

§ 713.7

§ 713.7 What will OPIC do with my request?

(a) *Factors OPIC will consider.* OPIC may consider various factors in reviewing a request for nonpublic records or testimony of OPIC employees, including:

(1) Whether disclosure would assist or hinder OPIC in performing its statutory duties or use OPIC resources unreasonably, including whether responding to the request will interfere with OPIC employees' ability to do their work.

(2) Whether disclosure is necessary to prevent the perpetration of a fraud or other injustice in the matter.

(3) Whether you can get the records or testimony you want from sources other than OPIC.

(4) Whether the request is unduly burdensome.

(5) Whether disclosure would violate a statute, executive order, or regulation, such as the Privacy Act, 5 U.S.C. 552a.

(6) Whether disclosure would reveal confidential, sensitive or privileged information, trade secrets or similar, confidential commercial or financial information, or would otherwise be inappropriate for release and, if so, whether a confidentiality agreement or protective order as provided in § 713.9(a) can adequately limit the disclosure.

(7) Whether the disclosure would interfere with law enforcement proceedings, compromise constitutional rights, or hamper OPIC programs or other OPIC operations.

(8) Whether the disclosure could result in OPIC's appearing to favor one litigant over another.

(9) Any other factors OPIC determines to be relevant to the interests of OPIC.

(b) *Review of your request.* OPIC will process your request in the order it is received. OPIC will try to respond to your request within 45 days, but this may vary, depending on the scope of your request.

(c) *Final determination.* the Vice-President/General Counsel makes the final determination on requests for nonpublic records or OPIC employee testimony. All final determinations are in the sole discretion of the Vice-President/General Counsel. The Vice-Presi-

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dent/General Counsel will notify you and the court or other authority of the final determination of your request. In considering your request, the Vice-President/General Counsel may contact you to inform you of the requirements of this part, ask that the request or subpoena be modified or withdrawn, or may try to resolve the request or subpoena informally without issuing a final determination.

§ 713.8 If my request is granted, what fees apply?

(a) *Generally.* You must pay any fees associated with complying with your request, including copying fees for records and witness fees for testimony. The Vice-President/General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the fees.

(b) *Fees for records.* You must pay all fees for searching, reviewing and duplicating records produced in response to your request. The fees will be the same as those charged by OPIC under its Freedom of Information Act regulations, 22 CFR Part 706, Subpart B, § 706.26.

(c) *Witness fees.* You must pay the fees, expenses, and allowances prescribed by the court's rules for attendance by a witness. If no such fees are prescribed, the local federal district court rule concerning witness fees, for the federal district court closest to where the witness appears, will apply. For testimony by current OPIC employees, you must pay witness fees, allowances, and expenses to the Vice-President/General Counsel by check made payable to the "Overseas Private Investment Corporation" within 30 days from receipt of OPIC's billing statement. For the testimony of a former OPIC employee, you must pay witness fees, allowances, and expenses directly to the former employee, in accordance with 28 U.S.C. 1821 or other applicable statutes.

(d) *Certification of records.* OPIC may authenticate or certify records to facilitate their use as evidence. If you require authenticated records, you must request certified copies at least 45 days before the date they will be needed.

Send your request to the Vice-President/General Counsel. OPIC will charge you a certification fee of \$5.00 per document.

(e) *Waiver of fees.* A waiver or reduction of any fees in connection with the testimony, production, or certification or authentication of records may be granted in the discretion of the Vice-President/General Counsel. Waivers will not be granted routinely. If you request a waiver, your request for records or testimony must state the reasons why a waiver should be granted.

§ 713.9 If my request is granted, what restrictions may apply?

(a) *Records.* The Vice-President/General Counsel may impose conditions or restrictions on the release of nonpublic records, including a requirement that you obtain a protective order or execute a confidentiality agreement with the other parties in the legal proceeding that limits access to and any further disclosure of the nonpublic records. The terms of a confidentiality agreement or protective order must be acceptable to the Vice-President/General Counsel. In cases where protective orders or confidentiality agreements have already been executed, OPIC may condition the release of nonpublic records on an amendment to the existing protective order or confidentiality agreement.

(b) *Testimony.* The Vice-President/General Counsel may impose conditions or restrictions on the testimony of OPIC employees, including, for example, limiting the areas of testimony or requiring you and the other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which you requested the testimony. The Vice-President/General Counsel may also require you to provide a copy of the transcript of the testimony to OPIC at your expense.

§ 713.10 Definitions.

For purposes of this part:

Legal proceedings means any matter before any federal, state or foreign administrative or judicial authority, including courts, agencies, commissions,

boards, grand juries, or other tribunals, involving such proceedings as lawsuits, licensing matters, hearings, trials, discovery, investigations, mediation or arbitration. When OPIC is a party to a legal proceeding, it will be subject to the applicable rules of civil procedure governing production of documents and witnesses; however testimony and/or production of documents by OPIC employees, as defined, will still be subject to this part.

Nonpublic records means any OPIC records which are exempt from disclosure by statute or under Part 706, OPIC's regulations implementing the provisions of the Freedom of Information Act. For example, this may include records created in connection with OPIC's receipt, evaluation and action on actual and proposed OPIC finance projects and insurance policies (whether such projects or policies were cancelled or not), including all reports, internal memoranda, opinions, interpretations, and correspondence, whether prepared by OPIC employees or by persons under contract, as well as confidential business information submitted by parties seeking to do business with OPIC. Whether OPIC has actually chosen in practice to apply any exemption to specific documents is irrelevant to the question of whether they are "nonpublic" for the purposes of this Part.

OPIC employee means current and former officials, members of the Board of Directors, officers, directors, employees and agents of the Overseas Private Investment Corporation, including contract employees, consultants and their employees. This definition does not include persons who are no longer employed by OPIC and are retained or hired as expert witnesses or agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment.

Subpoena means any order, subpoena for records or other tangible things or for testimony, summons, notice or legal process issued in a legal proceeding.

Testimony means any written or oral statements made by an individual in