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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12

13 THE CENTER FOR INVESTIGATIVE
14 REPORTING and WILL EVANS,

15 Plaintiffs,

16 v.

17 UNITED STATES DEPARTMENT OF
18 LABOR,

19 Defendant.

Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF**

20
21 **INTRODUCTION**

22 1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552,
23 for injunctive and other appropriate relief. The Center for Investigative Reporting (“CIR”) and Will
24 Evans (“Mr. Evans”) (collectively “Plaintiffs”) seek processing and release of agency records
25 requested from Defendant the United States Department of Labor (“DOL” or “Defendant”).

26 2. From January 2019 through September 2020, Plaintiffs submitted three Freedom of
27 Information Act requests (the “Requests”) to DOL’s Office of Federal Contract Compliance
28 Programs (“OFCCP” or “Defendant”) seeking disclosure of consolidated Type 2 diversity
employment reports (“EEO-1 Reports” or “Diversity Reports”) from federal contractors for the years
2016, 2017, 2018, 2019 and 2020.

3. In May 2021 the three individual requests were combined into one individual request.

4. This matter has been pending with OFCCP for nearly *four years*, since the date of

1 CIR's original request in January 2019.

2 5. This is the third time Plaintiffs have filed a complaint for EEO-1 Reports. *See Ctr. for*
3 *Investigative Reporting v. Dep't of Labor*, No. 3:18-cv-02008 (N.D. Cal. Dec. 21, 2018) (disclosing
4 records after months of settlement conversations) and *Ctr. for Investigative Reporting v. Dep't of*
5 *Labor*, 424 F. Supp. 3d 771, 779 (N.D. Cal. Dec. 10, 2019) (ordering disclosure of records after
6 finding that the EEO-1 Reports were not commercial information properly withheld under FOIA
7 Exemption 4) *aff'd*, 34 F.4th 762, 772 (9th Cir. 2022).

8 6. Despite this court previously requiring the release of EEO-1 Reports, OFCCP has
9 denied Plaintiffs' request for records. OFCCP alleged that disclosure would be unduly burdensome,
10 despite there being no need for redactions. OFCCP also stated, in abrogation of FOIA, that fulfilling
11 these requests would require a company-by-company consultation of the over 100,000 federal
12 contractors who have submitted the EEO-1 report data.

13 7. CIR sent several communications to OFCCP stating that the withholding was
14 improper due to this Court's order requiring disclosure of the EEO-1 Reports and finding Exemption
15 4 inapplicable. *See Ctr. for Investigative Reporting v. Dep't of Labor*, 424 F. Supp. 3d 771, 779 (N.D.
16 Cal. Dec. 10, 2019), *aff'd*, 34 F.4th 762, 772 (9th Cir. 2022),

17 8. Still, OFCCP asserted that data from these submitters is potentially protected from
18 disclosure under Exemption 4, despite the December 2019 ruling. In further correspondence OFCCP
19 asserted that this Court's December 2019 order does not have any "precedential effect." *See infra* at
20 9.

21 9. On August 19, 2022, after CIR's second letter to DOL asserting that the withholding
22 was improper, OFCCP published a notice on the Federal Register giving federal contractors "a period
23 of time object to the disclosure [of the diversity reports] and state their grounds for doing so." Notice
24 of Request Under the Freedom of Information Act for Federal Contractors' Type 2 Consolidated
25 EEO-1 Report Data, 87 Fed. Reg. 51145 (Aug. 19, 2022) <https://bit.ly/3ThtEzw>.

26 10. OFCCP provided that federal contractors had until October 19, 2022 to object to the
27 disclosure of any portion of the EEO-1 Reports and to state all grounds upon which disclosure was
28 opposed. OFCCP, *Notice of Extension, Submitter Notice Response Portal*

1 <https://www.dol.gov/agencies/ofccp/submitter-notice-response-portal> (last visited October 19,
2 2022).

3 11. As of November 15, 2022, the DOL has not released any records pertaining to the
4 Request. This continued withholding improperly includes any records from federal contractors that
5 may have consented to disclosure or waived their opportunity to object, in addition to federal
6 contractors that objected to disclosure.

7 12. DOL's withholding is of particular public concern because Diversity Reports contain
8 generalized employee diversity statistics of federal contractors. *See Will Evans, We Forced the*
9 *Government to Share Corporate Diversity Data. It's Giving Companies an Out Instead,*
10 REVEAL.ORG, Aug. 29, 2022, [https://revealnews.org/article/we-forced-the-government-to-share-](https://revealnews.org/article/we-forced-the-government-to-share-corporate-diversity-data-its-giving-companies-an-out-instead/)
11 [corporate-diversity-data-its-giving-companies-an-out-instead/](https://revealnews.org/article/we-forced-the-government-to-share-corporate-diversity-data-its-giving-companies-an-out-instead/). This data is instrumental to ensuring
12 that federal contractors, obtaining taxpayer dollars, diversify their workforces in compliance with
13 the federal law. *Id.*

14 13. Claims that the aggregate data on diversity employment for federal contractors
15 contained in the Diversity Reports is exempt as confidential commercial information under FOIA's
16 Exemption 4 is unjustified.

17 14. Plaintiffs now ask the Court for an injunction requiring DOL to promptly release the
18 withheld records.

19 **JURISDICTION**

20 15. The Court has subject matter jurisdiction over this action and personal jurisdiction
21 over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has
22 jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1436, and 5 U.S.C. §§ 701–706.

23 **VENUE AND INTRADISTRICT ASSIGNMENT**

24 16. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§
25 1391(e) and 1402. Plaintiff CIR has its principal place of business in this district. Plaintiff Will
26 Evans is domiciled in this district.

27 17. Assignment to the Oakland Division is proper pursuant to Local Rule 3-2(c) and (d)
28

1 because a substantial portion of the events giving rise to this action occurred in Alameda County,
2 where Plaintiff CIR’s principal place of business is located and most actions in this case occurred.

3 **PARTIES**

4 18. Founded in 1977, as the first national investigative news organization, Plaintiff CIR
5 has received multiple awards for its reporting. CIR is a non-profit established under the laws of the
6 State of California, with its primary office in Emeryville, California. CIR publishes *Reveal* an online
7 news site at revealnews.org and *Reveal* a weekly public radio show with approximately 1 million
8 listeners a week.

9 19. Plaintiff Will Evans is a staff reporter for *Reveal* and an employee of CIR.

10 20. Defendant DOL is a department of the executive branch of the U.S. government and
11 an “agency” within the meaning of 5 U.S.C. §552(f)(1). OFCCP is a component of DOL. DOL has
12 its headquarters in Washington, D.C., and offices all over the country, including in Oakland and San
13 Francisco, California.

14 **FACTUAL BACKGROUND**

15 **EEO-1 Reports and OFCCP**

16 21. OFCCP is the component of DOL that is responsible for enforcing nondiscrimination
17 and affirmative action requirements imposed on federal contractors as ordered by Executive Order
18 11246, the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, and Section 503 of the
19 Rehabilitation Act.

20 22. According to its website, OFCCP’s mission is to “protect workers, promote diversity
21 and enforce the law.” OFCCP, *Mission Statement*, <https://www.dol.gov/ofccp/aboutof.html> (last
22 visited October 11, 2022). “OFCCP holds those who do business with the federal government—
23 contractors and subcontractors—responsible for complying with the legal requirement to take
24 affirmative action and not discriminate.” *Id.*

25 23. To achieve this, OFCCP collects workforce data from employers who submit the
26 DOL’s Employer Information Component 1 Reports (“EEO-1 Reports”). These reports are collected
27 annually under the authority of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et. seq.*,
28

1 as amended. See EEOC, *EEO-1 Instruction Booklet* (2021),
2 https://www.eeocdata.org/pdfs/2021_EEO_1_Component_1_InstructionBooklet.pdf. OFCCP and
3 the Equal Employment Opportunity Commission (“EEOC”) together administer the EEO-1 Reports.
4 *Id.*

5 24. In accordance with Title VII, all employers in the United States with 15 or more
6 employees are required to keep employment records. *Id.* at 2. Based on those records, certain large
7 employers are required to file EEO-1 Reports on an annual basis. *Id.* at 2.

8 25. OFCCP regulations require certain federal contractors to file EEO-1 Reports if they
9 have 50 or more employees and are not exempt as provided for by 41 CFR 60-1. EEOC, *Frequently*
10 *Asked Questions (FAQs) EEO-1 Component 1 Data Collection*, available at
11 <https://eeocdata.org/pdfs/EEO-1%20Component%201%20FAQ.pdf>.

12 26. Submitting EEO-1 Reports is not voluntary and under section 709(c) of Title VII the
13 EEOC may compel an employer to file it by obtaining an order from the United States District Court.
14 42 U.S.C. § 2000(e).

15 27. In general, EEOC collects two types of reports containing diversity statistics: a Type
16 1 Report and a Type 2 Consolidated Report. Type 1 Reports are submitted by “an employer
17 conducting business at only one establishment” and Type 2 Reports are submitted by “an employer
18 conducting business at more than one establishment” (*i.e.*, a multi-establishment employer). See
19 EEOC, *EEO-1 Instruction Booklet* (2021), [https://www.eeocdata.org/pdfs/2021_EEO_1_Comp](https://www.eeocdata.org/pdfs/2021_EEO_1_Component_1_InstructionBooklet.pdf)
20 [onent_1_InstructionBooklet.pdf](https://www.eeocdata.org/pdfs/2021_EEO_1_Component_1_InstructionBooklet.pdf). Type 2 reports include demographic data for all the U.S. employees
21 of a company categorized by ethnicity, gender and job category. *Id.* at 5. The Type 1 and Type 2
22 Reports do not contain particularized or sensitive information like wage and payment information or
23 demographics of individual company offices or employees. Plaintiffs only seek Type 2 reports in
24 this request.

25 28. While the EEOC is prohibited from disclosing EEO-1 reports under Title VII of the
26 Civil Rights Act of 1964, Title VII “generally does not apply to individuals who are found to be
27
28

1 independent contractors.” EEOC, *Protections Against Employment Discrimination Based on Sexual*
2 *Orientation or Gender Identity* (2021), [https://www.eeoc.gov/laws/guidance/protections-against-](https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender)
3 [employment-discrimination-based-sexual-orientation-or-gender](https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender). As the EEOC explains on its
4 website “[p]eople who are not employed by the employer, such as independent contractors, are not
5 covered by the anti-discrimination laws.” EEOC, *Employer Coverage*,
6 <https://www.eeoc.gov/employers/coverage-0> (last visited October 31, 2022).

7 29. OFCCP does not proactively disclose the EEO-1 Reports. To obtain copies,
8 individuals and institutions, including media, must submit a FOIA request. Department of Labor,
9 *Federal Compliance Manual, §1A06* (2021), [https://www.dol.gov/agencies/ofccp/manual/fccm/1a-](https://www.dol.gov/agencies/ofccp/manual/fccm/1a-introduction/1a06-confidentiality-information)
10 [introduction/1a06-confidentiality-information](https://www.dol.gov/agencies/ofccp/manual/fccm/1a-introduction/1a06-confidentiality-information).

11 30. Once a FOIA request is submitted, OFCCP contacts federal contractors to notify them
12 of the request for disclosure, but OFCCP is required to make a separate determination as to whether
13 any exemptions apply under FOIA. *Id.*

14 31. The disclosure of these reports has been championed by civil rights activists such as
15 Rev. Jesse Jackson Sr., members of Congress, investment firms, and companies themselves. *See,*
16 *e.g.,* Salvador Rodriguez, *Jesse Jackson Gives Uber a Diversity Deadline*, INC.COM, Jan. 5, 2017,
17 <https://www.inc.com/salvador-rodriguez/uber-diversity-jesse-jackson.html>; Will Evans, *11 men and*
18 *1 woman on management team? No need for diversity report*, REVEAL.ORG, Nov. 8, 2017,
19 [https://www.revealnews.org/article/11-men-and-1-woman-on-management-team-no-need-for-](https://www.revealnews.org/article/11-men-and-1-woman-on-management-team-no-need-for-diversity-report/)
20 [diversity-report/](https://www.revealnews.org/article/11-men-and-1-woman-on-management-team-no-need-for-diversity-report/); Letter from Emanuel Cleaver II, Member of Congress, U.S. House of
21 Representatives, to Alexander Acosta, Secretary, U.S. Department of Labor (Mar. 6, 2019),
22 https://cleaver.house.gov/sites/cleaver.house.gov/files/DOL_FOIA.pdf; Ashley Marchand Orme,
23 *Big companies are already collecting important data on workforce diversity. More of them need to*
24 *make it public*, Fortune Magazine, Feb. 9, 2022 [https://fortune.com/2022/02/09/diversity-inclusion-](https://fortune.com/2022/02/09/diversity-inclusion-dei-intersectional-data-eeo-1-reports/)
25 [dei-intersectional-data-eeo-1-reports/](https://fortune.com/2022/02/09/diversity-inclusion-dei-intersectional-data-eeo-1-reports/).

26
27 32. The public need for disclosure of EEO-1 Reports in promoting diversity is
28 incontrovertible. Almost 30 years ago, The Federal Glass Ceiling Commission, created by the Civil

1 Rights Act of 1991, stated in its 1995 report that it “urges the Federal government and its agencies
2 to look for ways to increase public access to diversity data” and that “[t]he government should also
3 explore the possibility of mandating public release of EEO-1 forms for Federal contractors and
4 publicly traded corporations.” Federal Glass Ceiling Commission, *A Solid Investment: Making Full
5 Use of the Nation’s Human Capital* (1995).

6 33. While the type of data in Diversity Reports has been hotly debated, such as the
7 inclusion of employee payment data, the generalized statistics collected in EEO-1 Type 2 Reports
8 pertaining to race, gender and job category has been determined to be uncontroversial, necessary,
9 and continually collected for decades. See Memorandum from Neomi Rao to Acting EEOC Chair
10 Victoria Lipnic, Office of Information and Regulatory Affairs, Aug. 29, 2017,
11 <https://bit.ly/2uFABUV>. Type 2 Reports have been collected without interruption because its
12 aggregate data does not disclose individualized information. It is also does not include sensitive, nor
13 commercial information, such as salary information.

14 34. The collection of demographic data in the EEO-1 Reports is increasingly of
15 significant public importance as large numbers of public functions are increasingly outsourced to
16 private contractors, and so much of the federal government’s work force is composed of federal
17 contractors. Steven Pearlstein, *The federal outsourcing boom and why it’s failing Americans*,
18 WASHINGTON POST, January 31, 2014, <https://wapo.st/3zVolPr>.

