



## Exemption 7(F)

Exemption 7(F) of the Freedom of Information Act protects law enforcement information that "could reasonably be expected to endanger the life or physical safety of any individual."<sup>1</sup>

Courts have routinely upheld the use of Exemption 7(F) to protect the identities of law enforcement agents.<sup>2</sup> However, given that this Exemption protects the safety of "any

---

<sup>1</sup> 5 U.S.C. § 552(b)(7)(F) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524; see also Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009) (emphasizing that the Freedom of Information Act reflects a "profound national commitment to ensuring an open Government" and directing agencies to "adopt a presumption in favor of disclosure"); accord Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Mar. 19, 2009), available at <http://www.usdoj.gov/ag/foia-memo-march2009.pdf>; *FOIA Post*, "OIP Guidance: President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines - Creating a New Era of Open Government" (posted 4/17/09).

<sup>2</sup> See, e.g., *Rugiero v. DOJ*, 257 F.3d 534, 552 (6th Cir. 2001) (protecting names of DEA special agents); *Johnston v. DOJ*, No. 97-2173, 1998 WL 518529, \*1 (8th Cir. Aug. 10, 1998) (protecting names of DEA special agents); *McCoy v. United States*, No. 04-101, 2006 WL 2459075, at \*6 (N.D. W. Va. Aug. 23, 2006) (finding that DEA properly withheld names of DEA special agents, deputy U.S. Marshals, and state and local law enforcement officers); *Blanton v. DOJ*, 182 F. Supp. 2d 81, 87 (D.D.C. 2002) (acknowledging that disclosure of identities of FBI special agents could endanger their safety), aff'd, 64 F. App'x 787 (D.C. Cir. 2003); *Garcia v. DOJ*, 181 F. Supp. 2d 356, 378 (S.D.N.Y. 2002) (protecting names of FBI special agents and other government agents); *Amro v. U.S. Customs Serv.*, 128 F. Supp. 2d 776, 788 (E.D. Pa. 2001) (protecting names of DEA supervisory special agents and other law enforcement officers); *Hronek v. DEA*, 16 F. Supp. 2d 1260, 1275 (D. Or. 1998) (protecting names and identities of DEA special agents, supervisory special agents, and other law enforcement officers), aff'd, 7 F. App'x 591 (9th Cir. 2001); *Crompton v. DEA*, No. 95-8771, slip op. at 16 (C.D. Cal. Mar. 26, 1997) (finding agency properly withheld agents' names, signatures, and identifying information); *Jimenez v. FBI*, 938 F. Supp. 21, 30-31 (D.D.C. 1996) (holding that disclosure of names of DEA special agents, supervisors, and local law enforcement officers could result in "physical attacks, threats, or harassment"). But see *Pub. Employees for Env'tl. Responsibility v. EPA*, 978 F. Supp. 955, 964 (D. Colo. 1997) (finding no risk to agency investigators in disclosing EPA Inspector General guidelines).

individual,"<sup>3</sup> courts have held that Exemption 7(F) can protect the names and identifying information of non-law enforcement federal employees, local law enforcement personnel, and other third persons in connection with particular law enforcement matters.<sup>4</sup> Exemption 7(F) protection has also been extended to protect, for example, names of and identifying information about inmates,<sup>5</sup> private security contractor companies,<sup>6</sup> undercover agents,<sup>7</sup> and medical personnel.<sup>8</sup> Courts have also upheld the use of Exemption 7(F) to protect the

---

<sup>3</sup> 5 U.S.C. § 552(b)(7)(F); *see, e.g., Amuso v. DOJ*, No. 07-1935, 2009 WL 535965, at \*17 (D.D.C. Mar. 4, 2009) (explaining that "[w]hile courts generally have applied Exemption 7(F) to protect law enforcement personnel or other specified third parties, by its terms, the exemption is not so limited; it may be invoked to protect 'any individual' reasonably at risk of harm" (quoting *Long v. DOJ*, 450 F. Supp. 2d 42, 79 (D.D.C. 2006)), *amended*, 457 F. Supp. 2d 30 (D.D.C. 2006), *amended further on reconsideration*, 479 F. Supp. 2d 23 (D.D.C. 2007) (appeal pending)).

