

George W. Bush Presidential Library

Collection: Counsel's Office, White House

Series: Kavanaugh, Brett – Subject Files

Folder Title: Stem Cell

Withdrawn/Redacted Material

The George W. Bush Library

| DOCUMENT NO. | FORM | SUBJECT/TITLE | PAGES | DATE | RESTRICTION(S) |
|--------------|-----------------|---|-------|------------|----------------|
| 001 | Memorandum | Federal Funding of Human Cloning [draft] | 1 | 03/28/2001 | P5; |
| 002 | Report | Analysis... | 9 | N.D. | P5; |
| 003 | Report | Federal Funding of Human Cloning [draft] | 1 | 03/28/2001 | P5; |
| 004 | Statement | President William J. Clinton Remarks on Human Cloning [draft] [with attachment] | 3 | 03/03/1997 | P5; |
| 005 | Fax Cover Sheet | [Fax Cover Sheet with attachments] | 25 | 03/02/2001 | P5; |

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
Stem Cell

FRC ID:
9122

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed:- The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Withdrawal Marker

The George W. Bush Library

| FORM | SUBJECT/TITLE | PAGES | DATE | RESTRICTION(S) |
|------------|--|-------|------------|----------------|
| Memorandum | Federal Funding of Human Cloning [draft] | 1 | 03/28/2001 | P5; |

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Stem Cell

FRC ID:

9122

OA Num.:

341

NARA Num.:

237

FOIA IDs and Segments:

2018-0016-P

2017-0345-F

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal Marker

The George W. Bush Library

| FORM | SUBJECT/TITLE | PAGES | DATE | RESTRICTION(S) |
|--------|---------------|-------|------|----------------|
| Report | Analysis... | 9 | N.D. | P5; |

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Stem Cell

FRC ID:

9122

OA Num.:

341

NARA Num.:

237

FOIA IDs and Segments:

2018-0016-P

2017-0345-F

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal Marker

The George W. Bush Library

| FORM | SUBJECT/TITLE | PAGES | DATE | RESTRICTION(S) |
|--------|--|-------|------------|----------------|
| Report | Federal Funding of Human Cloning [draft] | 1 | 03/28/2001 | P5; |

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Stem Cell

FRC ID:

9122

OA Num.:

341

NARA Num.:

237

FOIA IDs and Segments:

2018-0016-P

2017-0345-F

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal Marker

The George W. Bush Library

| FORM | SUBJECT/TITLE | PAGES | DATE | RESTRICTION(S) |
|-----------|---|-------|------------|----------------|
| Statement | President William J. Clinton Remarks on Human Cloning [draft] [with attachment] | 3 | 03/03/1997 | P5; |

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Stem Cell

FRC ID:

9122

OA Num.:

341

NARA Num.:

237

FOIA IDs and Segments:

2018-0016-P

2017-0345-F

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Cells, Fetuses, and Logic

Who is being sentimental, who rational, in this debate?

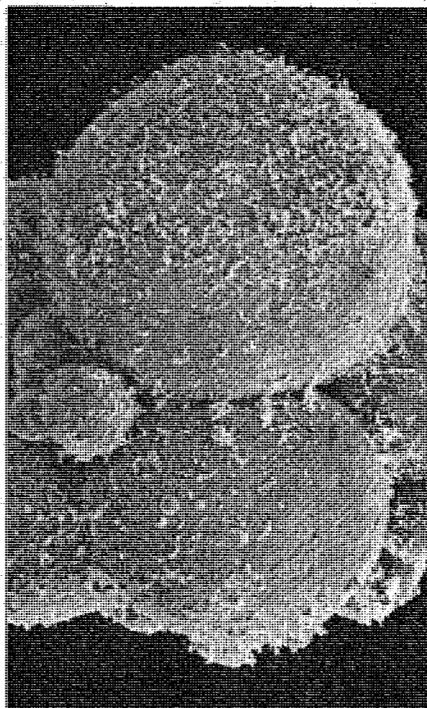
RAMESH PONNURU

AMERICANS' attitudes toward abortion are notoriously muddled. But it is safe to say that they tend to dislike pro-lifers more than pro-choicers, even when they themselves favor curbs on abortion. Pro-lifers have a suspect, a frightening, passion. They are agitators; they are religious zealots. Pro-choicers, on the other hand, are the party of reason. They see all the pitfalls of prohibiting abortion. They understand that abortion raises issues much more complex than sentimental slogans about "protecting unborn babies" can capture.

