

Government to Release EEO-1 Data of Federal Contractors Unless Objections are Filed by September 19, 2022



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The U.S. Department of Labor Office of Federal Contract Compliance Programs (OFCCP) intends to produce EEO-1 disclosures filed by federal contractors between 2016 and 2020 to comply with a Freedom of Information Act (FOIA) request filed by a watchdog group journalist. If contractors wish to prevent release of the demographic information contained in those filings, the deadline to object is September 19, 2022. OFCCP announced its intentions with little fanfare by filing in the Federal Register on August 19th.

The FOIA request calls for production of all Type 2 Consolidated Employer Information Reports, Standard Form 100, otherwise known as the EEO-1, filed with the OFCCP by federal contractors from 2016–2020. Many federal contractors are required to file annual EEO-1 reports, which provide the government with demographic information about their employees.

OFCCP has suggested that the information may be exempt from disclosure under one of the statutory exemptions to FOIA for confidential commercial information. However, OFCCP will release the information related to each contractor if they do not receive a timely objection from any contractor wishing to protect the information.

Federal contractors that filed EEO-1 reports between 2016–2020 need to take action immediately. Once a contractor has confirmed whether they filed EEO-1 reports with OFCCP during the relevant period, they'll need to determine whether they consider that information to be confidential. If so, there is very little time to object to the release.

Objections are due to the agency no later than September 19, 2022. OFCCP requests contractors to respond 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 not, 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 the interest of the contractor protected by Exemption 4 (such as by causing foreseeable harm to the contractor's economic or business interests)?

As noted above, OFCCP will release reports if it does not receive a timely objection.

Peckar & Abramson practices in the area of federal contracts and employment law, both of which are involved in this matter. Should you have any questions regarding your obligation under this OFCCP matter, please contact Stephen Irving at (713) 568-3429.

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