<sup>4</sup> *See, e.g., Johnston*, 1998 WL 518529, at \*1 (protecting names of not only special agents, but also "DEA personnel, local law enforcement personnel, and other third parties"); *Peter S. Herrick's Customs & Int'l Trade Newsletter v. U.S. Customs & Border Prot.*, No. 04-0377, 2006 WL 1826185, at \*9 (D.D.C. June 30, 2006) (finding that disclosure of U.S. Customs officials' identities and information regarding seized contraband could endanger life or physical safety of both Customs officials and innocent bystanders); *Garcia*, 181 F. Supp. 2d at 378 (protecting "names and/or identifying information concerning private citizens and third parties who provided information" to FBI); *Pfeffer v. Dir., BOP*, No. 89-899, 1990 U.S. Dist. LEXIS 4627, at \*4 (D.D.C. Apr. 18, 1990) (holding that information about smuggling weapons into prisons could reasonably be expected to endanger physical safety of "some individual" and therefore is properly withheld).

<sup>5</sup> *Lee v. DOJ.*, No. 04-1013, 2007 WL 2852538, at \*7 (W.D. Pa. Sept. 27, 2007) (finding agency properly withheld "names and personal information" about inmates involved in investigations of wrong-doing at correctional facilities because disclosure could subject them to "retaliatory physical harm"); *Brady-Lunny v. Massey*, 185 F. Supp. 2d 928, 932 (C.D. Ill. 2002) (finding that release of list of inmates' names would endanger life and physical safety "given inmates' gang ties, interest in escape, and motives for violence"); *Anderson v. U.S. Marshals Serv.*, 943 F. Supp. 37, 40 (D.D.C. 1996) (protecting identity of inmate who required separation from incarcerated requester when disclosure could endanger his safety).

<sup>6</sup> *L.A. Times Commcn's, LLC v. Dep't of the Army*, 442 F. Supp. 2d 880, 898-900 (C.D. Cal. 2006) (applying Exemption 7(F) where disclosure of private security contractor company names could endanger life or physical safety of many individuals).

<sup>7</sup> *McQueen v. United States*, 264 F. Supp. 2d 502, 521 (S.D. Tex. 2003) (protecting identities of undercover agents participating in plaintiff's criminal investigation), *aff'd*, 100 F. App'x 964 (5th Cir. 2004).

<sup>8</sup> *Sanders v. DOJ*, No. 91-2263, 1992 WL 97785, at \*4 (D. Kan. Apr. 21, 1992) (finding that disclosing identities of medical personnel who prepared requester's mental health records would endanger their safety, in view of requester's mental difficulties).

identities of informants and sources.<sup>9</sup> Finally, in keeping with the statutory language, courts have applied Exemption 7(F) in order to protect persons from possible harm from a requester who has threatened them in the past, or one who has a violent past or who has a connection to violent organizations.<sup>10</sup>

