Investment, and Federal Deposit Insurance Corporations; General Services, Social Security, National Archives and Records, and Farm Credit Administrations; Office of Personnel Management; the Environmental Protection, and U.S. Trade and Development Agencies; the Securities and Exchange, Federal Trade, Nuclear Regulatory, International Trade, Federal Communications, Federal Election, and Federal Maritime Commissions; Consumer Financial Protection Bureau, National Science Foundation, Corporation for National and Community Service; the Federal Retirement Thrift Investment, National Labor Relations, and Recovery Accountability and Transparency Boards; National Endowment for the Arts, and the Peace Corps.

¹⁹38 U.S.C. § 5701.

²⁰7 U.S.C. § 8791(b).

Figure 2: General Categories of (b)(3) Exemption Statutes Used by Agencies Subject to the Freedom of Information Act, Fiscal Years 2010-2019



Source: GAO analysis of FOIA.gov data. | GAO-21-148

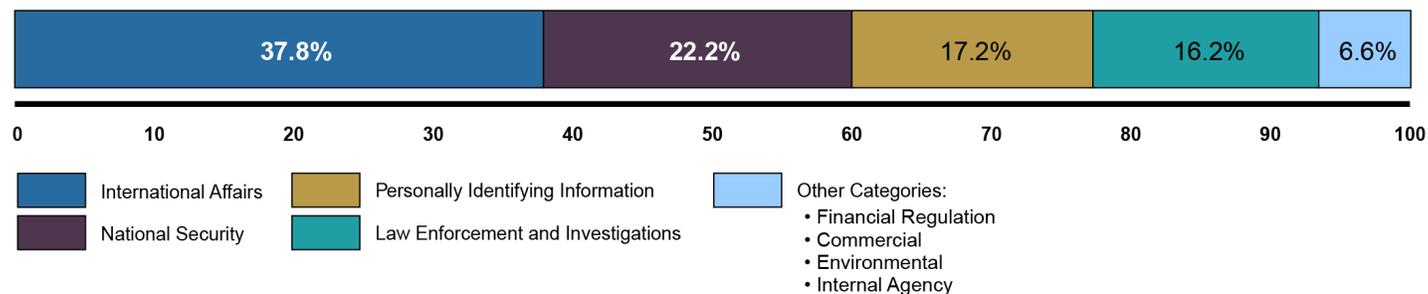
The number of (b)(3) statutes in each category did not reflect the frequency with which agencies cited statutes in the categories from fiscal years 2010 through 2019. In particular, agencies most frequently used the (b)(3) statutes in the international affairs category although it has fewer statutes than other categories (see fig. 3). During this period:

- 37.8 percent of the more than 525,000 citations of (b)(3) statutes occurred in the international affairs category, which included a statute withholding sensitive information of foreign governments and

international organizations maintained by the Departments of Defense, Homeland Security, or Energy.²¹

- 22.2 percent of total use fell in the national security category. For example, one statute exempted information on foreign intelligence or counterintelligence operations of the National Security Agency.²²
- 17.2 percent of total use withheld personally identifying information, such as a statute related to withholding death certificate information provided to the Social Security Administration.²³
- 16.2 percent of total use fell in the law enforcement and investigations category, which included a statute that exempts from disclosure information provided to DOJ pursuant to civil investigative demands pertaining to antitrust investigations.²⁴
- The remaining 6.6 percent of the total citations of (b)(3) statutes occurred in the remaining four categories: financial regulation, commercial, environmental, and internal agency functions and practices.

Figure 3: Agencies' Use of (b)(3) Statutes by General Categories, Fiscal Years 2010-2019



Source: GAO analysis of FOIA.gov data. | GAO-21-148

²¹10 U.S.C. § 130c(a).

²²50 U.S.C. § 3144.

²³42 U.S.C. § 405(r)(6).

²⁴15 U.S.C. § 1314(g).

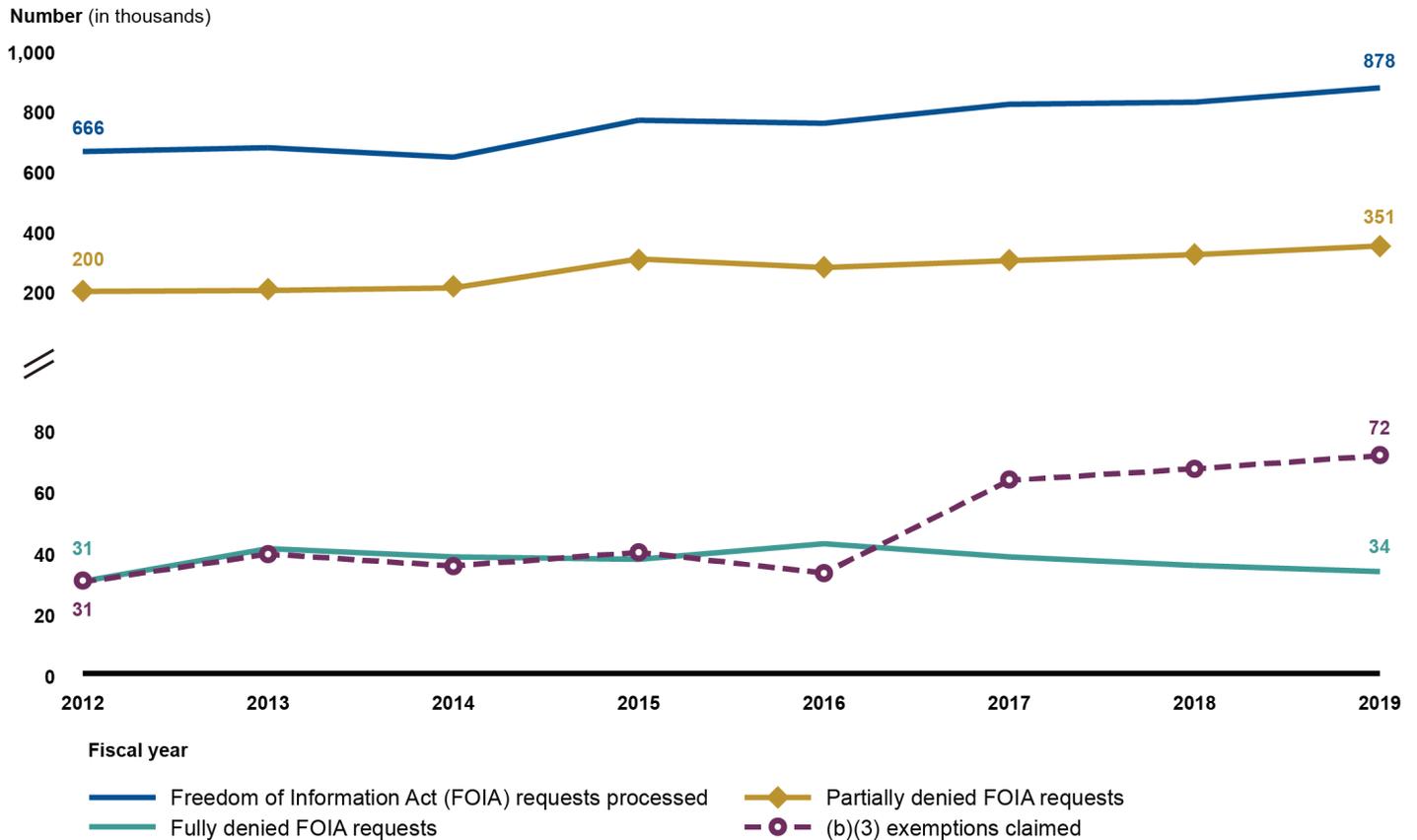
Agencies' Use of Certain (b)(3) Exemption Statutes Increased in Fiscal Years 2017 through 2019