19 35. Various news outlets, including CIR have used these reports to inform the public
20 about lack of diversity in the United States workforce across various industries. See, e.g., Will Evans
21 & Sinduja Rangarajan, *Hidden figures: How Silicon Valley keeps diversity data secret*, REVEAL, Oct.
22 19, 2017, [https://www.revealnews.org/article/hidden-figures-how-silicon-valley-keeps-diversity-
24 data-secret/](https://www.revealnews.org/article/hidden-figures-how-silicon-valley-keeps-diversity-
23 data-secret/); Kate Rooney & Yasmin Khorram, *Tech companies say they value diversity, but reports
25 show little change in last six years*, CNBC, June 12, 2020, [https://www.cnn.com/2020/06/12/six-
27 years-into-diversity-reports-big-tech-has-made-little-progress.html](https://www.cnn.com/2020/06/12/six-
26 years-into-diversity-reports-big-tech-has-made-little-progress.html); Charisse Jones, Jayme Fraser, &
28 Dian Zhang, *Racial justice in the workplace: In-depth look at diversity’s struggle to crack corporate
boardrooms*, USA TODAY, July 24, 2021, [-7-](https://www.usatoday.com/in-</p></div><div data-bbox=)

1 depth/money/business/2021/07/18/workplace-diversity-struggles-break-into-corporate-
2 boardrooms/7906529002/; Jessica Guynn, Jayme Fraser, Craig Harris and Dian Zhang, *How top*
3 *companies in US are struggling to diversify leadership*, USA TODAY, July 13, 2021,
4 [https://www.usatoday.com/in-depth/money/2021/07/14/diversity-corporate-systemic-racism-](https://www.usatoday.com/in-depth/money/2021/07/14/diversity-corporate-systemic-racism-employment-inequities/7639595002/)
5 [employment-inequities/7639595002/](https://www.usatoday.com/in-depth/money/2021/07/14/diversity-corporate-systemic-racism-employment-inequities/7639595002/).

6 36. Release of the demographic information contained in the EEO-1 Type 2 Reports
7 would inform the public on the important topics of workplace diversity, equality, and inclusivity. *Id.*

8 **CIR's EEO-1 FOIA Requests**

9 37. On January 10, 2019 Mr. Evans submitted a FOIA request via email to OFCCP for a
10 spreadsheet of all Type 2 consolidated EEO-1 report data submitted by all federal contractors in
11 2016. A true and correct copy of this request is attached as Exhibit A. The tracking No. 872421 was
12 assigned to this request. *Id.*

13 38. On March 25, 2019 Mr. Evans submitted a second FOIA request via email to OFCCP
14 seeking a spreadsheet of all consolidated EEO-1 report data submitted by all federal contractors in
15 2017. A true and correct copy of this request is attached as Exhibit B. The tracking No. 875877 was
16 assigned to this request. *Id.*

17 39. OFCCP responded to Mr. Evans' first request, No. 872421, on July 18, 2019 with a
18 letter. A true and correct copy of this response letter is attached as Exhibit C ("Ex. C"). The letter
19 stated that the "voluminous request would overwhelm the OFCCP FOIA unit" because it would
20 require the agency to reach out to the over 100,000 companies who could potentially be affected by
21 the release of information in their submitted EEO-1 reports. Ex. C. The agency recommended Mr.
22 Evans narrow his request. *Id.*

23 40. On August 8, 2019 Mr. Evans replied to OFCCP's July 18th letter declining to narrow
24 his request. A true and correct copy of this request is attached as Exhibit D. ("Ex. D"). He also
25 asserted that notification of the companies was not required and thus fulfilling the request would not
26 be unduly burdensome on the agency. Ex. D.

27 41. On September 11, 2020 Mr. Evans submitted another FOIA request via email to
28

1 OFCCP seeking all consolidated EEO-1 reports submitted by all federal contractors in year 2018. A
2 true and correct copy of this request is attached as Exhibit E (“Ex. E”). OFCCP sent an
3 acknowledgment of this request and assigned it tracking No. 897123. Ex. E.

4 42. On October 2, 2020, CIR received a letter from the OFCCP in response to request No.
5 897123. Under Executive Order 12600, the agency claimed it was required to grant all EEO-1
6 submitters the opportunity to object in writing to disclosure of any Diversity Reports. A true and
7 correct copy of this letter is attached as Exhibit F (“Ex. F”).

8 43. OFCCP asserted it could not release the data without notifying the submitters because
9 the “information may be protected from disclosure under FOIA Exemption 4.” Ex. F.

10 44. In response to the OFCCP’s decision, on October 30, 2020 CIR sent email reminding
11 Defendant of the recent federal court ruling, *Ctr. for Investigative Reporting v. U.S. Dep’t of Labor*
12 424 F. Supp. 3d 771, 779 (N.D. Cal. 2019), *aff’d*, 34 F.4th 762, 772 (9th Cir. 2022). In this identical
13 case, CIR had requested EEO-1 Reports of 10 companies. *Id.* The court held the “Government was
14 not justified in applying Exemption 4” to this information and it ordered the EEO-1 reports in
15 question to “be produced unredacted.” *Id.*; *see also* Will Evans, *Judge backs Reveal’s suit to end*
16 *secrecy around Silicon Valley’s diversity*, REVEAL.ORG, Dec. 13, 2019,
17 [https://revealnews.org/article/judge-backs-reveals-suit-to-end-secrecy-around-silicon-valleys-](https://revealnews.org/article/judge-backs-reveals-suit-to-end-secrecy-around-silicon-valleys-diversity/)
18 [diversity/](https://revealnews.org/article/judge-backs-reveals-suit-to-end-secrecy-around-silicon-valleys-diversity/). A true and correct copy of this email response is attached as Exhibit G (“Ex. G”).

19 45. On November 7, 2022, OFCCP acknowledged receipt of CIR’s October 30th email
20 and stated that the matter was under review. Ex. G.

21 46. On December 11, 2020, CIR’s counsel again emailed the OFCCP requesting an
22 update. *Id.*

23 47. On December 18, 2020, OFCCP responded to CIR’s email reiterating that under
24 Executive Order 12600 OFCCP was “obligated to notify submitters of the requests” because the
25 reports contained “potentially confidential commercial information. A true and correct copy of this
26 email correspondence is attached as Exhibit H (“Ex. H”).

27 48. OFCCP also stated that the Defendant does “not believe that the Northern California’s
28 District Court’s decision in *Ctr. for Investigative Reporting v. U.S. Dep’t of Labor* has precedential

1 effect on all EEO-1, Type 2 reports.” Ex. H. OFCCP estimated that CIR’s requests involved “the
2 EEO-1, Type 2 reports of well over 15,000, and possibly over 20,000 submitters from countless
3 industries” who were not bound by that court ruling. *Id.*

4 49. OFCCP did not provide an update on how it would move forward with processing
5 CIR’s requests nor did it provide a timeline on when the submitters would be notified of the requests.
6 *Id.*

7 50. On January 7, 2021, CIR sent another email to DOL requesting additional information
8 on when OFCCP had provided notices to the submitters and how the data would be released for those
9 submitters who had already consented to release or waived their opportunity to object. *Id.*

10 51. DOL failed to respond to CIR’s inquiries for months.

11 52. On May 10, 2021 Mr. Evans requested his initial FOIA request No. 872421 be
12 amended to include of all consolidated Type 2 EEO-1 Reports for all federal contractors for 2017
13 and 2018 as well as 2016. A true and correct copy of this amendment correspondence is attached as
14 Exhibit I (“Ex. I”).

15 53. On May 11, 2021 DOL combined the three individual EEO-1 requests into one
16 request under tracking No. 872421 (“the Request”). Ex. I.

17 54. On June 2, 2022, Mr. Evans submitted another FOIA request via email to OFCCP
18 seeking all consolidated Type 2 EEO-1 Reports submitted by federal contractors in 2019 and 2018.
19 A true and correct copy of this request is attached as Exhibit J. DOL sent an acknowledgment of this
20 request and consolidated it with the earlier request under tracking No. 872421. *Id.*

21 **CIR’s Objection Letter to the Department of Labor Solicitor**

22 55. On May 23, 2022, after an extensive period of no communication from OFCCP¹, CIR
23 General Counsel, D. Victoria Baranetsky, sent a letter to the Solicitor of Labor and the OFCCP
24 Director explaining why the DOL’s withholding of EEO-1 Type 2 Reports was wrongful and
25 demanding an immediate release. A true and correct copy of this letter is attached as Exhibit K (“Ex.
26 K”).

27 ¹ During this time, the government chose not to appeal the ruling in *Ctr. for Investigative Reporting v. U.S. Dep’t of*
28 *Labor* even though a single intervenor appealed. The U.S. Ninth Circuit Court of Appeals left the district court’s
decision undisturbed. 424 F. Supp. 3d 771 (N.D. Cal. Dec. 10, 2019) *aff’d*, 34 F.4th 762, 772 (9th Cir. 2022).

1 56. More specifically, the letter maintained that (1) the OFCCP is bound by the 2019 *Ctr.*
2 *for Investigative Reporting v. U.S. Dep't of Labor* decision requiring disclosure of EEO-1 Type 2
3 Reports and asserted; and (2) the OFCCP should proactively publish the records because this Court
4 has already ruled that Diversity Reports cannot be withheld. Ex. K.

5 57. On June 15, 2022 OFCCP responded to CIR's letter. A true and correct copy of this
6 correspondence is attached as Exhibit L ("Ex. L"). OFCCP continued "to strongly disagree with"
7 CIR's position that the *Ctr. for Investigative Reporting v. U.S. Dep't of Labor* decision has "any
8 binding effect as to other EEO-1 reports" beyond those at issue in the case. Ex. L. OFCCP also
9 disagreed with CIR's position that the agency could proactively publish the requested EEO-1 reports
10 without providing submitters an opportunity to object to disclosure. *Id.*

11 58. OFCCP stated that it has the authority to effectuate notice of disclosure to all federal
12 contractors "via posting and publishing the notice in a place reasonably calculated to accomplish
13 notification." Ex. L; 29 C.F.R. § 70.26(j).

14 59. On June 16, 2022 CIR requested for a clearer timeline regarding the Request and
15 requested a phone call with the agency. A true and correct copy of this correspondence is attached
16 as Exhibit L ("Ex. L"). After receiving no response, CIR's counsel called DOL's counsel and
17 requested a timeline but agency still was not able to provide any information.

18 60. On June 27, 2022 OFCCP emailed CIR and stated that the agency anticipated
19 publishing a notice in the Federal Register in July 2022. Ex. L. CIR responded by requesting DOL
20 reconsider its position and provide justification for its withholding. *Id.*

21 61. On July 6, 2022 OFCCP responded by citing agency regulations, 29 C.F.R. § 70.26,
22 regarding its procedures. *Id.* While citing to these procedures OFCCP circumvented its obligations
23 under FOIA and failed to explain its justification for wrongly withholding under the federal statute.
24 *Id.*

25 62. As of August 5, 2022, OFCCP had not published any information on the Federal
26 Register, as it had previously promised, so CIR's counsel emailed OFCCP to confirm the agency's
27 intended actions and timeline. *Id.* That same day, DOL responded and stated that the agency had just
28 sent its information to the Federal Register for publication and was awaiting approval. *Id.*

OFCCP's Federal Register Notice

63. On August 19, 2022, three years after Mr. Evans submitted his initial request for EEO-1 diversity data, OFCCP published a notice on the Federal Register informing all federal contractors that a FOIA request from CIR had been submitted for all Type 2 Consolidated EEO-1 report data. Notice of Request Under the Freedom of Information Act for Federal Contractors' Type 2 Consolidated EEO-1 Report Data, 87 Fed. Reg. 51145 (Aug. 19, 2022), <https://bit.ly/3ThtEzw>; Will Evans, *We Forced the Government to Share Corporate Diversity Data. It's Giving Companies an Out Instead*, REVEAL.ORG, Aug. 29, 2022, <https://revealnews.org/article/we-forced-the-government-to-share-corporate-diversity-data-its-giving-companies-an-out-instead/>.

64. Further, on September 23, 2022, the OFCCP published all of its correspondence with CIR but did not publish any of its correspondence with the federal contractors or disclose any of the Diversity Reports. OFCCP, Freedom of Information Act Library, OFCCP Correspondence, <https://www.dol.gov/agencies/ofccp/foia/library/Correspondence>.

65. The notice states contractors had until September 19, 2022 to submit written objections of disclosure to the OFCCP. It also states that OFCCP will make an independent evaluation of each companies' objections regarding diversity reports before making a determination. Notice of Request Under the Freedom of Information Act for Federal Contractors' Type 2 Consolidated EEO-1 Report Data, 87 Fed. Reg. 51145 (Aug. 19, 2022), <https://bit.ly/3ThtEzw>.

66. OFCCP granted an extension for the contractors' deadline to October 19, 2022. *Id.*

67. Since publication of the notice on the Federal Register, several news outlets have written stories on the withholding and law firms have published ways to object to the withholdings. *See, e.g.*, J. Edward Moreno, *Labor Department Reluctant to Reveal Contractor Diversity Data*, Bloomberg Law (October 20, 2022), <https://news.bloomberglaw.com/daily-labor-report/labor-department-reluctant-to-reveal-contractor-diversity-data>; Allen Smith, *Deadline for Objecting to Disclosure of EEO-1 Reports Extended*, SHRM Online (September 16, 2022), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/deadline-for-objecting-to-disclosure-of-eeo-1-reports-extended.aspx>; Mark J. Neuberger, *OFCCP May Blow*

1 *the Lid on Employers' Workforce Data*, Foley & Lardner LLP (August 23, 2022),
2 <https://www.foley.com/en/insights/publications/2022/08/ofccp-may-blow-lid-employers->
3 [workforce-data](https://www.foley.com/en/insights/publications/2022/08/ofccp-may-blow-lid-employers-).

4 68. On November 1, 2022 Mr. Evans received an email from another OFCCP FOIA
5 officer. The officer noted that the agency “intends to release to [CIR] the names of those federal
6 contractors that objected under an applicable FOIA exemption and whose data was removed from
7 public release.” A true and correct copy of this correspondence is attached as Exhibit N.

8 69. To date, OFCCP has made no final determination as to this Mr. Evans' combined
9 FOIA request and disclosed no records.

10 70. More than 20 working days have passed since Plaintiffs submitted the initial request
11 January 15, 2019.

12 71. DOL has failed to comply with FOIA, 5 U.S.C. § 552(a)(6)(A)(ii), requiring that an
13 agency make a determination with respect to a request within the 20 business days.

14 72. DOL has obviated its duties promulgated under FOIA, 5 U.S.C. § 552(a) by citing
15 agency regulations.

16 73. Having exhausted all administrative remedies, Plaintiffs now seeks injunctive relief.

