Exemption 7(E)*

Exemption 7(E) of the Freedom of Information Act affords protection to law enforcement information that "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."[1]

Techniques and Procedures

The first clause of Exemption 7(E) protects "techniques and procedures for law enforcement investigations or prosecutions."[2] The phrase "techniques and procedures" refers to the means by which agencies conduct investigations.[3] Specifically, a "technique"

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* This section primarily includes case law, guidance, and statutes up until December 31, 2023. 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)(7)(E) (2018).

[2] 5 U.S.C. § 552(b)(7)(E) (2018); see Mayer Brown LLP v. IRS, 562 F.3d 1190, 1192-93 (D.C. Cir. 2009) (discussing meaning of phrase "could reasonably be expected to risk circumvention of the law" found in second clause of Exemption 7(E)).

[3] See Allard K. Lowenstein Int'l Hum. Rts. Project v. DHS, 626 F.3d 678, 682 (2d Cir. 2010) (noting as example if investigators are given instructions on manner in which to investigate those suspected of tax evasion, such details constitute techniques and procedures); see also Knight First Amend. Inst at Columbia Univ. v. USCIS, 30 F.4th 318, 330 (2d Cir. 2022) (stating that phrase "'techniques or procedures' includes both law enforcement methods – the actions that law enforcement personnel take to identify and neutralize bad actors – as well as the triggers for the application of methods") (internal citation omitted); Fams. for Freedom v. CBP, 837 F. Supp. 2d 287, 296-97 (S.D.N.Y. 2011) (relying on definition set forth in Allard to state that techniques and procedures constitute how, where, and when law

is "'a technical method of accomplishing a desired aim'" and a "procedure" is "'a particular way of doing or of going about the accomplishment of something'" in the context of a law enforcement investigation or prosecution.[4] The Court of Appeals for the Second Circuit has stated that when determining if records contain "techniques or procedures," the key is "whether disclosure of [the] material would reveal particulars about the way in which an agency enforces the law and the circumstances that will prompt it to act."[5]

Exemption 7(E) has been held to authorize the withholding of law enforcement "techniques" or law enforcement "procedures," whenever they are used "for law enforcement investigations or prosecutions," both civil and criminal.[6] Some courts, though, have held that Exemption 7(E)'s protection does not extend to the punishment phase of the criminal law enforcement process when the techniques or procedures at issue do not concern investigations or prosecutions.[7]

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enforcement methods are carried out, while policy and budgetary decisions about law enforcement staffing patterns arguably constitute "guidelines" under Exemption 7(E)).

[4] Allard K. Lowenstein Int'l Hum. Rts. Project, 626 F.3d at 682 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1986)).

[5] Knight First Amend. Inst. at Columbia Univ., 30 F.4th at 331.

[6] See Elec. Priv. Info. Ctr. v. CBP, No. 17-5058, 2017 WL 4220339, at *1 (D.C. Cir. Aug. 1, 2017) (per curiam) (holding that Exemption 7(E)'s scope "is not limited to records the release of which would disclose techniques, procedures or guidelines for *criminal* law enforcement investigations or prosecutions"); Gordon v. FBI, 388 F. Supp. 2d 1028, 1036 (N.D. Cal. 2005) (rejecting plaintiff's "narrow[]" reading of the "law enforcement purpose" requirement of Exemption 7(E), and noting that it "is not limited to documents created in connection with a criminal investigation"); cf. Cozen v. U.S. Dep't of Treasury, 570 F. Supp. 2d 749, 782 (E.D. Pa. 2008) (noting that in context of Exemption 7, protection for "law enforcement" records or information "is not limited to documents involving criminal proceedings").

[7] See Buzzfeed, Inc. v. DOJ, No. 18-1556, 2023 WL 5607423, at *4 (D.D.C. Aug. 30, 2023) (holding that BOP did not properly withhold records "describing the guidelines, techniques and procedures used to obtain lethal injection substances" because BOP "does not claim disclosure would affect an investigation or prosecution"); ACLU v. BOP, No. 20-2320, 2022 WL 17250300, at *17 (D.D.C. Nov. 28, 2022) (holding that BOP improperly withheld records pertaining to federal execution process because they "do not identify any investigatory or prosecutorial function"); Hansten v. DEA, No. 21-2043, 2022 WL 2904151, at *4 (D.D.C. July 22, 2022) (noting that Exemption 7(E) does not apply to records related to providers of lethal injection drugs because those drugs are "part of the 'punishment phase' of the criminal process" (quoting Citizens for Resp. & Ethics in Wash. v. DOJ, 567 F. Supp. 3d 204, 217 (D.D.C. 2021))); Citizens for Resp. & Ethics in Wash., 567 F. Supp. 3d at 217 (holding that BOP improperly applied Exemption 7(E) to techniques and procedures used to acquire substances used in federal executions because they "have nothing to do with 'law enforcement investigations or prosecutions'") (internal citation omitted).

Historically, courts have reached differing conclusions as to whether a showing that disclosure could risk circumvention of the law is required to satisfy the first clause of Exemption 7(E).[8] Most courts have either required a showing of circumvention of the law to withhold techniques and procedures under the first clause or applied a circumvention standard without analyzing whether its application was or was not required.[9] Yet a few

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[8] See Reps. Comm. for Freedom of the Press v. FBI, 548 F. Supp. 3d 185, 196 n.1 (D.D.C. 2021) ("There is some debate among courts of appeals as to whether Exemption 7(E)'s 'circumvention' clause applies to 'techniques and procedures' like it does to 'guidelines'") (internal citations omitted); Associated Press v. FBI, 265 F. Supp. 3d 82, 99 (D.D.C. 2017) (noting that courts are divided on whether circumvention requirement applies to law enforcement techniques and procedures).

[9] See, e.g., Jud. Watch, Inc. v. DOJ, No. 22-5209, 2023 WL 4397354, at *3 (D.C. Cir. July 7, 2023) (applying circumvention standard, without analysis, to FBI's refusal to confirm or deny existence of specific "communications between the Agency and financial institutions" because to do so would reveal techniques and procedures, which in turn "might risk circumvention of the law"); Burnett v. DOJ, No. 21-5092, 2021 WL 6102268, at *2 (D.C. Cir. Dec. 3, 2021) (per curiam) (unpublished disposition) (affirming district court finding that agency properly withheld material "that would reveal sensitive law enforcement techniques and procedures, the release of which 'might increase the risk that a law will be violated or that past violators will escape legal consequences'" (quoting Pub. Emps. for Env't Resp. v. U.S. Section, Int'l Boundary & Water Comm'n, U.S.-Mex., 740 F.3d 195, 205 (D.C. Cir. 2014))); Garza v. USMS, No. 18-5311, 2020 WL 768221, at *1 (D.C. Cir. Jan. 22, 2020) (per curiam) (unpublished disposition) (approving invocation of Exemption 7(E) to protect information concerning effectiveness of investigative techniques and internal filing codes because public disclosure "'might increase the risk that a law will be violated or that past violators will escape legal consequences'" (quoting Pub. Emps. for Env't Resp., 740 F.3d at 205)); Blackwell v. FBI, 646 F.3d 37, 42 (D.C. Cir. 2011) (applying, without analysis, "risk of circumvention" standard to law enforcement techniques and procedures); Catledge v. Mueller, 323 F. App'x 464, 466-67 (7th Cir. 2009) (requiring showing of risk of circumvention for techniques and procedures); Davin v. DOJ, 60 F.3d 1043, 1064 (3d Cir. 1995) (declaring that "Exemption 7(E) applies to law enforcement records which, if disclosed, would risk circumvention of the law"); PHE, Inc. v. DOJ, 983 F.2d 248, 250 (D.C. Cir. 1993) (stating that under Exemption 7(E), agency "must establish that releasing the withheld materials would risk circumvention of the law"); Frank LLP v. Consumer Fin. Prot. Bureau, 327 F. Supp. 3d 179, 185 (D.D.C. 2018) (endorsing protection of methods of questioning individuals because agency demonstrated "a risk of circumvention, whether it was required to or not"); Elec. Frontier Found. v. DOD, No. 09-05640, 2012 WL 4364532, at *3 (N.D. Cal. Sept. 24, 2012) (requiring that agency satisfy "risk of circumvention" standard without distinguishing between first and second prongs of Exemption 7(E)); Bloomer v. DHS, 870 F. Supp. 2d 358, 369 (D. Vt. 2012) (applying "risk of circumvention" standard to "'internal instructions, codes, and guidance [that] would reveal both a law enforcement technique and an internal investigative practice'" (quoting agency declaration)); Hasbrouck v. CBP, No. 10-3793, 2012 WL 177563, at *3-4 (N.D. Cal. Jan. 23, 2012) (allowing withholding of certain identifiers used to retrieve personal information from law enforcement databases due to government's showing of plausible circumvention harms, but failing to identify whether first or second clause of Exemption 7(E) was at issue);

other courts have not required any circumvention showing under Exemption 7(E)'s first clause.[10]

Muslim Advocs. v. DOJ, 833 F. Supp. 2d 106, 109 (D.D.C. 2012) (finding that agency made adequate showing of circumvention harm for certain techniques and procedures); Kortlander v. Bureau of Land Mgmt., 816 F. Supp. 2d 1001, 1014 (D. Mont. 2011) (endorsing withholding of records regarding techniques and procedures associated with undercover operations because disclosure could allow criminals to circumvent such efforts and because such techniques are unknown to public); Riser v. U.S. Dep't of State, No. 09-3273, 2010 WL 4284925, at *5 (S.D. Tex. Oct. 22, 2010) (holding that "risk of circumvention" analysis must be applied to withholdings of law enforcement techniques and procedures); Skinner v. DOJ, 744 F. Supp. 2d 185, 214 (D.D.C. 2010) [hereinafter Skinner I] (recognizing cases that allowed withholding of law enforcement techniques or procedures where disclosure could lead to circumvention of the law).

[10] See, e.g., Transgender L. Ctr. v. ICE, 46 F.4th 771, 784 (9th Cir. 2022) ("The requirement that the Government show that disclosure 'could reasonably be expected to risk circumvention of the law' applies only to *guidelines* for law enforcement investigations or prosecutions, not to *techniques and procedures*." (quoting Hamdan v. DOJ, 797 F.3d 759, 778 (9th Cir. 2015))); Knight First Amend. Inst. at Columbia Univ. v. USCIS, 30 F.4th 318, 329, 331 (2d Cir. 2022) (stating that "law-enforcement documents revealing techniques and procedures are exempt from disclosure per se"); Hamdan, 797 F.3d at 778 (holding agency need not show risk of circumvention as to disclosure of law enforcement techniques); Allard K. Lowenstein Int'l Hum. Rts. Project v. DHS, 626 F.3d 678, 681 (2d Cir. 2010) (finding "no ambiguity" in Exemption 7(E)'s application of risk of circumvention standard to "guidelines" prong, but not "techniques and procedures" prong of Exemption 7(E)); Dale v. DEA, No. 20-1248, 2022 WL 3910502, at *7 (D.D.C. Aug. 31, 2022) ("The first clause 'provides categorical protection, requiring no demonstration of harm or balancing of interests.'" (quoting Peter S. Herrick's Customs & Int'l Trade Newsl. v. CBP, No. 04-00377, 2006 WL 1826185, at *7 (D.D.C. June 30, 2006))); ACLU of Mich. v. FBI, No. 11-13154, 2012 WL 4513626, at *9 (E.D. Mich. Sept. 30, 2012) (holding that no showing of harm is required to withhold law enforcement "techniques and procedures"); McRae v. DOJ, 869 F. Supp. 2d 151, 168 (D.D.C. 2012) (contrasting "techniques and procedures" prong of Exemption 7(E), which provides "categorical" protection, to "guidelines" prong of Exemption 7(E), which requires showing of risk of circumvention); Fams. for Freedom v. CBP, 837 F. Supp. 2d 287, 296-97 (S.D.N.Y. 2011) (noting that because certain information at issue constituted techniques and procedures rather than guidelines, any circumvention risks were irrelevant under FOIA); Jordan v. DOJ, No. 07-2303, 2009 WL 2913223, at *16 (D. Colo. Sept. 8, 2009) (adopting magistrate's recommendation) ("The court is not required to make any particular finding of harm or circumvention of the law when evaluating applications of Exemption 7(E) involving law enforcement techniques."); cf. ACLU of Mich., 2012 WL 4513626, at *9 (holding that law enforcement techniques and procedures receive "categorical protection" from disclosure if such techniques and procedures are not well known to public); Citizens for Resp. & Ethics in Wash. v. DOJ, 870 F. Supp. 2d 70, 85 (D.D.C. 2012) (declaring that "longstanding precedent" supports categorical protection for law enforcement techniques and procedures), rev'd & remanded on other grounds, 746 F.3d 1082, 1102 (D.C. Cir. 2014) (finding that agency did not provide sufficient detail to determine if records fell into Exemption 7(E)); Skinner v. DOJ, 806 F.

However, the FOIA Improvement Act of 2016 codified a "foreseeable harm" standard which requires that an agency shall withhold information under the FOIA only if "the agency reasonably foresees that disclosure would harm an interest protected by an exemption" or if "disclosure is prohibited by law."[11] The District Court for the District of Columbia has addressed the foreseeable harm standard's application in the context of Exemption 7(E), finding that "the FOIA Improvement Act does not heighten the exemption's substantive standard" and "[t]o the extent the standards of Exemption 7(E) and the FOIA Improvement Act conflict, the one specific to Exemption 7(E) should control."[12] Courts that have considered this have also generally acknowledged that "fulfilling the terms of . . . exemptions goes a long way to meeting the foreseeable harm requirement" and "Exemption 7(E) by its own terms already requires that an agency show a risk of foreseeable harm."[13] As to the showing of harm that must be made, the Court of Appeals for the District of Columbia Circuit has stated on multiple occasions that the

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Supp. 2d 105, 116 (D.D.C. 2011) [hereinafter Skinner II] (declaring that "[l]aw enforcement procedures and techniques are afforded categorical protection under Exemption 7(E)").

[11] 5 U.S.C. § 552(a)(8)(A) (2018).