Exemption use. On average, total annual agency use of (b)(3) exemptions was approximately 68,000 per year in fiscal years 2017 through 2019, a substantial increase over the average of approximately 36,000 per year in fiscal years 2012 through 2016. The largest increase in a single year for the use of (b)(3) exemptions occurred from fiscal year 2016 to 2017, when use of (b)(3) exemptions increased 91 percent—from approximately 33,000 to 64,000 uses. Overall, the use of (b)(3) exemptions outpaced the increase in FOIA requests processed by agencies from fiscal years 2012 through 2019. While the number of FOIA requests processed increased by 32 percent from approximately 666,000 in 2012 to 878,000 in 2019, the use of (b)(3) exemptions more than doubled during this time period from approximately 31,000 uses in 2012 to 72,000 in 2019 (a 135 percent increase).²⁵ At the same time, full denials of requests based on a FOIA exemption increased by 10 percent from approximately 31,000 in 2012 to 34,000 in 2019 and partial denials increased by 76 percent from approximately 200,000 in 2012 to 351,000 in 2019 (see fig. 4).²⁶

²⁵The number of (b)(3) exemptions cited in a fiscal year may be affected by both the volume and the nature of requests processed by an agency.

²⁶Full denials are based on a FOIA exemption and partial denials typically mean that an agency used exemptions in its response, but also could be due to procedural reasons.

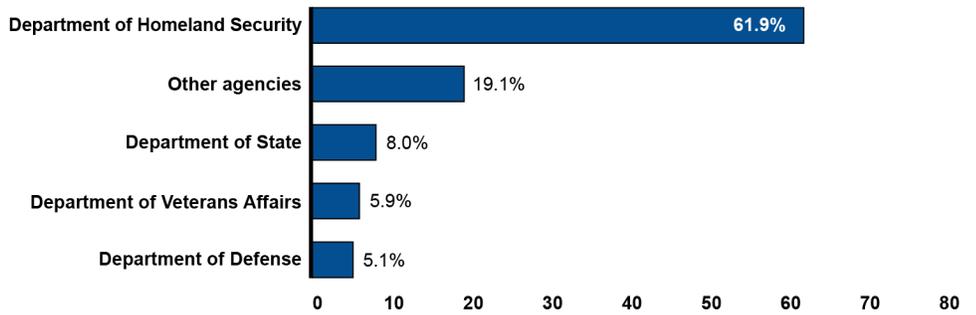
Figure 4: Freedom of Information Act Requests, Partial Denials, Full Denials, and Use of (b)(3) Exemptions, Fiscal Years 2012-2019



Source: GAO analysis of FOIA.gov data. | GAO-21-148

Agencies using exemptions. Of the more than 203,000 (b)(3) exemptions cited by agencies in fiscal years 2017 through 2019, the Department of Homeland Security represented about 62 percent (see fig. 5).

Figure 5: Agencies' Reported Use of (b)(3) Exemptions, Fiscal Years 2017-2019



Source: GAO analysis of FOIA.gov data. | GAO-21-148

Additional statutes used. Federal agencies cited 19 additional statutes to withhold information in fiscal years 2017 through 2019 that had not been used in fiscal years 2010 through 2016. Four of these statutes had been enacted or amended since 2016. Further, 13 agencies cited these statutes a total of 164 times. Appendix IV provides a listing of these 19 statutes.

Most cited statutes. Agency use of several statutes in the top 15 most-used (b)(3) statutes increased substantially during fiscal years 2017 through 2019. For example, agencies increased their use of a section of the Bank Secrecy Act, which exempts information pertaining to reportable financial transactions by 235 percent—from 958 times in fiscal year 2016 to 3,209 times in fiscal year 2017.²⁷ Three fiscal years, 2017 through 2019, accounted for 65 percent of the total use of that statute from 2010 through 2019.²⁸

Similarly, the Department of Homeland Security largely drove an increase in use of a statute relating to records pertaining to the issuance or refusal of visas to enter the United States, with nearly 28,600 additional citations in fiscal year 2017.²⁹ As the most-used statute from 2010 through 2019, 66

²⁷31 U.S.C. § 5319.

²⁸A total of five agencies cited 31 U.S.C. § 5319 in fiscal years 2017 through 2019, but the Office of Personnel Management used it the most.

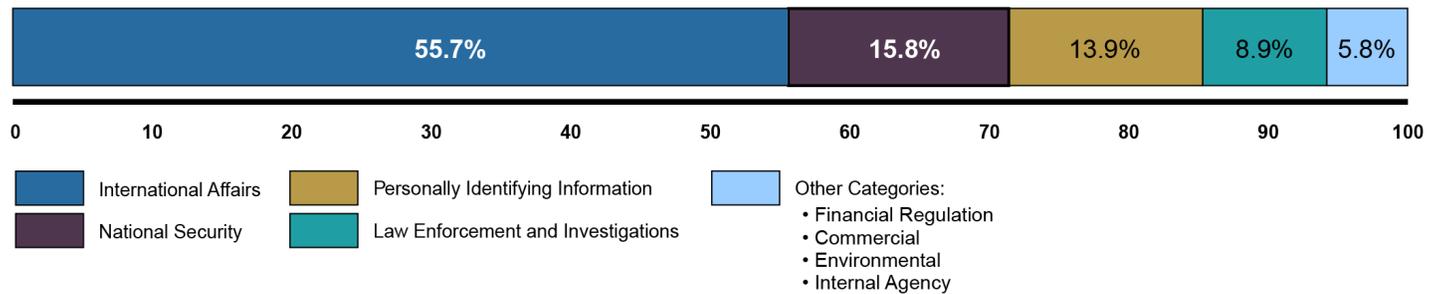
²⁹8 U.S.C. § 1202(f).

percent of its total use occurred during the last three years of this period—fiscal years 2017 through 2019.

In contrast, the Department of Veterans Affairs' use of a statute pertaining to the disclosure of certain confidential veterans' medical records peaked in fiscal year 2016, with more than 3,800 citations.³⁰ This decreased to approximately 3,150 citations in 2017, rose to 3,250 in 2018, and then declined to approximately 1,550 citations in fiscal year 2019.

Use of (b)(3) exemption statutes by category. Agencies used (b)(3) statutes mainly in the same four of the eight general categories from fiscal years 2017 through 2019 as for the time period from fiscal years 2010 through 2019. However, use of the (b)(3) statutes in the international affairs category increased from 23.4 percent in fiscal years 2010 through 2016 to 55.7 percent in fiscal years 2017 through 2019 (see fig. 6). This is due in part to the increased use of the (b)(3) statute related to records pertaining to the issuance or refusal of visas by the Department of Homeland Security, as previously described.³¹

Figure 6: Agencies' Use of (b)(3) Statutes by General Categories, Fiscal Years 2017-2019



Source: GAO analysis of FOIA.gov data. | GAO-21-148

Agency Comments

We provided a draft of this report to DOJ for review and comment. DOJ provided technical comments, which we incorporated as appropriate.

