

### **Exemption (f) - The Investigatory Exemption**

Exemption (f), the investigatory exemption, provides a basis for withholding:

*investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.*<sup>60</sup>

The exemption allows investigative officials to withhold materials which could compromise investigative efforts if disclosed. There is no blanket exemption, however, for records created or maintained by investigative officials.<sup>61</sup> Therefore, a custodian must demonstrate a prejudice to investigative efforts in order to withhold requested materials. Accordingly, any information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Also, any confidential investigative techniques may be withheld indefinitely since their disclosure would prejudice future law enforcement efforts.<sup>62</sup>

The exemption is also designed to allow investigative officials to provide an assurance of confidentiality to private citizens so that they will speak openly about matters under investigation.<sup>63</sup> Accordingly, any details in witness statements, which if released create a grave risk of directly or indirectly identifying a private citizen who volunteers as a witness are indefinitely exempt.<sup>64</sup>

*For example:* Can an incident report kept by a police department be released to a requester when the requester is familiar with the individuals who were involved in the incident(s) noted in the report? No. Usually, a police incident report can be released to a requester after the custodian has redacted the exempt portions from the record, such as, medical information and witness statements. However, in this case, it is not possible to redact the report in a manner as to avoid indirect identification of the voluntary witness and complainant. Therefore, exemption (f) allows withholding of the entire record.

*For example:* Can records of a current grand jury investigation be released? No. Grand jury investigations are required to remain secret in order to protect the investigatory functions of the grand jury. The rationale for such secrecy is to encourage full and free disclosure of information concerning the commission of a crime, and to allow the utmost freedom of deliberation to the grand jury.

Can the grand jury minutes be released if the investigation is closed? No. The minutes may still be withheld from disclosure as they contain witness statements in the form of testimony. The grand jury process is dependent upon people coming forward and testifying freely. Accordingly, both the records of the open and closed investigations by the grand jury may be withheld under exemption (f).