[12] Reps. Comm. for Freedom of the Press v. FBI, 548 F. Supp. at 196-97; see also 100Reporters v. U.S. Dep't of State, 602 F. Supp. 3d 41, 83 (D.D.C. 2022) ("Although the D.C. Circuit has yet to opine on what an agency must do to show foreseeable harm under Exemption 7(E), courts have acknowledged on at least two occasions that the foreseeable-harm requirement is similar to (and was not intended to heighten) Exemption 7(E)'s 'circumvention of the law' requirement." (citing Citizens for Resp. & Ethics in Wash. v. DHS, 525 F. Supp. 3d 181, 192 n.4 (D.D.C. 2021) & Reps. Comm. for Freedom of the Press v. FBI, 548 F. Supp. 3d at 196-97)); Advancement Project v. DHS, 549 F. Supp. 3d 128, 142 n. 5 (D.D.C. 2021) (noting that "the 'could reasonably be expected to risk' language supplants" the foreseeable harm requirement) (internal citation omitted).

[13] Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 127-28 (D.D.C. 2021); see also Kendrick v. FBI, No. 20-2900, 2022 WL 4534627, at *10 (D.D.C. Sept. 28, 2022) ("The proper assertion of 7(E) goes a long way to show the risk of foreseeable harm from disclosure."), aff'd per curiam, No. 22-5271, 2023 WL 8101123 (D.C. Cir. Nov. 21, 2023); Louise Trauma Ctr. LLC v. DHS, No. 20-01128, 2022 WL 1081097, at *10 (D.D.C. Apr. 11, 2022) (holding that DHS properly applied Exemption 7(E), which "[g]oes a long way to show foreseeable harm"); Callimachi v. FBI, 583 F. Supp. 3d 70, 89 (D.D.C. 2022) ("[F]oreseeable harm for Exemption 7(E) is linked to a proper assertion of the exemption itself. Because the exemption 'by its own terms' requires an agency to show a risk of circumvention from disclosure, fulfilling the terms of 7(E) also fulfills the foreseeable harm requirement" (quoting Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d at 127-28)); Reps. Comm. for Freedom of the Press v. FBI, 548 F. Supp. 3d at 196-97 (stating that "Exemption 7(E)'s text 'already contained an explicit requirement that the agency show a reasonable nexus between the withheld information and a predicted harm'" (quoting Citizens for Resp. & Ethics in Wash., 525 F. Supp. 3d at 192 n.4)).

FOIA sets a "relatively low bar" for withholding under this exemption.[14] (For further discussion of circumvention of the law, see Exemption 7(E), Guidelines, below.)

For the first clause of Exemption 7(E) to apply, courts uniformly require that the technique or procedure at issue ordinarily must not be well known to the public.[15]

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[14] Blackwell, 646 F.3d at 42 (noting that "'[r]ather than requiring a highly specific burden of showing how the law will be circumvented, [E]xemption 7(E) only requires that the [agency] demonstrate logically how the release of the requested information might create a risk of circumvention of the law'" (quoting Mayer Brown LLP v. IRS, 562 F.3d 1190, 1194 (D.C. Cir. 2009))); accord Skinner v. DOJ, 893 F. Supp. 2d 109, 114 (D.D.C. 2012) [hereinafter Skinner III] (noting that D.C. Circuit precedent sets a "'low bar'" for withholding under Exemption 7(E) (quoting Blackwell, 646 F.3d at 42)), aff'd sub nom. per curiam, Skinner v. ATF, No. 12-5319, 2013 WL 3367431 (D.C. Cir. May 31, 2013); see also Mayer Brown, 562 F.3d at 1194 (observing that while FOIA requires exemptions to be construed narrowly, Exemption 7(E) constitutes "broad language").

[15] See ACLU of N. Cal. v. DOJ, 880 F.3d 473, 492 (9th Cir. 2018) (holding that agency cannot withhold portions of manual on surveillance techniques for federal prosecutors because they describe investigative techniques known to public generally); Schwartz v. DEA, 692 F. App'x 73, 74 (2d Cir. 2017) (affirming district court decision that techniques and procedures possibly revealed by video of a drug interdiction operation are known to public and cannot be withheld); Rugiero v. DOJ, 257 F.3d 534, 551 (6th Cir. 2001) (stating that first clause of Exemption 7(E) "protects [only] techniques and procedures not already well-known to the public"); Davin v. DOJ, 60 F.3d 1043, 1064 (3d Cir. 1995) (holding that "[t]his exemption . . . may not be asserted to withhold 'routine techniques and procedures already well-known to the public'" (quoting Ferri v. Bell, 645 F.2d 1213, 1224 (3d Cir. 1981))); Rosenfeld v. DOJ, 57 F.3d 803, 815 (9th Cir. 1995) (establishing rule within that circuit that law enforcement techniques must not be well known to public); Founding Church of Scientology of D.C. v. NSA, 610 F.2d 824, 832 n.67 (D.C. Cir. 1979) (finding that Exemption 7(E) does not ordinarily protect "routine techniques and procedures already well known to the public") (internal quotation marks & citations omitted); Woodward v. USMS, No. 18-1249, 2022 WL 296171, at *6 (D.D.C. Feb. 1, 2022) (holding that USMS improperly withheld "the mere fact that telephonic data was collected" because "the potential for phones to double as tracking devices is common knowledge"); ACLU Found. v. DOJ, 418 F. Supp. 3d 466, 480 (N.D. Cal. 2019) (declining to support the FBI's 7(E) Glomar response because "disclosure of social media surveillance – a well-known general technique –would not reveal the *specific means* of surveillance"); Elec. Frontier Found. v. DOJ, 384 F. Supp. 3d 1, 14 (D.D.C. 2019) (finding that FBI properly applied Exemption 7(E) to protect "'non-public investigative techniques and procedures of its informant program, and non-public specific details concerning technique and procedures that are otherwise known to the public'" (quoting agency declaration)); Dutton v. DOJ, 302 F. Supp. 3d 109, 125 (D.D.C. 2018) (finding agency properly invoked 7(E) to protect information revealing the "'specific use of an investigative step'" that is not publicly known and could hinder law enforcement investigations if made public (quoting agency declaration)); ACLU of Mich., 2012 WL 4513626, at *9 (noting that categorical withholding is only permissible for unknown techniques and procedures); Kubik v. BOP, No. 10-6078, 2011 WL 2619538, at *11 (D. Or. July 1, 2011) (holding that tactics used by BOP personnel during prison riot cannot be withheld because they are known to inmates who were present during riot); Unidad Latina

Accordingly, techniques such as wiretaps,[16] the "use of post office boxes,"[17] pretext telephone calls,[18] and "planting transponders on aircraft suspected of smuggling"[19] have been denied protection under Exemption 7(E) when courts have found them to be generally known to the public. Courts have also held Exemption 7(E) inapplicable when the information could not fairly be characterized as describing "techniques or procedures."[20]

En Accion v. DHS, 253 F.R.D. 44, 51-52 (D. Conn. 2008) (finding that "the details, scope and timing" of surveillance techniques such as target apprehension charts are "not necessarily well-known to the public" and thus are properly withheld).

[16] See Billington v. DOJ, 69 F. Supp. 2d 128, 140 (D.D.C. 1999) (noting that "commonly known law enforcement practices, such as wiretaps . . . are generally not shielded"), aff'd & vacated on other grounds, 233 F.3d 581 (D.C. Cir. 2000) (affirming Exemption 7(E) redactions); Pub. Emps. for Env't Resp. v. EPA, 978 F. Supp. 955, 963 (D. Colo. 1997) (noting that "[i]nterception of wire, oral, and electronic communications are commonly known methods of law enforcement").

[17] Billington, 69 F. Supp. 2d at 140 (observing as general matter that "use of post office boxes" is "commonly known" for purposes of Exemption 7(E)).

[18] See Rosenfeld, 57 F.3d at 815 (rejecting agency's attempt to protect existence of pretext telephone calls because this technique is generally known to public); see also Campbell v. DOJ, No. 89-3016, 1996 WL 554511, at *10 (D.D.C. Sept. 19, 1996) (ordering disclosure of information pertaining to various "pretexts" because information is known to public, requested records do not describe details of techniques, and disclosure would not undermine techniques' effectiveness); Struth v. FBI, 673 F. Supp. 949, 970 (E.D. Wis. 1987) (dismissing pretext as merely "garden variety ruse or misrepresentation").

[19] Hamilton v. Weise, No. 95-1161, 1997 U.S. Dist. LEXIS 18900, at *30-31 (M.D. Fla. Oct. 1, 1997).

[20] See Hansten v. DEA, No. 21-2043, 2022 WL 2904151, at *1, *4 (D.D.C. July 22, 2022) (holding that DEA improperly categorically denied request for "drug purchase order forms" under Exemption 7(E) because such forms "say nothing about how the DEA would '*go about* investigating' a diversion case" (quoting Whittaker v. DOJ, No. 18-01434, 2019 WL 2569915, at *2 (D.D.C. June 21, 2019))); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. ICE, 571 F. Supp. 3d 237, 248 (S.D.N.Y. 2021) (holding that "a list of tools rather than specific instructions for how, when, and why to use such tools" does not qualify as "'a specialized, calculated technique or procedure' that would 'not be apparent to the public'" (quoting ACLU v. DHS, 243 F. Supp. 3d 393, 404 (S.D.N.Y. 2017))); Ibrahim v. U.S. Dep't of State, 311 F. Supp. 3d 134, 144 (D.D.C. 2018) (ordering release of agency's assessment of request for reconsideration of refugee resettlement application because it does not disclose law enforcement techniques); ACLU of Ariz. v. DHS Sec. Off. for C.R. & C.L., No. 15-00247, 2017 WL 3478658, at *14 (D. Ariz. Aug. 14, 2017) (unpublished disposition) (ordering release of "case numbers assigned to allegations of mistreatment of minors" because they do not reveal law enforcement techniques or procedures); ACLU, 243 F. Supp. 3d at 403-05 (finding that questions asked of alien juveniles suspected of smuggling did not constitute "a specialized, calculated technique"); ACLU of Wash. v. DOJ, No. 09-0642, 2012 U.S. Dist.

However, even records pertaining to commonly known procedures have been protected from disclosure when the circumstances of their usefulness are not widely

LEXIS 137204, at *17-19 (W.D. Wash. Sept. 21, 2012) (ordering release of characteristics of individuals suspected of illegal activity as well as internal agency telephone number associated with Terrorist Watch List because such information does not constitute law enforcement techniques or procedures, regardless of harm associated with releasing such information); Allard K. Lowenstein Int'l Hum. Rts. Project v. DHS, 603 F. Supp. 2d 354, 363 (D. Conn. 2009) (ordering release of "general outline of the operational steps" because it "would not reveal specific operational techniques"), aff'd, 626 F.3d 678 (2d Cir. 2010). Compare Shapiro v. DOJ, 153 F. Supp. 3d 253, 272-73 (D.D.C. 2016) (holding that agency cannot categorically withhold search slips associated with all FOIA requests within past twenty-five years because they do not reveal law enforcement techniques, procedures, or guidelines), with Shapiro v. DOJ, 239 F. Supp. 3d 100, 111-16 (D.D.C. 2017) (holding that FOIA request search slips created within past twenty-five years for which agency had issued "no records" responses to underlying FOIA request are protectable under 7(E) as "part of a complex mosaic related to ongoing FBI operations, involving one of the FBI's domestic terrorism priorities").

known,[21] or their use in combination with other factors would compromise the underlying techniques or procedures.[22]

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[21] See, e.g., Broward Bulldog, Inc. v. DOJ, 939 F.3d 1164, 1191 (11th Cir. 2019) (noting that "even for well-known techniques or procedures, Exemption 7(E) protects information that would reveal facts about such techniques or their usefulness that are not generally known to the public, as well as other information when disclosure could reduce the effectiveness of such techniques"); Shapiro v. DOJ, 893 F.3d 796, 800-01 (D.C. Cir. 2018) (affirming application of Exemption 7(E) to records generated from commercially-available database because details of agency's methods of searching and managing database "are generally not known"); Hamdan v. DOJ, 797 F.3d 759, 777-78 (9th Cir. 2015) (concluding that agency properly withheld records that would reveal "a specific *means* of conducting surveillance and credit searches rather than an application" of these publicly-known techniques); Buzzfeed Inc. v. DOJ, No. 19-1977, 2023 WL 6847008, at *9-10 (D.D.C. Oct. 17, 2023) (noting that "while the public may know generally that the FBI collects and analyzes DNA, it does not follow that the public is aware of the specific '*details* on evidence collection and the evidence gathered for pending investigations'" (quoting agency declaration)); Woodward v. USMS, No. 18-1249, 2022 WL 296171, at *6 (D.D.C. Feb. 1, 2022) (holding that even though USMS could not withhold mere existence of "cell data tracking," it could withhold "'confidential details' of what was tracked, specifically the numbers that were investigated") (quoting Elec. Frontier Found. v. DOJ, 384 F. Supp 3d 1, 10 (D.D.C. 2019))); Schwartz v. DEA, No. 13-5004, 2016 WL 154089, at *11 (E.D.N.Y Jan. 8, 2016) (unpublished disposition) (clarifying that "[c]ircumstances concerning the application of a technique are protectable where they reveal previously unknown techniques or previously unknown aspects of known techniques"), aff'd, 692 F. App'x 73 (2d Cir. 2017) (unpublished table decision); ACLU of Mich. v. FBI, No. 11-13154, 2012 WL 4513626, at *11 (E.D. Mich. Sept. 30, 2012) (holding that public's knowledge of some aspects of technique or procedure is "not dispositive" where manner and circumstances of use is not publicly known); Elec. Frontier Found. v. DOD, No. 09-05640, 2012 WL 4364532, at *5 (N.D. Cal. Sept. 24, 2012) (rejecting plaintiff's argument that agency could not withhold details of agency's known use of social networking websites to conduct investigations because withheld details were not known to public); Vazquez v. DOJ, 887 F. Supp. 2d 114, 117-18 (D.D.C. 2012) (noting that while public is generally aware of FBI's National Crime Information Center databases, details of their use and whether individuals are mentioned in them is not known to public), aff'd per curiam, No. 13-5197, 2013 WL 6818207 (D.C. Cir. Dec. 18, 2013); Muslim Advocs. v. DOJ, 833 F. Supp. 2d 92, 104-05 (D.D.C. 2011) (finding that while certain aspects of law enforcement techniques at issue are publicly known, because circumstances under which such techniques may be used are non-public, withholding of such information is permissible); Kubik v. BOP, No. 10-6078, 2011 U.S. Dist. LEXIS 71300, at *33 (D. Or. July 1, 2011) (agreeing that withholding is justified where identity of technique is known but circumstances of use of technique is unknown); Jordan v. DOJ, No. 07-2303, 2009 WL 2913223, at *15-16 (D. Colo. Sept. 8, 2009) (protecting photocopied inmate correspondence to protect details of BOP's well-known inmate mail-monitoring technique, endorsing protection of specific application of known technique where release could diminish effectiveness of such technique); Barnard v. DHS, 598 F. Supp. 2d 1, 23 (D.D.C. 2009) (recognizing that "[t]here is no principle . . . that requires an agency to release all details [of] techniques simply because some aspects of them are known to the public").

