

§ 1216.203

5 CFR Ch. II (1–1–10 Edition)

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;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require for each MSPB employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The MSPB reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 30 days before the date that records or testimony is required. Requests submitted in less than 30 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with the request.

(f) The request should state that the requester will provide a copy of the MSPB employee's statement free of charge and that the requester will permit the MSPB to have a representative present during the employee's testimony.

§ 1216.204 Service of requests or demands.

Requests or demands for official records or information or testimony under this subpart must be served on