



Final Check: Federal Contractors Get One Last Chance to Review Data Release List and File Objections

Insights

2.17.23

Federal officials announced that they have decided once again to extend the deadline for federal contractors to submit objections to the proposed disclosure of sensitive employee demographic data – and are providing you one final chance to review its list to see if your information will be released. The Office of Federal Contract Compliance Programs (OFCCP) announced on February 14 that the deadline to object to the public release of 2016-2020 EEO-1 reports has now been extended to March 3 at 11:59 p.m. There are important steps you should take if you have filed objections to ensure they have been properly lodged – and even more critical steps to take if you haven't yet done so.

First Things First: Check the List

As we previously [reported](#), OFCCP has announced that it will be releasing the Type 2 EEO-1 Reports – including a trove of employee demographic data – in response to a FOIA request the agency received from a news organization. It has provided multiple opportunities for contractors to review the list of companies whose data will be released in order to file objections and block the release, [including a recent deadline extension](#). The first thing you should do is check to see whether your company's name is on the list – even if you have filed objections.

The agency just posted a [revised Non-Objector Contractor List](#) that identifies those contractors whose EEO-1 Type 2 consolidated reports are due to be released. This list does not include contractors the agency has already identified as incorrectly included on a prior list published on February 2. [OFCCP's full announcement can be found here](#).

Importantly, the revised Non-Objector Contractor List has also removed all contractors that objected to the list by February 10, allowing the agency to evaluate those objections. OFCCP notes that the list is current as of February 10 – so contractors that submitted a response or objection for the first time after that date may not yet have been removed. The agency also states: "If your entity is not listed, no action is necessary at this time."

Next Step: Stay Vigilant and File Objections

Next, OFCCP has stated it will publish another updated list by March 10 which will not include contractors that submitted objections between February 10 and March 3, again permitting the agency an opportunity to evaluate those objections.

Contractors will then have “one final opportunity” to object no later than March 17 if they believe their company was improperly included on the list of those that will have its EEO-1 reports disclosed. The agency is asking contractors to explain why they had not objected previously and provide a reason for why it should accept objections that had not earlier been filed in response to previous notices. The agency has stated that it may, at its discretion, consider the substance of the late-filed objection.

What Should Your Objections Contain?

Focusing on the Freedom of Information Act’s (FOIA) exemption for trade secret or commercial or financial information that is confidential or privileged, this new notice directs contractors to the Federal Register’s initial list of questions that should be addressed in any objection you file. These include:

1. What specific information in the EEO-1 reports may be trade secret or commercial or financial information? What facts support this statement?
2. Is the above-described information private or closely held? How is it protected?
3. Did the government provide express or implied assurances of confidentiality? Were there any indicators the government would disclose the information?
4. How would disclosure harm the contractor’s interest(s)? E.g., causing foreseeable harm to contractors’ economic or business interests.

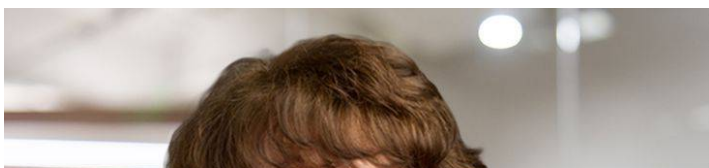
There are other potential FOIA exemptions, such as national security interests, that may be applicable to some contractors. You should coordinate with your affirmative action counsel to review which may cover your organization.

Conclusion

If your company is on the list and you would like our assistance in filing an objection, please contact us right away. Fisher Phillips has a dedicated team of attorneys that can assist in developing a response. Please contact your Fisher Phillips attorney, the authors 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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