Moreover, courts have endorsed the withholding of the details of a wide variety of commonly known procedures – for example, polygraph examinations,[23] undercover

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[22] See, e.g., Reps. Comm. for Freedom of the Press v. FBI, 548 F. Supp. 3d 185, 199 (D.D.C. 2021) (holding that FBI properly "invoke[d] a mosaic theory" in withholding records concerning nonpublic uses of filmmaker impersonation technique because "[f]orcing the agency to disclose even high-level information about the records of its uses of the filmmaker technique would reveal to wrongdoers how often, where, and when the agency uses the technique"); Citizens for Resp. & Ethics in Wash. v. DHS, 525 F. Supp. 3d 181, 190-91 (D.D.C. 2021) (approving use of "the mosaic theory" to withhold number of Secret Service personnel on protective trip because disclosure would provide "'one piece of information that could be combined with others to better understand [the Secret Service's] protective methods and their strengths and weaknesses'" (quoting agency declaration)); Whittaker v. DOJ, No. 18-01434, 2020 WL 6075681, at *5-6 (D.D.C. Oct. 15, 2020) (protecting background investigation name check search results because they could be pieced together with other name check results, enabling inferences to be drawn about how the FBI uses its resources); Reps. Comm. for Freedom of the Press v. FBI, 613 F. Supp. 3d 104, 123 (D.D.C. 2020) ("While any one piece of information might not compromise the FBI's techniques or procedures, 'pieces of information can be assembled – in mosaic fashion – to provide a framework to determine how, when, under which circumstances, certain te[ch]niques are employed.'" (quoting agency declaration)), aff'd, rev'd, & remanded on other grounds, 3 F.4th 350 (D.C. Cir. 2021); Shapiro v. DOJ, 393 F. Supp. 3d 111, 121 (D.D.C. 2019) (approving protection of database name because disclosure would "forever associate the database name to the information" contained in a specific serial that the FBI has not withheld, including "the type of information stored in the database and the type of investigation in which the database would be utilized" thereby increasing the risk that a terrorist armed with this information could "'predict FBI investigative strategies and enhance [their] ability to avoid detection by the FBI'" (quoting agency declaration)); Asian L. Caucus v. DHS, No. 08-00842, 2008 WL 5047839, at *4 (N.D. Cal. Nov. 24, 2008) (approving protection of database names that relate to watch lists, noting that watch lists may be common knowledge but disclosure of related database names "could . . . facilitate improper access to the database"); Gordon v. FBI, 388 F. Supp. 2d 1028, 1035-36 (N.D. Cal. 2005) (protecting details of agency's aviation "watch list" program, including records detailing "selection criteria" for watch lists and handling and dissemination of lists, and "addressing perceived problems in security measures"); cf. Elec. Priv. Info. Ctr. v. DOJ, 490 F. Supp. 3d 246, 268 (D.D.C. 2020) (protecting non-public information regarding Special Counsel's investigation including investigative focus and strategies as well as gathering and/or analysis of information, which directly implicate investigative targets, dates, and scope of investigatory operations, and noting that "although the redacted information itself may not be "'a technique, procedure[,] or guideline,' with the disclosure of such information 'comes the knowledge of how the agency employs its procedures or techniques'" (quoting Elec. Priv. Info. Ctr. v. DEA, 401 F. Supp. 3d 37, 46 (D.D.C. 2019))), aff'd, rev'd, & remanded on other grounds, 18 F.4th 712 (D.C. Cir. 2021).

[23] See, e.g., Sack v. DOD, 823 F.3d 687, 694-95 (D.C. Cir. 2016) (concluding that release of reports concerning polygraphs could undermine effectiveness of such examinations); Frankenberry v. FBI, 567 F. App'x 120, 124-25 (3d Cir. 2014) (affirming withholding of polygraph procedures that are unknown to public because disclosure could encourage circumvention of law); Hale v. DOJ, 973 F.2d 894, 902-03 (10th Cir. 1992) (concluding that

disclosure of "polygraph matters" could hamper their effectiveness); Schneider v. DOJ, 498 F. Supp. 3d 121, 129-30 (D.D.C. 2020) (affirming withholding of information concerning polygraph programs and techniques used to assess the suitability of job applicants and current employees because public disclosure could "enable 'future applicants and those with intent to harm the government [to] tailor their responses during polygraph sessions and screening interviews to circumvent security procedures'" (quoting agency declaration)); Piper v. DOJ, 294 F. Supp. 2d 16, 30 (D.D.C. 2003) (declaring that polygraph materials were properly withheld because release would reveal sensitive "logistical considerations"), aff'd, 222 F. App'x 1 (D.C. Cir. 2007) (unpublished table decision).

operations,[24] surveillance techniques,[25] and bank security measures[26] – because disclosure could reduce or even nullify the effectiveness of such procedures.[27] As one

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[24] See, e.g., Williams v. DOJ, No. 19-0104, 2023 WL 2424738, at *3-4 (D.D.C. Mar. 9, 2023) (protecting DEA form concerning "'approval and use of drugs in an undercover operation'" and recordings of surveillance taken though undercover means because release would allow for countermeasures to be taken (quoting agency declaration)), aff'd per curiam, No. 23-5082, 2024 WL 3632517 (D.C. Cir. Aug. 1, 2024); Kendrick v. FBI, No. 20-2900, 2022 WL 4534627, at *9 (D.D.C. Sept. 28, 2022) (protecting details of undercover operations because disclosure would allow for countermeasures to be created and used, "'thus rendering the technique useless to the FBI'" (quoting agency declaration)), aff'd per curiam, No. 22-5271, 2023 WL 8101123 (D.C. Cir. Nov. 21, 2023); O'Brien v. DOJ, No. 20-0092, 2022 WL 2651850, at *9 (E.D. Pa. July 8, 2022) (protecting details of when or how undercover employees are used, "'the information gathered as a result of this technique, and the relative utility of the type of information gathered'" because release risks "'providing information that would expose and disrupt undercover operations'" (quoting agency declaration)), aff'd per curiam, No. 22-2335, 2023 WL 2770824 (3d Cir. Apr. 4, 2023); Djenasevic v. EOUSA, 319 F. Supp. 3d 474, 490 (D.D.C. 2018) (holding that portions of undercover operations manual are withholdable because release would allow criminals to restructure activities to circumvent law), aff'd per curiam, No. 18-5262, 2019 WL 5390964 (D.C. Cir. Oct. 3, 2019); Brown v. FBI, 873 F. Supp. 2d 388, 407-08 (D.D.C. 2012) (withholding Vehicle Identification Numbers of vehicles used in undercover operations because criminals could determine which vehicles were being used by law enforcement agents); Kortlander v. Bureau of Land Mgmt., 816 F. Supp. 2d 1001, 1014 (D. Mont. 2011) (protecting means by which law enforcement "plans and executes undercover operations" because disclosure could allow wrongdoers to plan criminal activities to evade detection); Foster v. DOJ, 933 F. Supp. 687, 693 (E.D. Mich. 1996) (finding that release of techniques and guidelines used in undercover operations would diminish effectiveness).

[25] See, e.g., Kendrick, 2022 WL 4534627, at *8 (protecting non-public surveillance information, such as "'targets, dates, locations, types of devices, and installation information,'" because while FBI's use of surveillance is known, release would allow for development of countermeasures, "'thus rendering the techniques useless to the FBI'" (quoting agency declaration)); O'Brien, 2022 WL 2651850, at *9 (protecting "the 'who, what, when, where, and how'" of physical surveillance because while it may be known that agency utilizes this technique, "'the specific details or targeted information gathered'" are not known (quoting agency declaration)); Reps. Comm. for Freedom of the Press, 548 F. Supp. 3d at 203 (holding that FBI properly claimed Exemption 7(E) to withhold "the targets of the investigation and how agents surveilled them" because release of this information "could give wrongdoers insight into the Bureau's intelligence-gathering capabilities, possibly jeopardizing similar efforts in the future"); Buzzfeed, Inc. v. DOJ, 344 F. Supp. 3d 396, 407 (D.D.C. 2018) (finding that "public awareness that the FBI uses airplanes, or even, press speculation that certain planes are FBI planes, is not the same as, and does not give rise to the same risk as, the FBI's own confirmation of its use of specific aircraft"); Shores v. FBI, 185 F. Supp. 2d 77, 85 (D.D.C. 2002) (protecting details of surveillance operations at federal prison, including information about telephone system).

[26] See, e.g., Johnston v. Wray, No. 20-00520, 2022 U.S. Dist. LEXIS 94346, at *29-30 (D. Ariz. May 23, 2022) (protecting surveillance video from bank because it conveys availability

court observed, this is especially true "when the method employed is meant to operate clandestinely, unlike [other techniques] that serve their crime-prevention purpose by operating in the open."[28] In this regard, the use of a "Glomar response"[29] under

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and location of security measures); Ford v. DOJ, 208 F. Supp. 3d 237, 254 (D.D.C. 2016) (finding that "[e]ven if some cameras are 'visible' as a deterrent, other cameras may be placed at angles or in areas unknown to the public and disclosure of this information could, as the FBI points out, 'provide criminals the necessary information to circumvent the very purpose of a bank surveillance system, making banks more vulnerable to bank robberies and/or other criminal activity, and therefore circumvent the law'" (quoting agency declaration)); Maguire v. Mawn, No. 02-2164, 2004 WL 1124673, at *3 (S.D.N.Y. May 19, 2004) (protecting details of bank's use of "bait money" even though technique is publicly known because "disclosure . . . could reasonably make the [b]ank more susceptible to robberies in the future"); Dayton Newspapers, Inc. v. FBI, No. 3-85-815, 1993 WL 1367435, at *6 (S.D. Ohio Feb. 9, 1993) (concluding that agency properly withheld details of bank security devices and equipment used in bank robbery investigation).

[27] See, e.g., Hale, 973 F.2d at 902-03 (concluding that disclosure of use of security devices and their modus operandi could lessen their effectiveness); Bowen v. FDA, 925 F.2d 1225, 1229 (9th Cir. 1991) (deciding that release of specifics of cyanide-tracing techniques would present serious threat to future product-tampering investigations); Buzzfeed Inc. v. DOJ, No. 19-1977, 2023 WL 6847008, at *9-10 (D.D.C. Oct. 17, 2023) (concluding that FBI properly withheld "advancements in forensic [genealogy] evidence processing available to" it because release "could lead future suspects to potentially 'thwart' those strategies") (internal citation omitted); 100Reporters v. U.S. Dep't of State, 602 F. Supp. 3d 41, 83 (D.D.C. 2022) (concluding that agency properly withheld "procedures the Department employs to detect and to prevent violations of the prohibition on training or assisting [foreign security] units that have engaged in gross violations of human rights" because release of these non-public details could nullify or reduce their effectiveness); Frank LLP v. Consumer Fin. Prot. Bureau, 327 F. Supp. 3d 179, 185 (D.D.C. 2018) (concluding that disclosure of methods of questioning would allow entities to "'coach future witnesses in similar cases on how to avoid providing incriminating information'" which would thwart future use (quoting agency's declaration)); McGehee v. DOJ, 800 F. Supp. 2d 220, 236-37 (D.D.C. 2011) (holding that Exemption 7(E) does not require that techniques be unknown to public where release of non-public details of such techniques would allow circumvention of techniques); Cal-Trim, Inc. v. IRS, 484 F. Supp. 2d 1021, 1027 (D. Ariz. 2007) (protecting records related to agency investigation because release could allow individuals under investigation "to craft explanations or defenses based on the [IRS] agent's analysis or enable them the opportunity to disguise or conceal the transactions that are under investigation"); Leveto v. IRS, No. 98-285, 2001 U.S. Dist. LEXIS 5791, at *21 (W.D. Pa. Apr. 10, 2001) (protecting dollar amount budgeted for agency to investigate particular individual because release could allow others to learn agency's monetary limits and undermine such investigations in future).

[28] Maguire, 2004 WL 1124673, at *3.

[29] See Phillippi v. CIA, 546 F.2d 1009, 1013 (D.C. Cir. 1976) (approving agency's response where it would "neither confirm nor deny" the existence of responsive records) (origin of term "Glomar response").

