FOIA EXEMPTION 7: INFORMATION COLLECTED FOR LAW ENFORCEMENT PURPOSES

Summary of Exemptions 7(A), 7(C) and 7(D)

Exempts from disclosure information compiled for law enforcement purposes if:

- Disclosure of the information could reasonably be expected to interfere with ongoing or prospective enforcement proceedings [7(A)]; **OR**
- Disclosure of the information could reasonably be expected to constitute an unwarranted invasion of personal privacy [7(C)]; **OR**
- Disclosure of the information could reasonably be expected to reveal the identity of a confidential source which furnished information on a confidential basis [7(D)]; **OR**
- In a criminal matter, disclosure could reasonably be expected to reveal information provided by a confidential source [7(D)].

Exemption 7 - Inspection Reports and Field Notes

- Exemption 7(A) has been used in some cases to withhold EPA inspection reports and/or field notes from disclosure under FOIA.
- Consider drafting inspection reports so that the main body of the report is releaseable.
- Disclosure of an inspection report that would reveal an enforcement strategy or targeting methods and procedures can be withheld under Exemption 7(E) (i.e., when EPA conducts an inspection as part of an enforcement initiative).
- If the report is a mix of facts and opinions of a "deliberative" nature, consider withholding under Exemption 5 and possibly Exemption 7(A) (if harm to the enforcement proceedings can be articulated).

Examples of information that may be exempt from disclosure under Exemption 7(C) or 7(D)

- 7(C): Home phone numbers; email addresses; medical information; names of potential witnesses in civil cases; names of law enforcement personnel in civil cases.
- 7(D): Civil cases – names of citizens or employees confidentially reporting violations; names of credit bureau providing information confidentially.
- 7(D): Criminal cases – photographs provided by a confidential source in a criminal investigation; names <u>and information</u> provided confidentially (even if EPA could have obtained the information from a non-confidential source).

What else to know about Exemptions 7(A), 7(C) and 7(D)
• Exemption 7(A): May be considered to withhold information exchanged during settlement negotiations. Contact ORC FOIA attorney, OGC, and/or DOJ before asserting. (See also Exemption 4) • Exemption 7(A): When the enforcement proceeding is resolved, the exemption no longer applies. • Exemption 7(A): EPA must be able to articulate a harm that would result from the disclosure – speculative concern is not enough to justify withholding information. Most common "harm" is that disclosure of the information could reasonably interfere with the enforcement proceedings. • Exemption 7(C): Is similar to, but broader in scope, than Exemption 6, but limited to when the information was compiled for law enforcement purposes. • Exemption 7(D): To withhold from disclosure, there must have been an express or implied promise of confidentiality by the agency.
Infrequently used Exemptions 7(B), 7 (E) and 7(F)
The Agency also may withhold information compiled for law enforcement purposes if: • Disclosure would deprive a person of a right to a fair trial or impartial adjudication [7(B)] • Disclosure would reveal law enforcement techniques and procedures [7(E)] • Disclosure of law enforcement guidelines could lead to circumvention of the law [7(E)] • Disclosure could reasonably be expected to endanger the life or physical safety of any individual [7(F)]