



Exemption 9*

Exemption 9 of the Freedom of Information Act protects from disclosure “geological and geophysical information and data, including maps, concerning wells.”¹

The Court of Appeals for the District of Columbia Circuit has held that the analysis of Exemption 9 “start[s] with its text.”² In AquAlliance v. U.S. Bureau of Reclamation,³ the D.C. Circuit affirmed the district court’s determination that Exemption 9 permitted the withholding of information about the location and depth of water wells.⁴ The court found no ambiguity in the phrase “geological and geophysical” and ruled that the release of well depth and location would “necessarily disclose geological or geophysical information” and fell “squarely within Exemption 9.”⁵ The D.C. Circuit rejected the plaintiff’s “objections to that plain-text reading” and declined the plaintiff’s suggestion to “engraft[] a competitive-advantage limitation onto the text.”⁶ It also rejected the plaintiff’s argument that water wells be excluded from the protection of Exemption 9,

* This section primarily includes case law, guidance, and statutes up until June 30, 2024. While some legal authorities after this date may be included, for a comprehensive accounting of all recent court decisions, please visit OIP’s Court Decisions webpage (<https://www.justice.gov/oip/court-decisions-overview>). Please also note that this section generally only includes subsequent case history in the citations when it is relevant to the point for which the case is being cited.

¹ 5 U.S.C. § 552(b)(9) (2018).

² AquAlliance v. U.S. Bureau of Reclamation, 856 F.3d 101, 104 (D.C. Cir. 2017) (quoting Milner v. Dep’t of the Navy, 562 U.S. 562, 569 (2011)).

³ 856 F.3d 101 (D.C. Cir. 2017).

⁴ Id. at 105-06 (holding that “[t]he proper course . . . is for [the] court to assume that Congress meant what it said, and said what it meant”).

⁵ Id. at 104.

⁶ Id. at 104-05.

holding that “[t]he ordinary meaning of ‘wells’ includes water wells” and that “the depth and location of wells straightforwardly qualifies as ‘geological and geophysical information.’”⁷ Further, the D.C. Circuit rejected the plaintiff’s argument that Congress intended to limit the application of Exemption 9 to oil and gas wells, noting that the statutory text contains no “adjectival limitation” on the word “wells.”⁸ Finally, the D.C. Circuit rejected the plaintiff’s references to the legislative history of Exemption 9 by noting that legislative history should only be used to “illuminate ambiguous text” and concluding that “there is nothing ambiguous about Exemption 9’s unqualified reference to ‘wells.’”⁹

Relatedly, the District Court for the Central District of California rejected the plaintiff’s argument, based on legislative history, that Exemption 9 only protects information pertaining to privately-owned wells.¹⁰ The court emphasized that “reference to legislative history is inappropriate when the text of the statute is unambiguous” and held that the FOIA does not distinguish between information pertaining to privately- and publicly-owned water wells.¹¹

The District Court for the District of Columbia also specifically analyzed the word “wells.”¹² The court held that this term includes borehole maps and related information.¹³ The court reasoned that “[a] ‘well’ is a ‘hole or shaft sunk into the earth to obtain a fluid, such as water, oil, or natural gas,’” and a “[b]orehole’ has also been defined as a ‘deep,

⁷ *Id.* at 104 (internal citations omitted).

⁸ *Id.* at 105; see also *Starkey v. U.S. Dep’t of Interior*, 238 F. Supp. 2d 1188, 1196 (S.D. Cal. 2002) (holding that information including “ground water inventories, [water] well yield in gallons per minute, and the thickness of the decomposed granite aquifer” was exempt from disclosure under Exemption 9).

⁹ *AquAlliance*, 856 F.3d at 105 (quoting *Milner v. Dep’t of the Navy*, 562 U.S. 562, 572 (2011)).

¹⁰ *Nat. Res. Def. Council, Inc. v. DOD*, 388 F. Supp. 2d 1086, 1107-08 (C.D. Cal. 2005) (noting plaintiff’s reliance on H.R. Rep. No. 89-1497, at 32 (1966), 1966 U.S.C.C.A.N. 2418, 2428, which states that Exemption 9 was created “after witnesses testified that geological maps based on explorations by private oil companies were not covered by the ‘trade secrets’ provisions of . . . [then-existing] laws”) (internal citation omitted).

¹¹ *Id.* at 1108 (quoting *United States v. Sioux*, 362 F.3d 1241, 1246-47 (9th Cir. 2004)).

¹² *Story of Stuff Project v. U.S. Forest Serv.*, 366 F. Supp. 3d 66, 81 (D.D.C. 2019).

¹³ *Id.* at 81-82 (relating that “[a] ‘borehole’ is ‘a hole bored or drilled in the earth, such as an exploratory well’ or a ‘small-diameter well drilled especially to obtain water’”) (internal citation omitted).

narrow hole made in the ground, especially to locate water or oil.”¹⁴ The court concluded that “[t]hese definitions make it clear that a borehole is a type of well” because “[b]oth terms refer to a hole created in the earth to obtain a fluid.”¹⁵

The District Court for the Southern District of New York determined that Exemption 9’s use of the word “wells” should not be read to include “drilling holes used to extract coal.”¹⁶ The court found that “[w]ells are not used to extract solid matter such as coal; they are used to extract liquids or gases.”¹⁷ As a result, the court held that it was “constrained not to read Exemption 9 so broadly as to encompass the coal drill holes” at issue.¹⁸

Similarly, the District Court for South Dakota narrowly construed Exemption 9 and determined it applies only to “well information of a technical or scientific nature.”¹⁹ In support of its decision to order the release of generalized well data, the court pointed to the legislative history as evidence that Congress intended Exemption 9 to protect the oil and gas exploration and extraction industry from unfair competitive harm by speculators.²⁰ The court concluded that general mineral exploration data, such as the location, depth, or number of exploration drill holes, “falls short of the technical and scientific information envisioned by Congress.”²¹

¹⁴ *Id.* at 81 (internal citations omitted).

¹⁵ *Id.* (holding that agency “appropriately withheld the borehole maps and related information” under Exemption 9).

¹⁶ See *Nat. Res. Def. Council, Inc. v. U.S. Dep’t of Interior*, 36 F. Supp. 3d 384, 416 (S.D.N.Y. 2014) (noting that “FOIA exemptions ‘are explicitly made exclusive, and must be narrowly construed’” (quoting *Milner v. Dep’t of the Navy*, 562 U.S. 562, 564 (2011))).

¹⁷ *Id.* at 415-16 (defining “‘drill hole’ as ‘a hole in coal or rock made with an auger or a drill’”) (internal citation omitted).

¹⁸ *Id.* at 416.

¹⁹ *Black Hills All. v. U.S. Forest Serv.*, 603 F. Supp. 117, 122 (D.S.D. 1984).

²⁰ *Id.* (noting that witness testimony stated that disclosure of “exploratory findings of oil companies would give speculators an unfair advantage over the companies which spent millions of dollars in exploration” (citing H.R. Rep. No. 89-1497, at 32 (1966), 1966 U.S.C.C.A.N. 2418, 2428)).

²¹ *Id.* (requiring government to disclose number, locations, and depths of proposed uranium exploration drill holes in national forest under federally approved program).