This is, I think, a widespread view about the combatants in the abortion wars. It is also close to 180 degrees from the truth. Sentiment has been the pro-choicers' ally more often than not. The pro-life position, on the other hand, must ultimately be rooted in rigorous logic. A pro-life position that is merely sentimental is a weak and unsustainable thing—as demonstrated, most recently, in the controversy over embryonic stem-cell research.

Pro-choicers can depend more reliably on sentiment than pro-lifers for the simple reason that distressed pregnant women elicit more sympathy than endangered fetuses. Nobody remembers being a fetus. Nobody has held a fetus's hand. But many women know what it is like to be pregnant under difficult circumstances, or can easily imagine it. All of us, men and women alike, have known or can imagine a woman we care about in that situation: a sister, a friend. The fetus has almost no emotional claim on us. It—we think of the young fetus as an "it," not a "he" or "she," although of course every fetus has a chromosomally determined sex—is an abstraction to us, usually nameless.

Smart people have attempted to found moral theory on natural sentiments: One thinks of no less a figure than Adam



Smith. But these attempts are doomed. Untutored sentiment is a poor guide to morality. No profound knowledge of history or psychology is necessary to see that our sympathy often fails to recognize the legitimate moral claims of those we do not know or of those we do not look like. Tender feelings alone cannot lead us to grasp the requirements of decency or justice. It takes abstract reasoning to tell us, first, that the fetus is a living human being, and then to follow that premise to the eventual conclusion that abortion is a violation of human rights.

To say that the pro-life position is rooted in abstract logic is not, of course, to deny that its adherents possess strong emotions about the matter, or even that their emotions are stronger than those of pro-choicers. As Richard Brookhiser has remarked in this connection, thoughts, if they are taken seriously, do not lie idly on

the mind's table. They lead to further thoughts, and emotions and sensibilities form around them like crystals.

Nor do I mean to suggest that pro-lifers never make non-rational appeals. Many pro-choicers find the pro-life movement's rhetoric about "babies" manipulative. Fetuses aren't babies, they say. But pro-lifers don't really hold the views they hold because they think fetuses are babies; rather, they know that fetuses are members of human race. (Fifteen-year-olds, 31-year-olds, and 62-year-olds aren't babies, either, but nobody thinks it's okay to kill them.) The campaign against partial-birth abortion is an attempt by pro-lifers to win support from Americans in the "mushy middle" by stressing the grisliness of some abortions. But pro-lifers took up that campaign as a tactic, not because they really believe one method of abortion is worse than another.

For pro-choicers, however, an appeal to sentiment is frequently not merely a tactic or a bit of loose rhetoric but the entirety of the argument. Katha Pollitt, *The Nation's* engaging feminist columnist, jeers at pro-lifers for fretting about the fate of clusters of cells smaller than a fingernail. But surely size cannot be our criterion for determining when rights should be protected.

If the appeal of sentiment has been powerful in the debate over abortion, it has been irresistible in the one over embryonic stem cells. Research using these cells may yield cures or treatments for Parkinson's disease, Alzheimer's, and other ailments. But the extraction of the cells, and thus the research, requires the destruction of embryos. A recent cover story on stem cells in *Newsweek* was typical of press coverage in following the usual script of pro-life religious fanatics vs. science. But this is in fact a conflict in which the average person's emotional reaction is almost completely one-sided. On the one hand, people—movie stars, relatives of congressmen and journalists, your next-door neighbor—with terrible diseases. On the other hand, what looks like a clump of cells in some lab.

Indeed, the pro-abortion writer Anna Quindlen has advocated stem-cell research on the precise grounds that it would make people even more emotionally inclined to dismiss concerns about abortion: "[S]ome who believe that life

begins at conception may look into the vacant eyes of an adored parent with Alzheimer's or picture a paralyzed child walking again, and take a closer look at what an embryo really is." Quindlen would have us judge difficult moral questions by taking a look and forming a picture—by acts of dumb perception rather than of intellection. This is not surprising coming from a woman whose nonfiction oeuvre practically constitutes a sustained implicit brief against the application of logic to social controversies.

More surprising, perhaps, is that many people who are usually pro-life have adopted this way of thinking, or rather not thinking, to justify embryonic stem-cell research. Here is Republican senator Orrin Hatch speaking to the *New York Times*: "I just cannot equate a child living in the womb, with moving toes and fingers and a beating heart, with an embryo in a freezer." He has made similar comments elsewhere, with particular emphasis on the womb/freezer distinction and the embryo's lack of visibly human characteristics. But surely neither temperature nor location is morally decisive. Nobody would question whether a twelve-year-old who had been conceived in a lab was a human being entitled to full rights as such.