³⁰38 U.S.C. § 7332.

³¹8 U.S.C. § 1202(f).

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees and the Attorney General. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff has any questions about this report, please contact Michelle Sager at (202) 512-6806 or sagerm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of our report. Key contributors to this report are listed in appendix V.

A handwritten signature in black ink that reads "Michelle Sager". The signature is written in a cursive, flowing style.

Michelle Sager
Director
Strategic Issues

List of Requesters

The Honorable Carolyn B. Maloney
Chairwoman
The Honorable James Comer
Ranking Member
Committee on Oversight and Reform
House of Representatives

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
House of Representatives

The Honorable John Cornyn
United States Senate

The Honorable Dianne Feinstein
United States Senate

The Honorable Charles E. Grassley
United States Senate

The Honorable Patrick Leahy
United States Senate

Appendix I: Objectives, Scope, and Methodology

Our objectives were to determine (1) the (b)(3) exemption statutes cited by agencies and the frequency of their use to withhold information in response to Freedom of Information Act (FOIA) requests from fiscal years 2010 through 2019, and (2) key statistics related to the use of (b)(3) exemption statutes from fiscal years 2017 through 2019.

To address both objectives, we analyzed data on the use of FOIA exemptions and the statutes cited as the basis for (b)(3) exemptions for fiscal years 2010 through 2019.¹ For context, we also analyzed data that agencies reported on their FOIA requests processed and denials for fiscal years 2012 through 2019. We used fiscal year 2012 as the starting point for those analyses to be consistent with analyses presented in our prior work.² We retrieved aggregated data from the required annual reports filed with the Department of Justice (DOJ) and available on DOJ's FOIA.gov website. We also reviewed DOJ guidance and reports, and interviewed relevant officials from DOJ's Office of Information Policy on agency use of (b)(3) statutes.

To assess data reliability, we reviewed relevant documentation on steps taken to ensure the consistency of data on FOIA.gov and interviewed DOJ officials. We also electronically tested the data by identifying outliers and missing values, as well as correcting obvious errors, such as variations in agency name. We found the data to be sufficiently reliable for purposes of our reporting objectives.

To create a catalog of (b)(3) exemption statutes used by agencies in fiscal years 2010 through 2019, we first developed a standardized statute notation. Specifically, our standardization consisted of removing any typographical errors, formatting citations in a consistent U.S. Code format to refer to each existing U.S. Code section, and verifying the existence of each statute through legal research, which included statutes transferred by later legislation within the U.S. Code.³ In the case where an agency

¹Exemption 3 of FOIA, also referred to as a "(b)(3) exemption" which references the relevant section of the statute (5 U.S.C § 552(b)(3)), allows an agency to withhold information when answering a FOIA request on the basis of another federal statute that prohibits disclosure of that information.

²GAO, *Freedom of Information Act: Federal Agencies' Recent Implementation Efforts*, [GAO-20-406R](#) (Washington, D.C.: March 11, 2020), and *Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed*, [GAO-18-365](#) (Washington, D.C.: June 25, 2018).

³The format used was "title number-space-U.S.C.-space§-space-section number and subsection information." For example, 5 U.S.C. § 552(b)(3).

used a statute later repealed during our review period, we listed the statute as is.

For some statutes, we standardized statutes to an entire section or subsection of the U.S. Code to reference nondisclosure provisions that contain a description of the type of information withheld by that statute. Further, for some instances in which agencies used a range of statutes, we determined whether the range contained a single or multiple (b)(3) statute section(s) and developed a standardized statute notation. Additionally, for some statutes that agencies used that contained two (b)(3) statutes, we developed a standardized statute notation for each (b)(3) section or subsection to assign the original agency statute.

For those agency-used statutes that could not be easily standardized or seemed to be noted in error, we either (1) assigned that statute to a related section (or sections) containing a nondisclosure provision, (2) retained the notation and assigned a standardized version of the statute to the original agency-used statute, or (3) removed that statute from our catalog. We counted each standardized statute as a single statute, regardless of the number of sections it represented. We also identified which of these standardized statutes were qualified statutes—ones that a court has approved to be a (b)(3) statute—by comparing them to the list maintained by DOJ.

We then updated the catalog of (b)(3) exemption statutes included in our 2018 report to include fiscal years 2017 through 2019.⁴ Further, we created descriptions of each new (b)(3) statute and classified them into the eight general categories we used for our 2018 report. To categorize the statutes, two individuals independently assigned each statute a category and then discussed the differences, which resolved most of the discrepancies. For any remaining differences, we requested assistance from our Office of General Counsel to provide additional context for the statute as well as conduct a final review of the categorizations. We also listed the date of the most recent legislative change to identify statutes that had been updated since our previous work (which included fiscal years 2010 through 2016) and evaluated whether the statutory changes affected our description and categorization of those statutes.

To determine the use of (b)(3) statutes by agencies, we calculated the number of citations to each original agency-used statute and assigned

⁴[GAO-18-365](#).

those numbers to its associated standardized statute in our catalog. In cases where an agency appeared to cite multiple statutes, we counted the statutes separately if we determined a difference that would correspond to two separate listings in our catalog. We compiled and sorted these data to obtain information on which agencies used the statute, which agency used it the most, and the number of times agencies used it.

We conducted this performance audit from May 2020 to January 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Freedom of Information Act Exemptions

The Freedom of Information Act (FOIA) prescribes nine specific categories of information that are exempt from disclosure, which are described in table 2.

Table 2: Information Exempt from Disclosure under the Freedom of Information Act (FOIA)

Exemption number	Matters that are exempt from FOIA
(1)	(A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to the Executive Order.
(2)	Related solely to the internal personnel rules and practices of an agency.
(3)	Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute: (A) requires that matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld, and (C) if enacted after October 28, 2009, specifically refers to section 552(b)(3) of Title 5, United States Code.
(4)	Trade secrets and commercial or financial information obtained from a person and privileged or confidential.
(5)	Interagency or intra-agency memorandums or letters that would be unavailable by law to a party other than an agency in litigation with the agency.
(6)	Personnel and medical files and similar files whose disclosure would constitute a clearly unwarranted invasion of personal privacy.
(7)	Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information confidentially, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life or physical safety of an individual.
(8)	Contained in or related to examination, operating, or condition of reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.
(9)	Geological and geophysical information and data, including maps, concerning wells.

Source: 5 U.S.C. §§ 552(b)(1)-(9). | GAO-21-148

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

Table 3 describes the 256 Freedom of Information Act (FOIA) (b)(3) exemption statutes that 91 agencies reported using during fiscal years 2010 through 2019 and indicates whether that statute is on the Department of Justice (DOJ) list of statutes that have been found by a court to qualify as a (b)(3) exemption. During fiscal years 2010 through 2019, executive branch agencies used 81 of 87 total statutes identified on DOJ's list (as of September 2020) at least once as the basis for withholding information when responding to FOIA requests.