Exemption 7(E), i.e., where the agency neither confirms nor denies the existence of the requested records, has been approved by the courts when disclosing the abstract fact that a particular law enforcement technique was employed would reveal the circumstances under which that technique was used.[30]

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[30] See Jud. Watch, Inc. v. DOJ, No. 22-5209, 2023 WL 4397354, at *3 (D.C. Cir. July 7, 2023) (per curiam) (affirming FBI's Exemption 7(E) Glomar response regarding communications between FBI and financial institutions because confirmation would "'reveal the types of investigative techniques or procedures being employed, or not employed, as well as [show] how the FBI is applying investigative resources, or not, in furtherance of its investigations'" (quoting agency filing)); Platsky v. FBI, No. 21-2064, 2022 WL 17751274, at *2 (2d Cir. Dec. 19, 2022) (affirming agency's Exemption 7(E) Glomar response in neither confirming nor denying requester's placement on government watchlist); Catledge v. Mueller, 323 F. App'x 464, 467 (7th Cir. 2009) (affirming agency's refusal to confirm or deny existence of National Security Letters pertaining to requester); Sanders v. FBI, No. 20-3672, 2022 WL 888191, at *2, *4-5 (D.D.C. Mar. 25, 2022) (upholding FBI's Glomar response because confirming or denying "whether it was or was not coordinating with a specific foreign law enforcement agency in general or on a particular investigative matter" would allow bad actors "to predict FBI investigative tactics and develop countermeasures to avoid detection" (quoting agency filing)); Braun v. FBI, No. 18-2145, 2019 WL 3343948, at *5 (D.D.C. July 25, 2019) (affirming refusal to confirm or deny whether a requester is on any watch list because public disclosure would risk "giving away information that might tip off those on the watch list or aid those who seek to avoid being placed on it"); Buzzfeed, Inc., 344 F. Supp. 3d at 406-07 (holding that agency properly refused to confirm or deny use of a specific aircraft under its aerial surveillance program); Myrick v. Johnson, 199 F. Supp. 3d 120, 124-25 (D.D.C. 2016) (concluding that agency's response in neither confirming nor denying particular undercover operation is appropriate because acknowledging its existence would risk circumvention); Vazquez v. DOJ, 887 F. Supp. 2d 114, 117-18 (D.D.C. 2012) (affirming agency's use of Exemption 7(E) Glomar because public confirmation of whether or not individual is listed in one of FBI's National Crime Information Center databases would cause harm meant to be protected by Exemption 7(E)), aff'd per curiam, No. 13-5197, 2013 WL 6818207 (D.C. Cir. Dec. 18, 2013); El Badrawi v. DHS, 596 F. Supp. 2d 389, 396 (D. Conn. 2009) (concluding agency "properly asserted a Glomar response" where "confirming or denying that [an individual] is a subject of interest . . . would cause the very harm FOIA Exemption[] . . . 7(E) [is] designed to prevent"); cf. Machado Amadis v. DOJ, 388 F. Supp. 3d 1, 15 (D.D.C. 2019) (holding agency properly applied Exemption 7(E) to protect records related to its search that produced a "No Records"/Glomar response because "requesters put the FBI in an untenable position when they seek search slips and [FOIPA Document Processing System (FDPS)] case notes about such responses . . ."); Shapiro v. DOJ, 239 F. Supp. 3d 100, 111-16 (D.D.C. 2017) (holding that FOIA request search slips created within past twenty-five years for which agency had issued "no records" responses to underlying FOIA request are withholdable because they could serve to confirm "the existence or non-existence of an investigation" and that "might assist those seeking to evade detection").

Courts have construed Exemption 7(E) to encompass the withholding of a wide range of techniques and procedures, including immigration enforcement techniques,[31] techniques related to the regulation of controlled substances,[32] information regarding certain databases used for law enforcement purposes,[33] surveillance tactics and

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[31] See, e.g., Knight First Amend. Inst. at Columbia Univ. v. USCIS, 30 F.4th 318, 331-32 (2d Cir. 2022) (holding that questions asked to visa applicants "to detect ties to terrorism" were techniques or procedures because they are "more closely linked to the specific methods employed by government actors," and noting that Exemption 7(E) would still apply even if questions constituted guidelines instead because disclosure would "help those with terrorist ties to tailor their answers to avoid detection"); Allard K. Lowenstein Int'l Hum. Rts. Project v. DHS, 626 F.3d 678, 680-82 (2d Cir. 2010) (holding that criteria used to rank priority of immigration enforcement cases constitutes techniques and procedures rather than guidelines); Louise Trauma Ctr. LLC v. DHS, No. 20-01128, 2022 WL 1081097, at *9 (D.D.C. Apr. 11, 2022) (holding that USCIS properly invoked Exemption 7(E) to withhold "information related to sensitive techniques used by asylum officers to conduct interviews and consider [immigration] applications" because bad actors could utilize this information to circumvent or violate immigration law); Advancement Project v. DHS, 549 F. Supp. 3d 128, 145 (D.D.C. 2021) (finding that records concerning tool used "to gauge countries' cooperativeness with [agency's] efforts to enforce immigration law and respond accordingly" would disclose "confidential details" of law enforcement technique); Ibrahim v. U.S. Dep't of State, 311 F. Supp. 3d 134, 143 (D.D.C. 2018) (holding that Exemption 7(E) applies to lines of questioning in Refugee Application Assessment because disclosure could enable applicants to strategically plan inaccurate responses).

[32] See, e.g., Anand v. HHS, No. 21-1635, 2023 WL 2646815, at *22 (D.D.C. Mar. 27, 2023) (protecting DEA registration numbers used "'to regulate the prescription of controlled substances'" because if released, "'individuals could use these numbers to forge prescriptions'" (quoting agency declaration)); Williams v. DOJ, No. 19-0104, 2023 WL 2424738, at *3 (D.D.C. Mar. 9, 2023) (protecting DEA form containing "'chain of custody procedures and forensic techniques for drug evidence following operations and investigations'" because release "would reveal 'how drugs are received into custody, where and how drugs are stored when not in use, location of drug-processing facilities, . . . and how . . . DEA wraps, stores, and maintains particular drugs'" (quoting agency declaration)), aff'd per curiam, No. 23-5082, 2024 WL 3632517, at *1 (D.C. Cir. Aug. 1, 2024).

[33] See, e.g., Shapiro v. DOJ, 893 F.3d 796, 800-01 (D.C. Cir. 2018) (protecting records generated by commercially-available database because release would reveal how agency uses database and results it considers meaningful); Blackwell v. FBI, 646 F.3d 37, 42 (D.C. Cir. 2011) (affirming withholding of Choicepoint reports made to FBI because particular method by which data is "searched, organized, and reported" to FBI is not publicly known, and release of such reports could allow criminals to develop countermeasures to technique); Kendrick v. FBI, No. 20-2900, 2022 WL 4534627, at *8 (D.D.C. Sept. 28, 2022) (protecting "database identifiers and search results" because release would "jeopardize the FBI's investigative function and effectiveness by . . . providing 'criminals with the opportunity to corrupt or otherwise destroy [stored] information'" (quoting agency declaration)), aff'd per curiam, No. 22-5271, 2023 WL 8101123 (D.C. Cir. Nov. 21, 2023); Advancement Project v. DHS, No. 19-52, 2022 WL 4094061, at *10 (D.D.C. Sept. 7, 2022) (protecting information concerning database "'used to administer and enforce U.S. Immigration laws and to prevent

and track fraud'" because release would disclose specific information that is omitted and included in database, and that could be misused by wrongdoers (quoting agency filing)); Woodward v. USMS, No. 18-1249, 2022 WL 296171, at *13 (D.D.C. Feb. 1, 2022) (determining that "references to other databases that were queried . . . are demonstrative of investigation techniques that might, at least indirectly, increase the risk that would-be fugitives 'evade detection and capture'" (quoting agency filing)); Callimachi v. FBI, 583 F. Supp. 3d 70, 91 (D.D.C. 2022) (protecting "'the identity of sensitive, non-public investigative databases' and search results located through those databases" because release would disclose "which databases are most useful to the agency and what information the FBI finds most helpful when it conducts investigations" (quoting agency declaration)); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. ICE, 571 F. Supp. 3d 237, 248 (S.D.N.Y. 2021) (holding that agency properly withheld "specific information for accessing, using, and querying classified databases" because it constitutes procedures and "disclosure of this information could assist third parties in accessing the databases, which could compromise the integrity of the data and risk interference with national security investigations"); Advancement Project, 549 F. Supp. 3d at 145 ("ICE's internal methods of managing, collecting, and organizing law enforcement data qualify as techniques, procedures, or guidelines for purposes of Exemption 7(E)."); Long v. ICE, 464 F. Supp. 3d 409, 422-23 (D.D.C. 2020) (protecting metadata and schemas of an ICE database because disclosure could enable a hacker "to move faster through the databases to view, modify, or delete data" and public disclosure could "incentivize future attacks and make those attacks more harmful"); Elec. Priv. Info. Ctr. v. DEA, 401 F. Supp. 3d 37, 46-47 (D.D.C. 2019) (protecting names of agencies that have access to the Hemisphere database because release of this information "necessarily discloses a technique or procedure used by that agency" as knowing the names of agencies using a particular database brings with it "the knowledge of how the agency employs its procedures or techniques"); Sharkey v. DOJ, No. 16-2672, 2018 WL 838678, at * 8 (N.D. Ohio Feb. 13, 2018) (protecting key indicators agency uses in deciding whether and how data is entered in non-public law enforcement databases because disclosure would reveal types and location of information agency "gathers, analyzes and utilizes within" database, "making it vulnerable to cyber attackers"); Hasbrouck v. CBP, No. 10-3793, 2012 WL 177563, at *4 (N.D. Cal. Jan. 23, 2012) (protecting certain identifiers used to access personal information in law enforcement databases to prevent disclosure of whether agency "also tracks one or more non-obvious identifier[s], or for it to admit that it cannot retrieve information except by obvious identifiers"). But cf. 100Reporters v. U.S. Dep't of State, 602 F. Supp. 3d 41, 82 (D.D.C. 2022) (finding that agency did not adequately demonstrate "how disclosing information relating to the use of [a particular] database – the existence of which is public – 'could reasonably be expected to risk circumvention of the law'" (quoting 5 U.S.C § 552(b)(7)(E))); Am. Immigr. Council v. ICE, 464 F. Supp. 3d 228, 243-44 (D.D.C. 2020) (rejecting agency's withholding of unique identifier that agency claimed could be used to obtain sensitive law enforcement information if individual "were to hack illegally into [agency's] databases" because "the harm the exemption is designed to avert – the circumvention of the law – would not be caused or advanced by the disclosure of the data in question, and it depends upon the hypothetical commission of a crime that is independent of the disclosure of the data the defendant seeks to withhold").

methods,[34] portions of a law enforcement agency's investigations and operations manual,[35] funds expended in furtherance of an investigation,[36] identities of vendors

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[34] See, e.g., Williams, 2023 WL 2424738, at *3 (protecting DEA form that would divulge "the use of consensual eavesdropping or closed circuit television equipment" in undercover operation); Dalal v. DOJ, 643 F. Supp. 3d 33, 74 (D.D.C. 2022) (holding that FBI properly withheld "'[i]nformation about the installation, locations, monitoring and types of devices utilized in surveillance'" (quoting agency declaration)); Gatson v. FBI, No. 15-5068, 2017 WL 3783696, at *13 (D.N.J. Aug. 31, 217) (same); Citizens for Resp. & Ethics in Wash. v. DOJ, 160 F. Supp. 3d 226, 242-43 (D.D.C. 2016) (protecting information concerning development, capability, and limitation of drones and unmanned aerial vehicles because disclosure would risk circumvention of law); ACLU of Mich. v. FBI, No. 11-13154, 2012 WL 4513626, at *10-11 (E.D. Mich. Sept. 30, 2012) (protecting devices, methods, and tools used for surveillance and monitoring of illegal activity because disclosure of such techniques would allow criminals to develop countermeasures to nullify effectiveness of law enforcement investigations); Frankenberry v. FBI, No. 08-1565, 2012 U.S. Dist. LEXIS 39027, at *71 (M.D. Pa. Mar. 22, 2012) (accepting FBI's explanation that disclosure of precise placement of recording devices used by FBI to monitor conversations would allow circumvention of technique), aff'd, 567 F. App'x 120 (3d Cir. 2014) (unpublished table decision); ACLU v. DOJ, 698 F. Supp. 2d 163, 167 (D.D.C. Mar. 16, 2010) (protecting templates used by assistant U.S. attorneys to draft "applications, orders, and declarations to obtain authorization for cell phone monitoring" because release of such information would reveal details about types of information that such cell phone records can capture, limitations of such techniques, and uses of records that are not well known to public); Kurdykov v. U.S. Coast Guard, 657 F. Supp. 2d 248, 257 (D.D.C. 2009) (upholding protection of maritime counter-narcotics surveillance techniques and procedures); Carbe v. ATF, No. 03-1658, 2004 WL 2051359, at *11 (D.D.C. Aug. 12, 2004) (holding that "electronic surveillance request forms and asset forfeiture reimbursement forms . . . [are] [c]ertainly . . . protected from release by Exemption 7(E)," as disclosure "might reveal the nature of electronic equipment and the sequence of its uses").

[35] See, e.g., Djenasevic v. EOUSA, No. 18-5262, 2019 WL 5390964, at *1 (D.C. Cir. Oct. 3, 2019) (per curiam) (withholding non-public portions of DEA Agents' Manual because release of information "'might increase the risk that a law will be violated or that past violators will escape legal consequences'" (quoting Pub. Emps. for Envt. Resp. v. U.S. Section, Int'l Boundary & Water Comm'n, U.S.-Mex., 40 F.3d 195, 205 (D.C. Cir. 2014))); Immigrant Def. Project v. DHS, No. 20-10625, 2023 WL 1966178, at *10 (S.D.N.Y. Feb. 13, 2023) (protecting portions of Fugitive Operations Handbook relating to "law enforcement methods for identifying and investigating targets"); ACLU of N.J. v. DOJ, No. 11-2553, 2012 WL 4660515, at *9-10 (D.N.J. Oct. 2, 2012) (unpublished disposition) (withholding portions of FBI's Domestic Investigations and Operations Guide (DIOG) that list certain techniques, procedures and events that trigger FBI's use of such techniques and procedures, because disclosure of such records could allow bad actors to circumvent FBI's efforts), aff'd sub nom. ACLU of N.J. v. FBI, 733 F.3d 526 (3d Cir. 2013); ACLU of Mich., 2012 WL 4513626, at *10 (withholding sections of FBI's DIOG that would, if released, allow wrongdoers to undermine FBI's law enforcement activities); Elec. Frontier Found. v. DOD, No. 09-05640, 2012 WL 4364532, at *4-5 (N.D. Cal. Sept. 24, 2012) (protecting portions of law enforcement handbook containing details of agency's use of internet and social networking websites for investigations); Muslim Advocs. v. DOJ, 833 F. Supp. 2d 106, 109 (D.D.C. 2012) (protecting

portions of FBI's DIOG that would reveal circumstances under which investigations are or are not approved, and which particular investigative activities are or are not allowed in context of particular investigations, because such information could allow wrongdoers to alter behavior to avoid detection by law enforcement officers); Muslim Advocs. v. DOJ, 833 F. Supp. 2d 92, 104-05 (D.D.C. 2011) (endorsing withholding of chapters five and ten of FBI's DIOG).

