

### Subpart F—Exemptions From Public Access to Corporation Records

#### § 902.50 Applicability.

(a) This subpart implements section 552(b) of title 5 U.S.C., which exempts certain records from public inspection under section 552(a). This subpart applies to records requested under subparts D and E of this part. The Corporation may, however, release a record authorized to be withheld under §§ 902.52 through 902.59 unless it determines that the release of that record would be inconsistent with a purpose of the aforementioned sections. Examples given in §§ 902.52 through 902.59 of records included within a particular statutory exemption are not necessarily illustrative of all types of records covered by the exemption. Any reasonably segregable portion of a record withheld under this subpart shall be provided to a requester, after deletion of the portions which are exempt under this subpart.

(b) This subpart does not authorize withholding of information or limit the availability of records to the public, except as specifically stated. This subpart is not authority to withhold information from Congress.

#### § 902.51 Records relating to matters that are required by Executive order to be kept secret.

Records relating to matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, include those within the scope of the following, and any further amendment of any of them, but only to the extent that the records are in fact properly classified pursuant to such Executive order:

(a) Executive Order 11652 of March 8, 1972 (3 CFR 1974 Comp. p. 339);

(b) Executive Order 10865 of February 20, 1960 (3 CFR 1959-1963 Comp. p. 398); and

(c) Executive Order 10104 of February 1, 1950 (3 CFR 1949-1953 Comp., p. 298).

These records may not be made available for public inspection.

#### § 902.52 Records related solely to internal personnel rules and practices.

(a) Records related solely to internal personnel rules and practices that are within the statutory exemption include memoranda pertaining to personnel matters such as staffing policies, and policies and procedures for the hiring, training, promotion, demotion, and discharge of employees, and management plans, records, or proposals related to labor-management relationships.

(b) The purpose of this section is to authorize the protection of any record related to internal personnel rules and practices dealing with the relations between the Corporation and its employees.

#### § 902.53 Records exempted from disclosure by statute.

(a) Records relating to matters that are specifically exempted by statute from disclosure may not be made available for public inspection. For example: section 1905 of title 18 U.S.C., protecting trade secrets, processes, and certain economic and other data obtained by examination or investigation, or from reports.

(b) The purpose of this section is to preserve the effectiveness of statutes of the kind cited as an example, in accordance with their terms.

#### § 902.54 Trade secrets and commercial or financial information that is privileged or confidential.

(a) Trade secrets and commercial or financial information that are privileged and for which confidentiality is requested by the person possessing such privilege are within the statutory exemption. This includes the following:

(1) Commercial or financial information not customarily released to the public, furnished and accepted in confidence or disclosure of which could reasonably be expected to cause substantial competitive harm, or both;

(2) Statements of financial interest furnished by officers and employees of the Corporation;

(3) Commercial, technical, and financial information furnished by any person in connection with an application for a loan or a loan guarantee;

(4) Commercial or financial information customarily subjected to an attorney-client or similar evidentiary privilege; or,

(5) Materials in which the Corporation has a property right such as designs, drawings, and other data and reports acquired in connection with any research project, inside or outside of the Corporation, or any grant or contract.

(b) The purpose of this section is to authorize the protection of trade secrets and commercial or financial records that are customarily privileged or are appropriately given to the Corporation in confidence. It assures the confidentiality of trade secrets and commercial or financial information obtained by the Corporation through questionnaires and required reports to the extent that the information would not customarily be made public by the person from whom it was obtained. In any case in which the Corporation has obligated itself not to disclose trade secrets and commercial or financial information it receives, this section indicates the Corporation's intention to honor that obligation to the extent permitted by law. In addition, this section recognizes that certain materials, such as research data and materials, formulae, designs, and architectural drawings, have significance not as records but as items of property acquired, in many cases at public expense. In any case in which similar proprietary material in private hands would be held in confidence, material covered in this section may be held in confidence.

(c)(1) *In general.* For commercial or financial information furnished to the Corporation on or after March 30, 1988, the Corporation shall require the submitter to designate, at the time the information is furnished or within a reasonable time thereafter, any information the submitter considers confidential or privileged. Commercial or financial information provided to the Corporation shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this paragraph.

(2) *Notice to submitters.* The Corporation shall provide a submitter with prompt written notice of a request en-

compassing its commercial or financial information whenever required under paragraph (c)(3) of this section, and except as is provided in paragraph (c)(7) of this section. Such written notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the information. Concurrently with its notice to a submitter, the Corporation shall inform a requestor in writing that the submitter is afforded a reasonable period within which to object to disclosure and that the 10 workday initial determination period provided for in 36 CFR 902.60 may therefore be extended.

(3) *When notice is required.* (i) For information submitted to the Corporation prior to March 30, 1988, the Corporation shall provide a submitter with notice of a request whenever:

(A) The information is less than ten years old;

(B) The information is subject to prior express commitment of confidentiality given by the Corporation to the submitter; or

(C) The Corporation has reason to believe that disclosure of the information may result in substantial competitive harm to the submitter.

(ii) For information submitted to the Corporation on or after March 30, 1988, the Corporation shall provide a submitter with notice of a request whenever:

(A) The submitter has in good faith designated the information as confidential, or

(B) The Corporation has reason to believe that disclosure of the information may result in substantial competitive harm to the submitter.