Table 3: Freedom of Information Act (FOIA) (b)(3) Exemption Statutes Used by One or More Agencies, Fiscal Years 2010-2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
5 U.S.C. § 552 note (Pub. L. No. 103-236)	Sensor data relating to a foreign country collected during observation flights conducted in connection with the Open Skies Treaty.	1994	—
5 U.S.C. § 552 note (Pub. L. No. 105-246)	Privacy, intelligence, national security, weapons, or foreign relations information in Nazi war criminal records.	1998	—
5 U.S.C. § 552 note (Pub. L. No. 111-83)	Information about government employees deployed outside the United States, and photographs related to the treatment of individuals engaged, captured, or detained after September 11, 2001, in operations outside the United States.	2009	✓
5 U.S.C. § 552a	Personally identifiable information collected and held by government agencies.	2014	—
5 U.S.C. § 552b(c)	As an exception to open meeting requirements, records of agency meetings where disclosure is likely to involve matters that would be covered by any FOIA exemption (e.g. 5 U.S.C. § 552(b)(1)-(9)).	1995	—
5 U.S.C. § 574	Communications made by a mediator or parties in agency alternative dispute resolution proceedings.	1996	—
5 U.S.C. § 1213(h)	Personally identifiable information of an individual who makes a disclosure to the Office of Special Counsel.	2017	—
5 U.S.C. § 7114(b)(4)	Certain labor relations training, guidance, advice, or counsel provided for management officials or supervisors.	1978	✓
5 U.S.C. § 7132	Subpoenas that would disclose certain labor relations training, guidance, advice, or counsel.	1978	✓
5 U.S.C. § 7301 note (Pub. L. No. 100-71)	Federal employee drug testing information.	1987	—
5 U.S.C. App. 3 § 7(b)	Identity of employees who provided information to the Inspector General.	1978	—
5 U.S.C. App. 4 § 105	Certain financial disclosure information contained in Ethics in Government Act reports.	2018	—
5 U.S.C. App. 4 § 107(a)	Certain financial disclosure information contained in Ethics in Government Act reports.	1989	✓

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
6 U.S.C. § 121(d)(11)	Intelligence sources and methods and law enforcement sensitive information.	2018	—
6 U.S.C. § 623(e)	Certain antiterrorism information related to chemical facilities.	2014	—
6 U.S.C. § 673f	Voluntarily shared critical infrastructure information.	2018	—
6 U.S.C. § 1504(d)(3)	Cybersecurity information sharing.	2015	—
7 U.S.C. § 12(a)	Information relating to commodity exchange investigations by the Commodity Futures Trading Commission.	2010	✓
7 U.S.C. § 26(h)(2)	Information provided to the Commodity Futures Trading Commission, which could reveal the identity of a whistleblower.	2010	—
7 U.S.C. § 136h	Environmental pesticide control data that relate to trade secrets or commercial or financial information.	1991	—
7 U.S.C. § 136i-1(b)	Pesticide record data that would reveal the identity of individual producers.	1991	✓
7 U.S.C. § 608d(2)	Confidential trade secret, commercial, or financial information provided to the Department of Agriculture by parties to agricultural marketing agreements or orders.	1999	—
7 U.S.C. § 608d(3)	Business records, including confidential, trade secret, commercial, or financial information, provided to the Department of Agriculture relating to the handling or importation of cranberries.	1999	—
7 U.S.C. § 1502(c)	Individually identifiable information provided by an agricultural producer for crop insurance purposes.	2018	✓
7 U.S.C. § 2018(c)	Business records related to an applicant food store under the Supplemental Nutrition Assistance Program.	2019	✓
7 U.S.C. § 2020(e)(8)	Information of applicants of the Supplemental Nutrition Assistance Program.	2018	—
7 U.S.C. § 2105(c)	Research and business records provided to the Department of Agriculture by individuals and entities involved in covered cotton research and marketing activities.	1966	—
7 U.S.C. § 2276(a)	Information regarding certain agricultural products if it would allow identification of the individual reporting.	2018	✓
7 U.S.C. § 2619(c)	Business records from handlers and importers of potatoes.	1991	—
7 U.S.C. § 7414(i)	Business records provided to the Department of Agriculture by producers, importers, and others in the marketing chain of agricultural commodities.	1996	—
7 U.S.C. § 8401(h)	Business records, security information, and other information about biological agents and toxins whose disclosure would endanger animal or plant health or products	2018	—

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
7 U.S.C. § 8791(b)	Information provided by an agricultural producer or owner of agricultural land concerning farming or conservation practices for Department of Agriculture programs and related geospatial information.	2008	✓
8 U.S.C. § 1202(f)	Records pertaining to the issuance or refusal of visas to enter the United States.	2004	✓
10 U.S.C. § 128	Unclassified special nuclear materials information pertaining to security measures that could affect public health and safety or national security.	2016	
10 U.S.C. § 130	Export limited Department of Defense technical data with military or space application.	2016	✓
10 U.S.C. § 130b	Personally identifiable information pertaining to members of the armed forces assigned to sensitive or overseas units.	2002	✓
10 U.S.C. § 130c	Sensitive information of foreign governments and international organizations maintained by the Department of Defense, Department of Homeland Security, or Department of Energy.	2002	✓
10 U.S.C. § 130d	Confidential business information and sensitive but unclassified information shared by the Department of Defense with State and local personnel under section 892 of the Homeland Security Act.	2006	—
10 U.S.C. § 130e	Department of Defense critical infrastructure information.	2016	—
10 U.S.C. § 424(a)	Information pertaining to the organization, function, or personnel of the Defense Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency.	2003	✓
10 U.S.C. § 455	Department of Defense maps, charts, and geodetic products whose disclosure is restricted under international agreement or would jeopardize military or intelligence operations.	2003	—
10 U.S.C. § 457	Files of foreign intelligence or counterintelligence operations of the National Photographic Interpretation Center.	2014	—
10 U.S.C. § 613a(a)	Proceedings of a defense personnel selection board.	2011	—
10 U.S.C. § 1102	Department of Defense medical quality assurance records.	2011	✓
10 U.S.C. § 1506	Debriefing records of returned missing persons in Department of Defense personnel files.	2013	—
10 U.S.C. § 2254a	Sensitive information about military aircraft, units, or aircrews in military flight operations quality assurance files.	2011	—
10 U.S.C. § 2305(g)	Defense contractor proposals.	2018	✓
10 U.S.C. § 2306a(d)	Exempt information relating to commercial items received by a Department of Defense contracting officer.	2019	—
10 U.S.C. § 2371(i)	Information relating to proposals for defense research projects within 5 years of the proposal.	2017	—

