

Memorandum  
T. Jeremy Gunn  
March 15, 2017

**M E M O R A N D U M**

From: T. Jeremy Gunn  
To:  
cc:  
Date: March 15, 2017  
Memo: TJG/  
Re: Draft Memorandum on Law Pertaining to Confidential Sources

---

The FBI identified more than 2000 documents for postponement on the grounds that disclosure would either "reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person" (RC4) or that disclosure "would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest." (RC6).<sup>1</sup>

These grounds for postponement bear some similarity to the "confidential source" exemption under "subsection D" of FOIA:

this section does not apply to matters that are . . . records or information compiled for law enforcement purposes [that] could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source . . . .

5 U.S.C. sect. 552(b)(7). Subsection (D) is frequently invoked in national security cases to prevent disclosure of information by confidential sources. Stephen Dycus, et al., National Security Law

---

<sup>1</sup> There are two other grounds for postponement pertaining to confidentiality of sources that will not be considered below. The first, RC1, pertains to the identity of an agent, and the second, RC2, pertains to disclosure of "an intelligence source or method."

Memorandum  
T. Jeremy Gunn  
March 15, 2017

(1990).

On its face, the "confidential source" provisions of the JFK statute differ from the parallel FOIA exemption in \_\_ different ways:

First, under the JFK

Although no court has yet interpreted the scope of the confidential source exemption under the JFK Act, there has been a fair amount of litigation under FOIA.