

TYPES NOT MAPPED YET August 22, 2022 | TTR not mapped yet | Jayna Marie Rust

Do you want your EEO-1 reports made public?

If there is information in your EEO-1 Reports that you would prefer to keep out of your competitors' hands and the public eye, you should act quickly—before September 19.

On August 19, the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") published [a Federal Register notice](#) regarding a Freedom of Information Act ("FOIA") request from Will Evans of the Center for Investigative Reporting. Mr. Evans has been reporting on contractors' EEO-1 data [for at least 5 years](#), and the Center for Investigative Reporting's "Reveal" publication [self describes its work](#) by saying: "we pour the necessary time and resources into unearthing original stories that hold people and institutions accountable for the problems they've caused or benefited from."

The FOIA request seeks all Type 2 Consolidated Employer Information Reports, Standard Form 100 (EEO-1 Report) filed by Federal contractors from 2016 until 2020. OFCCP's notice explains that the information requested may be protected from disclosure under FOIA Exemption 4, which protects disclosure of confidential commercial information. Thus, OFCCP is now "requesting that entities that filed Type-2 Consolidated EEO-1 Reports as federal contractors at any time from 2016-2020, and object to the disclosure of this information, submit those objections to OFCCP" by September 19. [\[1\]](#) If a contractor whose report is covered by the FOIA request fails to submit its objections prior to the deadline, "it will be considered to have no objection to the disclosure of the information" (meaning that the agency may release it to Mr. Evans).

OFCCP estimates that nearly 15,000 companies have reports that are subject to this FOIA request, and the Agency has established [a portal for contractors to submit objections](#) (although objections will be accepted via other methods). OFCCP has requested that contractors' objections include, at a minimum, answers to certain questions outlined in the notice, and it also encourages potential objectors to review two Federal cases that OFCCP believes may be relevant or useful for contractors in crafting their objections. One of those cases was a U.S. District Court decision related to a prior version of Mr. Evans' request that covered 36 contractors' EEO-1 Reports. More than half of those contractors initially objected to the disclosure of their reports, but after Mr. Evans brought suit to obtain their reports, the district court ultimately disagreed with the arguments that the objecting contractors and the agency set forth. The Federal Register notice observes that the decision has not been affirmed by a higher-level court.

The bottom line: OFCCP's notice requires contractors that would like to object to the release of their 2016-2020 EEO-1 Reports to submit their objections prior to September 19 and indicates that the objecting contractors should set forth specific legal arguments that take into account recent FOIA case law. If a contractor does not object by the deadline, it should expect that its report may be provided to a reporter that will make it public.

[Jayna Marie Rust](#) is counsel in Thompson Coburn's Washington, D.C. office. She counsels clients on Federal contract- and grant-administration matters, including labor and employment issues specific to contractors. She also regularly assists contractors and other entities in protecting information subject to FOIA requests and in requesting information under FOIA.

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1. The Federal Register notice stated that the request was also being sent to contractors whose contact information the agency has due to their registration and provision of contact information in OFCCP's contractor portal, which we [discussed previously](#). ↩

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