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
10 U.S.C. § 2485(h)	Department of Defense commissary operations information—the disclosure of which would not be in the best interest of the Department of Defense.	2016	—
10 U.S.C. § 2640(h)	Safety-related information voluntarily provided to the Department of Defense by air carriers related to the charter air transportation of members of the armed forces.	1997	—
10 U.S.C. § 14104(a)	The proceedings of a defense personnel selection board.	2011	—
12 U.S.C. § 248(s)(6)	Information concerning certain matters before the Federal Reserve Board or a Federal Reserve Bank.	2018	—
12 U.S.C. § 3403	Restrictions on financial institutions on providing customer information to government authorities.	1988	—
12 U.S.C. § 3413(h)(4)	Financial institution customer records, the disclosure of which could harm customer financial privacy.	2010	—
13 U.S.C. § 8(b)	Individually identifiable information collected by the Bureau of the Census.	1976	✓
13 U.S.C. § 9(a)	Individually identifiable information collected by the Bureau of the Census.	1997	✓
13 U.S.C. § 301(g)	Shippers' export declarations.	2008	✓
15 U.S.C. § 18a(h)	Information filed with the Department of Justice or the Federal Trade Commission related to premerger notification and waiting periods.	2000	—
15 U.S.C. § 46(f)	Trade secret, commercial, or financial information obtained by the Federal Trade Commission.	2012	✓
15 U.S.C. § 57b-2	Confidential investigative materials received by the Federal Trade Commission.	2012	✓
15 U.S.C. § 77f(e)	Information provided to the Securities and Exchange Commission for review of proposals for registration of securities by an emerging growth company.	2015	—
15 U.S.C. § 78q(h)	Information provided to the Securities and Exchange Commission relating to the oversight of securities brokers and dealers.	2010	—
15 U.S.C. § 78u-6	Information provided to the Securities and Exchange Commission which could reveal the identity of a whistleblower.	2010	—
15 U.S.C. § 78x	Confidential or privileged information obtained by the Securities and Exchange Commission.	2010	—
15 U.S.C. § 80a-30(c) ^a	Information collected by the Securities and Exchange Commission from investment companies as well as underwriters, brokers, dealers, and investment advisers.	-	—
15 U.S.C. § 80b-4	Reports of investment advisers provided to the Securities and Exchange Commission.	2010	—
15 U.S.C. § 80b-10(b)	Information related to Securities and Exchange Commission examinations or investigations of investment advisers.	2010	—

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
15 U.S.C. § 638(j)	Data generated by contractors who retained their rights in the data under the contract.	2019	—
15 U.S.C. § 638(k)	Information in the Small Business Innovative Research and Small Business Technology Transfer program evaluation database.	2019	—
15 U.S.C. § 1153	Authority of the Department of Commerce Secretary to make, amend, and rescind orders, rules, and regulations relating to the dissemination of technical, scientific, and engineering information.	1970	—
15 U.S.C. § 1314(g)	Information provided to the Department of Justice pursuant to civil investigative demands pertaining to antitrust investigations.	1980	✓
15 U.S.C. § 1335a(b)(2)	Information provided to the Department of Health and Human Services related to cigarette ingredients to be treated as trade secret or commercial information subject to 5 U.S.C. § 552(b)(4).	1984	—
15 U.S.C. § 2055 ^b	Trade secrets and other confidential information relating to consumer product safety.	2008	✓
15 U.S.C. § 2074(c)	Personal information in accident or investigation reports related to consumer product safety.	1972	—
15 U.S.C. § 3710a(c)	Trade secrets, commercial or financial information relating to technological innovation under cooperative research and development agreements.	2000	✓
15 U.S.C. § 4305(d)	Antitrust investigation information about cooperative research joint ventures.	2004	—
15 U.S.C. § 4606(a)	Semiconductor related intellectual property, trade secrets, and technical data developed by Sematech maintained by the Department of Defense.	1987	—
15 U.S.C. § 6801	Nonpublic personal information of customers of financial institutions.	2010	✓
15 U.S.C. § 7215(b)(5)	Confidentiality of documents and information prepared or received by or specifically for the Public Company Accounting Oversight Board (Board), and deliberations of the Board and its employees and agents, in connection with a certain inspection or investigation.	2010	—
15 U.S.C. § 7306	Certain voluntarily provided information relating to investigations of building failures.	2002	✓
16 U.S.C. § 470aaa-8	Information concerning the nature and location of paleontological resources.	2009	—
16 U.S.C. § 470hh	Information concerning the nature and location of archaeological resources.	2014	✓
16 U.S.C. § 824o-1(d)	Critical electric infrastructure information.	2015	—
16 U.S.C. § 1383a(j)	Information about vessel owners and on-board observers.	2018	—

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
16 U.S.C. § 1387(d)	Proprietary information collected while monitoring incidental taking of marine mammals during commercial fishing operations.	1996	—
16 U.S.C. § 1881a(b)	Confidential information relating to fishery management.	2007	—
16 U.S.C. § 4304	Information concerning the location of significant caves.	1988	—
17 U.S.C. §§ 106, 107	Certain materials accompanying applications to register copyright claims.	2002, 1992	—
18 U.S.C. § 208(d)(1)	Certain personal financial information, relevant to conflict of interest determinations, consistent with confidentiality provisions of the Ethics in Government Act.	1994	✓
18 U.S.C. § 701	United States government employee identification card or other insignia.	1994	✓
18 U.S.C. § 798(a)	Classified information pertaining to a code, cryptographic system, or communication intelligence activity.	1996	✓
18 U.S.C. § 923 note (Pub L. No. 112-55, 111-117, 111-8, 110-161, 109-108, 108-447)	Records of public firearms sales maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives.	2011, 2009, 2009, 2007, 2005, 2004	✓
18 U.S.C. § 1461	Obscene materials or records concerning nonmailable matter.	1994	—
18 U.S.C. § 2251	Information that includes the visual depiction of the sexual exploitation of children.	2008	—
18 U.S.C. § 2252	Visual depictions of minors engaging in sexually explicit conduct.	2012	—
18 U.S.C. § 2252A	Images of child pornography.	2018	—
18 U.S.C. §§ 2510-20 ^c	Wiretap requests and the contents of any wire, oral, or electronic communication obtained through wiretaps.	2018	✓
18 U.S.C. § 2722(a)	Personal information from a motor vehicle record.	1994	—
18 U.S.C. § 3123(d)	Information concerning the existence of a pen register or a trap and trace device, or a court order authorizing or approving the installation of such device.	2001	✓
18 U.S.C. § 3153	Information obtained in the course of pretrial services functions in relation to a particular accused.	1982	—
18 U.S.C. § 3509(d)	Personal information concerning a child victim of, or witness to, a crime.	2018	✓
18 U.S.C. § 3521(b)	Information about a person in a witness relocation or protection program.	2006	✓
18 U.S.C. § 4208 ^d	Expert reports and opinions regarding prisoners up for parole.	2013	✓
18 U.S.C. § 5038	Information about juvenile records and juvenile delinquency proceedings.	1996	—
18 U.S.C. App. Fed. R. Crim. P. 6(e)	Information relating to grand jury proceedings.	2004	✓

