

## Federal Labor Relations Authority

## § 2413.4

### § 2412.15 Penalties.

Any person who knowingly and willfully requests or obtains any record concerning an individual from the Authority, the General Counsel or the Panel under false pretenses shall be subject to criminal prosecution under 5 U.S.C. 552a(i)(3) which provides that such person shall be guilty of a misdemeanor and fined not more than \$5,000.

### § 2412.16 Exemptions.

(a) *OIG files compiled for the purpose of a criminal investigation and for related purposes.* Pursuant to 5 U.S.C. 552a(j)(2), the FLRA hereby exempts the system of records entitled “FLRA/OIG-1, Office of Inspector General Investigative Files,” insofar as it consists of information compiled for the purposes of a criminal investigation or for other purposes within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, except for subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), (11) and (i).

(b) *OIG files compiled for other law enforcement purposes.* Pursuant to 5 U.S.C. 552a(k)(2), the FLRA hereby exempts the system of records entitled, “FLRA/OIG-1, Office of Inspector General Investigative Files,” insofar as it consists of information compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

[56 FR 33189, July 19, 1991]

## PART 2413—OPEN MEETINGS

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AUTHORITY: 5 U.S.C. 552b.

SOURCE: 45 FR 3494, Jan. 17, 1980, unless otherwise noted.

### § 2413.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority implementing the Government in the Sunshine Act, 5 U.S.C. 552b.

### § 2413.2 Public observation of meetings.

Every portion of every meeting of the Authority shall be open to public observation, except as provided in § 2413.4, and Authority members shall not jointly conduct or dispose of agency business other than in accordance with the provisions of this part.

### § 2413.3 Definition of meeting.

For purposes of this part, *meeting* shall mean the deliberations of at least two (2) members of the Authority where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting should be closed to public observation in accordance with the provisions of this part.

### § 2413.4 Closing of meetings; reasons therefor.

(a) Except where the Authority determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpoena, the Authority's participation in a civil action or proceeding or an arbitration, or the initiation, conduct or disposition by the Authority of particular cases of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing, or any court proceedings collateral or ancillary thereto.

(b) Meetings, or portions thereof, may also be closed by the Authority, except where it determines that the public interest requires otherwise, when the deliberations concern matters or information falling within the reasons for closing meetings specified in 5 U.S.C. 552b(c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (privileged or confidential

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trade secrets and commercial or financial information); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B) (disclosure would significantly frustrate implementation of a proposed agency action).

### **§ 2413.5 Action necessary to close meeting; record of votes.**

A meeting shall be closed to public observation under § 2413.4, only when a majority of the members of the Authority who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in § 2413.4(a), the Authority members shall vote at the beginning of the meeting, or portion thereof, on whether to close such meeting, or portion thereof, to public observation and on whether the public interest requires that a meeting which may properly be closed should nevertheless be open to public observation. A record of such vote, reflecting the vote of each member of the Authority, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concern matters specified in § 2413.4(b), the Authority shall vote on whether to close such meeting, or portion thereof, to public observation, and on whether there is a public interest which requires that a meeting which may properly be closed should nevertheless be open to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public announcement thereof. A single vote may be taken with respect to a series of meetings at which the deliberations will concern the same particular matters where such subsequent meetings are scheduled to be held within thirty (30) days after the initial meeting. A record of such vote, reflecting the vote of each member of the Authority, shall be kept and made available for the public within one (1) day after the vote is taken.

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(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Authority close that meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes), the Authority members participating in the meeting, upon request of any one of its members, shall vote on whether to close such meeting, or a portion thereof, for that reason. A record of such vote, reflecting the vote of each member of the Authority participating in the meeting, shall be kept and made available to the public within one (1) day after the vote is taken.

(d) After public announcement of a meeting as provided in § 2413.6, a meeting, or portion thereof, announced as closed may be opened, or a meeting, or portion thereof, announced as open may be closed only if a majority of the members of the Authority who will participate in the meeting determine by a recorded vote that Authority business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each member on the change shall be announced publicly at the earliest practicable time.

(e) Before a meeting may be closed pursuant to § 2413.4, the Solicitor of the Authority shall certify that in the Solicitor's opinion the meeting may properly be closed to public observation. The certification shall set forth each applicable exemptive provision for such closing. Such certification shall be retained by the agency and made publicly available as soon as practicable.