17 **CAUSE OF ACTION**

18 **Violation of Freedom of Information Act**

19 74. Plaintiffs repeat and reallege paragraphs 1-73.

20 75. DOL is subject to FOIA and must therefore release in response to a FOIA request any
21 disclosable records in its possession and provide a lawful reason for withholding any materials as to
22 which it is claiming an exemption.

23 76. DOL has no lawful basis for declining to a significant portion of the records requested
24 by Plaintiffs under FOIA.

25 77. DOL has failed to act on Plaintiffs' request within the 20 business days required by
26 FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i). Accordingly, Plaintiffs are deemed to have exhausted their
27 administrative remedies under FOIA.
28

1 78. DOL has failed to comply with FOIA’s obligations by citing to agency regulations.

2 79. Plaintiffs are entitled to declaratory and injunctive relief compelling the release and
3 disclosure of the requested records.

4 **REQUESTED RELIEF**

5 WHEREFORE, Plaintiffs prays that this Court:
6

7 1. Declare that Defendant DOL violated FOIA by failing to provide requested records
8 in response to Plaintiffs’ FOIA requests and failing to notify Plaintiffs of any determination;

9 2. Declare that Defendant DOL violated FOIA by citing agency guidelines to
10 circumvent the law;

11 3. Declare that the documents sought by their FOIA request, as described in the
12 foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

13 4. Order Defendant DOL to provide the requested documents to Plaintiffs within 20
14 business days of the Court’s order;

15 5. Award Plaintiffs the costs of this proceeding, including reasonable attorneys’ fees, as
16 expressly permitted by FOIA; and

17 6. Grant Plaintiffs such other and further relief as this Court may deem just and proper.
18

19 DATED: November 15, 2022

Respectfully submitted,

21 By: /s/ D. Victoria Baranetsky
22 D. Victoria Baranetsky (SBN 311892)
23 THE CENTER FOR INVESTIGATIVE REPORTING
24 1400 65th St., Suite 200
25 Emeryville, CA 94608
26 Telephone: (510) 982-2890
27 Email: vbaranetsky@revealnews.org

28 Attorney for Plaintiffs

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

The Center for Investigative Reporting and Will Evans

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

D. Victoria Baranestsky, General Counsel, The Center for

DEFENDANTS

U.S. Department of Labor

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Freedom of Information Act 5 U.S.C. 552

Brief description of cause:

Action under the Freedom of Information Act for injunctive and other appropriate relief.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

X SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 11/15/2022

SIGNATURE OF ATTORNEY OF RECORD

/s/ Victoria Baranestsky

Print

Save As...

Reset

Exhibit A



Shawn Musgrave <smusgrave@revealnews.org>

Fwd: Acknowledgment

Will Evans <wevans@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Thu, Oct 14, 2021 at 2:41 PM

----- Forwarded message -----

From: **FOIARequests** <FOIARequests@dol.gov>
Date: Tue, Jan 15, 2019 at 2:35 PM
Subject: Acknowledgment
To: Will Evans <wevans@revealnews.org>
Cc: Oliver, Ramona - SOL <Oliver.Ramona@dol.gov>, OFCCP NO FOIA <OFCCP_NO_FOIA@dol.gov>

Hello:

Your request has been assigned to OFCCP with tracking number **872421**. When they begin processing it, you will be able to track its progress at www.dol.gov/foia. If you need to contact them about it for any reason, please submit your inquiry through ofccp_no_foia@dol.gov or phone 202-693-0101. In addition, it would be helpful to include the tracking number in the Subject line of any submission to the agency or to have it available at the time of a call.

Sincerely,

Arginia Karamoko

Government Information Specialist, Office of Information Services
Office of the Solicitor | Management & Administrative Legal Services
U.S. DEPARTMENT OF LABOR
200 Constitution Ave., N.W., N-2420 | Washington, DC 20210
T: (202) 693-5531 | F: (202) 693-5389 | E: karamoko.arginia@dol.gov

From: Will Evans <wevans@revealnews.org>
Sent: Thursday, January 10, 2019 7:13 PM
To: FOIARequests <FOIARequests@dol.gov>
Cc: Victoria Baranetsky <vbaranetsky@revealnews.org>
Subject: FOIA request - OFCCP

Dear FOIA Officer,

Under the Freedom of Information Act, I am requesting a copy of the following records from OFCCP:

*** A spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2016.**

I am requesting this data in electronic format, by email.

There is an exception to the notice requirements of 29 CFR 70.26 and Executive Order 12600 that applies here, as will be explained below. Notice to the contractors is not required.

Under 29 CFR 70.2(G)(5) and Executive Order 12600 Sec.8(e), the notice requirements **need not be followed** if the information has not been designated by the submitter, unless OFCCP "has reason to believe that disclosure of the information would result in substantial competitive harm."

Under 29 CFR 70.2(G)(6) and Executive Order 12600 Sec.8(f), the notice requirements **need not be followed** the designation made by the submitter "appears obviously frivolous."

There is no substantial reason to believe that disclosure of the information would result in competitive harm, so the information should be released without notice for any contractor. Even if a contractor has designated it as confidential, that designation should be considered "obviously frivolous," as OFCCP has already determined that Type 2 EEO-1 reports are not subject to Exemption 4 of the Freedom of Information Act. (see CIR v USDOL, Case No. 3:18-cv-2008 JCS)

I am a representative of the news media as a reporter with Reveal from The Center for Investigative Reporting, a non-profit investigative journalism organization. This request is made as part of news gathering and not for a commercial use. I respectfully ask that you waive fees related to this request. Please notify me of any charges before fulfilling this request.

Please contact me with any questions at 510-809-2209 or

wevans@revealnews.org

Thank you for your attention to this request.

Sincerely,
Will Evans
Reveal / The Center for Investigative Reporting
[1400 65th, Suite 200](#)
Emeryville, CA 94608

--

Will Evans

reporter

o: 510-809-2209



www.revealnews.org

--

Will Evans

reporter

Reveal from The Center for Investigative Reporting

office: 510-809-2209

cell: 510-333-9584

www.revealnews.org

Exhibit B



Shawn Musgrave <smusgrave@revealnews.org>

Fwd: Acknowledgment

Will Evans <wevans@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Thu, Oct 14, 2021 at 2:38 PM

----- Forwarded message -----

From: **Karamoko, Arginia - SOL** <Karamoko.Arginia@dol.gov>
Date: Mon, Mar 25, 2019 at 1:32 PM
Subject: Acknowledgment
To: Will Evans <wevans@revealnews.org>
Cc: Oliver, Ramona - SOL <Oliver.Ramona@dol.gov>, OFCCP NO FOIA <OFCCP_NO_FOIA@dol.gov>

Hello:

Your request has been assigned to OFCCP with tracking number **875877**. When they begin processing it, you will be able to track its progress at www.dol.gov/foia. If you need to contact them about it for any reason, please submit your inquiry through ofccp_no_foia@dol.gov or phone 202-693-0101. In addition, it would be helpful to include the tracking number in the Subject line of any submission to the agency or to have it available at the time of a call.

Sincerely,

Arginia Karamoko

Government Information Specialist, Office of Information Services
Office of the Solicitor | Management & Administrative Legal Services
U.S. DEPARTMENT OF LABOR
200 Constitution Ave., N.W., N-2420 | Washington, DC 20210
T: (202) 693-5531 | F: (202) 693-5389 | E: karamoko.arginia@dol.gov

From: Will Evans <wevans@revealnews.org>
Sent: Monday, March 25, 2019 1:57 PM
To: FOIARequests <FOIARequests@dol.gov>
Subject: FOIA request - OFCCP

Dear FOIA Officer,

Under the Freedom of Information Act, I am requesting a copy of the following records from OFCCP:

*** A spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2017.**

I am requesting this data in electronic format, by email. Fulfilling this request is not unduly burdensome because there is no need to notify federal contractors.

There is an exception to the notice requirements of 29 CFR 70.26 and Executive Order 12600 that applies here, as will be explained below. Notice to the contractors is not required.

Under 29 CFR 70.2(G)(5) and Executive Order 12600 Sec.8(e), the notice requirements **need not be followed** if the information has not been designated by the submitter, unless OFCCP "has reason to believe that disclosure of the information would result in substantial competitive harm."

Under 29 CFR 70.2(G)(6) and Executive Order 12600 Sec.8(f), the notice requirements **need not be followed** the designation made by the submitter "appears obviously frivolous."

There is no substantial reason to believe that disclosure of the information would result in competitive harm, so the information should be released without notice for any contractor. Even if a contractor has designated it as confidential, that designation should be considered "obviously frivolous," as OFCCP has already determined that Type 2 EEO-1 reports are not subject to Exemption 4 of the Freedom of Information Act. (see CIR v USDOL, Case No. 3:18-cv-2008 JCS)

I am a representative of the news media as a reporter with Reveal from The Center for Investigative Reporting, a non-profit investigative journalism organization. This request is made as part of news gathering and not for a commercial use. I respectfully ask that you waive fees related to this request. Please notify me of any charges before fulfilling this request.

Please contact me with any questions at 510-809-2209 or

wevans@revealnews.org

Thank you for your attention to this request.

Sincerely,
Will Evans
Reveal / The Center for Investigative Reporting
[1400 65th, Suite 200](#)
Emeryville, CA 94608

--

Will Evans

reporter

o: 510-809-2209



www.revealnews.org

--

Will Evans
reporter
Reveal from The Center for Investigative Reporting
office: 510-809-2209
cell: 510-333-9584
www.revealnews.org

Exhibit C

U.S. Department of Labor

Office of Federal Contract
Compliance Programs
200 Constitution Avenue, N.W.
Washington, D.C. 20210



JUL 18 2019

Will Evans
The Center for Investigative Reporting
1400 65th Street, Suite 200
Emeryville, CA 94608

RE: Freedom of Information Act Request Acknowledgement – Tracking No. 872421

Dear Mr. Evans:

This letter is a follow-up to your Freedom of Information Act (FOIA) request submitted to the Office of Federal Contract Compliance Programs (OFCCP). Please refer to the above-referenced FOIA tracking number in any future correspondence regarding your FOIA request.

You requested a spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2016. As you know from your earlier requests, in accordance with 29 CFR § 70.26, OFCCP is required to notify submitters that their business information has been requested under the FOIA to give them an opportunity to object in writing to disclosure of any specified portion of the requested information.

Though your request is reasonably described, we have determined that there are more than 100,000 responsive records. Reaching out to each of the companies affected by your voluminous request would overwhelm the OFCCP FOIA unit for the foreseeable future, and the cost in sending more than 100,000 letters would be unduly burdensome. If you wish to narrow the scope of your request, please send a revised request to the address referenced above or send an e-mail to OFCCP_NO_FOIA@dol.gov. In the event that we do not receive a response from you within thirty (30) days from the date of this letter, we will administratively close your request.

Should you have questions regarding your request, please contact this office at (202) 693-0101 or by email at OFCCP_NO_FOIA@dol.gov. If you need further assistance or would like to discuss any aspect of your request, please do not hesitate to contact the DOL FOIA Public Liaison, Thomas Hicks, at (202) 693-5427.

Alternatively, you may contact the Office of Government Information Services within the National Archives and Records Administration (OGIS) to inquire about the mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. You can also reach that office by e-mail at ogis@nara.gov, by phone at (202) 741-5770, by fax at (202) 741-5769, or by calling toll-free at (877) 684-6448.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Solicitor of Labor within 90 days from the date of this letter. The appeal must state in writing the grounds for the appeal, and it may include any supporting statements or arguments, but such statements are not required. In order to facilitate processing of the appeal, please include your mailing address and daytime telephone number, as well as a copy of the initial request and copy of this letter. The envelope and letter of the appeal should be clearly marked "Freedom of Information Act Appeal." Any amendment to the appeal must be made in writing and received prior to a decision. The appeal should be addressed to the Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, DC 20210. Appeals may also be submitted by email to foiaappeal@dol.gov. Appeals submitted to any other email address will not be accepted.

Sincerely,



D. Lissette Geán
Special Assistant

Exhibit D



Dara Gray <dgray@revealnews.org>

Fwd: re FOIA 872421

1 message

Will Evans <wevans@revealnews.org>
To: Dara Gray <dgray@revealnews.org>

Wed, Nov 9, 2022 at 3:34 PM

----- Forwarded message -----

From: **Will Evans** <wevans@revealnews.org>
Date: Thu, Aug 8, 2019 at 1:10 PM
Subject: re FOIA 872421
To: Bruce Andersen - OFCCP <Andersen.Bruce@dol.gov>
Cc: Victoria Baranetsky <vbaranetsky@revealnews.org>

Dear FOIA Officer,

This is in regards to your July 18, 2019 letter requesting that I narrow my original request because it would be unduly burdensome to notify all affected companies. The notification requirements, however, do not apply here because no exemption applies. The agency, in fact, has previously determined that no exemption applies and has released Type 2 EEO-1 reports in response to previous FOIA requests. Because the agency does not need to notify any companies, providing a spreadsheet is not unduly burdensome, and there is no need to narrow the request.

Thank you for your work on this request.

Best,
Will Evans

--

Will Evans
reporter
o: 510-809-2209www.revealnews.org

--

Will Evans
reporter
Reveal from The Center for Investigative Reporting
cell: 510-333-9584
www.revealnews.org

 OFCCP FOIA 872421.pdf
478K

Exhibit E



Shawn Musgrave <smusgrave@revealnews.org>

Fwd: Acknowledgment

1 message

Will Evans <wevans@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Fri, Oct 15, 2021 at 6:51 PM

----- Forwarded message -----

From: **Karamoko, Arginia - SOL** <Karamoko.Arginia@dol.gov>
Date: Fri, Sep 18, 2020 at 12:50 PM
Subject: Acknowledgment
To: Will Evans <wevans@revealnews.org>
Cc: Oliver, Ramona - SOL <Oliver.Ramona@dol.gov>, OFCCP NO FOIA <OFCCP_NO_FOIA@dol.gov>

Hello:

Your request has been assigned to the Office of Federal Contract Compliance Programs (OFCCP) with tracking number **897123**. When they begin processing it, you will be able to track its progress at www.dol.gov/foia. If you need to contact them about it for any reason, please submit your inquiry through ofccp_no_foia@dol.gov or phone 202-693-0101. In addition, it would be helpful to include the tracking number in the Subject line of any submission to the agency or to have it available at the time of a call.