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
18 U.S.C. App. Fed. R. Crim. P. 32(c)	Probation officer presentence investigation prior to court sentencing.	1996	—
18 U.S.C. App. Fed. R. Crim. P. 32(e)	Probation office presentence reports prior to adjudication.	1996	✓
19 U.S.C. § 1332(g)	Confidential business information maintained by the International Trade Commission.	1988	—
19 U.S.C. § 1337(n)	Confidential information submitted to the International Trade Commission.	2004	—
19 U.S.C. § 1677f	Proprietary information submitted to the International Trade Commission.	2020	✓
19 U.S.C. § 2155(g)	Privileged or confidential trade secrets and commercial or financial information considered in trade negotiations.	2015	✓
19 U.S.C. § 2605(h),(i)	Privileged or confidential trade secrets, commercial or financial information submitted to the Cultural Property Advisory Committee.	1987	✓
20 U.S.C. § 959(c)(4)(B)	Personal information about individuals serving on National Endowment for the Arts advisory panels.	1990	—
20 U.S.C. § 1099c-1	Higher education program review reports prior to the release of the final report.	2008	✓
20 U.S.C. § 1232g	Personally identifiable education records or information.	2013	—
20 U.S.C. § 9573	Information collected, maintained, used, and widely disseminated by the Institute of Education Sciences.	2002	—
21 U.S.C. § 331(j)	Trade secrets relating to regulated food and drugs.	2018	✓
21 U.S.C. § 350d(a)	Information about registered food manufacturing, processing, or handling facilities.	2011	—
21 U.S.C. § 355	Personal and other sensitive information relating to the safety and effectiveness of drugs.	2018	—
21 U.S.C. §§ 1903-1905	Information relating to the identification and sanctioning of significant foreign narcotics traffickers.	2016	—
22 U.S.C. § 288a(c)	International organization records that are immune from search or disclosure.	1945	—
22 U.S.C. § 1461-1a	Information prepared for dissemination abroad by the Department of State or the Broadcasting Board of Governors.	2013	✓
22 U.S.C. § 1461	Information prepared for dissemination abroad by the Department of State or the Broadcasting Board of Governors.	2013	✓
22 U.S.C. § 1644 note (Pub. L. No. 104-99; 104-91)	Records pertaining to claims regarding the German Democratic Republic considered by the Foreign Claims Settlement Commission.	1996	—
22 U.S.C. § 2751	Technical data withheld according to regulations establishing lists or categories of technical data that may not be exported under the Arms Export Control Act.	1981	—

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
22 U.S.C. § 2778(e)	Information pertaining to the export and import of defense articles.	2014	✓
22 U.S.C. § 3104(c)	Records and reports pertaining to certain surveys and studies regarding international investment and trade.	1990	✓
22 U.S.C. § 4004(a)	Foreign Service employee records.	1999	—
23 U.S.C. § 403(e)	Identities of individuals included in any report of the National Highway Traffic Safety Administration relating to highway traffic accidents or their investigations.	2020	—
23 U.S.C. § 403 note (Pub. L. No. 89-564)	Identities of individuals included in any report of the National Highway Traffic Safety Administration on research projects, demonstration projects, or related activities.	1966	—
25 U.S.C. § 1675(g)	Medical quality assurance records created by or for any Indian health program.	2010	—
25 U.S.C. § 2103(c)	Information possessed by the Department of the Interior regarding Indian mineral resources.	1982	—
26 U.S.C. § 6103	Tax return information.	2020	✓
26 U.S.C. § 6105	Information about tax agreements with foreign governments.	2002	✓
28 U.S.C. § 652(d)	Confidential dispute resolution communications in federal district courts.	1998	✓
29 U.S.C. § 666(f)	Advanced notice of Occupational Safety and Health Administration inspections.	1970	—
29 U.S.C. § 1310(c)	Business records of retirement plans submitted to the Pension Benefit Guaranty Corporation.	2014	—
29 U.S.C. § 1343	Information reported to the Pension Benefit Guaranty Corporation relating to significant changes in employee retirement insurance plans.	2006	—
30 U.S.C. § 813(g)	Names of persons in mine safety complaints.	2006	—
30 U.S.C. § 872(b)	Coal mine maps.	1969	—
31 U.S.C. § 3729(c)	Information related to false claims proceedings.	2009	—
31 U.S.C. § 3730	Complaints in civil actions for false claims.	2010	—
31 U.S.C. § 3733(k)	Information provided under a civil investigative demand in a false claims investigation.	2009	—
31 U.S.C. § 5311	Records and reports on monetary instruments transactions.	2001	—
31 U.S.C. § 5318(g)(2)	Information about suspicious financial transactions relevant to a possible violation of law or regulation.	2014	—
31 U.S.C. § 5319	Information pertaining to reportable financial transactions.	2011	✓
34 U.S.C. § 10231	Law enforcement research or statistical information.	2006	—
34 U.S.C. § 12592	Information regarding DNA identification records and DNA analyses.	2017	—
35 U.S.C. § 122(a)	Patent applications and related information.	2012	✓

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
35 U.S.C. § 181 ^e	National security related patent information.	1999	—
35 U.S.C. § 202(c)(5)	Information about government contractor use of patent rights.	2011	—
35 U.S.C. § 205	Information pertaining to an invention in which the federal government owns or may own a right or interest.	1980	—
35 U.S.C. § 209(f)	Plans of a licensee for development or marketing of a federally owned invention.	2011	—
38 U.S.C. § 5701	Claims information filed with the Department of Veterans Affairs.	2017	✓
38 U.S.C. § 5705	Department of Veterans Affairs medical quality assurance program information.	1991	✓
38 U.S.C. § 7332	Certain confidential veterans' medical records.	2018	✓
38 U.S.C. § 7451	Information collected in Department of Veterans Affairs nurse and other health-care personnel wage surveys.	2017	—
39 U.S.C. § 410(c)	Personal, confidential commercial, and other sensitive postal related information.	2011	✓
39 U.S.C. § 412(a)	Mailing or other lists of the names or addresses of postal patrons or other persons.	1994	—
41 U.S.C. § 2102(a) ^f	Contractor bid or procurement information.	2011	✓
41 U.S.C. § 2313	Procurement integrity information.	2014	—
41 U.S.C. § 3505 ^f	Information used to determine the price of a government contract.	2018	—
41 U.S.C. § 4702 ^f	Contractor proposals.	2011	✓
42 U.S.C. § 241(d)	Personally identifiable health research information.	2016	—
42 U.S.C. § 242m(d)	Health statistical or epidemiological information.	1998	—
42 U.S.C. § 247d-6b(d)	Location of strategic national stockpiles of drugs, vaccines, and other supplies.	2020	—
42 U.S.C. § 262a(h)	Information about biological agents or toxins that may pose a severe threat to public health and safety.	2019	✓
42 U.S.C. § 282(j)(6)	Information on certain clinical trials that is not otherwise publicly available.	2018	—
42 U.S.C. § 290dd-2	Patient records relating to substance abuse treatment or prevention.	2020	—
42 U.S.C. § 299c-3	Personally identifiable health research information.	2010	—
42 U.S.C. § 300aa-12(d)(4)	Public health vaccine information.	1993	✓
42 U.S.C. § 300i-2(a)	Terrorist vulnerability assessments of water systems.	2018	—
42 U.S.C. § 405(r)(6)	Death certificate information provided by states to the Social Security Administration.	2018	✓
42 U.S.C. § 653	Information in the Federal Parent Locator Service.	2014	—
42 U.S.C. § 1306c	Death Master File records.	2013	—
42 U.S.C. § 1320c-9(a)	Healthcare quality improvement information.	2011	—

**Appendix III: Catalog of Freedom of
Information Act (b)(3) Exemption Statutes
Used by Agencies, Fiscal Years 2010 through
2019**

