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Court Orders Release of Contractor EEO-1 Reports

Government Contractor Compliance & Regulatory Update on **January 29, 2024**

On December 22, 2023, a court in the Northern District of California ordered the disclosure of EEO-1 Reports filed by federal contractors and subcontractors ("Contractors") between 2016 and 2020 in the case, *Center for Investigative Reporting v. U.S. Dep't of Labor*, No. 3:22-cv-07182-WHA (N.D. Cal. Dec. 22, 2023).

As we previously reported, in 2022, OFCCP published notice of the Center for Investigative Reporting's ("CIR") request pursuant to the Freedom of Information Act ("FOIA") for all Type 2 Consolidated Employer Information Reports, Standard Form 100 ("EEO-1 Report") filed by federal contractors and first-tier subcontractors during the relevant period. After giving Contractors several opportunities to submit objections, OFCCP published EEO-1 data for Contractors that "either affirmatively agreed to, or did not object to, the release of their EEO-1 data." OFCCP did not produce and publish data from Contractors that objected to the release of their data.

CIR challenged OFCCP's withholding of EEO-1s from the 4,796 contractors who lodged objections, and the parties filed cross-motions for summary judgment regarding whether the Trade Secrets Act and/or FOIA's Exemption 4, which addresses trade secrets and commercial or financial information that is privileged or confidential, protected the EEO-1 Reports from disclosure. The Court granted CIR's motion for summary judgment and denied the Department of Labor's motion.

In granting summary judgment to CIR, the Court concluded that the requested data was not protected by Exemption 4 of FOIA for several reasons. First, the Court rejected the argument "that the EEO-1 reports reveal commercial data because the workforce composition is a 'core operational metric that is critical to their organizations' success.'" The Court concluded that "the report cannot itself yield any commercial insight that is specific to the operations of the federal contractor" because the EEO-1 form uses "broadly sweeping categories such as 'professionals' and 'senior officials.'" Second, the Court held that the EEO-1 Reports did not contain commercial data protected under FOIA Exemption 4 because "the demographic background of employees does not speak to the commercial contributions of a company's workforce." The Court likewise rejected the argument that the disclosure of five years of EEO-1 Reports would "reveal insight into the company's operations which would not be revealed by any single EEO-1 report" since the data would likely "be 'stale' by the time it was disclosed."

The Court also rejected the Department of Labor's argument that "EEO-1 reports are protected under the Trade Secrets Act as 'confidential statistical data.'"

As a result of this ruling, OFCCP must release EEO-1 Reports of objecting Contractors by February 20, 2024, unless the OFCCP appeals the ruling by that date. We will continue to monitor developments in this case.

Related Professionals

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