Wall Street Journal editor Robert Bartley, who while not a pro-lifer himself is a frequent ally of pro-lifers, has made a similar argument for embryonic stem-cell research. Using the term for a six-day-old embryo, he writes, "I would find a funeral service for a blastocyst grotesque." Most miscarriages do not occasion funerals either, but presumably Bartley would not deny that what miscarriages end are tiny human lives. Blastocysts may not look like human beings at first glance. But on reflection, they look *exactly* like human beings—exactly like human beings at that stage of development; exactly like all of us once looked. (Not that stem-cell research and miscarriages raise the same moral issues. Michael Kinsley remarks in *Time* that since pro-lifers are not exercised about the thousands of miscarriages that happen every year—a "mass slaughter of embryos"—they shouldn't oppose the destruction of a few embryos for medical research. This is a miscarriage of logic. The elderly die in large numbers every

year, too, but that doesn't mean it's okay to extract organs they need to survive for research purposes.)

One virtue of the pro-life position is its clarity. Life begins at conception, and taking human life can be allowed under only the strictest of circumstances. Pro-choicers have a much harder time drawing a line past which life is unambiguously protected. Their views of when life begins generally fall into one of three categories: 1) The fetus, like Schrödinger's cat, exists in a kind of suspended state of life/non-life until the mother decides what she wants; 2) there is some continuum in which a fetus that is not a human life gradually becomes one; or 3) we don't really need to think about this obscure theological mystery. (Oddly enough, in the philosophical literature on abortion it is more common to see pro-choicers speculating on when "ensoulment" might occur than to see pro-lifers pondering the question.) In practice, they appear to draw the line at birth. At least their most powerful contingent, the judges, do.

When do pro-life supporters of stem-cell research believe life begins?

A pro-life position not rooted in logic ends up having the same line-drawing problem. When do pro-life supporters of stem-cell research believe life begins? They would seem to believe that a clump of matter that is not a person somehow becomes inhabited by a person as it develops. Rather than defend this theoretical disaster bordering on superstition, some of these pro-lifers have resorted to the name games that pro-choicers have used in the past: Blastocysts aren't embryos, embryos that have not been implanted are pre-embryos, etc. But none of these nominal distinctions—nor the biological distinctions they denote—mark a point of moral distinction.

Bartley describes himself as a member of the "mushy middle" on abortion as though it were good in itself not to draw principled distinctions. He opposes partial-birth abortion because it is ugly, supports stem-cell research because nobody grieves for blastocysts, seeks a middle

ground because the extremists are off-putting: a clump of positions united only by sensibility.

The trouble with this middle ground is that, in addition to giving up territory that should be defended, it is itself indefensible territory. Slippery slopes are slippery because the logic that starts you down them will lead you further down. During the stem-cell debate, people have said that it's okay to use embryos for research because we already "discard" plenty of embryos as a byproduct of *in vitro* fertilization; they could with equal validity say that we should allow research on five-month-old fetuses because we allow them to be aborted. Judges have said that we have to allow partial-birth abortion, or even euthanasia, because we allow abortion. The *Washington Post* says that the logic of abortion rights does not permit the law to charge people with murder when they kill an unborn child in the course of an assault on a pregnant woman, even if the woman considers it murder.

Slippery-slope arguments rarely succeed because people discount the possibility of remote future horrors; they think they will be able to stop the slide. But horrors can get less horrible as the future becomes less remote. People adjust their sensibilities. In 1973, not even pro-abortion lawyers were challenging Texas's law against partial-birth abortion. Back then, embryo-killing research would have seemed monstrous. I have read the argument (in *Reason*, the libertarian magazine, as it happens) that people predicted all kinds of dire consequences from *in vitro* fertilization that did not happen, so why not allow cloning? One of the dire consequences of *in vitro* fertilization, however, is precisely that we are debating cloning now.

A common trope of the press coverage of the stem-cell conflict—which reeks of weariness at the continued existence of pro-lifers—is that it's a shame this "scientific issue" has gotten caught up in the "politics" of abortion. But it is caught up in the issue because the premises of the arguments are the same: Either conception results in a new human being deserving of legal protection or it doesn't. No amount of sophisticated hairsplitting over bioethics is going to work if it ignores that awkward, obvious question. **NR**

Withdrawal Marker

The George W. Bush Library

| FORM | SUBJECT/TITLE | PAGES | DATE | RESTRICTION(S) |
|-----------------|------------------------------------|-------|------------|----------------|
| Fax Cover Sheet | [Fax Cover Sheet with attachments] | 25 | 03/02/2001 | P5; |

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Stem Cell

FRC ID:

9122

OA Num.:

341

NARA Num.:

237

FOIA IDs and Segments:

2018-0016-P

2017-0345-F

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.