

PROTECTING VULNERABILITY ASSESSMENTS UNDER FOIA

Vulnerability assessments are designed to safeguard various state and federal institutions or installations from external harm. Typically, DoD vulnerability assessments seek to identify an installation's assets, programs, or systems that are most sensitive and vulnerable to external harm. Vulnerability assessments are designed to expose the security measures and weaknesses of an installation in an effort to improve them. The security information contained in vulnerability assessments could potentially be used by external individuals or parties to bring harm to an installation.

Federal agencies routinely receive FOIA requests to access the vulnerability assessments of different installations. These FOIA requests should be denied under exemption 2 of the FOIA (10 USC §552(b)(2)). Exemption 2 of the FOIA is divided into two distinct exemptions: (1) The "low 2" exemption prevents the disclosure of routine and trivial administrative information; and (2) The "high 2" exemption prevents the disclosure of information that could lead to the circumvention of federal law or regulation.

Federal courts have determined that the "high 2" exemption can be used to prevent the disclosure of predominantly internal agency records wherever disclosure "significantly risks circumvention of agency regulations of statutes." See *Crooker v. BATF*, 670 F.2d 1051 (D.C. Cir. 1981). Subsequent federal courts have gone on to apply the *Crooker* holding to prevent the FOIA disclosure of sensitive law enforcement manuals, vulnerability assessments, threat assessment levels, sensitive records system, and computer security measures.

Limitations do exist to the use of the "high 2" exemption. Only the portions of records that would aid an attempted security breach or circumvention of law can be withheld. Blanket refusals of entire agency records under the "high 2" exemption are prohibited if the records contain disclosable information that can be reasonably segregated from the sensitive portion of the record.