Sincerely,

Arginia Karamoko

Government Information Specialist, Office of Information Services
Office of the Solicitor | Management & Administrative Legal Services
U.S. DEPARTMENT OF LABOR
200 Constitution Ave., N.W., N-2420 | Washington, DC 20210
T: (202) 693-5531 | F: (202) 693-5389 | E: karamoko.arginia@dol.gov

From: Will Evans <wevans@revealnews.org>
Sent: Friday, September 11, 2020 8:26 PM
To: FOIARequests <FOIARequests@dol.gov>
Subject: FOIA request - OFCCP

Dear FOIA Officer,

Under the Freedom of Information Act, I am requesting a copy of the following records from OFCCP:

*** A spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2018.**

I am requesting this data in electronic format, by email. Fulfilling this request is not unduly burdensome because there is no need to notify federal contractors.

There is an exception to the notice requirements of 29 CFR 70.26 and Executive Order 12600 that applies here, as will be explained below. Notice to the contractors is not required.

Under 29 CFR 70.2(G)(5) and Executive Order 12600 Sec.8(e), the notice requirements **need not be followed** if the information has not been designated by the submitter, unless OFCCP "has reason to believe that disclosure of the information would result in substantial competitive harm."

Under 29 CFR 70.2(G)(6) and Executive Order 12600 Sec.8(f), the notice requirements **need not be followed** the designation made by the submitter "appears obviously frivolous."

There is no substantial reason to believe that disclosure of the information would result in competitive harm, so the information should be released without notice for any contractor. Even if a contractor has designated it as confidential, that designation should be considered "obviously frivolous," **as federal contractor EEO-1s have been determined to be public records that must be disclosed, not confidential commercial information.** Please see the Dec. 10, 2019 ruling by Judge Kandis Westmore in U.S. District Court for the Northern District of California, 4:19-cv-01843-KAW (attached).

I am a representative of the news media as a reporter with Reveal from The Center for Investigative Reporting, a non-profit investigative journalism organization. This request is made as part of news gathering and not for a commercial use. I respectfully ask that you waive fees related to this request. Please notify me of any charges before fulfilling this request.

Please contact me with any questions at 510-809-2209 or

wevans@revealnews.org

Thank you for your attention to this request.

Sincerely,
Will Evans
Reveal / The Center for Investigative Reporting
1400 65th, Suite 200
Emeryville, CA 94608



www.revealnews.org

--

Will Evans
reporter
Reveal from The Center for Investigative Reporting
office: 510-809-2209
cell: 510-333-9584
www.revealnews.org

U.S. Department of Labor

Office of Federal Contract Compliance Programs
200 Constitution Avenue, N.W.
Washington, D.C. 20210



October 2, 2020

Via Electronic Mail

Will Evans
The Center for Investigative Reporting
1400 65th Street, Suite 200
Emeryville, CA 94608

RE: Freedom of Information Act Request Acknowledgement – Tracking No. 897123

Dear Mr. Evans:

This letter is to acknowledge receipt of your Freedom of Information Act (FOIA) request submitted to foiarequest@dol.gov. The Office of the Solicitor assigned your request to the Office of Federal Contract Compliance Programs (OFCCP) on September 18, 2020. Please refer to the above-referenced FOIA tracking number in any future correspondence regarding your FOIA request.

You requested a spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2018.

We consider you to be a representative of the news media as defined by the U.S. Department of Labor FOIA regulations at 29 CFR § 70.40(c)(3), therefore, only reproduction costs will be assessed, excluding charges for the first 100 pages. You will receive written notification if the total estimated fee for processing your request exceeds \$25.00.

OFCCP's National Office will process your request for EEO-1 data. Once we compile the data, we will send a letter to the submitters notifying them of the request for their EEO-1 data.

In accordance with 29 CFR § 70.26 and Executive Order 12600, because your request covers information that may be protected from disclosure under FOIA Exemption 4, OFCCP is required to notify submitters that their information has been requested under the FOIA to give them an opportunity to object in writing to disclosure of any specified portion of the requested information. For those submitters who do not object, we will provide the information with any necessary redactions consistent with FOIA. For those submitters who do object, OFCCP will evaluate any response provided by the submitter as to why the requested information should be withheld and make its own determination as to whether the specific facts and relevant law warrant disclosure or withholding of the requested information.

Due to the volume and complexity of the FOIA requests we have received, we anticipate that providing a full response will take longer than 20 business days to fulfill. Accordingly, OFCCP will take an additional 10 business days to fulfill your request as afforded by the FOIA at 5 U.S.C. § 552(a)(6)(B)(i). We will contact you if we are unable to fulfill your request in 30 business days.

We consider you a “news media” type of requestor. As a “news media” requestor, we charge you for photocopying after the first 100 pages in accordance with the U.S. Department of Labor FOIA regulations at 29 CFR § 70.40(c)(4). DOL’s FOIA regulations at 29 CFR § 70.42(a) deem that the filing of a FOIA constitutes an agreement by the requestor to pay all fees up to \$25.00.

If you need further assistance or would like to discuss any aspect of your request, please do not hesitate to contact this office at (202) 693-0101 or by email at OFCCP_NO_FOIA@dol.gov. Alternatively, you may wish to contact the DOL FOIA Public Liaison, Thomas Hicks, at (202) 693-5427 or by email at hicks.thomas@dol.gov.

You may also contact the Office of Government Information Services (OGIS), within the National Archives and Records Administration (NARA), to inquire about the mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. You can also reach that office by email at ogis@nara.gov, by phone at (202) 741-5770, by fax at (202) 741-5769, or by calling toll-free at (877) 684-6448.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Solicitor of Labor within 90 days from the date of this letter. In the appeal, you must state in writing the grounds for the appeal, and may include any supporting statements or arguments, but such statements are not required. To facilitate processing of the appeal, please include your mailing address and daytime telephone number, as well as a copy of the initial request and copy of this letter. Clearly mark “Freedom of Information Act Appeal” on the envelope and letter of the appeal. You must make any amendment to the appeal in writing and we must receive it prior to a decision. Address the appeal to the Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, DC 20210. You may submit your appeal by email to foiaappeal@dol.gov. The Department does not accept appeals submitted to any other email address.

Sincerely,

DORIS GEAN  Digitally signed
by DORIS GEAN

Doris Lissette Geán
FOIA Manager

Exhibit F

U.S. Department of Labor

Office of Federal Contract Compliance Programs
200 Constitution Avenue, N.W.
Washington, D.C. 20210



October 2, 2020

Via Electronic Mail

Will Evans
The Center for Investigative Reporting
1400 65th Street, Suite 200
Emeryville, CA 94608

RE: Freedom of Information Act Request Acknowledgement – Tracking No. 897123

Dear Mr. Evans:

This letter is to acknowledge receipt of your Freedom of Information Act (FOIA) request submitted to foiarequest@dol.gov. The Office of the Solicitor assigned your request to the Office of Federal Contract Compliance Programs (OFCCP) on September 18, 2020. Please refer to the above-referenced FOIA tracking number in any future correspondence regarding your FOIA request.

You requested a spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2018.

We consider you to be a representative of the news media as defined by the U.S. Department of Labor FOIA regulations at 29 CFR § 70.40(c)(3), therefore, only reproduction costs will be assessed, excluding charges for the first 100 pages. You will receive written notification if the total estimated fee for processing your request exceeds \$25.00.

OFCCP's National Office will process your request for EEO-1 data. Once we compile the data, we will send a letter to the submitters notifying them of the request for their EEO-1 data.

In accordance with 29 CFR § 70.26 and Executive Order 12600, because your request covers information that may be protected from disclosure under FOIA Exemption 4, OFCCP is required to notify submitters that their information has been requested under the FOIA to give them an opportunity to object in writing to disclosure of any specified portion of the requested information. For those submitters who do not object, we will provide the information with any necessary redactions consistent with FOIA. For those submitters who do object, OFCCP will evaluate any response provided by the submitter as to why the requested information should be withheld and make its own determination as to whether the specific facts and relevant law warrant disclosure or withholding of the requested information.

Due to the volume and complexity of the FOIA requests we have received, we anticipate that providing a full response will take longer than 20 business days to fulfill. Accordingly, OFCCP will take an additional 10 business days to fulfill your request as afforded by the FOIA at 5 U.S.C. § 552(a)(6)(B)(i). We will contact you if we are unable to fulfill your request in 30 business days.

We consider you a “news media” type of requestor. As a “news media” requestor, we charge you for photocopying after the first 100 pages in accordance with the U.S. Department of Labor FOIA regulations at 29 CFR § 70.40(c)(4). DOL’s FOIA regulations at 29 CFR § 70.42(a) deem that the filing of a FOIA constitutes an agreement by the requestor to pay all fees up to \$25.00.

If you need further assistance or would like to discuss any aspect of your request, please do not hesitate to contact this office at (202) 693-0101 or by email at OFCCP_NO_FOIA@dol.gov. Alternatively, you may wish to contact the DOL FOIA Public Liaison, Thomas Hicks, at (202) 693-5427 or by email at hicks.thomas@dol.gov.

You may also contact the Office of Government Information Services (OGIS), within the National Archives and Records Administration (NARA), to inquire about the mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. You can also reach that office by email at ogis@nara.gov, by phone at (202) 741-5770, by fax at (202) 741-5769, or by calling toll-free at (877) 684-6448.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Solicitor of Labor within 90 days from the date of this letter. In the appeal, you must state in writing the grounds for the appeal, and may include any supporting statements or arguments, but such statements are not required. To facilitate processing of the appeal, please include your mailing address and daytime telephone number, as well as a copy of the initial request and copy of this letter. Clearly mark “Freedom of Information Act Appeal” on the envelope and letter of the appeal. You must make any amendment to the appeal in writing and we must receive it prior to a decision. Address the appeal to the Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, DC 20210. You may submit your appeal by email to foiaappeal@dol.gov. The Department does not accept appeals submitted to any other email address.

Sincerely,

DORIS GEAN  Digitally signed
by DORIS GEAN

Doris Lissette Geán
FOIA Manager

Exhibit G



Dara Gray <dgray@revealnews.org>

Fwd: Freedom of Information Act Request Acknowledgement – Tracking No. 897123

Dara Gray <dgray@revealnews.org>
To: Dara Gray <dgray@revealnews.org>

Tue, Nov 15, 2022 at 3:55 PM

----- Forwarded message -----

From: **Alexandra Gutierrez** <agutierrez@revealnews.org>

Date: Fri, Dec 11, 2020 at 4:41 PM

Subject: Re: Freedom of Information Act Request Acknowledgement – Tracking No. 897123

To: OFCCP NO FOIA <OFCCP_NO_FOIA@dol.gov>

Cc: Victoria Baranetsky <vbaranetsky@revealnews.org>, Will Evans <wevans@revealnews.org>, Hicks, Thomas - SOL <Hicks.Thomas@dol.gov>

VIA EMAIL

Doris Lissette Geán
FOIA Manager
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
OFCCP_NO_FOIA@dol.gov

Re: Freedom of Information Act Request Acknowledgement – Tracking No. 897123

Dear Ms. Geán:

We are following up on your e-mail correspondence dated November 7, 2020, and we write seeking an update as to the status of FOIA Request No. 897123. We would also like to remind the Department that Judge Westmore’s opinion remains in effect, *see Ctr. for Investigative Reporting v. U.S. Dep’t of Labor*, 424 F. Supp. 3d 771 (N.D. Cal. 2019), as a stay was granted only as to Synopsys’s records, *see Ctr. for Investigative Reporting v. U.S. Dep’t of Labor*, No. 4:19-CV-01843-KAW, ECF No. 79 (July 20, 2020). Unless and “until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected.” *United States v. Mine Workers*, 330 U.S. 258, 294 (1947) (citation omitted).

Again, thank you for your assistance for this matter. We look forward to the expeditious fulfillment of the request and to the avoidance of unnecessary litigation.

Sincerely,

Alexandra M. Gutierrez

cc: D. Victoria Baranetsky, General Counsel, Center for Investigative Reporting
Will Evans, Report, Center for Investigative Reporting
Thomas Hicks, DOL FOIA Public Liaison

enc: PDF copy

On Sat, Nov 7, 2020 at 1:50 PM OFCCP NO FOIA <OFCCP_NO_FOIA@dol.gov> wrote:

Good afternoon Ms. Gutierrez,

We acknowledge receipt of your email/letter. We are reviewing it and will get back to them shortly.

Thank you,

D. Lissette Geán

FOIA Manager

Office of Federal Contract Compliance Programs

From: Alexandra Gutierrez <agutierrez@revealnews.org>

Sent: Friday, October 30, 2020 8:56 PM

To: OFCCP NO FOIA <OFCCP_NO_FOIA@DOL.GOV>

Cc: Victoria Baranetsky <vbaranetsky@revealnews.org>; Will Evans <wevans@revealnews.org>; Hicks, Thomas - SOL <Hicks.Thomas@dol.gov>

Subject: Re: Freedom of Information Act Request Acknowledgement – Tracking No. 897123

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VIA EMAIL

Doris Lissette Geán

FOIA Manager

Department of Labor

200 Constitution Avenue, N.W.

Washington, D.C. 20210

OFCCP_NO_FOIA@dol.gov

Re: Freedom of Information Act Request Acknowledgement – Tracking No. 897123

Dear Ms. Geán:

We received your letter dated October 2, 2020, acknowledging FOIA Request No. 897123 made by Center for Investigative Reporting ("CIR") reporter Will Evans. That request seeks a spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2018, and it is a follow-on request to FOIA Request No. 875877 (seeking same for 2017) and 872421 (same for 2016).

CIR understands that the Department of Labor intends to act in contravention of a federal court decision and grant EEO-1 submitters the opportunity to object in writing to disclosure of information pertaining to them. CIR would like to remind DOL that, just last year, Judge Westmore addressed CIR's request for 2016 EEO-1 report data and concluded that the "Government was not justified in applying Exemption 4" to this information, requiring the EEO-1 reports to "be produced unredacted." *Ctr. for Investigative Reporting v. U.S. Dep't of Labor*, 424 F. Supp. 3d 771, 779 (N.D. Cal. 2019).

The Government chose not to appeal this still-binding ruling. See *Ctr. for Investigative Reporting v. U.S. Dep't of Labor*, No. 4:19-CV-01843-KAW, 2020 WL 554001, at *1 (N.D. Cal. Feb. 4, 2020) (noting DOL's decision "that it would not be appealing the December 10, 2019 order"). Moreover, all but one of the relevant EEO-1 submitters decided against intervention. Although the District Court has permitted a single third party, Synopsys, Inc., to intervene for the limited purpose of appealing the December 10, 2019 order, see *Ctr. for Investigative Reporting v. U.S. Dep't of Labor*, No. 4:19-CV-01843-KAW, ECF No. 79 (July 20, 2020), the Government has indeed noticed an intention to cross-appeal and oppose that intervention, see *id.*, ECF No. 93 (Sept. 18, 2020). The December 10, 2019 order generally remains in effect, as the parties, including the Government, stipulated that it would only be stayed as to the "disclosure of the requested Synopsys information." *Id.*, ECF No. 87, ¶ 2 (July 28, 2020).