[36] See, e.g., Kendrick, 2022 WL 4534627, at *8-9 (protecting information about "payment to implement particular investigative techniques" because release "'would reveal the FBI's level of focus on certain types of law enforcement or intelligence-gathering efforts' and 'give criminals the opportunity to structure their activities in a manner that avoids the FBI's strengths and exploits its weaknesses'" (quoting agency declaration)); Reps. Comm. for Freedom of the Press v. FBI, 548 F. Supp. 3d 185, 203 (D.D.C. 2021) (protecting "payments agents made to implement investigative techniques" because disclosure of this information "would give wrongdoers a glimpse of how [the FBI] allocates its limited resources"); Citizens for Resp. & Ethics in Wash. v. DHS, 525 F. Supp. 3d 181, 193 (D.D.C. 2021) (protecting information concerning room rates, meal expenditures and incidental expenses because "releasing these figures could help wrongdoers estimate the number of Secret Service personnel on the trip, which in turn could help them predict the size of future Secret Service details"); Associated Press v. FBI, 265 F. Supp. 3d 82, 100 (D.D.C. 2017) (protecting purchase price of tool to unlock smartphone of suspected terrorist because release would allow adversaries to "assess the nature of the tool and determine its likely capabilities"); Frankenberry, 2012 U.S. Dist. LEXIS 39027, at *71 (protecting expenditures made by law enforcement authorities during investigation); Concepcion v. FBI, 606 F. Supp. 2d 14, 43-44 (D.D.C. 2009) (withholding amount of money used to purchase evidence). But see Kan. ex rel. Schmidt v. DOD, 320 F. Supp. 3d 1227, 1246 (D. Kan. 2018) (finding that law enforcement costs "without copious amounts of detail" do not reveal law enforcement techniques, procedures, or guidelines in a way that could increase the risk of circumvention); Hidalgo v. FBI, 541 F. Supp. 2d 250, 253-54 (D.D.C. 2008) (ordering disclosure of information regarding payments to confidential informants because agency failed to show risk of circumvention from disclosure).

supplying tools and services to law enforcement agencies,[37] law enforcement codes,[38] law enforcement case and file numbers,[39] the identities and locations of specific law

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[37] See, e.g., N.Y. Times v. DOJ, No. 22-1539, 2023 WL 7305242, at *2-3 (S.D.N.Y. Nov. 6, 2023) (holding that identities of vendors from whom agency may have acquired digital surveillance products constitute law enforcement techniques warranting protecting under Exemption 7(E)); Associated Press, 265 F. Supp. 3d at 99 (protecting identity of technology vendor who assisted FBI in unlocking smartphone of suspected terrorist because disclosure would enable hostile entities "to circumvent the technology"); Citizens for Resp. & Ethics in Wash., 160 F. Supp. 3d at 243 (protecting identities of vendors and suppliers because disclosure would "reveal the equipment and services provided" to the law enforcement agency).

[38] See, e.g., Patino-Restrepo v. DOJ, No. 17-5143, 2019 WL 1250497, at *2 (D.C. Cir. Mar. 14, 2019) (per curiam) (holding that "DEA's redaction of internal codes and identification numbers was proper under FOIA Exemption 7(E)"); Sabra v. CBP, No. 20-681, 2023 WL 1398473, at *11 (D.D.C. Jan. 31, 2023) (protecting "'computer codes . . . that can expose [agency] computer systems to a risk of unauthorized access or navigation'" (quoting agency filing)), aff'd per curiam, No. 23-5069, 2024 WL 5182911 (D.C. Cir. Dec. 20, 2024); Dale v. DEA, No. 20-1248, 2022 WL 3910502, at *8 (D.D.C. Aug. 31, 2022) (holding that DEA properly withheld "investigative case numbers, qualitative characterization codes, and ORI and NCIC numbers," which are "'unique identifiers assigned by the FBI to criminal justice agencies,'" (quoting agency declaration)); Lapp v. FBI, No. 14-160, 2016 WL 737933, at *5 (N.D. W. Va. Feb. 23, 2016) (protecting CJIS access codes because disclosure could allow unauthorized access to law enforcement databases); Skinner III, 893 F. Supp. 2d 109, 114 (D.D.C. 2012) (protecting DHS TECS codes because release could allow individual to access database or otherwise circumvent law); Miller v. DOJ, 872 F. Supp. 2d 12, 28-29 (D.D.C. 2012) (protecting TECS and NADDIS numbers maintained by DEA because release could reveal law enforcement techniques or otherwise lead to circumvention); McRae v. DOJ, 869 F. Supp. 2d 151, 168-69 (D.D.C. 2012) (withholding computer codes from TECS, National Criminal Information Center, and local law enforcement databases); Bloomer v. DHS, 870 F. Supp. 2d 358, 369 (D. Vt. 2012) (withholding law enforcement TECS database codes); Abdelfattah v. ICE, 851 F. Supp. 2d 141, 145 (D.D.C. 2012) (protecting FBI "program codes").

[39] See, e.g., Williams, 2023 WL 2424738, at *2 (protecting DEA file numbers as they identify "'the investigative interest or priority given to' a matter" (quoting agency declaration)); Dalal, 643 F. Supp. 3d at 75 (holding that FBI properly withheld file numbers and its "file numbering convention" because release would divulge "the priority given to certain investigations"); Dale, 2022 WL 3910502, at *8 (holding that DEA properly withheld its investigative case numbers because DEA explained that "disclosure would identify 'the specific DEA office that initiated the investigation, the year the investigation was established, and the total number of cases initiated by the DEA office in a particular fiscal year'" (quoting agency declaration)); Woodward v. USMS, No. 18-1249, 2022 WL 296171, at *5 (D.D.C. Feb. 1, 2022) (protecting "case identifying numbers" because they "surpass the low bar of Exemption 7(E)"); Callimachi v. FBI, 583 F. Supp. 3d 70, 89 (D.D.C. 2022) (protecting file numbers because they reveal "types of investigative strategies pursued" and "which FBI field office has responsibility over certain types of investigations," and that

enforcement units,[40] and techniques used to enforce tax laws.[41] Courts have also upheld protection for techniques and procedures pertaining to the forensic analysis of firearms[42]

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information could be used by bad actors "to track how the FBI investigates particular subjects and whether those investigations might relate to one another").

[40] See, e.g., Williams, 2023 WL 2424738, at *3 (protecting sub-office codes that "identify 'the enforcement group within a specific DEA Field office or Resident office' associated with a particular matter" because armed with this information, suspects "'could pinpoint where a certain enforcement group is located,' and in turn, 'determine where [the] DEA conducts operations and investigations' or 'where [the] DEA focuses its investigative resources geographically'" (quoting agency declaration)), aff'd per curiam, No. 23-5082, 2024 WL 3632517, at *1 (D.C. Cir. Aug. 1, 2024); Callimachi, 583 F. Supp. 3d at 90-91 (protecting location of "'an FBI unit, squad, and division involved'" in specific investigation because releasing location "could reveal the investigative subject and the physical areas of interest to that investigation" and protecting identities of units, many of which "'are highly specialized,'" because release would reveal "when and how and where the FBI deploys such units" (quoting agency declaration)); Reps. Comm. for Freedom of the Press, 548 F. Supp. 3d at 203 (holding that FBI properly applied Exemption 7(E) to withhold "the names and locations of specialized FBI units involved in a specific operation" because disclosure "could reveal what kinds of crimes and geographic areas the agency prioritizes"); cf. Sabra, 2023 WL 1398473, at *11 (protecting "'information that, in the aggregate, reveals trends and/or specific law enforcement capabilities and techniques employed in particular operational locations, which can reveal the likelihood of [agency] utilizing certain inspection techniques in specific operational locations'" (quoting agency filing)). But see Woodward, 2022 WL 296171, at *7 (holding that USMS improperly withheld "[t]he name of a specific sub-unit that assisted with the investigation" because "the mere mention of this unit" does not reveal confidential aspects of the investigation and "the existence and general functions of the different components of USMS are public knowledge").

[41] See Palmarini v. IRS, No. 17-3430, 2019 WL 1429547, at *5 (E.D. Pa. Mar. 29, 2019) (holding that agency properly protected checklist form used to assess compliance with tax laws because release of this information would reveal enforcement processes and priorities of the IRS that "may enable tax dodgers to avoid detection"); Carp v. IRS, No. 00-5992, 2002 WL 373448, at *6 (D.N.J. Jan. 28, 2002) (concluding that disclosure would "expose[] specific, non-routine investigative techniques used by the IRS to uncover tax fraud"); Peyton v. Reno, No. 98-1457, 2000 WL 141282, at *1 (D.D.C. Jan. 6, 2000) (protecting Discriminant Function scores used to select tax returns for evaluation); Wishart v. Comm'r, No. 97-20614, 1998 WL 667638, at *6 (N.D. Cal. Aug. 6, 1998) (protecting Discriminant Function scores to avoid possibility that "taxpayers could manipulate" return information to avoid IRS audits), aff'd, 199 F.3d 1334 (9th Cir. 1999) (unpublished table decision).

[42] See Nat'l Pub. Radio, Inc. v. FBI, No. 18-03066, 2021 WL 1668086, at *9 (D.D.C. Apr. 28, 2021) (protecting video footage featuring ammunition ballistics tests because disclosure would "'arm adversaries with the foundational information about the offensive and defensive capabilities of law enforcement'" while also enabling those adversaries to use this information "'to circumvent the law by modifying the types of ammunition they use when dealing with law enforcement'" (quoting agency filing & declaration)); Skinner I, 744 F. Supp. 2d 185, 214-15 (D.D.C. 2010) (protecting details of firearms toolmark forensic

and computers,[43] details concerning or relating to information technology security,[44] details about the status of investigatory efforts,[45] search and arrest warrant execution

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techniques to avoid disclosure of means by which law enforcement officers identify such toolmarks).

[43] See Blackwell v. FBI, 646 F.3d 37, 42 (D.C. Cir. 2011) (protecting techniques of forensic examinations of computers conducted by law enforcement personnel because release would expose "computer forensic vulnerabilities" to wrongdoers); Dalal, 643 F. Supp. 3d at 74 (protecting "'Computer Analysis Response Team . . . reports and/or data'" (quoting agency declaration)); Gatson v. FBI, No. 15-5068, 2017 WL 3783696, at *14 (D.N.J. Aug. 31, 2017) (same), aff'd, 779 F. App'x 112 (3d Cir. 2019) (unpublished table decision).

[44] See, e.g., Buzzfeed Inc v. DOJ, No. 19-1977, 2023 WL 6847008, at *10 (D.D.C. Oct. 17, 2023) (protecting "'internal FBI secure email and IP addresses, and internet/web addresses'" because disclosure could risk "'unauthorized access to . . . the FBI's non-public intranet systems,'" could interfere with "'the FBI's non-public internet protocol,'" or could disrupt "'the FBI's internal communications'" (quoting agency declaration)); Dalal, 643 F. Supp. 3d at 74 (holding that FBI properly withheld "'[i]nternal FBI email or IP address/Intranet Web Address'" (quoting agency declaration)); Kendrick v. FBI, No. 20-2900, 2022 WL 4534627, at *9 (D.D.C. Sept. 28, 2022) (protecting "'non-public, internal web addresses'" because disclosure could present cyber-attack targets and could reduce "the effectiveness of the agencies' information systems") (quoting agency declaration)); Reps. Comm. for Freedom of the Press v. CBP, 567 F. Supp. 3d 97, 128 (D.D.C. 2021) (protecting "procedures used to investigate cybersecurity threats and disclosure of internal information" because disclosure might lead bad actors to "exploit vulnerabilities in the agency's detection and investigation techniques"); Kowal v. DOJ, No. 18-2798, 2021 WL 4476746, at *6 (D.D.C. Sept. 30, 2021) (holding that FBI properly withheld "'Internal Secure File Path and E-mail Web Addresses'" because disclosure "'could jeopardize its own secure technological infrastructure'" (quoting agency declaration)); Prechtel v. FCC, 330 F. Supp. 3d 320, 335 (D.D.C. 2018) (protecting agency's electronic server logs because disclosure "would reveal sensitive information regarding [its] IT architecture, including security measures [it] takes to protect its systems from malicious activity" and would provide a "'"roadmap"'" to circumvent agency's defensive efforts (quoting agency declaration)); Poitras v. DHS, 303 F. Supp. 3d 136, 159 (D.D.C. 2018) (withholding "'protected internal e-mail addresses, non-public intranet web addresses, and a secure internal e-mail tool'" because disclosure would increase risk of unauthorized access to agency's information technology system (quoting agency declaration)); Levinthal v. FEC, 219 F. Supp. 3d 1, 8-9 (D.D.C. 2016) (protecting study that assesses vulnerabilities in information technology system because possible security risk exists and disclosure could permit unlawful access to agency system).

