

Subpart B—Demands or Requests for Testimony and Production of Documents

§ 1216.201 General prohibition.

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the General Counsel.

§ 1216.202 Factors the MSPB will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

- (a) The purposes of this part are met;
- (b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;
- (c) Allowing such testimony or production of records would assist or hinder the MSPB in performing its statutory duties;
- (d) Allowing such testimony or production of records would be in the best interest of the MSPB or the United States;
- (e) The records or testimony can be obtained from other sources;
- (f) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rule of procedure governing the case or matter in which the demand or request arose;
- (g) Disclosure would violate a statute, Executive Order or regulation;
- (h) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;
- (i) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(j) Disclosure would result in the MSPB appearing to favor one litigant over another;

(k) Whether the request was served before the demand;

(l) A substantial Government interest is implicated;

(m) The demand or request is within the authority of the party making it; and

(n) The demand or request is sufficiently specific to be answered.

§ 1216.203 Filing requirements for litigants seeking documents or testimony.

A litigant must comply with the following requirements when filing a request for official records and information or testimony under this part. A request should be filed before a demand.

(a) The request must be in writing and must be submitted to the Clerk of the Board who will immediately forward the request to the General Counsel.

(b) The written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and outweighs the burden on the MSPB to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an MSPB employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;