

OFCCP Informs Contractors of Broad FOIA Request For EEO-1 Reports and Provides Opportunity to Object

Government Contractor Compliance & Regulatory Update on August 19, 2022

OFCCP [published a notice](#) on August 19, 2022, notifying federal contractors of a request by the Center for Investigative Reporting made pursuant to the Freedom of Information Act (“FOIA”) requesting the disclosure of federal contractors’ EEO-1 Reports. Specifically, the request seeks all Type 2 Consolidated Employer Information Reports, Standard Form 100 (EEO-1 Report), filed between 2016 and 2020 by federal contractors and first-tier subcontractors. In the notice, OFCCP advises that it “has reason to believe that the information requested may be protected from disclosure under FOIA Exemption 4, which protects disclosure of confidential commercial information, but has not yet determined whether the requested information is protected from disclosure under that exemption.” It instructs that any federal contractor who objects to the disclosure of the requested information submit a written objection by September 19, 2022.

Submitting Written Objections:

Any objections should be submitted through the OFCCP web form, available [here](#), by the September 19, 2022 deadline. Alternatively, written objections may be submitted by email to OFCCPSubmitterResponse@dol.gov or by mail to the contact information provided on the [notice](#).

Specifically, objections must include the contractor’s name, address, and contact information, and at a minimum, should include detailed answers to the following questions:

- (1) What specific information from the EEO-1 Report does the contractor consider to be a trade secret or commercial or financial information?
- (2) What facts support the contractor’s belief that this information is commercial or financial in nature?

- (3) Does the contractor customarily keep the requested information private or closely-held? What steps have been taken by the contractor to protect the confidentiality of the requested data, and to whom has it been disclosed?
- (4) Does the contractor contend that the government provided an express or implied assurance of confidentiality? If no, were there express or implied indications at the time the information was submitted that the government would publicly disclose the information?
- (5) How would disclosure of this information harm an interest of the contractor protected by Exemption 4 (such as by causing foreseeable harm to the contractor's economic or business interests)?

Next Steps:

Upon receipt of a timely written objection, OFCCP "will give careful consideration to the objection prior to making a decision whether the requested information should be disclosed or withheld under FOIA Exemption 4." If disclosure is determined to be appropriate despite the objection, the submitter will receive "written notice of the reason for the decision, and a specified disclosure date that is a reasonable time subsequent to the notice."

If a covered contractor does not submit a timely written objection, OFCCP will assume there are no objections to the disclosure of the information.

Answers to certain Frequently Asked Questions are available on the Submitter Notice Response Portal's [FAQ Page](#). Further questions should be directed to the OFCCP Helpdesk Number at (855) 680-0971.

[View Original](#)

Related Professionals

- **Guy Brenner**
Partner