

harm to the submitter, and has no designation from the submitter, it shall notify the submitter of the following:

(i) That a FOIA request has been received seeking the record,

(ii) That disclosure of the record may be required,

(iii) That disclosure of the record could result in competitive harm to the submitter,

(iv) That the submitter has a period of seven workdays from date of notice within which it or a designee may object to the disclosure its records, and

(v) That a detailed explanation should be submitted setting forth all grounds as to why the disclosure would result in substantial competitive harm, such as, the general custom or usage in the business of the information in the record, the number and situation of the persons who have access to the record, the type and degree of risk of financial injury that release would cause, and the length of time the record needs to be kept confidential.

(4) In exceptional circumstances, the Board may extend by seven workdays the time for a submitter's response for good cause.

(5) The Board shall give careful consideration to all specified grounds for nondisclosure prior to making an administrative determination on the issue of competitive harm.

(6) Should the Board determine to disclose the requested records, it shall provide written notice to the submitter, explaining briefly why the submitter's objections were not sustained and setting forth the date for disclosure, which date may be less than 10 calendar days after the date of the letter to the submitter.

(7) A submitter who provided records to the Board prior to January 1, 1988, and did not designate which records contain confidential commercial information, shall be notified as provided in §1631.15(b)(3). After making such notification, the Board will follow the procedures set forth in §1631.15(b)(4)-(6).

(8) The Board will, as a general rule, look favorably upon recommendations for withholding information about ideas, methods, and processes that are unique; about equipment, materials, or systems that are potentially patent-

able; or about a unique use of equipment which is specifically outlined.

(9) The Board will not withhold information that is known through custom or usage in the relevant trade, business, or profession, or information that is generally known to any reasonably educated person. Self-evident statements or reviews of the general state of the art will not ordinarily be withheld.

(10) The Board will withhold all cost data submitted, except the total estimated costs from each year of a contract. It will release these total estimated costs and ordinarily release explanatory material and headings associated with the cost data, withholding only the figures themselves. If a contractor believes that some of the explanatory material should be withheld, that material must be identified and a justification be presented as to why it should not be released.

(11) *Exemption 6.* This exemption is not a blanket exemption for all personal information submitted by a non-U.S. Government source. The Board will balance the need to keep a person's private affairs from unnecessary public scrutiny with the public's right to information on Board records. As a general practice, the Board will release information about any person named in a contract itself or about any person who signed a contract as well as information given in a proposal about any officer of a corporation submitting that proposal. Depending upon the circumstances, the Board may release most information in resumes concerning employees, including education and experience. Efforts will be made to identify information that should be deleted and offerors are urged to point out such material for guidance. Any information in the proposal, such as the names of staff persons, which might, if released, constitute an unwarranted invasion of personal privacy if released should be identified and a justification for non-release provided in order to receive proper consideration.

§ 1631.16 Exemptions.

The Freedom of Information Act exempts from all of its publication and disclosure requirements nine categories of records which are described

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in 5 U.S.C. 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence and matters involving personal privacy.

§ 1631.17 Deletion of exempted information.

Where requested records contain matters which are exempted under 5 U.S.C. 552(b) but which matters are reasonably segregable from the remainder of the records, they shall be disclosed by the Board with deletions. To each such record, the Board shall attach a written justification for making deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

§ 1631.18 Annual report.

The Executive Director will submit annually, on or before February 1, a Freedom of Information report covering the preceding fiscal year to the Attorney General of the United States. The report will include matters required by 5 U.S.C. 552(e).

[63 FR 41709, Aug. 5, 1998]

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

§ 1631.30 Purpose and scope.

This subpart contains the regulations of the Board concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a “demand”) of a court or other authority is issued for the production or disclosure of:

- (a) Any material contained in the files of the Board;
- (b) Any information relating to materials contained in the files of the Board; or
- (c) Any information or material acquired by an employee of the Board as a part of the performance of his or her official duties or because of his or her official status.

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§ 1631.31 Production prohibited unless approved by the Executive Director.

No employee or former employee of the Board shall, in response to a demand of a court or other authority, produce any material contained in the files of the Board or disclose any information or produce any material acquired as part of the performance of his or her official status without the prior approval of the Executive Director or his or her designee.

§ 1631.32 Procedure in the event of a demand for disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Board for the production of material or the disclosure of information described in § 1631.31, he or she shall immediately notify the Executive Director or his or her designee. If possible, the Executive Director or his or her designee shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the Executive Director or his or her designee are received, an attorney designated for that purpose by the Board shall appear with the employee or former employee upon whom the demand has been made and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Executive Director or his or her designee. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Executive Director.

§ 1631.33 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 1631.32(b) pending receipt of instructions from the Executive Director, or his or her designee, or if the court or other authority rules that the demand must be complied with irrespective of the instructions