### **§ 2413.6 Notice of meetings; public announcement and publication.**

(a) A public announcement setting forth the time, place and subject matter of meetings, or portions thereof, closed to public observation pursuant to the provisions of § 2413.4(a), shall be made at the earliest practicable time.

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(b) Except for meetings closed to public observation pursuant to the provisions of §2413.4(a), the agency shall make public announcement of each meeting to be held at least seven (7) days before the scheduled date of the meeting. The announcement shall specify the time, place and subject matter of the meeting, whether it is to be open to public observation or closed, and the name, address, and phone number of an agency official designated to respond to requests for information about the meeting. The seven (7) day period for advance notice may be shortened only upon a determination by a majority of the members of the Authority who will participate in the meeting that agency business requires that such meeting be called at an earlier date, in which event the public announcements shall be made at the earliest practicable time. A record of the vote to schedule a meeting at an earlier date shall be kept and made available to the public.

(c) Within one (1) day after a vote to close a meeting, or any portion thereof, pursuant to the provisions §2413.4(b), the agency shall make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If after public announcement required by paragraph (b) of this section has been made, the time and place of the meeting are changed, a public announcement shall be made at the earliest practicable time. The subject matter of the meeting may be changed after the public announcement only if a majority of the members of the Authority who will participate in the meeting determine that agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved, a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereto issued pursuant to the provisions of paragraphs (b) and (d) of this section or pursuant to the provisions of

§2413.5(d) shall be submitted for publication in the FEDERAL REGISTER immediately following their release to the public.

(f) Announcements of meetings made pursuant to the provisions of this section shall be made publicly available by the Executive Director.

### **§ 2413.7 Transcripts, recordings or minutes of closed meeting; public availability; retention.**

(a) For every meeting, or portion thereof, closed under the provisions of §2413.4, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the agency. For each such meeting, or portion thereof, there shall also be maintained a complete transcript or electronic recording of the proceedings, except that for meetings closed pursuant to §2413.4(a), the Authority may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reasons therefor and views thereon, documents considered and the members' vote on each rollcall vote.

(b) The agency shall make promptly available to the public copies of transcripts, recordings or minutes maintained as provided in accordance with paragraph (a) of this section, except to the extent the items therein contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552b(c). Copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs in accordance with the schedule of fees set forth in §2411.10 of this subchapter and the actual cost of transcription.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two (2) years after such meeting

or until one (1) year after the conclusion of any agency proceeding with respect to which the meeting or portion was held whichever occurs later.

## PART 2414—EX PARTE COMMUNICATIONS

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AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3495, Jan. 17, 1980, unless otherwise noted.

### § 2414.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority relating to ex parte communications.

### § 2414.2 Unauthorized communications.

(a) No interested person outside this agency shall, in any agency proceeding subject to 5 U.S.C. 557(a), make or knowingly cause to be made any prohibited ex parte communication to any Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding.

(b) No Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding shall: (1) Request any prohibited ex parte communications; or (2) make or knowingly cause to be made any prohibited ex parte communications about the proceeding to any interested person outside this agency relevant to the merits of the proceeding.

### § 2414.3 Definitions.

When used in this part:

(a) The term *person outside this agency*, to whom the prohibitions apply,

shall include any individual outside the Authority, labor organization, agency, or other entity, or an agent thereof, and the General Counsel or his representative when prosecuting an unfair labor practice proceeding before the Authority pursuant to 5 U.S.C. 7118.

(b) The term *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, subject however, to the provisions of §§ 2414.5 and 2414.6.

### § 2414.4 Duration of prohibition.

Unless otherwise provided by specific order of the Authority entered in the proceeding, the prohibition of § 2414.2 shall be applicable in any agency proceeding subject to 5 U.S.C. 557(a) beginning at the time of which the proceeding is noticed for hearing, unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of such person's acquisition of such knowledge.

### § 2414.5 Communications prohibited.

Except as provided in § 2414.6, ex parte communications prohibited by § 2414.2 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of part 2429 of this chapter; and

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present.

### § 2414.6 Communications not prohibited.

Ex parte communications prohibited by § 2414.2 shall not include:

(a) Oral or written communications which relate solely to matters which the Hearing Officer, Regional Director, Administrative Law Judge, General Counsel or member of the Authority is authorized by law or Authority rules to entertain or dispose of on an ex parte basis;