Given the continuing force of the December 10, 2019 order and the Government's current position on this litigation, CIR is perplexed by DOL's current plan of action as to FOIA Request No. 897123. We hope this clarifies any existing misunderstanding and allows us to avoid needless, repetitive litigation. We thank you in advance for your fulfillment of this request.

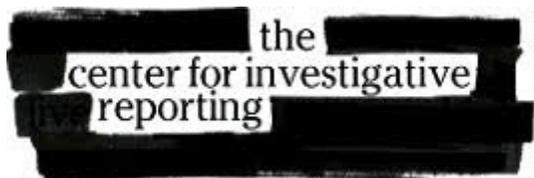
Sincerely,

Alexandra M. Gutierrez

cc: D. Victoria Baranetsky, General Counsel, Center for Investigative Reporting
Will Evans, Report, Center for Investigative Reporting
Thomas Hicks, DOL FOIA Public Liaison

enc: PDF copy

--
Dara Gray
First Amendment Fellow
c: (404) 395-2356



 **FOIAReq897123_Dec112020Letter.pdf**
414K

Exhibit H

Shawn Musgrave <smusgrave@revealnews.org>

Fwd: Freedom of Information Act Requests – Tracking Nos. 872421 and 897123

Will Evans <wevans@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Thu, Sep 30, 2021 at 10:30 PM

----- Forwarded message -----

From: **Alexandra Gutierrez** <agutierrez@revealnews.org>

Date: Thu, Jan 7, 2021 at 9:13 AM

Subject: Re: Freedom of Information Act Requests – Tracking Nos. 872421 and 897123

To: Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov>Cc: Victoria Baranetsky <vbaranetsky@revealnews.org>, Will Evans <wevans@revealnews.org>, Hicks, Thomas - SOL <hicks.thomas@dol.gov>

VIA E-MAIL

Doris Lissette Geán
FOIA Manager
Department of Labor
[200 Constitution Avenue, N.W.](https://www.dol.gov)
[Washington, D.C. 20210](https://www.dol.gov)
OFCCP_NO_FOIA@dol.gov

Re: Freedom of Information Act Request Acknowledgement – Tracking No. 897123

Dear Ms. Geán,

We are following up on your December 18, 2020 e-mail. While we are considering are options as to the Department of Labor's current position as to our reporter's request, we seek answers to the following questions:

1. When did the Department provide E.O. 12600 notices to submitters?
2. Have any submitters responded, either objecting or consenting?
3. For those submitters who have consented or have waived their opportunity to object due to the passage of a reasonable amount of time, would the Department be able to provide their submitted reports on a rolling basis.

We appreciate your attention to these inquiries.

Sincerely,

Alexandra M. Gutierrez

cc: D. Victoria Baranetsky, General Counsel, Center for Investigative Reporting
Will Evans, Reporter, Center for Investigative Reporting
Thomas Hicks, DOL FOIA Public Liaison

On Fri, Dec 18, 2020 at 9:32 AM Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov> wrote:
Via Electronic Mail

Dear Ms. Gutierrez:

We have received your December 11, 2020, e-mail inquiring about outstanding FOIA requests that, combined, seek two years (2016 and 2018) of EEO-1 consolidated (Type 2) reports for all federal contractors.

As you are aware, we have complied with the district court's order and released the 2016 reports of the individual submitters who have not appealed the court's decision in the matter of *Ctr. for Investigative Reporting v. U.S. Dep't of Labor*, 424 F. Supp. 3d 771, 779 (N.D. Cal. 2019). Your outstanding FOIA requests seek the EEO-1, Type 2 reports of well over 15,000, and possibly over 20,000 submitters from countless industries whose reports are not subject to that court order.

We continue to be subject to Executive Order 12600 and are obligated to notify submitters of requests for their potentially confidential commercial information. *See* 29 C.F.R. § 70.26. Under Executive Order 12600, we must afford submitters a reasonable period of time to object to the disclosure of any portion of the information and to state all grounds upon which disclosure is opposed. The submitters that are the subject of your request have not had the opportunity to demonstrate whether their EEO-1, Type 2 reports contain confidential commercial information. Moreover, while we do not believe that the Northern California's District Court's decision in *Center for Investigative Reporting* has precedential effect on all EEO-1, Type 2 reports, we note that this matter is currently on appeal before the U.S. Court of Appeals for the Ninth Circuit and there is still a chance that the district court's holding may be overturned.

Sincerely,

D. Lissette Geán

FOIA Manager

--

Alexandra M. Gutierrez
First Amendment Fellow
(c) 907-209-1799



--

Will Evans
reporter
Reveal from The Center for Investigative Reporting
office: 510-809-2209
cell: 510-333-9584
www.revealnews.org

Exhibit I

Shawn Musgrave <smusgrave@revealnews.org>

Fwd: amendment request

Will Evans <wevans@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Thu, Sep 30, 2021 at 10:28 PM

----- Forwarded message -----

From: **OFCCP NO FOIA** <OFCCP_NO_FOIA@dol.gov>
Date: Tue, May 11, 2021 at 9:05 AM
Subject: RE: amendment request
To: Will Evans <wevans@revealnews.org>

Dear Mr. Evans,

We have modified request 872421 to include a spreadsheet of the consolidated (Type 2) EEO-1 reports for all federal contractors for the years 2016 through 2018.

We will administratively close request 897123.

Cordially,

Bruce Andersen

The OFCCP FOIA Team

From: Will Evans <wevans@revealnews.org>
Sent: Monday, May 10, 2021 1:02 PM
To: OFCCP NO FOIA <OFCCP_NO_FOIA@DOL.GOV>
Subject: amendment request

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.

Dear FOIA Officer,

I would like to amend my FOIA request #872421 to include a spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2017 and 2018 as well as 2016.

If you agree to this amendment, I will withdraw my separate FOIA #897123 for the 2018 data.

Please let me know.
Thank you very much.
Best,

Will Evans

--

Will Evans

reporter

office: 510-809-2209

cell: 510-333-9584



www.revealnews.org

--

Will Evans

reporter

Reveal from The Center for Investigative Reporting

office: 510-809-2209

cell: 510-333-9584

www.revealnews.org

Exhibit J



Dara Gray <dgray@revealnews.org>

Fwd: FOIA 872421 - Amendment

1 message

Will Evans <wevans@revealnews.org>
To: Dara Gray <dgray@revealnews.org>

Wed, Nov 9, 2022 at 2:01 PM

----- Forwarded message -----

From: **Office of Federal Contract Compliance Programs** <ofccp_no_foia@dol.gov>
Date: Fri, Jun 3, 2022 at 10:52 AM
Subject: RE: FOIA 872421 - Amendment
To: <wevans@revealnews.org>
Cc: <vbaranetsky@revealnews.org>

Dear Mr. Evans,

We have received your latest email. We will modify request 872421 to include both the 2019 and 2020 data. Your request is now for the consolidated (Type 2) EEO-1 reports for all federal contractors for the years 2016 through 2020.

Cordially,

Bruce Andersen

The OFCCP FOIA Team

From: Will Evans wevans@revealnews.org
Sent: Thursday, June 2, 2022 4:45 PM
To: FOIARequests FOIARequests@dol.gov
Cc: OFCCP NO FOIA OFCCP_NO_FOIA@DOL.GOV
Subject: FOIA request- OFCCP

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Dear FOIA Officer,

Under the Freedom of Information Act, I am requesting a copy of the following records from OFCCP:

*** A spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2019 and 2020.**

I am requesting this data in electronic format, by email.

I am a representative of the news media as a reporter with Reveal from The Center for Investigative Reporting, a non-profit investigative journalism organization. This request is made as part of news gathering and not for a commercial use. I respectfully ask that you waive fees related to this request. Please notify me of any charges before fulfilling this request.

Please contact me with any questions at 510-809-2209 or

wevans@revealnews.org

Thank you for your attention to this request.

Sincerely,
Will Evans
Reveal / The Center for Investigative Reporting

PO Box 8307

Emeryville, CA 94608

--

Will Evans

reporter

Reveal from The Center for Investigative Reporting

cell: 510-333-9584

www.revealnews.org

--

Will Evans
reporter
Reveal from The Center for Investigative Reporting
cell: 510-333-9584
www.revealnews.org

Exhibit K

[REDACTED] the
[REDACTED] center for
[REDACTED] investigative
[REDACTED] reporting

Secretary of Labor Martin J. Walsh
Office of the Secretary of Labor
200 Constitution Ave, NW
Room C-2318
Washington, DC 20210

Solicitor of Labor Seema Nanda
Office of the Solicitor of Labor
200 Constitution Ave, NW
Washington, DC 20210

Director Jenny R. Yang
Office of Federal Contract Compliance Programs
200 Constitution Ave, NW
Room C-3325
Washington, DC 20210

May 23, 2022

VIA ELECTRONIC DELIVERY

Re: FOIA Request No. 872421 and DOL's Wrongful Withholding of EEO-1 Type 2 Forms That Should be Released and Published Prospectively

To Whom It May Concern:

The Center for Investigative Reporting ("CIR") writes to object to the agency's withholding of records requested under the Freedom of Information Act ("FOIA") by our reporter, Mr. Will Evans. Mr. Evans's FOIA request, which has been pending for *more than three years*, seeks disclosure of aggregate workforce diversity data submitted by federal contractors to the Department of Labor ("DOL")'s Office of Federal Contract Compliance Programs ("OFCCP"). This withholding is in contravention of legal authority.

According to OFCCP, the agency's extensive delay in responding to this request is due to its need to consult with thousands of federal contractors to ascertain whether they object to

disclosure of their diversity data. It is unclear whether OCFPP has attempted to initiate that process. Nevertheless, CIR disputes that such consultation is appropriate or necessary in the first instance. The agency's withholding is in direct contravention of law in light of recent court decisions, including a federal district court ordering disclosure of diversity data, an opinion which the DOL did not appeal and which the U.S. Ninth Circuit Court of Appeals left undisturbed, as discussed below. These records should be disclosed immediately. Regardless, even if the agency wanted to formalize this disclosure process moving forward, by proactively publishing these records on its website, it could provide a broad notice to companies, instead of reaching out to federal contractors individually. According to agency rules, DOL has the authority to expedite its consultation process by publishing notices in the Federal Register.

In light of its obligations under FOIA, CIR demands DOL disclose the requested records and prospectively publish these records online. If DOL fails to act and continues to withhold these records, CIR will be required to file suit under FOIA, yet a third time.

I. Background on EEO-1 Reports

Since 1966, certain federal contractors have been required to submit workforce demographic data to the U.S. Equal Opportunity Commission on an annual basis.¹ OFCCP uses these diversity reports, the EEO-1 Consolidated Reports (Type 2) ("EEO-1 Type 2 reports") to evaluate contractors' compliance with anti-discrimination laws, particularly Executive Order 11246.² For decades, momentum has been growing to make the diversity data in EEO-1 Type 2 reports accessible and keep federal contractors accountable to the public. As far back as 1974, courts have required EEO-1 Type 2 reports to be disclosed under FOIA.³ Many companies now post their reports online as part of their own social responsibility commitments.⁴ Members of

¹ See 41 C.F.R. § 60-1.7(a).

² See 30 Fed. Reg. 12,319 (Sept. 28, 1965).

³ As OFCCP explains on its website, "[C]ourts have ruled that the Title VII prohibition against disclosure does not apply to OFCCP's collection of EEO-1 data." OFCCP, *Freedom of Information Act (FOIA) Frequently Asked Questions*, <https://www.dol.gov/agencies/ofccp/faqs/foia> (citing *Sears Roebuck & Co. v. Gen. Servs. Admin.*, 509 F.2d 527, 529 (D.C. Cir. 1974) as one such ruling).

⁴ For example, Intel proactively began posting diversity reports online in 2008. Intel, *Workforce Demographics*, 2008, <http://web.archive.org/web/20081224004419/http://www.intel.com/intel/diversity/divpractice.htm>. Google began posting its diversity data in 2014 after a similar FOIA lawsuit, and Microsoft followed suit in 2015. Murrey Jacobson, *Google finally discloses its diversity record, and it's not good*, PBS NEWSHOUR, May 28, 2014, <https://www.pbs.org/newshour/nation/google-discloses-workforce-diversity-data-good>; Laura Lorenzetti, *Microsoft releases diversity stats: How the tech giant sizes up*, FORTUNE, Jan. 5, 2015, <https://fortune.com/2015/01/05/microsoft-eeo-1-diversity-tech>.

Congress⁵ and legislative commissions,⁶ civil rights activists,⁷ and scholars have been calling for this data to be more accessible, including in response to CIR's reporting. In March 2019, after CIR sued DOL for diversity data the first time, Representative Emanuel Cleaver II wrote to the DOL stating this data should not be withheld under Exemption 4, as EEO-1 reports "enumerate the diversity of firms accepting the taxpayer money."⁸

As part of his reporting for CIR over the last decade, Mr. Evans has submitted numerous FOIA requests to OFCCP for EEO-1 Type 2 reports and data. In addition to the FOIA request addressed herein, Mr. Evans has previously requested EEO-1 Type 2 reports regarding specific companies and CIR has previously sued DOL twice over its refusal to release these reports on the basis of Exemption 4. The first of these lawsuits was voluntarily dismissed in 2018 after DOL reversed its prior determination that five companies' reports were exempt.⁹ In the second lawsuit, the court granted summary judgment to CIR, ruling in December 2019, "the Government failed to make a showing that the demographic information contained in the EEO-1 reports is commercial."¹⁰ As a result, the Government was not justified in applying Exemption 4 to the EEO-1 reports, and the court ruled they "must be produced unredacted."¹¹ The government chose not to appeal that ruling and the U.S. Ninth Circuit Court of Appeals recently

⁵ Members of Congress have called for greater access to diversity reports, both via companies' proactive disclosures and via OFCCP's disclosures under FOIA. *See, e.g.*, Jessica Guyun, *Barbara Lee calls on Apple, tech holdouts to release diversity data*, USA TODAY, Aug. 4, 2015, <https://www.usatoday.com/story/tech/2015/08/04/barbara-lee-black-caucus-federal-diversity-data-apple/31128479>.

⁶ The Federal Glass Ceiling Commission, created by the Civil Rights Act of 1991, stated in its 1995 report that the government should "explore the possibility of mandating public release of EEO-1 forms for Federal contractors and publicly-traded corporations." GLASS CEILING COMM'N, *A Solid Investment: Making Full Use of the Nation's Human Capital* 42-43, Nov. 1, 1995, <https://ecommons.cornell.edu/handle/1813/79349>.

