



Federal Contractors Should Act Now to Object to New FOIA Requests for Reports Containing Sensitive Employee Data

Insights
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Federal officials recently received several Freedom of Information Act (FOIA) requests to disclose certain reports from federal contractors that include sensitive employee demographic data — specifically the release of 2021 EEO-1 consolidated report information. But if you oppose having your 2021 EEO-1 Type 2 Reports disclosed, the Office of Federal Contract Compliance Programs (OFCCP) is giving you an opportunity to submit a written objection by December 10. Sound familiar? You may remember OFCCP [received a similar request](#) several years ago and sought objections from federal contractors when the agency’s challenges in court were largely unsuccessful. Is your company on the list of affected contractors? If so, what information should your objection include? Read on to learn more now that OFCCP officially opened its comment period and portal today.

Are You on the List?

If you are a covered federal contractor, you should strongly consider filing an objection to OFCCP releasing your 2021 EEO-1 Type 2 Report. This is especially true if you believe the information may include confidential and proprietary business information, which may be protected from disclosure under FOIA. A list of contractors that are covered by the request can be found on [the OFCCP’s website](#).

Notably, the FOIA requests included reports from 2022, but OFCCP said it currently only has the EEO-1 data for reporting year 2021 in its possession, so its notice is limited to that dataset.

What Should You Do?

OFCCP has stated that federal contractors should submit their written objections no later than December 10. Moreover, the agency strongly recommends that contractors submit their objections through a [dedicated portal](#) that was made available on October 29.

“The responses collected from this web form will be evaluated to determine whether the requested information includes confidential trade secret, commercial, or financial information that should be withheld pursuant to FOIA Exemption 4,” according to OFCCP.

You should note that Fisher Phillips has a dedicated team of attorneys in our [Affirmative Action and Federal Contract Compliance Practice Group](#) that can assist in developing a response

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What Information Should You Gather?

Some of the factors that need to be considered and addressed in any objection filed on your behalf include:

- whether you consider information from your EEO-1 Report to be a trade secret or commercial information;
- whether you customarily keep the requested information private or closely held;
- the steps you have taken to protect data contained in your reports;
- an accounting of any parties with whom you have disclosed the information;
- whether you contend the government provided an express or implied assurance of confidentiality; and
- whether you believe that disclosure of this information could cause harm to your economic or business interests.

Conclusion

Our team is ready to assist you in determining your best plan of action and in developing a response, if necessary. Please contact your Fisher Phillips attorney, the author of this insight, or any attorney in our [Affirmative Action and Federal Contract Compliance Practice Group](#) with questions. We will continue to monitor developments on this topic. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information direct to your inbox.

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