[45] See, e.g., Dalal, 643 F. Supp. 3d at 74 (holding that FBI properly withheld "dates and types of investigations" because release "would 'allow individuals to know the types of activities that would trigger . . . a full investigation'" (quoting agency declaration)); Callimachi, 583 F. Supp. 3d at 92-93 (holding that FBI properly withheld dates and types of investigations because releasing these records would reveal "'the type of criminal behavior or intelligence that predicated the initiation of a particular type of investigation'" (quoting agency declarations)); Reps. Comm. for Freedom of the Press, 567 F. Supp. 3d at 130-31

(holding that agency properly withheld material concerning "'techniques and procedures related to the issuance or non-issuance of administrative summonses in specific investigations,'" including "'dates of investigations'" because "disclosure would give potential criminals some very specific information, including what behaviors trigger a full investigation and how [the agency] uses its summons authority to conduct investigations" (quoting agency declaration)); Gatson, 2017 WL 3783696, at *13 (protecting "records containing information about the types and dates of investigations conducted" by agency because release would reveal activities that "trigger a full investigation"); Skinner II, 806 F. Supp. 2d 105, 115-16 (D.D.C. 2011) (withholding "all-points bulletin" regarding ongoing criminal law enforcement operation); Council on Am.-Islamic Rels., Cal. v. FBI, 749 F. Supp. 2d 1104, 1123 (S.D. Cal. 2010) (finding that disclosure of bases for investigations, dates of initiation of investigations, and whether investigations are "preliminary" or "full field" would allow targets to avoid detection and circumvent law, and would impede FBI's investigative effectiveness); cf. Shapiro v. DOJ, 239 F. Supp. 3d 100, 111-16 (D.D.C. 2017) (protecting FOIA request search slips created within past twenty-five years for which agency had issued "no records" responses to underlying FOIA request because disclosure "would likely reflect important information about the 'scope of the FBI's [domestic terrorism] program in the United States, the scope and focus of its investigative efforts, and strategies it plans to pursue in preventing and disrupting domestic terrorist activity'" which could "create a risk of circumvention of the law" (quoting agency declaration)).

techniques,[46] suspect threat detection techniques,[47] techniques and procedures for investigating and policing detainees and inmates,[48] law enforcement checkpoints,[49]

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[46] See Pejouhesh v. USPS, No. 17-1684, 2022 WL 768470, at *4 (D.D.C. Mar. 14, 2022) (protecting plan for search warrant and arrest operations, even though techniques described therein "may not be novel or secret," because disclosure could help bad actors avoid being detected or arrested) (appeal pending); Skinner I, 744 F. Supp. 2d at 214-15 (protecting details of search and arrest warrant techniques where disclosure would allow investigatory subjects to identify circumstances under which search warrants are executed).

[47] See, e.g., Heartland All. Nat'l Immigrant Just. Ctr. v. DHS, 840 F.3d 419, 421 (7th Cir. 2016) (holding that "withholding of the name of a terrorist organization from an alien who is being questioned" is a law enforcement technique protectable under Exemption 7(E)); ACLU Found. v. DOJ, No. 19-00290, 2021 WL 4481784, at *4 (N.D. Cal. Sept. 30, 2021) (protecting "list of symbols ICE uses to identify specific terrorist groups on social media"); Elec. Privacy Info. Ctr. v. CBP, 248 F. Supp. 3d 12, 19 (D.D.C. 2017) (protecting details of internal agency system that allows agency to identify and apprehend individuals posing a security or law enforcement risk), aff'd per curiam, No. 17-5078, 2017 WL 4220339 (D.C. Cir. Aug. 1, 2017); ACLU of N.J. v. DOJ, No. 11-2553, 2012 WL 4660515, at *10 (D.N.J. Oct. 2, 2012) (protecting criteria for identification and evaluation of suspected terrorist groups because release of such information would allow targets to alter behavior to "avoid detection and to exploit gaps in FBI intelligence"), aff'd sub nom. ACLU of N.J. v. FBI, 733 F.3d 526 (3d Cir. 2013); Elec. Frontier Found. v. DOD, No. 09-05640, 2012 WL 4364532, at *10 (N.D. Cal. Sept. 24, 2012) (withholding search terms used to detect online threats to Secret Service protectees); ACLU of Wash. v. DOJ, No. 09-0642, 2012 U.S. Dist. LEXIS 137204, at *5-6 (W.D. Wash. Sept. 21, 2012) (protecting "events, behaviors, and objects" to be considered in detection of terrorist activity because even if some indicators are publicly known, disclosure of all such factors would allow wrongdoers to adjust behavior to avoid detection); Skinner II, 806 F. Supp. 2d at 115-16 (agreeing with agency's withholding of criminal profile describing habits and threat level of subject of investigation).

[48] See, e.g., Rosenberg v. DOD, 342 F. Supp. 3d 62, 94-95 (D.D.C. 2018) (protecting protocols addressing handling of detainees on hunger strikes because disclosure would render techniques and procedures ineffective); Pinson v. DOJ, 313 F. Supp. 3d 88, 117-18 (D.D.C. 2018) (protecting use of force techniques and procedures in federal prison because disclosure would allow circumvention and could reduce usefulness); cf. Stahl v. DOJ, No. 19-4142, 2021 WL 1163154, at *9 (E.D.N.Y. Mar. 26, 2021) (noting that "the prison setting often requires investigations and prosecutions" but holding that BOP did not properly withhold portion of video depicting involuntary medical treatment of hunger striking inmate because BOP insufficiently argued such medical treatment concerned investigations); Evans v. BOP, 951 F.3d 578, 587 (D.C. Cir. Mar. 10, 2020) (rejecting withholding of prison surveillance video in full because agency had not explained why it could not use techniques commonly used by average citizens to segregate video to remove 7(E) concerns).

[49] See Buzzfeed, Inc. v. DHS, No. 19-03062, 2023 WL 5133158, at *6 (D.D.C. Aug. 10, 2023) (finding that agency logically demonstrated "how the release of the location of Border Patrol stations, and thus knowledge of which Border Patrol stations are relatively overwhelmed, might create a risk of circumvention of the law"); Skinner II, 806 F. Supp. 2d at 115-16

selection criteria and fraud indicators associated with applications for employment or government benefits,[50] certain interview techniques,[51] and a list showing which select techniques and procedures were used by the FBI in a given case, along with the FBI's internal rating of the effectiveness of each of those techniques.[52]

(protecting information regarding actions to be taken by law enforcement personnel stationed at checkpoints if subjects of investigation are encountered); cf. Fams. for Freedom v. CBP, 797 F. Supp. 2d 375, 391 (S.D.N.Y. 2011) (allowing withholding of station-level, but not regional arrest data, for Customs border entry checkpoints despite simultaneously holding that such data does not constitute "techniques or procedures" or "guidelines").

[50] See, e.g., Morley v. CIA, 508 F.3d 1108, 1129 (D.C. Cir. 2007) (affirming CIA's invocation of Exemption 7(E) to prevent release of techniques and procedures pertaining to background investigations conducted to determine suitability for security clearances); Yadav v. USCIS, No. 22-00420, 2023 WL 5671621, at *10-11 (D. Md. Sept. 1, 2023) (holding that USCIS properly withheld "information that [it] may find useful to evaluate immigration fraud indicators); Cath. Legal Immigr. Network, Inc. v. USCIS, No. 19-1511, 2020 WL 5747183, at *13 (D. Md. Sept. 25, 2020) (approving withholding of document evaluating fraud in Special Immigration Juvenile cases "because release . . . would disclose how the Agency considers fraud indicators, creating a risk of circumvention of the law"); Sheridan v. OPM, 278 F. Supp. 3d 11, 23 (D.D.C. 2017) (finding that OPM demonstrated that records concerning security clearance process "could reasonably be expected to risk circumvention of the law based on the logical possibility that applicants for federal jobs might glean information about how background investigation forms are processed and use that information to pass their background checks undeservedly"); Techserve All. v. Napolitano, 803 F. Supp. 2d 16, 29 (D.D.C. 2011) (allowing withholding of "selection criteria, fraud indicators, and investigative process . . . use[d] in fraud investigations during the H-1B visa process").

[51] See Frank LLP v. Consumer Fin. Prot. Bureau, 480 F. Supp. 3d 87, 103-04 (D.D.C. 2020) (holding that application of Exemption 7(E) to withhold interview techniques was proper because "the *specific* interview methods used to investigate Consumer Financial Protection Act and Fair Debt Collection Practices Act violations are confidential" and not generally known by the public).

[52] See, e.g., Frankenberry v. FBI, 567 F. App'x 120, 124-25 (3d Cir. 2014) (affirming protection of portions of FBI FD-515 form used to rate effectiveness of investigative techniques); Dalal v. DOJ, 643 F. Supp. 3d 33, 74 (D.D.C. 2022) (holding that FBI properly withheld "'[s]tatistical information contained in effectiveness rating FD-515'" (quoting agency declaration)); Kowal v. DOJ, No. 18-2798, 2021 WL 4476746, at *6 (D.D.C. Sept. 30, 2021) (protecting portions of FBI FD-515 form containing "rating scale assessing the effectiveness of" surveillance techniques used in specific investigation and "information about law enforcement partnerships used to carry out the techniques" because it "could alert potential criminals to the techniques that the FBI finds useful in a certain type or stage of investigation"); Skinner I, 744 F. Supp. 2d 185, 214-15 (D.D.C. 2010) (noting that release of such information could allow criminal targets to change their modus operandi to avoid detection).

Although courts have rejected agency declarations that are too conclusory,[53] which merely recite the statutory standard,[54] or which otherwise fail to demonstrate that the

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[53] See, e.g., Huddleston v. FBI, No. 20-00447, 2023 WL 8235243, at *8 (E.D. Tex. Nov. 28, 2023) (finding that FBI's justification for withholding procedures and techniques used in specific investigation was "vague and convey[ed] minimal concrete information" as it did not explain which procedures were implicated or how release would disclose them); N.Y. Times Co. v. FBI, No. 22-3590, 2023 WL 5098071, at *5 (S.D.N.Y. Aug. 9, 2023) (finding that FBI did not sufficiently justify its withholding of Behavioral Analysis Unit's techniques and procedures in report on "Havana Syndrome" because some techniques were made public and some were described in "a vague and conclusory manner"); Dalal, 643 F. Supp. 3d at 74 (finding that agency did not adequately explain how information provided by grantees for security funding conveys techniques and procedures, despite showing how release might cause harm); Ecological Rts. Found. v. EPA, No. 19-980, 2021 WL 535725, at *30 (D.D.C. Feb. 13, 2021) (criticizing agency's declaration for failing to include any "specification of the law enforcement ends to which the records relate or indeed, any evidence that the records were even used by or made available to law enforcement"); Elec. Frontier Found. v. DOJ, No. 17-03263, 2019 WL 2098084, at *2 (N.D. Cal. May 14, 2019) (finding government's argument that aggregate disclosure of termination letters issued to private companies would reveal a law enforcement trend to be "dubious" and not protected under Exemption 7(E)); ACLU v. DHS, 243 F. Supp. 3d 393, 403 (S.D.N.Y. 2017) (holding that agency did not meet its burden to provide more than "'generic assertions'" and "'boilerplate'" justifications (quoting ACLU v. Off. of the Dir. of Nat'l Intel., No. 10-4419, 2011 WL 5563520, at *11 (S.D.N.Y. Nov. 15, 2011))); Raher v. BOP, No. 09-526, 2011 WL 2014875, at *9 (D. Or. May 24, 2011) (granting summary judgment to requester because agency's declarant failed to explain why responsive records met standard for withholding under Exemption 7(E)); Clemente v. FBI, 741 F. Supp. 2d 64, 88 (D.D.C. 2010) (noting that declarant cannot merely rely upon "vaguely worded categorical description" of withheld law enforcement techniques, but "must provide evidence . . . of the nature of the techniques in question"); Allard K. Lowenstein Int'l Hum. Rts. Project v. DHS, 603 F. Supp. 2d 354, 360 (D. Conn. 2009) (criticizing portions of agency's declaration describing "ongoing law enforcement techniques" as "vague" and "of little, or no, use"; agency "must understand that affidavits and indices must be 'relatively detailed' and nonconclusory to serve their intended purpose") (internal citation omitted), aff'd, 626 F.3d 678 (2d Cir. 2010); Jud. Watch, Inc. v. U.S. Secret Serv., 579 F. Supp. 2d 182, 187-88 (D.D.C. 2008) (finding that agency's general claims did not sufficiently demonstrate that records pertaining to visitor names, dates of visits, and persons visited would reveal investigation procedures); Feshbach v. SEC, 5 F. Supp. 2d 774, 786-87, 786 n.11 (N.D. Cal. 1997) (finding agency's reasons for withholding computer printouts from internal database to be conclusory and insufficient); see also Jett v. FBI, 139 F. Supp. 3d 352, 363-64 (D.D.C. 2015) (concluding after in camera review that agency properly withheld investigative strategies despite inadequacy of agency's declaration); El Badrawi v. DHS, 583 F. Supp. 2d 285, 313-16, 319-20 (D. Conn. 2008) (ordering in camera review for all Exemption 7(E) claims made by defendants due to deficiencies in declarations), subsequent opinion, 596 F. Supp. 2d 389, 397-99 (D. Conn. 2009) (following in camera review, ordering partial releases of portions of records previously withheld under Exemption 7(E), approving withholdings of other portions, but simultaneously ordering supplemental Vaughn Indices for those portions properly withheld to correct deficiencies noted in previous opinion).

release of records would cause the claimed harms,[55] courts have permitted agencies to describe secret law enforcement techniques in only general terms, where necessary, while

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[54] See, e.g., Citizens for Resp. & Ethics in Wash. v. DOJ, 746 F.3d 1082, 1102 (D.C. Cir. 2014) (finding agency's "near-verbatim recitation of the statutory standard" inadequate); Neese v. DOJ, No. 19-01098, 2022 WL 898827, at *11-12 (D.D.C. Mar. 28, 2022) (denying summary judgment where FBI "merely regurgitate[d] the statutory test"); Advancement Project v. DHS, 549 F. Supp. 3d 128, 145-46 (D.D.C. 2021) (finding that ICE did not justify its withholding of "information about 'ongoing and proposed operations and investigations' and ICE detention facilities" because it merely recited statutory standard) (quoting agency declaration)); El Badrawi, 583 F. Supp. 2d at 313 (finding agencies' "Vaughn indices merely restate statutory language and case law, and lack the specificity necessary" for de novo review).