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
42 U.S.C. § 1320d-6(a)	Unauthorized disclosure of individually identifiable health information under the Health Insurance Portability and Accountability Act.	2009	—
42 U.S.C. § 1395bb(b)	Osteopathic accreditation information.	2018	—
42 U.S.C. § 1396r-8(b)(3)(D)	Drug manufacturing and price information.	2020	—
42 U.S.C. § 2000e-5(b)	Equal employment opportunity enforcement information.	2009	✓
42 U.S.C. § 2000e-8(e)	Equal employment opportunity investigation information.	1972	✓
42 U.S.C. § 2000ff-6	Employment discrimination related information.	2008	—
42 U.S.C. § 2000g-2(b)	Civil rights conciliation assistance information.	1964	—
42 U.S.C. § 2162	Atomic energy and weapons Restricted Data.	2013	✓
42 U.S.C. § 2167	Atomic energy safeguards information.	1992	✓
42 U.S.C. § 2168(a)(1)	Atomic energy defense program information.	2013	✓
42 U.S.C. § 2286d(a)	Department of Energy nuclear facilities safety information.	2013	✓
42 U.S.C. § 3537a	Department of Housing and Urban Development grant selection process information.	1989	—
42 U.S.C. § 3545(a)(5)	Emergency exception to the Department of Housing and Urban Development publication of information about assistance programs.	2008	—
42 U.S.C. § 3610(d)	Information related to conciliation of disputes regarding unfair housing.	1988	✓
42 U.S.C. § 7256(g)(5)	Commercial information involved in Department of Energy contractor leases.	2013	—
42 U.S.C. § 7412(r)(7)(H)(iii)	Air pollution analysis information.	1999	—
42 U.S.C. § 11137(b)	Medical professional review information.	1987	—
42 U.S.C. § 12117	Information relating to employment discrimination on the basis of disability.	1990	—
43 U.S.C. § 1352	Confidential oil and gas information.	1978	—
44 U.S.C. § 3501 note (Pub. L. No. 107-347, Title V)	Confidential statistical information.	2002	—
44 U.S.C. § 3555(f)	Sensitive information security information.	2014	—
45 U.S.C. § 362	Personally identifiable Railroad Retirement Board employee information.	1988	✓
46 U.S.C. § 40306	Common carrier agreements and other shipping information filed with the Federal Maritime Commission.	2006	—
46 U.S.C. § 40502(b)(1)	Service contracts or agreements filed with the Federal Maritime Commission.	2006	—
46 U.S.C. § 42105	Certain information submitted to the Federal Maritime Commission regarding shipping in foreign trade.	2006	—
46 U.S.C. § 42303(c)	Certain reports or information regarding foreign shipping practices ordered by the Federal Maritime Commission.	2006	—

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
46 U.S.C. § 70103(d)	Maritime transportation security plans and related information.	2018	—
47 U.S.C. § 1426(d)	Information relating to the First Responder Network Authority.	2012	—
48 CFR § 15.207	Solicitation and receipt of proposals and information related to federal acquisitions.	2014	—
49 U.S.C. § 114	Air transportation security information.	2018	✓
49 U.S.C. § 1114	Information submitted to the National Transportation Safety Board.	2018	✓
49 U.S.C. § 1136(d)	Passenger lists of aircraft accidents.	2018	—
49 U.S.C. § 20109(i)	Identity of railroad employee whistleblowers.	2008	—
49 U.S.C. § 20118(c)	Information on railroad safety analysis records.	2008	—
49 U.S.C. § 24301 note (Pub. L. No. 105-134)	Contractor proposals in the possession or control of Amtrak.	1997	—
49 U.S.C. § 30172(f)	Information that could identify a whistleblower.	2015	—
49 U.S.C. § 30183	National Highway Traffic Safety Administration information relating to any highway traffic accident.	2012	—
49 U.S.C. § 30305(c)	National Driver Register information.	2018	—
49 U.S.C. § 31105(h)	Identity of motor vehicle safety whistleblowers.	2007	—
49 U.S.C. § 31143(b)	Identity of motor vehicle complainants.	1994	—
49 U.S.C. § 40110(e)	Aviation program procurement proposals.	2018	—
49 U.S.C. § 40115	Information harmful to United States international aviation negotiations.	1994	—
49 U.S.C. § 40119(b) ^g	Transportation security related information.	2018	—
49 U.S.C. § 40123(a)	Voluntarily submitted aviation security information.	1996	—
49 U.S.C. § 46102(c)	National security information in aviation security proceedings.	2018	—
49 U.S.C. § 46311	Information obtained by the Department of Transportation or the Federal Aviation Administration from aviation safety inspections of air carrier records.	2018	—
49 U.S.C. § 60138	Pipeline security information.	2012	—
50 U.S.C. § 1701 note (Pub. L. No. 99-93)	Iranian Claims Tribunal information.	1985	—
50 U.S.C. § 1702(a)(1)	Certain information related to emergency seizure of foreign assets by the President of the United States.	2001	—
50 U.S.C. § 1802(a)(3)	Electronic surveillance authorization certificate.	2010	—
50 U.S.C. § 1806(b)	Foreign intelligence electronic surveillance information.	2015	—
50 U.S.C. § 3024(i)(1) ^f	Intelligence sources and methods information.	2019	✓
50 U.S.C. § 3024(m)(1)	Confidentiality of identities of Office of the Director of National Intelligence personnel.	2019	—

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
50 U.S.C. § 3121 ^f	Identities of United States undercover intelligence officers, agents, informants, and sources.	2010	—
50 U.S.C. § 3141(a) ^f	Files of foreign intelligence or counterintelligence operations of the Central Intelligence Agency.	2010	✓
50 U.S.C. § 3142 ^f	Files of foreign intelligence or counterintelligence operations of the National Geospatial-Intelligence Agency.	2006	—
50 U.S.C. § 3143(a) ^f	Files of foreign intelligence or counterintelligence operations of the National Reconnaissance Office.	2006	✓
50 U.S.C. § 3144 ^f	Files of foreign intelligence or counterintelligence operations of the National Security Agency.	2006	—
50 U.S.C. § 3161 note (Pub. L. No. 102-190)	Information concerning unaccounted for United States personnel of the Cold War, Korean conflict, and Vietnam era.	1996	—
50 U.S.C. § 3507 ^f	Information related to sources and methods of intelligence activities of the Office of the Director of National Intelligence and the Central Intelligence Agency.	2010	✓
50 U.S.C. § 3605 ^f	Information related to sources and methods of intelligence activities and personnel of the National Security Agency.	1959	✓
50 U.S.C. § 4555(d)	Information obtained under the Defense Production Act of 1950 that the President deems confidential or the person furnishing such information requests confidential treatment of the information.	2003	—
50 U.S.C. § 4565(c) ^f	National security information relating to mergers and acquisitions.	2018	—
50 U.S.C. § 4614(c) ^h	National security export control information.	2018	✓
51 U.S.C. § 50916	Restricted commercial space launch activities information.	2010	—
52 U.S.C. § 30109 ^f	Federal election campaign information.	2018	✓
54 U.S.C. § 100707 ^f	Information concerning the nature and location of endangered, threatened, rare, or commercially valuable National Park System sites or resources.	2014	✓
54 U.S.C. § 307103 ^f	Sensitive information about historic resources or properties.	2014	—
Convention on Nuclear Safety (1994), Article 27, S. TREATY DOC. NO. 104-6 (1995). Ratified Mar. 25, 1999.	Personal, commercial confidential and national security information.	1999	—
Legal Services Corporation Appropriations Act, Pub. L. No. 104-134, § 509(i)	Information relating to the Legal Services Corporation, including client services.	1996	—
Pub. L. No. 113-235, Sec. 716 & 717 (Consolidated Appropriations Act, 2015)	Federal employee address and nonpublic information (e.g., mailing, telephone, or email lists).	2014	—
Supplemental Appropriation Act of 2010, Pub. L. No. 111-212	Contractor performance information.	2010	—