---

<sup>9</sup> See, e.g., Amuso, 2009 WL 535965, at \*18 (concluding that agency properly withheld information pertaining to "source symbol number informants and the names and identifying information concerning cooperating witnesses" because "disclosure of this information could threaten the lives of or otherwise endanger their safety"); Cozen O'Connor v. Dep't of Treasury, 570 F. Supp. 2d 749, 786 (E.D. Pa. 2008) (finding agency properly redacted names and personal identifiers of sources to protect them from retribution in connection with their "involve[ment] in ongoing criminal investigations of terrorist activities"); Miller v. DOJ, 562 F. Supp. 2d 82, 124-25 (D.D.C. 2008) (finding agency properly withheld information pertaining to symbol-numbered informant and cooperating witnesses); Diaz v. DEA, 555 F. Supp. 2d 124, 126 (D.D.C. 2008) (finding agency properly withheld documents that "relate to the identity and history of cooperation of an individual who has assisted DEA agents in several drug investigations"); Butler v. DOJ, 368 F. Supp. 2d 776, 786 (E.D. Mich. 2005) (protecting information that could endanger lives of individuals who provided information to DEA); McQueen, 264 F. Supp. 2d at 521 (protecting identities of informants participating in plaintiff's criminal investigation); Bartolotta v. FBI, No. 99-1145, slip op. at 5-6 (D.D.C. July 13, 2000) (protecting name of, and identifying information about, confidential inmate-source); Pray v. FBI, No. 95-0380, 1998 WL 440843, at \*3 (S.D.N.Y. Aug. 3, 1998) (protecting names of sources); Jimenez, 938 F. Supp. at 30-31 (protecting names and identifying information furnished by confidential sources); Bruscino v. BOP, No. 94-1955, 1995 WL 444406, at \*11 (D.D.C. May 12, 1995) (protecting investigatory information obtained from sources whose lives would be endangered by disclosure, especially in view of "rough justice" to be rendered upon informants should identities be disclosed), summary affirmance granted in pertinent part, vacated & remanded in part, No. 95-5213, 1996 WL 393101, at \*1 (D.C. Cir. June 24, 1996); Crooker v. IRS, No. 94-0755, 1995 WL 430605, at \*5 (D.D.C. Apr. 27, 1995) (protecting confidential informants when requester has history of harassing, intimidating, and abusing witnesses). But see Hidalgo v. FBI, 541 F. Supp. 2d 250, 256 (D.D.C. 2008) (ordering "disclosure of information related to the FBI's misconduct in handling [the confidential informant]" where agency has not explained how disclosure "would further endanger [the confidential informant's] life . . . when his identity as an informant is manifest and could not be any clearer"); Homick v. DOJ, No. 98-557, slip op. at 33-34 (N.D. Cal. Sept. 16, 2004) (finding that agency did not satisfy standard for invoking Exemption 7(F), and ordering disclosure, "except insofar as other exemptions apply," of information that would identify informants despite evidence of requester's violent nature), reconsideration denied, (N.D. Cal. Oct. 27, 2004), appeal dismissed, No. 04-17568 (9th Cir. July 5, 2005).

<sup>10</sup> See, e.g., Brunetti v. FBI, 357 F. Supp. 2d 97, 109 (D.D.C. 2004) (approving withholding of identities of individuals who cooperated with agency, given "violent nature of the La Cosa Nostra organization"); Ortloff v. DOJ, No. 98-2819, slip op. at 10 (D.D.C. Mar. 22, 2002) (finding withholding of "name of one witness who was identified as being potentially subject to future harm" proper, given plaintiff's conviction for violent acts); Shores v. FBI, 185 F. Supp. 2d 77, 85 (D.D.C. 2002) (approving nondisclosure of names of, and identifying information about, cooperating witnesses when information obtained from one of those witnesses led to plaintiff's murder conviction and prompted plaintiff to attempt to murder a witness's family

(continued...)

Significantly, Exemption 7(F) protection has been held to remain applicable even after a law enforcement officer subsequently retired.<sup>11</sup> Moreover, it has been held that Exemption 7(F) can be employed to protect even the identities of individuals who testified at the requester's criminal trial.<sup>12</sup> And one court approved a rather novel application of this exemption to a description in an FBI laboratory report of a homemade machine gun because its disclosure would create the real possibility that law enforcement officers would have to face "individuals armed with homemade devices constructed from the expertise of other law enforcement people."<sup>13</sup>

Exemption 7(F) has been used to protect information regarding seized contraband and information concerning U.S. Customs' employees involved in the seizure, storage, and evaluation of the contraband.<sup>14</sup> Applying Exemption 7(F), the court reasoned that the release of this information could place at risk innocent third parties located in the vicinity of U.S.

---

<sup>10</sup>(...continued)

member); Blanton, 182 F. Supp. 2d at 87 (protecting identities of FBI special agents and non-law enforcement personnel assisting in investigation, because "[e]ven though [requester] is incarcerated, his threats against persons responsible for his arrest and now his conviction make it possible that these individuals could be targets of physical harm"); Burke v. DOJ, No. 96-1739, 1999 WL 1032814, at \*9 (D.D.C. Sept. 30, 1999) (finding that disclosing identities of "agents, other agencies' personnel and sources could expose [them] to violent retaliation," given requester's violent history); Anderson v. DOJ, No. 95-1888, 1999 U.S. Dist. LEXIS 4731, at \*10-11 (D.D.C. Mar. 31, 1999) (finding that releasing witnesses' names could subject them to harassment and threats, given requester's history of carrying firearms); Crooker, 1995 WL 430605, at \*5 (protecting confidential informants when requester has history of harassing, intimidating, and abusing witnesses); Manna v. DOJ, 815 F. Supp. 798, 810 (D.N.J. 1993) (finding that releasing agency reports would endanger life or physical safety of associates of requester in organized crime case), aff'd on other grounds, 51 F.3d 1158 (3d Cir. 1995); Author Servs. v. IRS, No. 90-2187, slip op. at 7 (C.D. Cal. Nov. 14, 1991) (withholding identities of third parties and handwriting and identities of agency employees in view of previous conflict and hostility between parties).