[55] See, e.g., Evans v. BOP, 951 F.3d 578, 586-88 (D.C. Cir. Mar. 10, 2020) (finding agency's affidavit in support of withholding portions of surveillance footage to be "vague" and failing to provide sufficient specificity to trigger 7(E) protection); 100Reporters v. U.S. Dep't of State, 602 F. Supp. 3d 41, 82 (D.D.C. 2022) (determining that agency did not provide enough detail for court to determine that portions of guide concerning vetting of foreign security personnel were properly withheld pursuant to Exemption 7(E) where it did not explain how redacted portions could risk circumvention); Woodward v. USMS, No. 18-1249, 2022 WL 296171, at *12 (D.D.C. Feb. 1, 2022) (holding that agency improperly withheld "the fact that the USMS sought and obtained court orders for certain cell phone records" because disclosure "would not in any way 'reduce or nullify' the effectiveness of obtaining such information by court order given that the availability of that technique is already well-known" (quoting Reps. Comm. for Freedom of the Press v. FBI, 369 F. Supp. 3d 212, 222 (D.C. Cir. 2012))); Prop. of the People, Inc. v. DOJ, 539 F. Supp. 3d 16, 28 (D.D.C. 2021) (noting that agency's "explanation here fails to demonstrate 'that release of [these] document[s] might increase the risk "that a law will be violated or that past violators will escape legal consequences"'" and finding nothing in surveillance logs from over twenty years ago that "bad actors could make use of" (quoting Pub. Emps. For Env't Resp. v. U.S. Section, Int'l Boundary & Water Comm'n, U.S.-Mex., 740 F.3d 195, 205 (D.C. Cir. 2014))); Ecological Rts. Found., 2021 WL 535725, at *30-31 (noting agency failed to identify a law enforcement technique, procedure, or guideline connected to the redacted information or "any way in which disclosure of this information would create or enhance a risk of violation of the law"); Pinson v. DOJ, 313 F. Supp. 3d 88, 118-19 (D.D.C. 2018) (rejecting agency's withholding of records related to statute-based programming assignment used to manage inmates because agency did not demonstrate that information was not publicly known or show how risk of circumvention of law would occur); Higgs v. U.S. Park Police, No. 16-96, 2018 WL 3109600, at *14-15 (S.D. Ind. June 25, 2018) (rejecting application of Exemption 7(E) to twenty-year old National Crime Information Center reports because agency declaration "fails to acknowledge the passage of time . . . and . . . the possibility that such techniques are sufficiently out of date so as to negate the possible risk of criminals gaining access thereto"); ACLU of Ariz. v. DHS Sec. Off. for C.R. & C.L., No. 15-00247, 2017 WL 3478658, at *14 (D. Ariz. Aug. 14, 2017) (unpublished disposition) (rejecting withholding of codes, web addresses, and case numbers because it is implausible that disclosure "could allow easy navigation of internal law enforcement computer systems" and "case numbers are not information connected to law enforcement databases"); Long v. ICE, 149 F. Supp. 3d 39, 53 (D.D.C. 2015) (finding that agency did not demonstrate that disclosure of law enforcement

withholding the full details.[56] Courts have also recognized that sometimes it is not possible to describe secret law enforcement techniques even in general terms without disclosing the very information sought to be withheld.[57] A court's in camera review of the documents at issue may be required to demonstrate the propriety of nondisclosure in such cases.[58]

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metadata and database schema would increase risk of claimed harm of cyber-attack or data breach because no external entry point to databases exists); Fams. for Freedom v. CBP, 797 F. Supp. 2d 375, 391-94 (S.D.N.Y. 2011) (rejecting agency's withholding of border arrest statistics; finding they were not sufficiently detailed to enable wrongdoers to circumvent border security measures; also rejecting withholding of "charge codes" keyed to legal reason that individual was arrested for violation of immigration laws because such codes were already publicly available and could not cause harm).

[56] See, e.g., Knight First Amend. Inst. at Columbia Univ. v. USCIS, 30 F.4th 318, 330 (2d Cir. 2022) (finding that "it would not be reasonable to expect [agency] to provide more specific descriptions . . . [as] doing so would effectively require disclosure of the isolated material [agency] chose to redact"); Truthout v. DOJ, 667 F. App'x 637, 637-38 (9th Cir. 2016) (concluding that further description in agency declaration would force agency to reveal withheld information); Hamdan v. DOJ, 797 F.3d 759, 778 (9th Cir. 2015) (concluding that "further detail would compromise the very techniques the government is trying to keep secret"); Bowen v. FDA, 925 F.2d 1225, 1229 (9th Cir. 1991) (ruling that release of specifics of cyanide-tracing techniques would present serious threat to future product-tampering investigations); Brown v. FBI, 873 F. Supp. 2d 388, 407 (D.D.C. 2012) (endorsing practice of submitting documents for in camera review where even general description of records would reveal secret law enforcement techniques or procedures); Jud. Watch, Inc. v. Dep't of State, 650 F. Supp. 2d 28, 34 n.6 (D.D.C. 2009) (allowing agency to describe techniques and procedures in general terms where greater specificity would allow investigatory targets to thwart investigation); cf. Prop. of the People, Inc. v. DOJ, No. 17-1193, 2021 WL 3052033, at *2-3 (D.D.C. July 20, 2021) (stating that "file-by-file" approach to withholding is not permitted and rejecting FBI's justification that records were withholdable "solely because they are within an informant file" and that providing "any more specific information about them could compromise the FBI's confidential-informant program").

[57] See Boyd v. ATF, No. 05-1096, 2006 WL 2844912, at *9 (D.D.C. Sept. 29, 2006) (stating that "[i]n some cases, it is not possible to describe secret law enforcement techniques without disclosing the very information withheld"); McQueen v. United States, 264 F. Supp. 2d 502, 521 (S.D. Tex. 2003) (finding that requested documents detail how agent detected tax evaders and that "these details, by themselves, would reveal law enforcement techniques and procedures" and thus were properly withheld).

[58] See, e.g., Jones v. FBI, 41 F.3d 238, 249 (6th Cir. 1994) (concluding upon in camera review that investigative techniques were properly withheld); Sussman v. DOJ, No. 03-3618, 2008 WL 2946006, at *10 (E.D.N.Y. July 29, 2008) (ordering in camera review where agency asserted that revealing name of investigative technique would allow circumvention of investigative efforts); cf. Reps. Comm. for Freedom of the Press v. FBI, 548 F. Supp. 3d 185, 198 (D.D.C. 2021) (recognizing need for ex parte in camera review of agency affidavits

Guidelines

The second clause of Exemption 7(E) protects "guidelines for law enforcement investigations or prosecutions if [their] disclosure could reasonably be expected to risk circumvention of the law."[59]

The Court of Appeals for the Second Circuit has distinguished between "guidelines" in the second clause of Exemption 7(E) and "techniques and procedures" in the first clause, by noting that "guidelines" refer to the means by which agencies allocate resources for law enforcement investigations (whether to investigate) while "techniques and procedures" refer to the means by which agencies conduct investigations (how to investigate).[60]

As to "circumvention of the law," the Court of Appeals for the District of Columbia Circuit has stated that this phrase means that "a law will be violated or that past violators will escape legal consequences."[61]

The D.C. Circuit has further held that the government need not prove that circumvention of the law is a necessary result of disclosure, but instead determined that Exemption 7(E)'s circumvention clause is satisfied if disclosure could "risk" a circumvention harm.[62] The D.C. Circuit held that the agency need not show that there is a certainty that a risk is present; it is enough if there is an "expectation" of a risk of circumvention.[63] Even the expectation of risk need not be certain, the court held, as the

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describing uses of filmmaker impersonation techniques where "a detailed description of the withheld documents would risk disclosing information the agency seeks to protect").

[59] 5 U.S.C. § 552(b)(7)(E) (2018); see Mayer Brown LLP v. IRS, 562 F.3d 1190, 1192-93 (D.C. Cir. 2009) (discussing meaning of phrase "could reasonably be expected to risk circumvention of the law" found in second clause of Exemption 7(E)).

[60] See Allard K. Lowenstein Int'l Hum. Rts. Project v. DHS, 626 F.3d 678, 682 (2d Cir. 2010) (noting as example that if tax investigators are told only to bring charges against those who evade more than a certain enumerated dollar amount in taxes, such guidance constitutes guidelines, while if investigators are given instructions on manner in which to investigate those suspected of tax evasion, such details constitute techniques and procedures); see also Fams. for Freedom v. CBP, 837 F. Supp. 2d 287, 296-97 (S.D.N.Y. 2011) (relying on definition set forth in Allard to state that techniques and procedures constitute how, where, and when law enforcement methods are carried out, while policy and budgetary decisions about law enforcement staffing patterns arguably constitute "guidelines" under Exemption 7(E)).

[61] Mayer Brown, 562 F.3d at 1193.

[62] Id. at 1192-93.

[63] Id.

statute merely requires that the risk "could reasonably" be expected.[64] The D.C. Circuit opined that this standard "is written in broad and general terms" to ensure the necessary deterrence of those who would otherwise attempt to evade the law.[65]

Courts have found protection for various types of law enforcement guidelines "that pertain[] to the prosecution or investigative stage of a law enforcement matter,"[66] including law enforcement manuals,[67] policy guidance documents,[68] settlement

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[64] Id.; see also Blackwell v. FBI, 646 F.3d 37, 42 (D.C. Cir. 2011) (same) (quoting Mayer Brown, 646 F.3d at 1193); McRae v. DOJ, 869 F. Supp. 2d 151, 169 (D.D.C. 2012) (same).

[65] Mayer Brown, 562 F.3d at 1192-93; see also Strunk v. Dep't of State, 845 F. Supp. 2d 38, 47 (D.D.C. 2012) (observing that Mayer Brown set forth a "low standard" for withholding records pursuant to Exemption 7(E)).

[66] Jud. Watch, Inc. v. FBI, No. 00-745, 2001 WL 35612541, at *9 (D.D.C. Apr. 20, 2001).

[67] See, e.g., PHE, Inc. v. DOJ, 983 F.2d 248, 251 (D.C. Cir. 1993) (approving withholding of portion of FBI manual containing investigation guidance); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. ICE, 571 F. Supp. 3d 237, 248-49 (S.D.N.Y. 2021) (protecting portions of National Security Investigations Handbook describing where evidence from electronic devices will be sent because bad actors could use such information to "counter operational or investigative actions to thwart investigations and compromise potential evidence"); Gatson v. FBI, No. 15-5068, 2017 WL 3783696, at *12, *14 (D.N.J. Aug. 31, 2017) (protecting "operational directives concerning sensitive investigative techniques and strategies"), summary affirmance granted, 779 F. App'x 112 (3d Cir. 2019) (unpublished table decision); Peter S. Herrick's Customs & Int'l Trade Newsl. v. CBP, No. 04-00377, 2006 WL 1826185, at *7 (D.D.C. June 30, 2006) (protecting many portions of manual pertaining to seized property, including details of "the transport, seizure, storage, testing, physical security, evaluation, maintenance, and cataloguing of, as well as access to, seized property"); Guerrero v. DEA, No. 93-2006, slip op. at 14-15 (D. Ariz. Feb. 22, 1996) (approving nondisclosure of portions of Special Agents Manual); Church of Scientology Int'l v. IRS, 845 F. Supp. 714, 723 (C.D. Cal. 1993) (concluding that parts of agency Law Enforcement Manual concerning "procedures for handling applications for tax exemption and examinations of Scientology entities" and memorandum regarding application of such procedures were properly withheld); cf. ACLU of Mich. v. FBI, No. 11-13154, 2012 WL 4513626, at *11 (E.D. Mich. Sept. 30, 2012) (protecting hypotheticals used to train investigators to recognize circumstances that would trigger an investigation, circumstances under and extent to which informants are allowed to participate in activities of third parties, and approval limitations on use of certain technique or procedure by law enforcement personnel).

[68] See, e.g., Reps. Comm. for Freedom of the Press v. FBI, 548 F. Supp. 3d 185, 205-06 (D.D.C. 2021) (holding that FBI properly withheld portions of its filmmaker impersonation policy because disclosure "could enable wrongdoers 'to discern the FBI's use of undercover operations'" and thus could lead to circumvention (quoting agency declaration)); Vento v. IRS, No. 08-159, 2010 WL 1375279, at *8 (D.V.I. Mar. 31, 2010) (endorsing protection of DOJ policy memorandum to IRS employees regarding when and how they should process

guidelines,[69] staffing of protective security details,[70] and emergency plans,[71] as well as other types of law enforcement guidelines.[72] One court has upheld protection for

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certain law enforcement summons); Asian L. Caucus v. DHS, No. 08-00842, 2008 WL 5047839, at *5 (N.D. Cal. Nov. 24, 2008) (protecting interim policy guidance for border searches and examinations even where guidance was superseded by later version because "the newer version of the policy does not render the [earlier] policy valueless").

[69] See Mayer Brown, 562 F.3d at 1196 (holding that settlement guidelines in case that involved fraudulent tax schemes "fall squarely within" language of Exemption 7(E)'s second clause).

[70] See Surgey v. EPA, No. 18-654, 2021 WL 5758880, at *8 (D.D.C. Dec. 3, 2021) (determining that agency properly withheld information concerning security staffing because "staffing-related information would allow the public to 'know the number of [Protective Service Detail] agents traveling with the Administrator during specific trips'" and such information could lead to circumvention (quoting agency declaration)); N.Y. Times Co. v. U.S. Secret Serv., No. 17-1885, 2018 WL 722420, at *8 (S.D.N.Y. Feb. 5, 2018) (finding that "the number of Secret Service personnel that flew with the 2016 presidential candidates on campaign flights . . . 'would clearly show the manpower present to conduct direct protection in such situations'" (quoting agency declaration)).

[71] See Pub. Emps. for Env't Resp. v. U.S. Sec. Int'l Boundary & Water Comm'n, U.S-Mex., 740 F.3d 195, 205 (D.C. Cir. 2014) (upholding invocation of Exemption 7(E) as to emergency action plans for two dams); Ctr. for Nat'l Sec. Studies v. INS, No. 87-2068, 1990 WL 236133, at *5-6 (D.D.C. Dec. 19, 1990) (recognizing that release of INS plans to be deployed in event of attack on U.S. could assist terrorists in circumventing border).

