

**§ 806.31 Requirements of 5 U.S.C. 552(b)(4) to submitters of non-government contract-related information.**

(a) The FOIA requires federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy. Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

(b) In this case, the fourth exemption, 5 U.S.C. 552(b)(4), may apply to records or information the Air Force maintains. Under this exemption, agencies must withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government that is privileged or confidential. This generally includes information provided and received during the contracting process with the understanding that the Air Force will keep it privileged or confidential.

(c) Commercial or financial matter is “confidential” and exempt if its release will probably:

(1) Impair the government’s ability to obtain necessary information in the future.

(2) Substantially harm the source’s competitive position or impair some other legitimate government interest such as compliance and program effectiveness.

(d) Applicability of exemption. The exemption may be used to protect information provided by a nongovernment submitter when public disclosure will probably cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

(1) Commercial or financial information received in confidence with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

NOTE: Certain proprietary and source selection information may also fall under exemption (b)(3), under the provisions of 10 U.S.C. 2305(g) or 41 U.S.C. 423, if statutory requirements are met.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits,

losses, and expenditures, offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given during inspections, investigations, or audits, received and kept in confidence because they reveal trade secrets or commercial or financial information, normally considered confidential or privileged.

(4) Financial data that private employers give in confidence for local wage surveys used to set and adjust pay schedules for the prevailing wage rate of DoD employees.

(5) Information about scientific and manufacturing processes or developments that is technical or scientific or other information submitted with a research grant application, or with a report while research is in progress.

(6) Technical or scientific data a contractor or subcontractor develops entirely at private expense, and technical or scientific data developed partly with Federal funds and partly with private funds, in which the contractor or subcontractor retains legitimate proprietary interests per 10 U.S.C. 2320 to 2321 and 48 CFR, Chapter 2, 227.71-227.72.

(7) Computer software copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would adversely impact its potential market value.

(e) Submitter’s Written Response. If release of the requested material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm public release will cause to you, your organization, or your business. The act requires the Air Force to provide any reasonably segregable part of a record after deleting exempt portions. If deleting key words or phrases would adequately protect your interests, advise us in writing which portions you believe we can safely release, and which portions you believe we need to withhold from release. If you do not provide details on the probability of substantial harm to your competitive position or other commercial interests, which would be caused by releasing your material to the requester, we may be required to release the information. Records qualify for protection on a case by case basis.

(f) Pricing Information. Generally, the prices a contractor charges the government for goods or services would be released under the FOIA. Examples of releasable data include: bids submitted in response to an invitation for bids (IFB), amounts actually paid by the government under a contract, and line item prices, contract award price, and modifications to a contract. Unit prices contained in a contract award are considered releasable as part of the post award notification procedure prescribed by 48 CFR 15.503, unless they are part of an unsuccessful proposal, then 10 U.S.C. 2305(g) protects everything including unit price.

APPENDIX A TO PART 806—REFERENCES

Title 5, United States Code, Section 552, The Freedom of Information Act, as amended  
 Title 5, United States Code, Section 552a, The Privacy Act (as amended)  
 Title 10, United States Code, Section 2305(g), Prohibition on Release of Contractor Proposals  
 Title 48, Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR) System  
 OMB Bulletin 95-01, 7 December 1994  
 OMB Memorandum, 6 February 1998  
 DoD 5200.1-R, Information Security Program, January 1997  
 AFI 16-701, Special Access Programs  
 AFI 31-206, Security Police Investigations  
 AFI 31-401, Information Security Program Management  
 AFI 31-501, Personnel Security Program Management  
 AFI 31-601, Industrial Security Program Management  
 AFI 33-129, Transmission of Information Via the Internet  
 AFI 35-205, Air Force Security and Policy Review Program  
 AFI 36-2603, Air Force Board for Correction of Military Records  
 AFI 36-2706, Military Equal Opportunity and Treatment Program  
 AFI 36-2906, Personal Financial Responsibility  
 AFI 36-2907, Unfavorable Information File (UIF) Program  
 AFPD 37-1, Air Force Information Management (will convert to AFPD 33-3)  
 AFI 37-124, The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections (will convert to AFI 33-324)  
 AFI 37-132, Air Force Privacy Act Program (will convert to AFI 33-332)  
 AFMAN 37-139, Records Disposition Schedule (will convert to AFMAN 33-339)

