

OSLDPS Information Bulletin
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TO: All State Administrative Agency Heads
All State Administrative Agency Points of Contact

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Director

SUBJECT: Disclosure of Information under the Fiscal Year 1999 State Domestic
Preparedness Equipment Program

The Office of Justice Programs (OJP), Office for State and Local Domestic Preparedness Support (OSLDPS), recently held five regional conferences designed to introduce states to the level of effort and the types of information required for the threat, risk and needs assessments associated with the Fiscal Year 1999 State Domestic Preparedness Equipment Program. The conferences also provided an opportunity to ask questions and allow each state to begin formulating their assessment methodologies. One key question raised at these conferences was whether data submitted as part of the threat, risk and needs assessments would be subject to disclosure at the federal level under the Freedom of Information Act (FOIA).

The OJP Office of the General Counsel (OGC) has considered this issue and has determined that sensitive information submitted by State and local jurisdictions to secure funding from OSLDPS, including information about a jurisdiction's threat, risk and needs assessments (including discussions of demographics, transportation, public works, and industrial and public health infrastructures) with regard to terrorist threats and activities may not need to be disclosed because it qualifies under the terms of exemption 7(E) of the FOIA. Exemption 7(E) exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such records or information... 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." 5 U.S.C. § 552(b)(7)(E).

OGC is aware that releasing a jurisdiction's terrorist threat, risk and needs assessment information to the public could cause a serious threat to the citizens of the jurisdiction, and could hinder the abilities of the jurisdiction's law enforcement and first responder officials to provide fast and effective assistance in the event of a terrorist act. The release of this information could also render these jurisdictions extremely vulnerable by providing information needed to circumvent both State and Federal law. Therefore, in OGC's view it is appropriate that information pertaining to a jurisdiction's infrastructure and vulnerability, as well as any threat, risk and needs

assessment and strategy information, be withheld under exemption (b)(7)(E) of the FOIA. OGC has cautioned, however, that all final determinations regarding FOIA release must be made on a case-by-case basis. Furthermore, a decision by OJP to withhold information may be reviewed, upon appeal, by the Department of Justice's Office of Information and Privacy.