Notice of a request for information falling within the former category shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration. The submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative that the information in question is in fact confidential and has not been disclosed to the public.

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(4) *Opportunity to object to disclosure.* Through the notice described in paragraph (c)(2) of this section, the Corporation shall afford a submitter a reasonable period within which to provide the Corporation with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be privileged or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(5) *Notice of intent to disclose.* The Corporation shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose information. Whenever the Corporation decides to disclose information over the objection of a submitter, the Corporation shall forward to the submitter a written notice which shall include:

- (i) A statement of the reasons for which the submitter's disclosure objections were not sustained;
- (ii) A description of the information to be disclosed; and
- (iii) A specified disclosure date.

Such notice of intent to disclose shall be forwarded a reasonable number of days, as circumstances permit, prior to the specified date upon which disclosure is intended. A copy of such disclosure notice shall be forwarded to the requester at the same time.

(6) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of information covered by paragraph (c) of this section, the Corporation shall promptly notify the submitter.

(7) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

- (i) The Corporation determines that the information should not be disclosed;
- (ii) The information lawfully has been published or otherwise made available to the public;
- (iii) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(iv) The designation made by the submitter in accordance with paragraphs (c)(1) and (c)(3)(ii) of this section appears obviously frivolous; except that, in such case, the Corporation shall provide the submitter with written notice of any final decision to disclose information within a reasonable number of days prior to a specified disclosure date.

[41 FR 43143, Sept. 30, 1976, as amended at 53 FR 10374, Mar. 31, 1988]

**§ 902.55 Intragovernmental exchanges.**

(a) Any record prepared by a Government officer or employee (including those prepared by a consultant or advisory body) for internal Government use is within the statutory exemption to the extent that it contains—

(1) Opinions, advice, deliberations, or recommendations made in the course of developing official action by the Government, but not actually made a part of that official action, or

(2) Information concerning any pending proceeding or similar matter including any claim or other dispute to be resolved before a court of law, administrative board, hearing officer, or contracting officer.

(b) This section has two distinct purposes. One is to protect the full and frank exchange of ideas, views, and opinions necessary for the effective functioning of the Government and to afford this protection both before and after any action is taken. This judicially recognized privilege of protection against disclosure in litigation or elsewhere is intended to assure that these resources will be fully and readily available to those officials upon whom the responsibility rests to take official and final Corporation action. However, the action itself, any memoranda made part of that action, and the facts on which it is based are not within this protection. The other purpose is to protect against the premature disclosure of material that is in the development stage if premature disclosure would be detrimental to the authorized and appropriate purposes for which the material is being used, or if, because of its tentative nature, the material is likely to be revised or modified before it is officially presented to the public.

(c) Examples of records covered by this section include minutes to the extent they contain matter described in paragraph (a) of this section; staff papers containing advice, opinions, suggestions, or exchanges of views, preliminary to final agency decision or action; budgetary planning and programming information; advance information on such things as proposed plans to procure, lease, or otherwise hire and dispose of materials, real estate, or facilities, documents exchanged preparatory to anticipated legal proceedings; material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly processes of the Corporation; records of inspection, investigations, and surveys pertaining to internal management of the Department; and matters that would not be routinely disclosed under disclosure procedures in litigation and which are likely to be the subject of litigation. However, if such a record also contains factual information, that information must be made available under subpart E of this part unless the facts are so inextricably intertwined with deliberative or policymaking processes, that they cannot be separated without disclosing those processes.

**§902.56 Protection of personal privacy.**

(a) Any of the following personnel, medical, or similar records is within the statutory exemption if its disclosure would harm the individual concerned or be a clearly unwarranted invasion of his personal privacy:

- (1) Personnel and background records personal to any officer or employee of the Corporation, or other person, including his home address;
- (2) Medical histories and medical records concerning individuals, including applicants for licenses; or
- (3) Any other detailed record containing personal information identifiable with a particular person.

(b) The purpose of this section is to provide a proper balance between the protection of personal privacy and the preservation of the public's rights to Corporation information by authorizing the protection of information that, if released, might unjustifiably

invade an individual's personal privacy.

**§902.57 Investigatory files compiled for law enforcement purposes.**

(a) Files compiled by the Corporation for law enforcement purposes, including the enforcement of the regulations of the Corporation, are within the statutory exemption to the extent that production of such records would:

- (1) Interfere with enforcement proceedings;
- (2) Deprive a person of a right to a fair trial or an impartial adjudication;
- (3) Constitute an unwarranted invasion of personal privacy;
- (4) Disclose the identity of a confidential source and in the case of a record compiled by a criminal law enforcement authority in the courts of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;
- (5) Disclose investigative techniques and procedures; or,
- (6) Endanger the life or physical safety of law enforcement personnel.

(b) The purpose of this section is to protect from disclosure the law enforcement files of the Corporation including files prepared in connection with related litigation and adjudicative proceedings. It includes the enforcement not only of criminal statutes but all kinds of laws.

**§902.58 Reports of financial institutions.**

Any material contained in or related to any examination, operating, or condition report prepared by, on behalf of, or for the use of, any agency responsible for the regulation or supervision of financial institutions is within the statutory exemption.

**§902.59 Geological and geophysical information.**

Any geological or geophysical information and data (including maps) concerning wells is within the statutory exemption.