

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR Data is current as of December 1, 2014

[Title 43](#) → [Subtitle A](#) → [Part 2](#)

Subpart F—Handling Confidential Information

SOURCE: 77 FR 76906, Dec. 31, 2012, unless otherwise noted.

§2.26 How will the bureau interact with the submitter of possibly confidential information?

(a) The Department encourages, but does not require, submitters to designate confidential information in good faith at the time of submission. Such designations assist the bureau in determining whether information obtained from the submitter is confidential information, but will not always be determinative.

(b) If, in the course of responding to a FOIA request, a bureau cannot readily determine whether information is confidential information, the bureau will:

(1) Consult with the submitter under §§2.27 and 2.28; and

(2) Provide the submitter an opportunity to object to a decision to disclose the information under §§2.30 and 2.31 of this subpart.

§2.27 When will the bureau notify a submitter of a request for their possibly confidential information?

(a) Except as outlined in §2.29 of this subpart, a bureau must promptly notify a submitter in writing when it receives a FOIA request if either:

(1) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4 of the FOIA, found at 5 U.S.C. 552(b)(4); or

(2) The bureau believes that requested information may be protected from disclosure under Exemption 4.

(b) If a large number of submitters are involved, the bureau may publish a notice in a manner reasonably calculated to reach the attention of the submitters (for example, in newspapers or newsletters, the bureau's Web site, or the FEDERAL REGISTER) instead of providing a written notice to each submitter.

§2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?

A notice to a submitter must include:

(a) Either a copy of the FOIA request or the exact language of the request;

(b) Either a description of the possibly confidential information located in response to the request or a copy of the responsive records, or portions of records, containing the information;

(c) A description of the procedures for objecting to the release of the possibly confidential information under §§2.30 and 2.31 of this subpart;

(d) A time limit for responding to the bureau—no less than 10 workdays from receipt or publication of the notice (as set forth in §2.27(b) of this subpart)—to object to the release and to explain the basis for the objection;

(e) Notice that information contained in the submitter's objections may itself be subject to disclosure under the FOIA;

(f) Notice that the bureau, not the submitter, is responsible for deciding whether the information will be released or withheld;

(g) A request for the submitter's views on whether they still consider the information to be confidential if the submitter designated the material as confidential commercial or financial information 10 or more years before the request; and

(h) Notice that failing to respond within the time frame specified under §2.28(d) of this subpart will create a presumption that the submitter has no objection to the disclosure of the information in question.

§2.29 When will the bureau not notify a submitter of a request for their possibly confidential information?

The notice requirements of §2.28 of this subpart will not apply if:

(a) The information has been lawfully published or officially made available to the public; or

(b) Disclosure of the information is required by a statute other than the FOIA or by a regulation (other than this part) issued in accordance with the requirements of Executive Order 12600.

§2.30 How and when may a submitter object to the disclosure of confidential information?

(a) If a submitter has any objections to the disclosure of confidential information, the submitter should provide a detailed written statement to the bureau that specifies all grounds for withholding the particular information under any FOIA exemption (see §2.31 of this subpart for further discussion of Exemption 4 objection statements).

(b) A submitter who does not respond within the time period specified under §2.28(d) of this subpart will be considered to have no objection to disclosure of the information. Responses received by the bureau after this time period will not be considered by the bureau unless the appropriate bureau FOIA contact determines, in his or her sole discretion, that good cause exists to accept the late response.

§2.31 What must a submitter include in a detailed Exemption 4 objection statement?

(a) To rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information is confidential information. To do this, the submitter must give the bureau a detailed written statement. This statement must include a specific and detailed discussion of why the information is a trade secret or, if the information is not a trade secret, the following three categories must be addressed (unless the bureau informs the submitter that a response to one of the first two categories will not be necessary):

(1) Whether the Government required the information to be submitted, and if so, how substantial competitive or other business harm would likely result from release;

(2) Whether the submitter provided the information voluntarily and, if so, how the information fits into a category of information that the submitter does not customarily release to the public; and

(3) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(b) If not already provided, the submitter must include a daytime telephone number, an email and mailing address, and a fax number (if available).

§2.32 How will the bureau consider the submitter's objections?

(a) The bureau must carefully consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(b) The bureau, not the submitter, is responsible for deciding whether the information will be released or withheld.

§2.33 What if the bureau determines it will disclose information over the submitter's objections?

If the bureau decides to disclose information over the objection of a submitter, the bureau must notify the submitter by certified mail or other traceable mail, return receipt requested. The notification must be sent to the submitter's last known address and must include:

(a) The specific reasons why the bureau determined that the submitter's disclosure objections do not support withholding the information;

(b) Copies of the records or information the bureau intends to release; and

(c) Notice that the bureau intends to release the records or information no less than 10 workdays after receipt of the notice by the submitter.

§2.34 Will a submitter be notified of a FOIA lawsuit?

If you file a lawsuit seeking to compel the disclosure of confidential information, the bureau must promptly notify the submitter.

§2.35 Will you receive notification of activities involving the submitter?

If any of the following occur, the bureau will notify you:

- (a) The bureau provides the submitter with notice and an opportunity to object to disclosure;
- (b) The bureau notifies the submitter of its intent to disclose the requested information; or
- (c) A submitter files a lawsuit to prevent the disclosure of the information.

§2.36 Can a bureau release information protected by Exemption 4?

If a bureau determines that the requested information is protected from release by Exemption 4 of the FOIA, the bureau has no discretion to release the information. Release of information protected from release by Exemption 4 is prohibited by the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.