[72] See, e.g., Jordan v. DOJ, 668 F.3d 1188, 1201 (10th Cir. 2011) (protecting guidelines to staff for handling dangerous inmate because public release of guidelines could allow inmate to circumvent such guidelines); Advancement Project v. DHS, No. 19-52, 2022 WL 4094061, at *10 (D.D.C. Sept. 7, 2022) (protecting "'specific guidance to consular offices concerning the internal processing and adjudication of visa applications'" because release would permit "'applicants seeking to fraudulently obtain U.S. visas to tailor their applications in a manner that enhances their chances of success'" (quoting agency Vaughn Index)); Asian Ams. Advancing Just. - Asian L. Caucus v. DHS, No. 21-02833, 2022 WL 3579886, at *4 (N.D. Cal. Aug. 19, 2022) (protecting portions of memorandum of understanding between U.S. and Vietnam concerning repatriation conditions and factors because non-citizens could use that information to avoid removal); Rosenberg v. DOD, 342 F. Supp. 3d 62, 94-95 (D.D.C. 2018) (protecting protocols addressing handling of detainees on hunger strikes because disclosure would render guidelines ineffective); Iraqi Refugee Assistance Project v. DHS, No. 12-3461, 2017 WL 1155898, at *7 (S.D.N.Y. Mar. 27, 2017) (approving use of Exemption 7(E) to withhold enforcement guidelines related to refugee applications because public disclosure "could help applicants evade investigator techniques and thus circumvent the law"); Sussman v. USMS, No. 03-610, 2005 WL 3213912, at *9 (D.D.C. Oct. 13, 2005) (protecting "guidelines and procedures utilized in investigation [of] threats against federal court employees," because release "could create a risk of circumvention of the law"), aff'd in pertinent part, vacated in part & remanded in part on other grounds, 494 F.3d 1106 (D.C. Cir. 2007).

computer codes, not because the codes themselves constituted law enforcement guidelines, but because wrongdoers could use such codes to illegally gain access to sensitive law enforcement databases that contain protectable law enforcement guidelines.[73] Courts have denied protection, however, when the agency has failed to demonstrate that circumvention of the law would occur[74] or where the information at issue was not related to law enforcement investigations or prosecutions. [75]

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[73] See Strunk v. U.S. Dep't of State, 905 F. Supp. 2d 142, 147-49 (D.D.C. 2012) (agreeing that TECS database codes should be withheld to prevent unauthorized access to databases used by CBP, which contain information such as guidelines followed by Customs officials to target and inspect suspicious international travelers).

[74] See, e.g., ACLU of N. Cal. v. DOJ, 880 F.3d 473, 492 (9th Cir. 2018) (finding that portions of law enforcement manual containing instructions on use of electronic surveillance in criminal investigations and prosecutions "provides no relevant information that would assist criminals in" circumventing the law); Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. ICE, 571 F. Supp. 3d 237, 249-50 (S.D.N.Y. 2021) (concluding that ICE did not properly withhold certain sections of agent handbook because those sections "are at such a high level of generality that the Court finds it most highly unlikely that disclosing this information could pose any particular risk that bad actors could thwart investigations"); ACLU Found. v. DOJ, No. 19-00290, 2021 WL 4481784, at *4 (N.D. Cal. Sept. 30, 2021) (ordering release of "Policy on Operational Use of Social Media" because withheld portions merely reflect "procedures for obtaining authorization to use masked monitoring and undercover engagement" which would not risk circumvention of the law); Tushnet v. ICE, 246 F. Supp. 3d 422, 437 (D.D.C. 2017) (ordering review of withholdings of guides for identifying counterfeit trademarked goods because application of Exemption 7(E) is "inappropriate if there is no risk that a law could be violated . . . and successful parodies do not violate trademark laws"); Long v. ICE, 149 F. Supp. 3d 39, 53 (D.D.C. 2015) (finding that agency did not demonstrate disclosure of law enforcement metadata and database schema would increase risk of claimed harm of cyber-attack or data breach because no external entry point to databases exists); Fams. for Freedom v. CBP, 837 F. Supp. 2d 287, 296-97 (S.D.N.Y. 2011) (ordering release of portions of Amtrak meeting minutes, past Border Patrol staffing patterns, and transit node definitions because such records are not "techniques and procedures," and to extent such records constitute "guidelines" their release would not risk legal circumvention); ACLU of Wash. v. DOJ, No. 09-0642, 2011 WL 887731, at *7-9 (W.D. Wash. Mar. 10, 2011) (denying protection for variety of watch list related material including watch listing procedures, criteria for watch list inclusion, location of database information, procedures to prevent individuals from discovery of watch list status, watch list field codes, and guidelines for handling individuals determined to be on watch list, noting that much of this information was already public and agency failed to adequately explain harm from releasing remainder of withheld information), reconsideration granted in part on other grounds, 2011 WL 1900140 (W.D. Wash. May 19, 2011); Unidad Latina En Accion v. DHS, 253 F.R.D. 44, 59 (D. Conn. 2008) (ordering disclosure of queries contained in agency emails, finding that disclosure would not risk circumvention of law).

[75] See Peter S. Herrick's Customs & Int'l Trade Newsl. v. CBP, No. 04-00377, 2006 WL 1826185, at *8 (D.D.C. June 30, 2006) (holding that portion of agency manual pertaining to destruction of seized property is not related to law enforcement investigation and instead

Similarly, courts have disapproved agency declarations under Exemption 7(E)'s second clause when they provide conclusory or otherwise insufficient justifications for the withholdings.[76] Additionally, courts have found it necessary at times to conduct in camera review of the withheld documents to establish the appropriateness of the agency's withholding under the second clause of Exemption 7(E).[77]

Homeland Security Records and Exemption 7(E)

Courts have regularly applied Exemption 7(E) to protect information relating to homeland security under both prongs of Exemption 7(E), including:

"relate[s] only to the conservation of the agency's physical and monetary resources"); Cowsen-El v. DOJ, 826 F. Supp. 532, 533-34 (D.D.C. 1992) (finding agency's program statement to be internal policy document wholly unrelated to investigations or prosecutions).

[76] See, e.g., PHE, Inc. v. DOJ, 983 F.2d 248, 252 (D.C. Cir. 1993) (describing agency's affidavit as "too vague and conclusory to support summary judgment"; agency's submission should have included "more precise descriptions of the nature of the redacted material" from agency's enforcement manual); Surgey v. EPA, No. 18-654, 2021 WL 5758880, at *9 (D.D.C. Dec. 3, 2021) (finding that agency did not sufficiently describe whether withheld records concerned "logistical coordination information," which would risk circumvention of the law, or merely reflected "where the Protective Service Detail went or stayed during" Administrator's family trip, which would not risk circumvention); Hussain v. DHS, 674 F. Supp. 2d 260, 271 (D.D.C. 2009) (explaining that withholdings cannot be upheld under Exemption 7(E) where agency's Vaughn index merely recites statutory language and fails to explain harm from release); Feshbach v. SEC, 5 F. Supp. 2d 774, 786-87, 786 n.11 (N.D. Cal. 1997) (finding agency's reasons for withholding checklists and selection criteria used "to determine what type of review to give . . . documents filed with the [agency]" conclusory and insufficient).

[77] See, e.g., PHE, 983 F.2d at 252 (stating that "in camera review is appropriate when agency affidavits are not sufficiently detailed to permit meaningful assessment of the exemption claims"); Iraqi Refugee Assistance Project, 2017 WL 1155898, at *3 (finding that while agency's Vaughn index provides accurate and good-faith descriptions of the redacted material, "it discusses them in broad terms, as is warranted given the potentially sensitive nature of some underlying subject matter," and that "[a]bsent in camera review, the Court would be unable to make adequate findings as to the . . . claimed FOIA exemptions and whether the discussions contain segregable factual content"); Mayer, Brown, Rowe & Maw LLP v. IRS, No. 04-2187, 2006 U.S. Dist. LEXIS 58410, at *26 (D.D.C. Aug. 21, 2006) (directing agency to submit "a representative sample of the [withheld] records for in camera review" because agency's declaration did not have sufficient detail to permit ruling on applicability of Exemption 7(E)), subsequent opinion, No. 04-2187, 2006 U.S. Dist. LEXIS 85633, at *2-3 (D.D.C. Oct. 24, 2006) (concluding after in camera review that Exemption 7(E) was properly applied).

(1) guidelines for response to terrorist attacks;[78]

(2) records pertaining to terrorism "watch lists";[79]

(3) terrorist "trend" information that would reveal travel plans by regional area;[80]

(4) records confirming whether an individual is the subject of a national security letter;[81]

(5) inspection and arrest statistics or data of border entry points;[82]

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[78] See Bigwood v. DOD, 132 F. Supp. 3d 124, 153 (D.D.C. 2015) (adopting magistrate's recommendation) (holding that Exemption 7(E) applies to records containing measures "to be taken in response to terrorist threats to military facilities"); Ctr. for Nat'l Sec. Studies v. INS, No. 87-2068, 1990 WL 236133, at *5-6 (D.D.C. Dec. 19, 1990) (according Exemption 7(E) protection to final contingency plan in event of attack on United States, to guidelines for response to terrorist attacks, and to contingency plans for immigration emergencies).

[79] See, e.g., Kalu v. IRS, 159 F. Supp. 3d 16, 23 (D.D.C. 2016) (holding that agency may refuse to confirm or deny an individual's placement on its watch lists because doing so would "'circumvent the purpose of the watch lists'" (quoting Gordon v. FBI, 388 F. Supp. 2d 1028, 1037 (N.D. Cal. 2005))); El Badrawi v. DHS, 596 F. Supp. 2d 389, 396 (D. Conn. 2009) (agreeing that confirming or denying individual's presence in FBI's Violent Gang and Terrorist Organization file database "would cause the very harm FOIA Exemption[] . . . 7(E) [is] designed to prevent"); Asian L. Caucus v. DHS, No. 08-00842, 2008 WL 5047839, at *4 (N.D. Cal. Nov. 24, 2008) (withholding detailed information regarding watch lists, and noting that "[k]nowing about the general existence of government watchlists does not make further detailed information about the watchlists routine and generally known"); Gordon, 388 F. Supp. 2d at 1035-36 (protecting details of agency's aviation "watch list" program – including records detailing "selection criteria" for lists and handling and dissemination of lists, and "addressing perceived problems in security measures").

[80] See ACLU of Wash. v. DOJ, No. 09-0642, 2011 WL 887731, at *9 (W.D. Wash. Mar. 10, 2011) (crediting agency's explanation that disclosure of terrorist travel plans by geographic area could tip off terrorists about government's knowledge of their travel plans, allowing terrorists to take countermeasures against investigators).

[81] See Catledge v. Mueller, 323 F. App'x 464, 467 (7th Cir. 2009) (affirming agency's refusal to confirm or deny whether plaintiff was "a subject of the [national security] letters" because it "would reveal the circumstances under which the FBI has used this technique").

[82] See Buzzfeed, Inc. v. DHS, No. 19-03062, 2023 WL 5133158, at *6 (D.D.C. Aug. 10, 2023) (holding that DHS properly withheld locations of "Border Patrol stations associated with apprehensions" because disclosure would reveal overlaps or gaps in coverage between stations as well as "which Border Patrol stations are relatively overwhelmed"); Am. Immigr. Council v. ICE, 464 F. Supp. 3d 228, 244-45 (D.D.C. 2020) (approving withholding of specific data concerning locations of border arrests and encounters because disclosure would "provide the public with information on staffing strengths and weaknesses of individual ports of entry"); Fams. for Freedom v. CBP, 797 F. Supp. 2d 375, 391 (S.D.N.Y.

(6) analyses of security procedures;[83]

(7) records pertaining to domestic terrorism investigations;[84]

(8) financial crimes research analysis;[85] and

(9) U.S. Customs Service traveler examination criteria and techniques.[86]

2011) (allowing withholding of station-level, but not regional arrest data, for Customs border entry checkpoints because station-level data could tell wrongdoers about relative activity levels and arrest success rates between stations); Coastal Delivery Corp. v. U.S. Customs Serv., 272 F. Supp. 2d 958, 963-66 (C.D. Cal. 2003) (protecting number of examinations at particular seaport because information could be used in conjunction with other publicly available information to discern rates of inspection at that port, thereby allowing for identification of "vulnerable ports" and target selection).

[83] See, e.g., N.Y. Times Co. v. DOD, No. 19-5779, 2021 WL 3774410, at *6 (S.D.N.Y. Aug. 25, 2021) (concluding that agency properly withheld "'certain aspects of the physical security of the detention camps at Guantanamo Bay and certain information security processes at JTF-GTMO'" because release would allow for "'circumvention of physical security measures at Guantanamo and consequentially result in the disclosure of classified information related to detention operations in a manner that would harm national security'" (quoting agency declaration)); Voinche v. FBI, 940 F. Supp. 323, 329, 332 (D.D.C. 1996) (approving nondisclosure of information "relating to the security of the Supreme Court building and the security procedures for Supreme Court Justices" on basis of both former version of Exemption 2 and Exemption 7(E)), aff'd per curiam, Nos. 95-5304, 95-01944, 1997 WL 411685 (D.C. Cir. June 19, 1997); cf. U.S. News & World Rep. v. Dep't of the Treasury, No. 84-2303, 1986 U.S. Dist. LEXIS 27634, at *8 (D.D.C. Mar. 26, 1986) (upholding protection of Secret Service's contract specifications for President's armored limousine).

[84] See Allard K. Lowenstein Int'l Hum. Rts. Project v. DHS, 603 F. Supp. 2d 354, 364 (D. Conn. 2009) (holding that "specific reference to the database [associated with effort to disrupt potential terrorist activities] used as a lookout was properly withheld under Exemption 7(E) since this information was compiled for law enforcement purposes, and if disclosed, could reasonably be expected to risk circumvention of the law"); ACLU v. FBI, 429 F. Supp. 2d 179, 194 (D.D.C. 2006) (holding that agency properly withheld certain records, release of which "could allow individuals 'to develop countermeasures' that could defeat the effectiveness of the agency's domestic terrorism investigations" (quoting agency declaration)).

[85] See Boyd v. DEA, No. 01-0524, 2002 U.S. Dist. LEXIS 27853, at *11-13 (D.D.C. Mar. 8, 2002) (upholding protection under both clauses of Exemption 7(E) for highly sensitive research analysis contained in intelligence report).

[86] See Fams. for Freedom v. CBP, 837 F. Supp. 2d 287, 296-97 (S.D.N.Y. 2011) (protecting operational details of train passenger inspections by Customs agents); Barnard v. DHS, 598 F. Supp. 2d 1, 22 (D.D.C. 2009) (protecting "examination and inspection procedures," including instructions for processing international travelers); Asian L. Caucus v. DHS, No.

08-00842, 2008 WL 5047839, at *5 (N.D. Cal. Nov. 24, 2008) (withholding specific topics for questioning travelers attempting to enter United States); Hammes v. U.S. Customs Serv., No. 94-4868, 1994 WL 693717, at *1 (S.D.N.Y. Dec. 9, 1994) (protecting Customs Service criteria used to determine which passengers to stop and examine).