⁷ For example, civil rights activist Rev. Jesse Jackson has called on companies to release diversity statistics. *See* Salvador Rodriguez, *Jesse Jackson Gives Uber a Diversity Deadline*, INC.COM, Jan. 5, 2017, <https://www.inc.com/salvador-rodriguez/uber-diversity-jesse-jackson.html>.

⁸ Letter from Emanuel Cleaver II, Member of Congress, U.S. House of Representatives, to Alexander Acosta, Secretary, U.S. Department of Labor (Mar. 6, 2019), https://cleaver.house.gov/sites/cleaver.house.gov/files/DOL_FOIA.pdf.

⁹ *Ctr for Investigative Reporting v. Dep't of Labor*, No. 3:18-cv-02008 (N.D. Cal. Dec. 21, 2018).

¹⁰ *Ctr. for Investigative Reporting v. Dep't of Labor*, 424 F. Supp. 3d 771, 779 (N.D. Cal. Dec. 10, 2019).

¹¹ *Id.*

left it undisturbed following a belated challenge by the single holdout company whose data was at issue.¹²

OFCCP asserts that DOL regulations and Executive Order 12600 require notification to individual submitters to consult if this information qualifies as “confidential commercial information.”¹³ First, the very same DOL regulations allow such notification “by posting or publishing notice reasonably likely to accomplish such notification” in cases where “notification to a voluminous number of submitters is required.”¹⁴ Second, either time-consuming and burdensome notification process directly contradicts a federal court opinion requiring disclosure. Now that EEO-1 Type 2 reports have been ruled as outside the scope of Exemption 4, any such consultation is in contravention of a federal court decision. The agency’s own prior actions confirm this conclusion. In a similar context, DOL released data online regarding workplace injuries and illnesses for tens of thousands of employers — without consulting with each company individually — after courts ruled this data is outside the scope of Exemption 4.¹⁵

II. Procedural History

Mr. Evans submitted the requested EEO-1 Type 2 data for all federal contractors more than three years ago, in January 2019. He initially submitted three separate requests for annual data for the years 2016, 2017, and 2018. *See* Exhibits A, B, and C.¹⁶ In May 2021, at OFCCP’s request, Mr. Evans agreed to combine these requests into one FOIA request for all three years’ worth of data. *See* Exhibit D. That combined request has been assigned OFCCP tracking number 872421. *Id.*

On numerous occasions, OFCCP indicated that Mr. Evans’s request required company-by-company consultation which posed logistical challenges due to the volume of federal contractors who might object to disclosure of their diversity data. For example, in July 2019, the OFCCP FOIA office estimated that there were “more than 100,000 responsive records”

¹² *Evans v. Synopsys*, No. 20-16416 (9th Cir. May 12, 2022), <https://cdn.ca9.uscourts.gov/datastore/opinions/2022/05/12/20-16416.pdf> (dismissing company’s untimely appeal for lack of jurisdiction).

¹³ 29 C.F.R. § 70.26; *see also* OFCCP FOIA website, *supra* note 3.

¹⁴ 29 C.F.R. § 70.26(c); *see also* 29 C.F.R. § 70.26(j) (“Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting and publishing the notice in a place reasonably calculated to accomplish notification.”)

¹⁵ DOL, *U.S. Department of Labor Releases Work-Related Injury and Illness Data*, Sept. 4, 2020, <https://www.dol.gov/newsroom/releases/osha/osha20200904>; *see also* *Ctr. for Investigative Reporting v. Dep’t of Labor*, No. 4:18-cv-02414, 2020 WL 2995209 (N.D. Cal. June 4, 2020); *Public Citizen Foundation v. Dep’t of Labor*, No. 1:18-cv-00117 (D.D.C. June 23, 2020).

¹⁶ The FOIA request for the 2016 EEO-1 Type 2 data was submitted on January 10, 2019, and assigned tracking number 872421. Ex. A. The FOIA request for the 2017 data was submitted on March 25, 2019, and assigned tracking number 875877. Ex. B. The FOIA request for the 2018 data was submitted on September 11, 2020, and assigned tracking number 897123. Ex. C.

pertaining to the 2016 data, and that “the cost in sending more than 100,000 letters would be unduly burdensome.” *See* Exhibit E. Following the December 2019 ruling in CIR’s favor, OFCCP suggested the court’s ruling did not have any “precedential effect” and that it was obligated to consult individual federal contractors in response to Mr. Evans’s request for aggregate data. *See* Exhibit F at 2. In December 2020, for example, OFCCP estimated that this request involved “the EEO-1, Type 2 reports of well over 15,000, and possibly over 20,000 submitters from countless industries.” *Id.*

Since January 2021, OFCCP has not answered CIR’s questions about what steps, if any, the agency has taken to date to consult with companies whose data is at issue in Mr. Evans’s request. *Id.* at 1.

III. Discussion

The Freedom of Information Act seeks “to ensure an informed citizenry, vital to the functioning of a democratic society.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). Under FOIA, “each agency . . . shall make the records promptly available.” 5 U.S.C. § 552(a)(3)(A). “Congress underscored the importance it attached to prompt responses by allowing judicial recourse, bypassing administrative exhaustion, if an agency fails to meet statutory timetables for disclosure or to justify its delay in making nonexempt records available upon request.” *Jud. Watch, Inc. v. Dep’t of Homeland Sec.*, 895 F.3d 770, 775–76 (D.C. Cir. 2018). “[A]n agency’s compliance with FOIA depends upon its good faith effort and due diligence to comply with all lawful demands for records in as short a time as is possible.” *Id.* at 781 (cleaned up).

Here, more than *three years* after receiving Mr. Evans’s initial request, OFCCP has failed to fulfill it. OFCCP has justified this extensive delay based on its suggestion that the federal court’s decision in the Northern District of California did not have precedential effect and the difficulty of notifying thousands of companies whose data is at issue. Ex. F at 2. CIR asserts that this position is faulty and to remedy the circumstances the agency should: 1) immediately disclose the requested records and 2) proactively notify all companies moving forward that these records will be disclosed.

A. OFCCP is Bound by Court Decisions Requiring Disclosure of EEO-1 Type 2 Reports.

By continuing to withhold the long-overdue diversity data, OFCCP is acting outside the bounds of law. Contrary to the agency’s suggestion, Judge Westmore’s ruling that diversity data is outside Exemption 4 does, in fact, have “precedential effect,” particularly since the Ninth Circuit left that decision undisturbed. The plain text of FOIA “vests jurisdiction in federal district courts to enjoin an ‘agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant,’” and agencies must comply with court disclosure orders. *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 139 (1980) (quoting 5 U.S.C. § 552(a)(4)(B)). Under the “law of the circuit doctrine, a published decision of [a federal appellate] court constitutes binding authority which must be

followed unless and until overruled by a body competent to do so.” *In re Zermeno-Gomez*, 868 F.3d 1048, 1052 (9th Cir. 2017) (cleaned up).

Here, both the district court and the appeals court decisions create binding law on the agency. Just two years ago, Judge Westmore ruled on CIR’s request for 2016 EEO-1 report data and concluded that the “Government was not justified in applying Exemption 4” to this information, requiring the EEO-1 reports to “be produced unredacted.” *Ctr. for Investigative Reporting v. Dep’t of Labor*, 424 F. Supp. 3d 771, 779 (N.D. Cal. 2019). DOL elected not to appeal that decision, and subsequently the U.S. Ninth Circuit Court of Appeals found it lacked jurisdiction to disturb Judge Westmore’s order. *Evans v. Synopsys*, No. 20-16416 (9th Cir. May 12, 2022). The December 10, 2019 order generally remains in effect, as the parties, including the Government, stipulated that it would only be stayed as to the “disclosure of the requested Synopsys information.” *Ctr. for Investigative Reporting*, No. 4:19-cv-01843, ECF No. 87, ¶¶ 2-3 (N.D. Cal. July 28, 2020). Given that the December 10, 2019 order remains in force, that the Government chose not to appeal it, and that the Government opposed the company’s attempt to intervene for the sole purpose of appealing it, CIR is perplexed by DOL’s current plan of action as to FOIA Request No. 872421. According *Kissinger* and *In re Zermeno*, DOL must disclose the records and the agency has not presented any other to the contrary. We hope this clarifies any remaining confusion and that the agency will disclose the requested records immediately to avoid needless, repetitive litigation – for a third time.

B. OFCCP Should Proactively Publish the Requested Records on Its Website.

The same DOL regulation OFCCP invokes to justify its delay also offers a solution for future requests involving EEO-1s: To mitigate the burden and expense of notifying a “voluminous number of submitters,” OFCCP can notify all companies simultaneously by posting a notice on its website before proactively publishing these records on its website. 29 C.F.R. § 70.26(c); *see also* 29 C.F.R. § 70.26(j) (“Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting and publishing the notice in a place reasonably calculated to accomplish notification.”).

OFCCP has various options for notifying companies by publication. It could publish a notice in the Federal Register, as DOL previously did to alert companies about a FOIA lawsuit and underlying request.¹⁷ Another agency with similar regulations about “voluminous” notifications recently published notices in the Federal Register.¹⁸ Alternatively, OFCCP could

¹⁷ 71 Fed. Reg. 20,732 (April 21, 2006), *available at* <https://www.federalregister.gov/documents/2006/04/21/06-3795/freedom-of-information-act-notice-of-lawsuit> (notice from the Occupational Health and Safety Administration regarding air sampling data). *See also Finkel v. Dep’t of Lab.*, No. CIV A 05-5525, 2007 WL 1963163, at *2 (D.N.J. June 29, 2007).

¹⁸ 81 Fed. Reg. 75,838 (Nov. 1, 2016), *available at* <https://www.federalregister.gov/documents/2016/11/01/2016-26412/freedom-of-information-act-notice-of-lawsuit> (notice from the U.S. Fish and Wildlife Service regarding FOIA request and lawsuit for data about import and export of wildlife specimens); 81 Fed. Reg. 85,255 (Nov. 25,

issue a press release, as DOL did regarding disclosure of its workplace injury data.¹⁹ Whatever the venue, DOL should avail itself of its regulatory authority to notify the “voluminous” number of companies – and begin to proactively publishing these records online, as other DOL components such as OSHA have done with comprehensive datasets after courts ruled that they could not be withheld.

IV. Conclusion

Rather than continue to delay Mr. Evans’s long-overdue request for EEO-1 Type 2 data, DOL should disclose the requested records. Moving forward it should exercise its authority to notify companies and begin proactive publication. We request that OFCCP respond to this letter **within two weeks of receipt** to discuss any clarifying points and the agency’s intended course of action to resolve this matter. You may reach me at vbaranetsky@revealnews.org or (201) 306-4831.

Sincerely,



Victoria D. Baranetsky
General Counsel
The Center for Investigative Reporting

cc: Will Evans, Senior Reporter and Producer, The Center for Investigative Reporting
Shawn Musgrave, First Amendment Fellow, The Center for Investigative Reporting

2016), *available at* <https://www.federalregister.gov/documents/2016/11/25/2016-28379/freedom-of-information-act-notice-of-lawsuit> (same). *See also* 43 C.F.R. § 2.27(b) (“If a voluminous number of submitters are involved, [a bureau of the Department of the Interior] may publish a notice in a manner reasonably calculated to reach the attention of the submitters (for example, in newspapers or newsletters, the bureau’s Web site, or the Federal Register) instead of providing a written notice to each submitter.”).

¹⁹ *Supra* note 15.

Exhibit A



Shawn Musgrave <smusgrave@revealnews.org>

Fwd: Acknowledgment

Will Evans <wevans@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Thu, Oct 14, 2021 at 2:41 PM

----- Forwarded message -----

From: **FOIARequests** <FOIARequests@dol.gov>
Date: Tue, Jan 15, 2019 at 2:35 PM
Subject: Acknowledgment
To: Will Evans <wevans@revealnews.org>
Cc: Oliver, Ramona - SOL <Oliver.Ramona@dol.gov>, OFCCP NO FOIA <OFCCP_NO_FOIA@dol.gov>

Hello:

Your request has been assigned to OFCCP with tracking number **872421**. When they begin processing it, you will be able to track its progress at www.dol.gov/foia. If you need to contact them about it for any reason, please submit your inquiry through ofccp_no_foia@dol.gov or phone 202-693-0101. In addition, it would be helpful to include the tracking number in the Subject line of any submission to the agency or to have it available at the time of a call.

Sincerely,

Arginia Karamoko

Government Information Specialist, Office of Information Services
Office of the Solicitor | Management & Administrative Legal Services
U.S. DEPARTMENT OF LABOR
200 Constitution Ave., N.W., N-2420 | Washington, DC 20210
T: (202) 693-5531 | F: (202) 693-5389 | E: karamoko.arginia@dol.gov

From: Will Evans <wevans@revealnews.org>
Sent: Thursday, January 10, 2019 7:13 PM
To: FOIARequests <FOIARequests@dol.gov>
Cc: Victoria Baranetsky <vbaranetsky@revealnews.org>
Subject: FOIA request - OFCCP

Dear FOIA Officer,

Under the Freedom of Information Act, I am requesting a copy of the following records from OFCCP:

*** A spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2016.**

I am requesting this data in electronic format, by email.

There is an exception to the notice requirements of 29 CFR 70.26 and Executive Order 12600 that applies here, as will be explained below. Notice to the contractors is not required.

Under 29 CFR 70.2(G)(5) and Executive Order 12600 Sec.8(e), the notice requirements **need not be followed** if the information has not been designated by the submitter, unless OFCCP "has reason to believe that disclosure of the information would result in substantial competitive harm."

Under 29 CFR 70.2(G)(6) and Executive Order 12600 Sec.8(f), the notice requirements **need not be followed** the designation made by the submitter "appears obviously frivolous."

There is no substantial reason to believe that disclosure of the information would result in competitive harm, so the information should be released without notice for any contractor. Even if a contractor has designated it as confidential, that designation should be considered "obviously frivolous," as OFCCP has already determined that Type 2 EEO-1 reports are not subject to Exemption 4 of the Freedom of Information Act. (see CIR v USDOL, Case No. 3:18-cv-2008 JCS)

I am a representative of the news media as a reporter with Reveal from The Center for Investigative Reporting, a non-profit investigative journalism organization. This request is made as part of news gathering and not for a commercial use. I respectfully ask that you waive fees related to this request. Please notify me of any charges before fulfilling this request.

Please contact me with any questions at 510-809-2209 or

wevans@revealnews.org

Thank you for your attention to this request.

