



OFCCP is Poised to Release Your Confidential Demographic Data: What Can Federal Contractors Do to Protect Your Information?

Insights

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If you are a federal contractor or first-tier subcontractor, you probably received a notice from the government last week letting you know that it was gearing up to turn over your confidential demographic information to a news organization. The Office of Federal Contract Compliance Programs (OFCCP) told contractors on August 18 that it needed to comply with a Freedom of Information Act (FOIA) request submitted by the Center for Investigative Reporting, meaning it would soon release all demographic data from Type 2 Consolidated EEO-1 Reports filed by federal contractors and first-tier subcontractors between 2016 and 2020. The good news is that you can file an objection in the next few weeks to block this production, but you have to move swiftly – and follow precise procedures to preserve your rights. What do you need to know in order to protect your confidential information, and how can the Fisher Phillips Affirmative Action and Federal Contract Compliance Practice Group assist you?

What Will Be Turned Over?

To confirm, only demographic data contained in Type 2 consolidated reports will be turned over. These reports are submitted only by multi-establishment employers and include the demographics for the workforce in all company locations. They are required by the federal government for employers with 100 or more employees.

The good news, as confirmed by OFCCP, is that the scope of the request does **not** include Component 2 compensation data.

What Should You Do?

If you are a multi-establishment federal contractor or first-tier subcontractor, you should strongly consider filing an objection to OFCCP's proposed release. This is especially true if you believe the information may include confidential and proprietary business information, which may be protected from disclosure under FOIA. To determine whether you filed a report covered by the FOIA request, check the EEO-1 Online Filing System. From the Company Dashboard, click on Historic Data (Prior EEO-1 Reports) to download or review prior year reports.

The OFCCP has stated that it needs notice of a federal contractor's objection **no later than September 19, 2022**. Fisher Phillips has a dedicated team of attorneys in our [Affirmative Action and Federal Contract Compliance Practice group](#) that can assist in developing a response.

[Editor's Note: Days before the original deadline, OFCCP extended the deadline for submitting objections from September 19 to October 19.]

Some of the factors that need to be considered and addressed in any objection filed on your behalf include:

- whether you consider information from your EEO-1 Report to be a trade secret or commercial information;
- whether you customarily keep the requested information private or closely held;
- the steps you have been taken to protect data contained in your reports;
- an accounting of the any parties with whom you have disclosed the information;
- whether you contend the government provided an express or implied assurance of confidentiality; and
- whether you believe that disclosure of this information could cause harm to your economic or business interests.

Conclusion

Our [Affirmative Action and Federal Contract Compliance Practice group](#) stands ready to assist in determining your best next steps and in developing a response, if necessary. Please contact your Fisher Phillips attorney, the author of this insight, or any attorney in our [Affirmative Action and Federal Contract Compliance Practice group](#) with questions. We will continue to monitor developments on this topic. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information direct to your inbox.

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