<sup>11</sup> See Moody v. DEA, 592 F. Supp. 556, 559 (D.D.C. 1984).

<sup>12</sup> See Linn v. DOJ, No. 92-1406, 1997 U.S. Dist. LEXIS 9321, at \*17 (D.D.C. May 29, 1997) (protecting witnesses who testified) (Exemptions 7(C) and 7(F)), appeal dismissed voluntarily, No. 97-5122 (D.C. Cir. July 14, 1997); Beck v. DOJ, No. 88-3433, 1991 U.S. Dist. LEXIS 1179, at \*10-11 (D.D.C. July 24, 1991) (finding that exemption was not necessarily waived when information revealed at public trial); Prows v. DOJ, No. 87-1657, 1989 WL 39288, at \*2 (D.D.C. Apr. 13, 1989) (finding DEA special agents' identities protectible even though they testified at trial), aff'd, No. 89-5185, 1990 WL 45519, at \*1 (D.C. Cir. Feb. 26, 1990). But see Myers v. DOJ, No. 85-1746, 1986 U.S. Dist. LEXIS 20058, at \*6 (D.D.C. Sept. 22, 1986) (declining to protect law enforcement personnel who testified) (Exemptions 7(C) and 7(F)).

<sup>13</sup> LaRouche v. Webster, No. 75-6010, 1984 WL 1061, at \*8 (S.D.N.Y. Oct. 23, 1984); see also Pfeffer, No. 89-899, 1990 U.S. Dist. LEXIS 4627, at \*4 (D.D.C. Apr. 14, 1990) (approving withholding of information on smuggling of weapons into prison).

<sup>14</sup> Herrick's Newsletter, 2006 WL 1826185, at \*8-9.

Customs' officials, activities, or the seized contraband.<sup>15</sup> Similarly, Exemption 7(F) was used to protect the company names of private security contractors (PSC) operating in concert with U.S. military forces in Iraq.<sup>16</sup> In that case, the court accepted the government's specific "assessment that disclosure of the PSC company names might very well be expected to endanger the life or safety of military personnel, PSC employees, and civilians of Iraq."<sup>17</sup>

By contrast, protection was denied by the Court of Appeals for the Second Circuit in ACLU v. DOD, where the court held that "in order to justify withholding documents under exemption 7(F), an agency must identify at least one individual with reasonable specificity and establish that disclosure of the documents could reasonably be expected to endanger that individual."<sup>18</sup> The Second Circuit declined to "shape the precise contours of the exemption," but found that it did not apply to "some unspecified member of a group so vast as to encompass all United States troops, coalition forces, and civilians in Iraq and Afghanistan."<sup>19</sup>

Although Exemption 7(F)'s coverage is in large part duplicative of that afforded by Exemption 7(C), some courts have found that it is potentially broader in that no balancing is required for withholding information under Exemption 7(F).<sup>20</sup>

Finally, while courts generally defer to an agency's assessment of harm,<sup>21</sup> courts

---

<sup>15</sup> See id. at \*9 (citing Garcia, 181 F. Supp. 2d at 378).

<sup>16</sup> L.A. Times, 442 F. Supp. 2d at 898-900.

<sup>17</sup> Id. at 900.

<sup>18</sup> 543 F.3d 59, 71 (2d Cir. 2008), application to extend time to file petition for cert. granted, No. 08A1068 (J. Ginsburg, May 29, 2009).

<sup>19</sup> Id.

