

# An Exploration of Limits on Newsgathering

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## Freedom of Information Act and Privacy Rights

Animal welfare records disappeared in February 2017 from the U.S. Department of Agriculture website. The information removed includes reports on inspections, research facilities, and enforcement. USDA said it removed the records to protect the privacy of animal owners. USDA said information that doesn't jeopardize individual privacy might be re released on the USDA's Animal and Plant Health Inspection Service's website. All other information will be available through approved FOIA requests. If this issue goes to court, the court will ask if the information truly violates Exemption 6, which says information containing personnel files should be private and kept from the public. Freedom of Information Act cases in this study, specifically concerning the issue of privacy rights and personnel files tried in the 12th U.S. Circuit Court of Appeals, addresses how privacy and public interests are balanced. These cases uncover how impactful the FOIA's foundation in the U.S. has affected the public's knowledge of information and how the privacy of individuals has been upheld. The right to privacy and the right to public records should be supported equally not opposed absolutely in order to adapt society's views on freedom of information.

### Evidence

- *U.S. Department of State v. Washington Post*, 456 U.S. 595 (1982)

The Washington Post requested personal background information through a FOIA request on whether two Iranian individuals had U.S. passports from the U.S. Department of State. The Department of State denied its request, stating the individuals were protected by the privacy exemption in FOIA. The Department of State argued that the information, if released, could jeopardize the men's government positions in their country and cause possible physical harm. The court decided that Exemption 6 was applicable and the information would not be released to The Washington Post.

- *In Defense of Animals v. National Institutes of Health*, 543 U.S. 552 (2008)

This FOIA case was brought to court against NIH by In Defense of Animals, a non-profit organization requesting information about chimpanzees in the Alamogordo Primate Facility in New Mexico. NIH believed the information didn't constitute "agency records" because they belonged to NIH's contractor, Charles River Laboratories Inc., an animal research company. The court rejected NIH's motion for partial reconsideration of public records release because of Exemption 6. The court decided the NIH's argument about the safety of the animal workers at APF didn't apply to Exemption 6 because it didn't affect a specific individual.

- *Department of Justice v. Reporters Committee*, 489 U.S. 749 (1989)

CBS and the RCFP requested a criminal identification record of financial crimes from the FBI about Charles Medico whose family company was found organized by crime figures by the Pennsylvania Crime Commission. FBI denied the request and the RCFP argued those records were a matter of public interest. The court held that the right of an individual to refuse to disclose criminal information held by the FBI is significant enough to be protected by the FOIA privacy exemption. The court said Medico's privacy was more important than the public's interest because the RCFP's request was too general and didn't specifically request information for the purpose of their news story.



## The Constitutionality of Restrictive Orders Against the Press

Restrictive orders against the press are often deemed unconstitutional by higher courts because the orders because the information they protect should be public knowledge, they are found to not violate privacy issues, or do not interfere with the sixth amendment. Courts issue restrictive orders that limit the discussion of facts in a criminal case in order to protect parties and witnesses involved in the case, while simultaneously exerting control over the media. Restrictive orders can be issued to the press and trial participants. Sealing court documents that would otherwise be available to the public also limits the press' access to information on a case. Many cases in which documents or other important information are sealed by the courts are also considered unconstitutional. When David Westerfield was found guilty of murder in California, journalists pushed to have thousands of pages worth of sealed documents released and won the case.

### Evidence

- *New York Times Co. v. United States*, 403 U.S. 713 (1971)

The court held that prior restraint was not necessary to uphold national security and preventing the press from publishing the Defense Department study violated the first amendment. Though the court only issued a short per curiam opinion, Justice Black wrote a concurring opinion that reiterated the protection of the press from government control. They also held that the First Amendment does not to allow governmental suppression of embarrassing information.

- *United States v. Noriega*, 917 F.2d 1543 (1990)

The court recognizes the difficulty in balancing the Sixth and First Amendments, but ultimately decided that this imbalance would be best remedied if CNN produced the tapes in question immediately so that the court could decide which bits of it would violate Noriega's Sixth Amendment rights and which parts the press could publish.

- *Nebraska Press Assn. v. Stuart*, 427 U.S. 539 (1976)

The Court permitted the press to publish information about an accused murderer. The Court noted that the state court was not able to provide evidence for how the publication of this information would take away the defendant's right to a fair trial.

- *Westerfield v. The People*, 98 Cal.App.4th 145, 158 (2002)

This is a murder case in California in which a man was convicted of killing a 7-year-old. After the case, the Society of Professional Journalists and the San Diego Union-Tribune sought thousands of pages of documents concerning the murder. The documents were held based on concern that Westerfield's sixth amendment rights would be threatened, but the media ultimately won the case that the information being concealed was important.



## The Constitutionality of California Anti-paparazzi Laws

On July 6th, 2010, freelance photographer Paul Raef was arrested after chasing Justin Bieber down a freeway in Los Angeles in order to obtain a photograph of the famous singer. Raef became the first person charged under the new California Anti-paparazzi law signed by former Gov. Arnold Schwarzenegger. The state's 2010 Assembly Bill 2479 was designed to curtail reckless driving by paparazzi seeking to photograph celebrities. A celebrity who sues a paparazzo for violating the anti-paparazzi laws may have a strong chance at winning if he or she argues that the paparazzo violated a time, place or manner restriction. However, any law that restricts the rights of the media under the First Amendment must pass the Supreme Court's strict scrutiny test. Celebrities and other public figures often conduct themselves within the public eye, and the press has a right to publish and broadcast their stories.

### Evidence

- *Galella v. Onassis*, 353 F. Supp. 196 (1972)

This case involved a high profile freelance photographer, Ron Galella, who used extensive efforts to photograph Jacqueline Kennedy Onassis, wife of John F. Kennedy, and her children. Galella came "uncomfortably close" (court's words) to Jacqueline Kennedy and her children while they participated in familial activities. After being arrested by Secret Service agents, Galella sued the agents for wrongful arrest. In two separate court cases, Galella unsuccessfully argued a First Amendment freedom of the press right to photograph Jacqueline Kennedy Onassis. A federal appellate court judge granted Onassis and her children a physical zone of privacy.

- *Raef v. Appellate Division of Superior Court*, 240 Cal. App. 4th 1112 (2015)

In 2015, California appeals court reviewed the arrest of photographer Paul Raef, who was charged with violating Section 40008 of the Vehicle Code for endangering motorists by driving recklessly while trying to obtain a photo of Justin Bieber. Raef argued that Section 40008 abridged his First Amendment rights, and in 2012, a California trial court ruled in favor of Raef. However, the Appellate Division of the Los Angeles County Superior Court reversed the decision in 2013 and convicted Raef.