Sincerely,
Will Evans
Reveal / The Center for Investigative Reporting
[1400 65th, Suite 200](#)
Emeryville, CA 94608

--

Will Evans

reporter

o: 510-809-2209



www.revealnews.org

--

Will Evans

reporter

Reveal from The Center for Investigative Reporting

office: 510-809-2209

cell: 510-333-9584

www.revealnews.org

Exhibit B



Shawn Musgrave <smusgrave@revealnews.org>

Fwd: Acknowledgment

Will Evans <wevans@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Thu, Oct 14, 2021 at 2:38 PM

----- Forwarded message -----

From: **Karamoko, Arginia - SOL** <Karamoko.Arginia@dol.gov>
Date: Mon, Mar 25, 2019 at 1:32 PM
Subject: Acknowledgment
To: Will Evans <wevans@revealnews.org>
Cc: Oliver, Ramona - SOL <Oliver.Ramona@dol.gov>, OFCCP NO FOIA <OFCCP_NO_FOIA@dol.gov>

Hello:

Your request has been assigned to OFCCP with tracking number **875877**. When they begin processing it, you will be able to track its progress at www.dol.gov/foia. If you need to contact them about it for any reason, please submit your inquiry through ofccp_no_foia@dol.gov or phone 202-693-0101. In addition, it would be helpful to include the tracking number in the Subject line of any submission to the agency or to have it available at the time of a call.

Sincerely,

Arginia Karamoko

Government Information Specialist, Office of Information Services
Office of the Solicitor | Management & Administrative Legal Services
U.S. DEPARTMENT OF LABOR
200 Constitution Ave., N.W., N-2420 | Washington, DC 20210
T: (202) 693-5531 | F: (202) 693-5389 | E: karamoko.arginia@dol.gov

From: Will Evans <wevans@revealnews.org>
Sent: Monday, March 25, 2019 1:57 PM
To: FOIARequests <FOIARequests@dol.gov>
Subject: FOIA request - OFCCP

Dear FOIA Officer,

Under the Freedom of Information Act, I am requesting a copy of the following records from OFCCP:

*** A spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2017.**

I am requesting this data in electronic format, by email. Fulfilling this request is not unduly burdensome because there is no need to notify federal contractors.

There is an exception to the notice requirements of 29 CFR 70.26 and Executive Order 12600 that applies here, as will be explained below. Notice to the contractors is not required.

Under 29 CFR 70.2(G)(5) and Executive Order 12600 Sec.8(e), the notice requirements **need not be followed** if the information has not been designated by the submitter, unless OFCCP "has reason to believe that disclosure of the information would result in substantial competitive harm."

Under 29 CFR 70.2(G)(6) and Executive Order 12600 Sec.8(f), the notice requirements **need not be followed** the designation made by the submitter "appears obviously frivolous."

There is no substantial reason to believe that disclosure of the information would result in competitive harm, so the information should be released without notice for any contractor. Even if a contractor has designated it as confidential, that designation should be considered "obviously frivolous," as OFCCP has already determined that Type 2 EEO-1 reports are not subject to Exemption 4 of the Freedom of Information Act. (see CIR v USDOL, Case No. 3:18-cv-2008 JCS)

I am a representative of the news media as a reporter with Reveal from The Center for Investigative Reporting, a non-profit investigative journalism organization. This request is made as part of news gathering and not for a commercial use. I respectfully ask that you waive fees related to this request. Please notify me of any charges before fulfilling this request.

Please contact me with any questions at 510-809-2209 or

wevans@revealnews.org

Thank you for your attention to this request.

Sincerely,
Will Evans
Reveal / The Center for Investigative Reporting
[1400 65th, Suite 200](#)
Emeryville, CA 94608

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Will Evans

reporter

o: 510-809-2209



www.revealnews.org

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Will Evans
reporter
Reveal from The Center for Investigative Reporting
office: 510-809-2209
cell: 510-333-9584
www.revealnews.org

Exhibit C



Shawn Musgrave <smusgrave@revealnews.org>

Fwd: Acknowledgment

1 message

Will Evans <wevans@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Fri, Oct 15, 2021 at 6:51 PM

----- Forwarded message -----

From: **Karamoko, Arginia - SOL** <Karamoko.Arginia@dol.gov>
Date: Fri, Sep 18, 2020 at 12:50 PM
Subject: Acknowledgment
To: Will Evans <wevans@revealnews.org>
Cc: Oliver, Ramona - SOL <Oliver.Ramona@dol.gov>, OFCCP NO FOIA <OFCCP_NO_FOIA@dol.gov>

Hello:

Your request has been assigned to the Office of Federal Contract Compliance Programs (OFCCP) with tracking number **897123**. When they begin processing it, you will be able to track its progress at www.dol.gov/foia. If you need to contact them about it for any reason, please submit your inquiry through ofccp_no_foia@dol.gov or phone 202-693-0101. In addition, it would be helpful to include the tracking number in the Subject line of any submission to the agency or to have it available at the time of a call.

Sincerely,

Arginia Karamoko

Government Information Specialist, Office of Information Services
Office of the Solicitor | Management & Administrative Legal Services
U.S. DEPARTMENT OF LABOR
200 Constitution Ave., N.W., N-2420 | Washington, DC 20210
T: (202) 693-5531 | F: (202) 693-5389 | E: karamoko.arginia@dol.gov

From: Will Evans <wevans@revealnews.org>
Sent: Friday, September 11, 2020 8:26 PM
To: FOIARequests <FOIARequests@dol.gov>
Subject: FOIA request - OFCCP

Dear FOIA Officer,

Under the Freedom of Information Act, I am requesting a copy of the following records from OFCCP:

*** A spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2018.**

I am requesting this data in electronic format, by email. Fulfilling this request is not unduly burdensome because there is no need to notify federal contractors.

There is an exception to the notice requirements of 29 CFR 70.26 and Executive Order 12600 that applies here, as will be explained below. Notice to the contractors is not required.

Under 29 CFR 70.2(G)(5) and Executive Order 12600 Sec.8(e), the notice requirements **need not be followed** if the information has not been designated by the submitter, unless OFCCP "has reason to believe that disclosure of the information would result in substantial competitive harm."

Under 29 CFR 70.2(G)(6) and Executive Order 12600 Sec.8(f), the notice requirements **need not be followed** the designation made by the submitter "appears obviously frivolous."

There is no substantial reason to believe that disclosure of the information would result in competitive harm, so the information should be released without notice for any contractor. Even if a contractor has designated it as confidential, that designation should be considered "obviously frivolous," **as federal contractor EEO-1s have been determined to be public records that must be disclosed, not confidential commercial information.** Please see the Dec. 10, 2019 ruling by Judge Kandis Westmore in U.S. District Court for the Northern District of California, 4:19-cv-01843-KAW (attached).

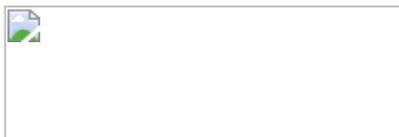
I am a representative of the news media as a reporter with Reveal from The Center for Investigative Reporting, a non-profit investigative journalism organization. This request is made as part of news gathering and not for a commercial use. I respectfully ask that you waive fees related to this request. Please notify me of any charges before fulfilling this request.

Please contact me with any questions at 510-809-2209 or

wevans@revealnews.org

Thank you for your attention to this request.

Sincerely,
Will Evans
Reveal / The Center for Investigative Reporting
1400 65th, Suite 200
Emeryville, CA 94608



www.revealnews.org

--

Will Evans
reporter
Reveal from The Center for Investigative Reporting
office: 510-809-2209
cell: 510-333-9584
www.revealnews.org

U.S. Department of Labor

Office of Federal Contract Compliance Programs
200 Constitution Avenue, N.W.
Washington, D.C. 20210



October 2, 2020

Via Electronic Mail

Will Evans
The Center for Investigative Reporting
1400 65th Street, Suite 200
Emeryville, CA 94608

RE: Freedom of Information Act Request Acknowledgement – Tracking No. 897123

Dear Mr. Evans:

This letter is to acknowledge receipt of your Freedom of Information Act (FOIA) request submitted to foiarequest@dol.gov. The Office of the Solicitor assigned your request to the Office of Federal Contract Compliance Programs (OFCCP) on September 18, 2020. Please refer to the above-referenced FOIA tracking number in any future correspondence regarding your FOIA request.

You requested a spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2018.

We consider you to be a representative of the news media as defined by the U.S. Department of Labor FOIA regulations at 29 CFR § 70.40(c)(3), therefore, only reproduction costs will be assessed, excluding charges for the first 100 pages. You will receive written notification if the total estimated fee for processing your request exceeds \$25.00.

OFCCP's National Office will process your request for EEO-1 data. Once we compile the data, we will send a letter to the submitters notifying them of the request for their EEO-1 data.

In accordance with 29 CFR § 70.26 and Executive Order 12600, because your request covers information that may be protected from disclosure under FOIA Exemption 4, OFCCP is required to notify submitters that their information has been requested under the FOIA to give them an opportunity to object in writing to disclosure of any specified portion of the requested information. For those submitters who do not object, we will provide the information with any necessary redactions consistent with FOIA. For those submitters who do object, OFCCP will evaluate any response provided by the submitter as to why the requested information should be withheld and make its own determination as to whether the specific facts and relevant law warrant disclosure or withholding of the requested information.

Due to the volume and complexity of the FOIA requests we have received, we anticipate that providing a full response will take longer than 20 business days to fulfill. Accordingly, OFCCP will take an additional 10 business days to fulfill your request as afforded by the FOIA at 5 U.S.C. § 552(a)(6)(B)(i). We will contact you if we are unable to fulfill your request in 30 business days.

We consider you a “news media” type of requestor. As a “news media” requestor, we charge you for photocopying after the first 100 pages in accordance with the U.S. Department of Labor FOIA regulations at 29 CFR § 70.40(c)(4). DOL’s FOIA regulations at 29 CFR § 70.42(a) deem that the filing of a FOIA constitutes an agreement by the requestor to pay all fees up to \$25.00.

If you need further assistance or would like to discuss any aspect of your request, please do not hesitate to contact this office at (202) 693-0101 or by email at OFCCP_NO_FOIA@dol.gov. Alternatively, you may wish to contact the DOL FOIA Public Liaison, Thomas Hicks, at (202) 693-5427 or by email at hicks.thomas@dol.gov.

You may also contact the Office of Government Information Services (OGIS), within the National Archives and Records Administration (NARA), to inquire about the mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. You can also reach that office by email at ogis@nara.gov, by phone at (202) 741-5770, by fax at (202) 741-5769, or by calling toll-free at (877) 684-6448.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Solicitor of Labor within 90 days from the date of this letter. In the appeal, you must state in writing the grounds for the appeal, and may include any supporting statements or arguments, but such statements are not required. To facilitate processing of the appeal, please include your mailing address and daytime telephone number, as well as a copy of the initial request and copy of this letter. Clearly mark “Freedom of Information Act Appeal” on the envelope and letter of the appeal. You must make any amendment to the appeal in writing and we must receive it prior to a decision. Address the appeal to the Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, DC 20210. You may submit your appeal by email to foiaappeal@dol.gov. The Department does not accept appeals submitted to any other email address.

Sincerely,

DORIS GEAN  Digitally signed
by DORIS GEAN

Doris Lissette Geán
FOIA Manager

Exhibit D

Shawn Musgrave <smusgrave@revealnews.org>

Fwd: amendment request

Will Evans <wevans@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Thu, Sep 30, 2021 at 10:28 PM

----- Forwarded message -----

From: **OFCCP NO FOIA** <OFCCP_NO_FOIA@dol.gov>
Date: Tue, May 11, 2021 at 9:05 AM
Subject: RE: amendment request
To: Will Evans <wevans@revealnews.org>

Dear Mr. Evans,

We have modified request 872421 to include a spreadsheet of the consolidated (Type 2) EEO-1 reports for all federal contractors for the years 2016 through 2018.

We will administratively close request 897123.

Cordially,

Bruce Andersen

The OFCCP FOIA Team

From: Will Evans <wevans@revealnews.org>
Sent: Monday, May 10, 2021 1:02 PM
To: OFCCP NO FOIA <OFCCP_NO_FOIA@DOL.GOV>
Subject: amendment request

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.

Dear FOIA Officer,

I would like to amend my FOIA request #872421 to include a spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2017 and 2018 as well as 2016.

If you agree to this amendment, I will withdraw my separate FOIA #897123 for the 2018 data.

Please let me know.
Thank you very much.
Best,

Will Evans

--

Will Evans

reporter

office: 510-809-2209

cell: 510-333-9584



www.revealnews.org

--

Will Evans

reporter

Reveal from The Center for Investigative Reporting

office: 510-809-2209

cell: 510-333-9584

www.revealnews.org

Exhibit E

U.S. Department of Labor

Office of Federal Contract
Compliance Programs
200 Constitution Avenue, N.W.
Washington, D.C. 20210



JUL 18 2019

Will Evans
The Center for Investigative Reporting
1400 65th Street, Suite 200
Emeryville, CA 94608

RE: Freedom of Information Act Request Acknowledgement – Tracking No. 872421

Dear Mr. Evans:

This letter is a follow-up to your Freedom of Information Act (FOIA) request submitted to the Office of Federal Contract Compliance Programs (OFCCP). Please refer to the above-referenced FOIA tracking number in any future correspondence regarding your FOIA request.

You requested a spreadsheet of all consolidated (Type 2) EEO-1 reports for all federal contractors for 2016. As you know from your earlier requests, in accordance with 29 CFR § 70.26, OFCCP is required to notify submitters that their business information has been requested under the FOIA to give them an opportunity to object in writing to disclosure of any specified portion of the requested information.

Though your request is reasonably described, we have determined that there are more than 100,000 responsive records. Reaching out to each of the companies affected by your voluminous request would overwhelm the OFCCP FOIA unit for the foreseeable future, and the cost in sending more than 100,000 letters would be unduly burdensome. If you wish to narrow the scope of your request, please send a revised request to the address referenced above or send an e-mail to OFCCP_NO_FOIA@dol.gov. In the event that we do not receive a response from you within thirty (30) days from the date of this letter, we will administratively close your request.

Should you have questions regarding your request, please contact this office at (202) 693-0101 or by email at OFCCP_NO_FOIA@dol.gov. If you need further assistance or would like to discuss any aspect of your request, please do not hesitate to contact the DOL FOIA Public Liaison, Thomas Hicks, at (202) 693-5427.

Alternatively, you may contact the Office of Government Information Services within the National Archives and Records Administration (OGIS) to inquire about the mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. You can also reach that office by e-mail at ogis@nara.gov, by phone at (202) 741-5770, by fax at (202) 741-5769, or by calling toll-free at (877) 684-6448.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Solicitor of Labor within 90 days from the date of this letter. The appeal must state in writing the grounds for the appeal, and it may include any supporting statements or arguments, but such statements are not required. In order to facilitate processing of the appeal, please include your mailing address and daytime telephone number, as well as a copy of the initial request and copy of this letter. The envelope and letter of the appeal should be clearly marked "Freedom of Information Act Appeal." Any amendment to the appeal must be made in writing and received prior to a decision. The appeal should be addressed to the Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, DC 20210. Appeals may also be submitted by email to foiaappeal@dol.gov. Appeals submitted to any other email address will not be accepted.

