

## Federal Mediation and Conciliation Service

## § 1401.21

AUTHORITY: Sec. 202, 61 Stat. 136, as amended; 5 U.S.C. 552.

SOURCE: 40 FR 8169, Feb. 26, 1975, unless otherwise noted.

### Subpart A—Information in Response to Subpoenas

#### § 1401.1 Purpose and scope.

This subpart contains the regulations of the Service concerning procedures to be followed when a subpoena, order, or other demand of a court or other authority is issued for the production or disclosure of (a) any material contained in the files of the Service; (b) any information relating to material contained in the files of the Service; or (c) any information or material acquired by any person as a part of the performance of his official duties or because of his official status, while such person was an employee of the Service.

#### § 1401.2 Production of records or testimony by FMCS employees.

(a) Public policy and the successful effectuation of the Federal Mediation and Conciliation Service's mission require that commissioners and employees maintain a reputation for impartiality and integrity. Labor and management or other interested parties participating in mediation efforts must have the assurance and confidence that information disclosed to commissioners and other employees of the Service will not subsequently be divulged, voluntarily or because of compulsion, unless authorized by the Director of the Service.

(b) No officer, employee, or other person officially connected in any capacity with the Service, currently or formerly shall, in response to a subpoena, subpoena duces tecum, or other judicial or administrative order, produce any material contained in the files of the Service, disclose any information acquired as part of the performance of his official duties or because of his official status, or testify on behalf of any party to any matter pending in any judicial, arbitral or administrative proceeding, without the prior approval of the Director.

#### § 1401.3 Procedure in the event of a demand for production, disclosure, or testimony.

(a) Any request for records of the Service, whether it be by letter, by subpoena duces tecum or by any other written demand, shall be handled pursuant to the procedures established in subpart B of this part, and shall comply with the rules governing public disclosure.

(b) Whenever any subpoena or subpoena duces tecum calling for production of records or testimony as described above shall have been served upon any officer, employee or other person as noted in §1401.2(b), he will, unless notified otherwise appear in answer thereto, and unless otherwise expressly directed by the Director, respectfully decline to produce or present such records or to give such testimony, by reason of the prohibitions of this section, and shall state that the production of the record(s) involved will be handled by the procedures established in this part.

### Subpart B—Production or Disclosure of Information

SOURCE: 50 FR 52917, Dec. 27, 1985, unless otherwise noted.

#### § 1401.20 Purpose and scope.

This subpart contains the regulations of the Federal Mediation and Conciliation Service providing for public access to information from records of the Service. These regulations implement the Freedom of Information Act, 5 U.S.C. 552, and the policy of the FMCS to disseminate information on matters of interest to the public and to disclose on request information contained in agency records insofar as is compatible with the discharge of its responsibilities and the principle of confidentiality and neutrality of dispute resolution by third party neutrals.

#### § 1401.21 Information policy.

(a) Except for matters specifically excluded by subsection 552(b) of title 5, United States Code, matters covered by the Privacy Act, or other applicable statutes, all documents and records maintained by this agency or in its

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custody shall be available to the public upon request filed in accordance with these regulations. To the extent permitted by other laws, the Service also will make available records which it is authorized to withhold under 5 U.S.C. 552(b) whenever it determines that such disclosure is in the public interest.

(b) Any document released for inspection under the provisions of this part may be manually copied by the requesting party. The Service shall provide facilities for copying such documents at reasonable times during normal working hours so long as it does not interfere with the efficient operation of the agency.

(c) The Service will also publish and maintain a current index, revised quarterly, providing identifying information for the public as to statements of policy and interpretation adopted by the agency and still in force but not published by the FEDERAL REGISTER, and administrative staff manuals and instructions to staff that affect the public. The Service will also maintain on file all material published in the Service in the FEDERAL REGISTER and currently in effect.

(d) Records or documents prepared by the Service for routine public distribution, e.g., pamphlets, speeches, and educational or training materials, will be furnished upon request to the Office of Information, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, as long as the supply lasts. The provisions of § 1401.36 (fees) is not applicable to such requests except when the supply of such material is exhausted and it is necessary to reproduce individual copies upon specific request.

(e) All existing FMCS records are subject to routine destruction according to standard record retention schedules.

### § 1401.22 Partial disclosure of records.

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not feasible to separate them or release of the disclosable information would com-

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promise or impinge upon the nondisclosable portion of the record.

### § 1401.23 Preparation of new records.

(a) Freedom of Information Act and the provisions of this part apply only to existing records that are reasonably described in a request filed with the Federal Mediation and Conciliation Service pursuant to the procedures established in §§ 1401.31—1401.36.

(b) The Director may, in his or her discretion, prepare new records in order to respond to a request for information when he or she concludes that it is in the public interest and promotes the objectives of the Labor-Management Relations Act, 1947, as amended.

### § 1401.24 Notices of dispute are public.

Written notices of disputes received by the Service pursuant to sections 8(d)(3), 8(d)(A), 8(g) and 9(c)(1) of the Labor-Management Relations Act, 1947, as amended, or pursuant to 29 CFR 1425.2, are not exempt from disclosure. Parties at interest have the right to receive certified copies of any such notice of dispute upon written request. Requests for copies of notices should be submitted to FMCS, Notice Processing Unit, 2100 K Street, NW., Washington, DC 20427.

### § 1401.30 Applicability of procedures.

Requests for inspection or copying of information from records in the custody of the FMCS which are reasonably identifiable and available under the provisions of this part shall be made and acted upon as provided in the following sections of this subpart. The prescribed procedure shall be followed in all cases where access is sought to official records pursuant to the provisions of the Freedom of Information Act, except with respect to records for which a less formal disclosure procedure is provided specifically in this part.

### § 1401.31 Filing a request for records.

(a) Any person who desires to inspect or copy any record covered by this part shall submit a written request to that effect to the Legal Services Office, FMCS, 2100 K Street, NW., Washington, DC 20427. (202) 653-5305.