AFI 40-301, Family Advocacy  
 AFI 41-210, Patient Administration Functions  
 AFI 44-109, Mental Health and Military Law  
 AFI 51-201, Administration of Military Justice  
 AFI 51-301, Civil Litigation  
 AFI 51-303, Intellectual Property-Patents, Patent Related Matters, Trademarks, and Copyrights  
 AFI 51-501, Tort Claims  
 AFI 51-503, Aircraft, Missile, Nuclear and Space Accident Investigations  
 AFI 51-504, Legal Assistance, Notary and Preventive Law Programs  
 AFI 51-1102, Cooperation with the Office of the Special Counsel  
 AFI 61-204, Disseminating Scientific and Technical Information  
 AFI 61-303, Licensing Inventions Made Under Cooperative Research and Development Agreements  
 AFI 65-401, Relations With the General Accounting Office  
 AFI 71-101, Volume 1, Criminal Investigations  
 AFI 71-101, Volume 2, Protective Service Matters  
 AFI 84-101, Historical Products, Services, and Requirements  
 AFI 90-301, Inspector General Complaints  
 AFI 90-401, Air Force Relations With Congress  
 AFI 91-204, Safety Investigations and Reports

APPENDIX B TO PART 806—  
 ABBREVIATIONS AND ACRONYMS

AFCA—Air Force Communications Agency  
 AFCIC—Air Force Communications and Information Center  
 AFRC—Air Force Reserve Command  
 AFI—Air Force Instruction  
 AFLSA/JACL—Air Force Legal Services Agency, General Litigation Division  
 AFMAN—Air Force Manual  
 AFPC/MSIMD—Air Force Personnel Center/Records Management, FOIA, and Privacy Act Office  
 AFPD—Air Force Policy Directive  
 ANG—Air National Guard  
 ASCII—American Standard Code for Information Interchange  
 CFR—Code of Federal Regulations  
 DFAS—Defense Finance and Accounting Service  
 DFOISR—Director, Freedom of Information and Security Review  
 DoD—Department of Defense  
 DRU—Direct Reporting Unit  
 EFOIA—Electronic Freedom of Information Act  
 ERR—Electronic Reading Room  
 FOA—Field Operating Agency  
 FOIA—Freedom of Information Act  
 FOUO—For Official Use Only

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GAO—General Accounting Office  
GILS—Government Information Locator Service  
GPO—Government Printing Office  
IDA—Initial Denial Authority  
IG—Inspector General  
IMPAC—International Merchant Purchase Authority Card  
LOA—Letters of Offer and Acceptance  
MAJCOM—Major Command  
MFR—Memorandum for Record  
NATO—North Atlantic Treaty Organization  
NORAD—North American Aerospace Defense  
NTIS—National Technical Information Service  
OCR—Office of Corollary Responsibility  
OMB—Office of Management and Budget  
OPR—Office of Primary Responsibility  
PA—Privacy Act  
PAO—Public Affairs Office  
PAS—Personnel Accounting Symbol  
RCS—Reports Control Symbol  
SAF—Secretary of the Air Force  
SSN—Social Security Number  
USAF—United States Air Force  
U.S.C.—United States Code  
WWW—World Wide Web

**APPENDIX C TO PART 806—TERMS**

Appellate Authority—The Office of the General Counsel to the Secretary of the Air Force (SAF/GCA).  
Denial—An adverse determination on no records, fees, expedited access, or not disclosing records.  
Determination—The written decision to release or deny records or information that is responsive to a request.  
Disclosure—Providing access to, or one copy of, a record.  
Disclosure Authority—Official authorized to release records, normally division chiefs or higher.  
FOIA Manager—The person who manages the FOIA Program at each organizational level.  
FOIA Request—A written request for DoD records from the public that cites or implies the FOIA.  
Functional Request—Any request for records from the public that does not cite the FOIA.  
Government Information Locator Service (GILS)—An automated on-line card catalog of publicly accessible information.  
Glomar Response—A reply that neither confirms nor denies the existence or nonexistence of the requested record.  
Initial Denial Authority (IDA)—Persons in authorized positions that may withhold records.  
Partial Denial—A decision to withhold part of a requested record.  
Public Interest—The interest in obtaining official information that sheds light on how an agency performs its statutory du-

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ties and informs citizens about what their government is doing.  
Reading Room—A place where the public may inspect and copy, or have copied, releasable records.  
Records—The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under Federal Law in connection with the transaction of public business and in the agency's possession and control at the time the FOIA request is made. Records include notes, working papers, and drafts.  
Redact—To remove nonreleasable material.

**PART 806b—PRIVACY ACT PROGRAM**

**Subpart A—Overview of the Privacy Act Program**

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