Appendix III: Catalog of Freedom of Information Act (b)(3) Exemption Statutes Used by Agencies, Fiscal Years 2010 through 2019

(b)(3) Exemption statute	Type of information withheld	Year of most recent legislative change	Found to qualify in court
Treaty with Hong Kong on criminal matters (1996), S. TREATY DOC. NO. 105-3 (1997). Ratified Oct. 23, 1997.	Information deemed confidential under a criminal extraditions treaty.	1997	—
Treaty with Israel on criminal matters, Art. 7 & 9, S. TREATY DOC. NO. 105-40 (1998). Ratified Oct. 21, 1998.	Information deemed confidential under a mutual assistance in criminal investigations treaty.	1998	—
Treaty with the European Union on criminal matters, Art. 10, S. TREATY DOC. NO. 109-13 (2006). Ratified Sept. 23, 2008.	Information deemed confidential under a mutual assistance in criminal investigations treaty.	2008	—
Treaty with the Russian Federation on criminal matters, S. TREATY DOC. NO. 106-22, Articles 7, 9 & 13 (2000). Ratified Dec. 19, 2001.	Information deemed confidential under a mutual assistance in criminal investigations treaty.	2001	—
Treaty with the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters, S. TREATY DOC. NO. 104-2 (1995). Ratified Aug. 2, 1996.	Information exchanged with foreign government pursuant to a mutual legal assistance treaty.	1996	—
Treaty with the Swiss Confederation on criminal matters, May 25, 1973, Art. 5, S. TREATY DOC. NO. 94-17 (1976). Ratified June 21, 1976.	Information deemed confidential under a mutual assistance in criminal investigations treaty.	1976	✓
United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, S. TREATY DOC. NO. 101-4 (1989). Ratified Nov. 22, 1989.	Information deemed confidential under a treaty for enforcement of laws related to illicit drug trafficking.	1989	—

Legend: ✓ = statute included on the Department of Justice (DOJ) list of statutes that have been found by a court to qualify as a (b)(3) exemption; — = not on the DOJ list

Source: GAO analysis of FOIA.gov data. | GAO-21-148

^aThis statute was repealed by Pub. L. No. 111-257 on 10/5/10.

^bFor this statute, the criteria for nondisclosure is made by references to other statutes.

^cAgencies used this range of statutes, but only “18 U.S.C. § 2511”, “2517”, and “2518” contain nondisclosure provisions. Each of these statutes has been amended individually at various times, but the most recent was 2018.

^dRepealed by Pub. L. No. 98-473 (1984) but provisions extended in 18 U.S.C. § 3551 note.

^eAgencies claimed the range “35 U.S.C. § 181-188,” however the only (b)(3) statute in the range is “35 U.S.C. § 181.”

^fTransferred from a previous statute.

^gRepealed by Pub. L. No. 115-254 on 10/5/2018.

^hRepealed by Pub. L. No. 115-232 on 8/13/2018.

Appendix IV: Additional Freedom of Information Act (b)(3) Exemptions Statutes, Fiscal Years 2017 through 2019

Table 4 provides details about the 19 additional Freedom of Information Act (b)(3) exemption statutes used by agencies in fiscal years 2017 through 2019 that were not cited in fiscal years 2010 through 2016.

Table 4: Additional Freedom of Information Act (FOIA) (b)(3) Exemption Statutes Cited, Fiscal Years 2017-2019

(b)(3) Exemption statute	Type of information withheld	Total number of reported uses by all agencies	Agencies that reported use of the statute
5 U.S.C. § 1213(h)	Personally identifiable information of an individual who makes a disclosure to the Office of Special Counsel.	13	Office of Special Counsel
6 U.S.C. § 1504(d)(3)	Cybersecurity information sharing.	2	Department of Defense, Department of Justice (DOJ)
15 U.S.C. § 1153	Authority of the Department of Commerce Secretary to make, amend, and rescind orders, rules, and regulations relating to the dissemination of technical, scientific, and engineering information.	1	Department of Commerce (Commerce)
15 U.S.C. § 7215(b)(5)	Confidentiality of documents and information prepared or received by or specifically for the Public Company Accounting Oversight Board (Board), and deliberations of the Board and its employees and agents, in connection with a certain inspection or investigation.	1	Securities and Exchange Commission
16 U.S.C. § 824o-1(d)	Critical electric infrastructure information.	5	Department of Energy, Nuclear Regulatory Commission
16 U.S.C. § 1383a(j)	Information about vessel owners and on-board observers.	1	Commerce
18 U.S.C. App. Fed. R. Crim. P. 32(c)	Probation officer presentence investigation prior to court sentencing.	108	DOJ
20 U.S.C. § 9573	Information collected, maintained, used, and widely disseminated by the Institute of Education Sciences.	1	Department of Education
22 U.S.C. § 3104(c)	Records and reports pertaining to certain surveys and studies regarding international investment and trade.	1	DOJ
34 U.S.C. § 12592	Information regarding DNA identification records and DNA analyses.	1	DOJ
42 U.S.C. § 282(j)(6)	Information on certain clinical trials that is not otherwise publicly available.	11	Department of Health and Human Services
46 U.S.C. § 42105	Certain information submitted to the Federal Maritime Commission regarding shipping in foreign trade.	1	Federal Maritime Commission

Appendix IV: Additional Freedom of Information Act (b)(3) Exemptions Statutes, Fiscal Years 2017 through 2019

(b)(3) Exemption statute	Type of information withheld	Total number of reported uses by all agencies	Agencies that reported use of the statute
46 U.S.C. § 42303(c)	Certain reports or information regarding foreign shipping practices ordered by the Federal Maritime Commission.	2	Federal Maritime Commission
48 CFR § 15.207	Solicitation and receipt of proposals and information related to federal acquisitions.	3	International Boundary and Water Commission
49 U.S.C. § 20118(c)	Information on railroad safety analysis records.	6	Department of Transportation
49 U.S.C. § 30172(f)	Information that could identify a whistleblower.	2	Department of Transportation
50 U.S.C. § 4555(d)	Information obtained under the Defense Production Act of 1950 that the President deems confidential or the person furnishing such information requests confidential treatment of the information.	3	Commerce
Supplemental Appropriation Act of 2010, Pub. L. No. 111-212	Contractor performance information.	1	Federal Retirement Thrift Investment Board
Treaty with the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters, S. TREATY DOC. NO. 104-2 (1995). Ratified Aug. 2, 1996.	Information exchanged with foreign government pursuant to a mutual legal assistance treaty.	1	DOJ

Source: GAO analysis of FOIA.gov data. | GAO-21-148

Appendix V: GAO Contact and Staff Acknowledgments

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Staff Acknowledgments

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