<sup>20</sup> See Raulerson v. Ashcroft, 271 F. Supp. 2d 17, 29 (D.D.C. 2002) ("Unlike Exemption 7(C), which involves a balancing of societal and individual privacy interests, 7(F) is an absolute ban against certain information and, arguably, an even broader protection than 7(C)."); Shores, 185 F. Supp. 2d at 85 (stating that Exemption 7(F), while covering material that also may be subject to Exemption 7(C), "does not require any balancing test"); LaRouche, 1984 WL 1061, at \*8 (stating Exemption 7(F) was properly asserted after danger to law enforcement personnel was identified); see also FOIA Update, Vol. V, No. 2, at 5 ("FOIA Counselor: Questions & Answers"). But see ACLU, 389 F. Supp. 2d at 578 (dicta) (rejecting principle that once threat to life or safety is discerned, no balancing is required in Exemption 7(F) analysis).

<sup>21</sup> See, e.g., El Badrawi v. DHS, 583 F. Supp. 2d 285, 319 (D. Conn. 2008) (noting that agencies are entitled to deference, but that "court's review is not vacuous"); Levy v. USPS, 567 F. Supp. 2d 162, 169 (D.D.C. 2008) (concluding agency properly withheld "information given by victims of a hoax involving the deadly anthrax toxin [which] could result in bodily harm or death for those individuals" and deferring to "agency's assessment of danger"); Miller, 562 F. Supp. 2d at 124 (noting that "[w]ithin limits, the Court defers to the agency's assessment of danger"); Garcia, 181 F. Supp. 2d at 378 ("In evaluating the validity of an agency's invocation of Exemption 7(F), the court should 'within limits, defer to the agency's assessment of danger.'"

(continued...)

nevertheless require agency declarations to provide an adequate justification for the withholding.<sup>22</sup> In cases where agency declarations are lacking sufficient explanation for the withholding, courts will sometimes undertake an in camera review to determine whether application of Exemption 7(F) is appropriate.<sup>23</sup>

---

<sup>21</sup>(...continued)

(quoting Linn v. DOJ, No. 92-1406, 1995 WL 631847, at \*9 (D.D.C. Aug. 22, 1995)).

<sup>22</sup> See, e.g., Lawyers' Comm. for Civil Rights v. Dep't. of the Treasury, No. C 07-2590, 2009 WL 1299821, at \*5-6 (N.D. Cal. May 11, 2009) (finding that "[u]nlike the prior" declaration with its "conclusory, unsupported speculation" that failed to provide "court with sufficient information to understand the basis" for withholdings, that current declaration "provides sufficient non-conclusory reasons" and detailed information; thus, agency is "entitled to categorically redact under Exemption 7(F) the identities and other identifying information" from delisting petitions); Antonelli v. BOP, No. 07-2016, 2008 WL 5339738, at \*9 (D.D.C. Dec. 22, 2008) (explaining that agency did not link withheld information to "a specific exemption" and thus provided no basis for ruling on withholdings); Long v. DOJ, 450 F. Supp. 2d 42, 80 (D.D.C. 2006) (explaining that agency "offers little more than conclusory assertions" and finding that "[s]uch unsupported speculations cannot serve as a justification for withholding information under Exemption 7(F)", amended, 457 F. Supp. 2d 30 (D.D.C. 2006), amended further on reconsideration, 479 F. Supp. 2d 23 (D.D.C. 2007) (appeal pending); Trupej v. Huff, No. 96-2850, 1998 WL 8986, at \*5 (D.D.C. Jan. 7, 1998) (finding agency's assertion "conclusory and not supported with sufficient detail for the Court to determine whether Exemption 7(F) was properly invoked"); Linn v. DOJ, No. 92-1406, 1995 WL 631847, at \*9 (D.D.C. Aug. 22, 1995) (finding that agency "has not established even a minimal nexus" between the withheld information and harm to persons discussed in file).

<sup>23</sup> El Badrawi, 583 F. Supp. 2d at 319 (ordering in camera review because agency's "string of cryptic and indefinite possibilities whereby terrorists could piece together . . . abstract information" does not sustain "its burden of demonstrating that the material withheld under Exemptions 7(D), 7(E), and 7(F) is exempt"; explaining that "[e]ven where nations security implications are involved, the court must have sufficient information to review the agency's withholdings de novo" (quoting Halpern v. FBI, 181 F.3d 279, 295 (2d. Cir. 1999))).