

## Delaware River Basin Commission

## § 401.115

requester will be liable for payment of these costs.

(3) *Forwarding material to destination.* Postage, insurance, and special fees will be charged on an actual cost basis.

(b) No charge shall be made for the time spent in resolving legal or policy issues or in examining records for the purpose of deleting nondisclosable portions thereof.

(c) Payment shall be made by check or money order payable to "Delaware River Basin Commission" and shall be sent to the FOIA Officer.

[40 FR 14056, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975. Redesignated at 52 FR 37602, Oct. 8, 1987, as amended at 67 FR 56753, Sept. 5, 2002]

### § 401.111 Waiver of fees.

(a) No fee shall be charged for disclosure of records pursuant to this part where:

(1) The records are requested by a congressional committee or subcommittee or the General Accounting Office.

(2) The records are requested by an agency of a signatory party.

(3) The records are requested by a court of competent jurisdiction.

(4) The records are requested by a state or local government having jurisdiction thereof.

(b) No fee shall be charged if a record requested is not found or for any record that is totally exempt from disclosure.

### § 401.112 Exempt information.

The following materials and information covered by this part shall be exempt from disclosure; that is, information that is:

(a) Related solely to the internal personnel matters of the Commission;

(b) Specifically exempted from disclosure by statute;

(c) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. (For purposes of this section a trade secret may consist of any formula, pattern, device, or compilation of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. Commercial or financial information that is privileged or confidential means valuable data or information which is used in

one's business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.)

(d) Inter-agency or intra-agency memorandums or letters other than purely factual compilations, which would not be available by law to a party other than an agency in litigation with the Commission;

(e) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(f) Investigatory records compiled for law enforcement purposes, but only to the extent that the 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, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel.

[40 FR 14056, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975. Redesignated at 52 FR 37602, Oct. 8, 1987, as amended at 63 FR 45943, Aug. 28, 1998]

### § 401.113 Segregable materials.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this part, except as provided in § 401.92.

### § 401.114 Data and information previously disclosed to the public.

Any Commission record that is otherwise exempt from public disclosure pursuant to this part is available for public disclosure to the extent that it contains data or information that have previously been disclosed in a lawful manner to any member of the public, other than an employee or consultant or pursuant to other commercial arrangements with appropriate safeguards for secrecy.

### § 401.115 Discretionary disclosure by the Executive Director.

(a) The Executive Director may, in his discretion, disclose part or all of

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any Commission record that is otherwise exempt from disclosure pursuant to this part. The Executive Director shall exercise his discretion to disclose such records whenever he determines that such disclosure is in the public interest, will promote the objectives of the Commission, and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to § 401.98, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Executive Director to exercise his discretion to disclose any other record that is exempt from disclosure.

### **§ 401.116 Disclosure to consultants, advisory committees, State and local government officials, and other special government employees.**

Data and information otherwise exempt from public disclosure may be disclosed to Commission consultants, advisory committees, state and local government officials, and other special government employees for use only in their work in cooperation with the Commission. Such persons are thereafter subject to the same restrictions with respect to the disclosure of such data and information as any other Commission employee.

### **§ 401.117 Disclosure to other Federal government departments and agencies.**

Any Commission record otherwise exempt from public disclosure may be disclosed to other Federal Government departments and agencies, except that trade secrets may be disclosed only to a department or agency that has concurrent jurisdiction over the matter and separate legal authority to obtain the specific information involved. Any disclosure under this section shall be pursuant to an agreement that the record shall not be further disclosed by the other department or agency except

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with the written permission of the Commission.

### **§ 401.118 Disclosure in administrative or court proceedings.**

Data and information otherwise exempt from public disclosure may be revealed in Commission administrative or court proceedings where the data or information are relevant. The Commission will request that the data or information be held in camera and that any other appropriate measures be taken to reduce disclosure to the minimum necessary under the circumstances.

### **§ 401.119 Disclosure to Congress.**

All records of the Commission shall be disclosed to Congress upon an authorized request.

## **Subpart I—General Provisions**

SOURCE: 40 FR 14059, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975, unless otherwise noted. Redesignated at 52 FR 37602, Oct. 8, 1987.

### **§ 401.121 Definitions.**

For the purposes of this part, except as the context may otherwise require:

(a) All words and phrases which are defined by section 1.2 of the Compact shall have the same meaning herein.

(b) Words and phrases which are defined by part I of the Administrative Manual (section 1-3) shall have the same meaning for the purposes of this part 401.

(c) *Application* shall mean a request for action by the Commission in any written form, including without limitation thereto, a letter, referral by any agency of a signatory party, or an official form prescribed by the Commission; provided that whenever an official form of application has been duly required, an application shall not be deemed to be pending before the Commission until such time as such form, together with the information required thereby, has been completed and filed.

(d) *Applicant* shall mean any sponsor or other person who has submitted an application to the Commission.

(e) *Sponsor* shall mean any person authorized to initiate, construct or administer a project.