

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) 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 a 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) 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; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) Geological and geophysical information and data, including maps, concerning wells. Any reasonably segregable portion of a record shall be provided to any person requesting the record after deletion of the portions which are exempt under this section.

(j) Whenever a request is made which involves access to records described in paragraph (g)(1) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, FEMA may, during only such time as that circumstance continues, treat the

records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

[44 FR 50287, Aug. 27, 1979, as amended at 52 FR 13679, Apr. 24, 1987]

#### **§ 5.72 Executive privilege exemption.**

Where application of the executive privilege exemption is desired, the matter shall be forwarded to the Director for consideration. If the request for information is Congressional, only the President may invoke the exemption. Presidential approval is not necessarily required if the request for information is in connection with judicial or adjudicatory proceedings or otherwise. In connection with judicial proceedings, the response shall be coordinated with the Department of Justice.

#### **Subpart F—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information**

SOURCE: 54 FR 11715, Mar. 22, 1989, unless otherwise noted.

#### **§ 5.80 Scope and applicability.**

(a) This subpart sets forth policies and procedures with respect to the disclosure or production by FEMA employees, in response to a subpoena, order or other demand of a court or other authority, of any material contained in the files of the Agency or any information relating to material contained in the files of the Agency or any information acquired by an employee as part of the performance of that person's official duties or because of that person's official status.

(b) This subpart applies to State and local judicial, administrative and legislative proceedings, and federal judicial and administrative proceedings.

(c) This subpart does not apply to Congressional requests or subpoenas for testimony or documents, or to an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

**§ 5.81 Statement of policy.**

(a) It is the policy of FEMA to make its records available to private litigants to the same extent and in the same manner as such records are made available to members of the general public, except where protected from disclosure by litigation procedural authority (e.g., Federal Rules of Civil Procedure) or other applicable law.

(b) It is FEMA's policy and responsibility to preserve its human resources for performance of the official functions of the Agency and to maintain strict impartiality with respect to private litigants. Participation by FEMA employees in private litigation in their official capacities is generally contrary to this policy.

**§ 5.82 Definitions.**

For purposes of this subpart, the following terms have the meanings ascribed to them in this section:

(a) *Demand* refers to a subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority (e.g., an administrative or State legislative body), signed by the presiding officer, for the production, disclosure, or release of FEMA records or information or for the appearance and testimony of FEMA personnel as witnesses in their official capacities.

(b) *Employee of the Agency* includes all officers and employees of the United States appointed by or subject to the supervision, jurisdiction or control of the Director of FEMA.

(c) *Private litigation* refers to any legal proceeding which does not involve as a named party the United States Government, or the Federal Emergency Management Agency, or any official thereof in his or her official capacity.

**§ 5.83 Authority to accept service of subpoenas.**

In all legal proceedings between private litigants, a subpoena duces tecum or subpoena ad testificandum or other demand by a court or other authority for the production of records held by FEMA Regional offices or for the oral or written testimony of FEMA Regional employees should be addressed to the appropriate Regional Director

listed in § 5.26. For records or testimony of the Office of Inspector General, the subpoena should be addressed to the Inspector General, FEMA, Washington, DC 20472. For all other records or testimony, the subpoena should be addressed to the General Counsel, FEMA, Washington, DC 20472. No other official or employee of FEMA is authorized to accept service of subpoenas on behalf of the Agency.

**§ 5.84 Production of documents in private litigation.**

(a) The production of records held by FEMA in response to a subpoena duces tecum or other demand issued pursuant to private litigation, whether or not served in accordance with the provisions of § 5.83 of this subpart, is prohibited absent authorization by the General Counsel or, as to records of the Office of the Inspector General, by the Inspector General.

(b) Whenever an official or employee of FEMA, including any Regional Director, receives a subpoena or other demand for the production of Agency documents or material, he or she shall immediately notify and provide a copy of the demand to the General Counsel, unless the subpoena or demand seeks the production of documents or material maintained by the Office of Inspector General, in which case a copy of the demand shall be provided to the Inspector General.

(c) The General Counsel (or Inspector General), after consultation with other appropriate officials as deemed necessary, shall promptly determine whether to disclose the material or documents identified in the subpoena or other demand. Generally, authorization to furnish the requested material or documents shall not be withheld unless their disclosure is prohibited by relevant law or for other compelling reasons.

(d) Whenever a subpoena or demand commanding the production of any record is served upon any Agency employee other than as provided in § 5.83 of this subpart, or the response to a demand is required before the receipt of instructions from the General Counsel (or Inspector General), such employee shall appear in response thereto, respectfully decline to produce the