Sincerely,



D. Lissette Geán
Special Assistant

Exhibit F

Shawn Musgrave <smusgrave@revealnews.org>

Fwd: Freedom of Information Act Requests – Tracking Nos. 872421 and 897123

Will Evans <wevans@revealnews.org>
To: Shawn Musgrave <smusgrave@revealnews.org>

Thu, Sep 30, 2021 at 10:30 PM

----- Forwarded message -----

From: **Alexandra Gutierrez** <agutierrez@revealnews.org>

Date: Thu, Jan 7, 2021 at 9:13 AM

Subject: Re: Freedom of Information Act Requests – Tracking Nos. 872421 and 897123

To: Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov>Cc: Victoria Baranetsky <vbaranetsky@revealnews.org>, Will Evans <wevans@revealnews.org>, Hicks, Thomas - SOL <hicks.thomas@dol.gov>

VIA E-MAIL

Doris Lissette Geán
FOIA Manager
Department of Labor
[200 Constitution Avenue, N.W.](https://www.dol.gov)
[Washington, D.C. 20210](https://www.dol.gov)
OFCCP_NO_FOIA@dol.gov

Re: Freedom of Information Act Request Acknowledgement – Tracking No. 897123

Dear Ms. Geán,

We are following up on your December 18, 2020 e-mail. While we are considering are options as to the Department of Labor's current position as to our reporter's request, we seek answers to the following questions:

1. When did the Department provide E.O. 12600 notices to submitters?
2. Have any submitters responded, either objecting or consenting?
3. For those submitters who have consented or have waived their opportunity to object due to the passage of a reasonable amount of time, would the Department be able to provide their submitted reports on a rolling basis.

We appreciate your attention to these inquiries.

Sincerely,

Alexandra M. Gutierrez

cc: D. Victoria Baranetsky, General Counsel, Center for Investigative Reporting
Will Evans, Reporter, Center for Investigative Reporting
Thomas Hicks, DOL FOIA Public Liaison

On Fri, Dec 18, 2020 at 9:32 AM Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov> wrote:
Via Electronic Mail

Dear Ms. Gutierrez:

We have received your December 11, 2020, e-mail inquiring about outstanding FOIA requests that, combined, seek two years (2016 and 2018) of EEO-1 consolidated (Type 2) reports for all federal contractors.

As you are aware, we have complied with the district court's order and released the 2016 reports of the individual submitters who have not appealed the court's decision in the matter of *Ctr. for Investigative Reporting v. U.S. Dep't of Labor*, 424 F. Supp. 3d 771, 779 (N.D. Cal. 2019). Your outstanding FOIA requests seek the EEO-1, Type 2 reports of well over 15,000, and possibly over 20,000 submitters from countless industries whose reports are not subject to that court order.

We continue to be subject to Executive Order 12600 and are obligated to notify submitters of requests for their potentially confidential commercial information. *See* 29 C.F.R. § 70.26. Under Executive Order 12600, we must afford submitters a reasonable period of time to object to the disclosure of any portion of the information and to state all grounds upon which disclosure is opposed. The submitters that are the subject of your request have not had the opportunity to demonstrate whether their EEO-1, Type 2 reports contain confidential commercial information. Moreover, while we do not believe that the Northern California's District Court's decision in *Center for Investigative Reporting* has precedential effect on all EEO-1, Type 2 reports, we note that this matter is currently on appeal before the U.S. Court of Appeals for the Ninth Circuit and there is still a chance that the district court's holding may be overturned.

Sincerely,

D. Lissette Geán

FOIA Manager

--

Alexandra M. Gutierrez
First Amendment Fellow
(c) 907-209-1799



--

Will Evans
reporter
Reveal from The Center for Investigative Reporting
office: 510-809-2209
cell: 510-333-9584
www.revealnews.org

Exhibit L

U.S. Department of Labor

Office of Federal Contract Compliance Programs
200 Constitution Avenue, N.W.
Washington, D.C. 20210



June 15, 2022

Via Electronic Mail: vbaranetsky@revealnews.org

Victoria D. Barenetsky
General Counsel
The Center for Investigative Reporting
1400 65th, Suite 200
Emeryville, CA 94608

RE: Freedom of Information Act Request – Tracking No. 872421

Dear Ms. Baranetsky:

We are in receipt of your correspondence of May 23, 2022, (hereinafter “Baranetsky Correspondence”) to Secretary Walsh, Solicitor Nanda, and Director Yang regarding FOIA Request #872421 from Will Evans of the Center for Investigative Reporting (CIR) to the Office of Federal Contract Compliance Programs (OFCCP) for consolidated Type 2 EEO-1 reports for all federal contractors from 2016-2018.¹ This correspondence has been referred to the undersigned for response.

As an initial matter, the Department of Labor (Department) continues to strongly disagree with CIR’s assertion that the Department is in “direct contravention of law” by not immediately disclosing the thousands of EEO-1 reports from 2016-2020 (hereinafter “EEO-1 reports”) responsive to FOIA Request #872421. The recent Northern District of California decision referenced in your letter² addressed only 10 EEO-1 reports of select companies from 2016 and does not have any binding effect as to the other EEO-1 reports for which CIR now demands immediate disclosure. Furthermore, the subsequent Ninth Circuit decisions³ were limited to purely jurisdictional issues and explicitly did not reach the merits of the district court decision.

We also disagree with CIR’s position that OFCCP can proactively publish the requested EEO-1 reports without providing submitters an opportunity to object to disclosure. The Department’s disclosure regulations at 29 C.F.R. part 70, consistent with Executive Order 12600, require the Department to provide notice to submitters “whenever it has reason to believe that the information requested under the FOIA may be protected from disclosure under Exemption 4, but

¹ Within the last month, CIR sent a new FOIA request to the Department for Type 2 EEO-1 reports for all federal contractors for the years 2019 and 2020 as well. As agreed to by Mr. Evans, OFCCP has combined this request with FOIA Request #872421 for processing.

² *Ctr. For Investigative Reporting v. Dep’t of Labor*, 424 F. Supp. 3d 771 (N.D. Cal. 2019).

³ *Evans v. Synopsis*, 34 F.4th 762 (9th Cir. 2022); *Synopsis v. Dep’t of Labor*, Nos. 20-16414 and 20-16416, Dkt. No. 53-1 (9th Cir. May 12, 2022).

has not yet determined whether the information is protected from disclosure...,”⁴ and to provide submitters with a reasonable period of time to object to the disclosure and state their grounds for doing so. Indeed, were the Department to immediately release all Type 2 EEO-1 reports as CIR recommends, it would be at risk of substantial liability in reverse FOIA actions if the reviewing court(s) found that Exemption 4 did apply to the EEO-1 records, and that in releasing them to the public the Department had violated its own regulations and improperly disclosed the confidential commercial information of thousands of federal contractors.

We do, however, agree with CIR that the Department may effectuate notice to all federal contractors via “posting and publishing the notice in a place reasonably calculated to accomplish notification.”⁵ The Department will publish a notice in the Federal Register and on the Department’s public-facing website that it has received FOIA requests seeking Type 2 EEO-1 records from all federal contractors that filed them from 2016-2020, and pursuant to its regulations,⁶ the Department will provide an opportunity for the submitters to respond.

If you have any questions, please contact us via email at OFCCP_NO_FOIA@dol.gov, or by telephone at (202) 693-0101.

Sincerely,

Kelechi Ahaghotu
Branch Chief of Information Services
Division of Management and Administrative Programs

⁴ 29 C.F.R. § 70.26(d)

⁵ 29 C.F.R. § 70.26(j)

⁶ *Id.* at § 70.26(e) (“A component will allow a submitter a reasonable time to respond to the notice described in [29 C.F.R. § 70.26(c)]....”)

Exhibit M



Dara Gray <dgray@revealnews.org>

FOIA 872421 OFCCP Response to CIR

1 message

Dara Gray <dgray@revealnews.org>
To: Dara Gray <dgray@revealnews.org>



Victoria Baranetsky <vbar

FOIA 872421 OFCCP Response to CIR

9 messages

Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov>

Wed, Jun 15, 2022 at 12:50 PM

To: vbaranetsky@revealnews.org

Cc: wevans@revealnews.org, smusgrave@revealnews.org

June 15, 2022

Via Electronic Mail: vbaranetsky@revealnews.org

Victoria D. Baranetsky

General Counsel

The Center for Investigative Reporting

1400 65th, Suite 200

Emeryville, CA 94608

RE: Freedom of Information Act Request – Tracking No. 872421

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[1] This correspondence has been referred to the undersigned for response.

As an initial matter, the Department of Labor (Department) continues to strongly disagree with CIR’s assertion that the Department is in “direct contravention of law” by not immediately disclosing the thousands of EEO-1 reports from 2016-2020 (hereinafter “EEO-1 reports”) responsive to FOIA Request #872421. The recent Northern District of California decision referenced in your letter[2] addressed only 10 EEO-1 reports of select companies from 2016 and does not have any binding effect as to the other EEO-1 reports for which CIR now demands immediate disclosure. Furthermore, the subsequent Ninth Circuit decisions[3] were limited to purely jurisdictional issues and explicitly did not reach the merits of the district court decision.

We also disagree with CIR’s position that OFCCP can proactively publish the requested EEO-1 reports without providing submitters an opportunity to object to disclosure. The Department’s disclosure regulations at 29 C.F.R. part 70, consistent with Executive Order 12600, require the Department to provide notice to submitters “whenever it has reason to believe that the information requested under the FOIA may be protected from disclosure under Exemption 4, but has not yet determined whether

the information is protected from disclosure...,”[4] and to provide submitters with a reasonable period of time to object to the disclosure and state their grounds for doing so. Indeed, were the Department to immediately release all Type 2 EEO-1 reports as CIR recommends, it would be at risk of substantial liability in reverse FOIA actions if the reviewing court(s) found that Exemption 4 did apply to the EEO-1 records, and that in releasing them to the public the Department had violated its own regulations and improperly disclosed the confidential commercial information of thousands of federal contractors.

We do, however, agree with CIR that the Department may effectuate notice to all federal contractors via “posting and publishing the notice in a place reasonably calculated to accomplish notification.”[5] The Department will publish a notice in the Federal Register and on the Department’s public-facing website that it has received FOIA requests seeking Type 2 EEO-1 records from all federal contractors that filed them from 2016-2020, and pursuant to its regulations,[6] the Department will provide an opportunity for the submitters to respond.

If you have any questions, please contact us via email at OFCCP_NO_FOIA@dol.gov, or by telephone at (202) 693-0101.

Sincerely,

Kelechi Ahaghotu

Branch Chief of Information Services
Division of Management and Administrative Programs

[1] Within the last month, CIR sent a new FOIA request to the Department for Type 2 EEO-1 reports for all federal contractors for the years 2019 and 2020 as well. As agreed to by Mr. Evans, OFCCP has combined this request with FOIA Request #872421 for processing.

[2] *Ctr. For Investigative Reporting v. Dep’t of Labor*, 424 F. Supp. 3d 771 (N.D. Cal. 2019).

[3] *Evans v. Synopsis*, 34 F.4th 762 (9th Cir. 2022); *Synopsis v. Dep’t of Labor*, Nos. 20-16414 and 20-16416, Dkt. No. 53-1 (9th Cir. May 12, 2022).

[4] 29 C.F.R. § 70.26(d)

[5] 29 C.F.R. § 70.26(j)

[6] *Id.* at § 70.26(e) (“A component will allow a submitter a reasonable time to respond to the notice described in [29 C.F.R. § 70.26(c)]....”

 **FOIA 872421 OFCCP Response to CIR 2022-06-15.pdf**
317K

Victoria Baranetsky <vbaranetsky@revealnews.org>

Thu, Jun 16, 2022 at 10:12 AM

To: Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov>

Cc: wevans@revealnews.org, smusgrave@revealnews.org

Dear OFCCP,

Thank you for your email. CIR was disappointed the Office did not provide a production timeline or more concrete idea of when these records would be released - given how much time has elapsed since the request was filed. CIR also strongly disagrees with the agency's interpretation of the case law in the Ninth Circuit.

To avoid needless next steps, please let me know your when you and counsel are available to speak early next week to provide a clearer timeline on this matter.

Kind regards,
Victoria

[Quoted text hidden]

[Quoted text hidden]

Victoria Baranetsky <vbaranetsky@revealnews.org>

Wed, Jun 22, 2022 at 2:32 PM

To: Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov>, "Bickerstaffe, Keir - SOL" <Bickerstaffe.Keir@dol.gov>, "cc: Whitten, Emily S - SOL" <Whitten.Emily.S@dol.gov>
Cc: wevans@revealnews.org, smusgrave@revealnews.org

Hello,

I'd like to follow up and again, request if there is a time we can speak about this matter.

Regards,
Victoria

[Quoted text hidden]

Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov>

Mon, Jun 27, 2022 at 2:36 PM

To: vbaranetsky@revealnews.org

Cc: wevans@revealnews.org, smusgrave@revealnews.org

By Electronic Mail

Dear Ms. Baranetsky,

This email responds to yours of June 16, 2022, and specifically your request for a clearer timeline regarding FOIA #872421, which, as revised, requests that OFCCP disclose Type 2 EEO-1 data for all federal contractors from 2015-2020. In July, the Department anticipates publishing a notice in the Federal Register to inform contractors of the FOIA request for contractors' EEO-1 data. This notice will provide contractors with 30 days to submit written objections to the disclosure of their EEO-1 data pursuant to Exemption 4 of FOIA. At the conclusion of that 30 days, OFCCP will ascertain which contractors have objected to disclosure, and which have not. As soon as possible thereafter, OFCCP will disclose to CIR the EEO-1 data for all contractors that have not objected to disclosure. In addition to the Federal Register notice, OFCCP will also announce this FOIA request through other means, such as its GovDelivery listserv, which includes a large number of federal contractors.

For those contractors that have submitted written objections, OFCCP will review the objections submitted and make an independent assessment for each as to whether the information should be withheld under FOIA Exemption 4. At this time, we cannot estimate how long this process will take. We do not know how many contractors will object, but given that there were approximately 25,000 unique filers of Type 2 EEO-1 data from 2015-2020, we anticipate that the number of objectors will be in the thousands. OFCCP will devote significant resources to review and assess these objections as quickly as possible, but we note that the scope of this request, and the number of objections that OFCCP will receive and need to evaluate, is unprecedented.

We hope that this clarifies for CIR the agency's timeline with regard to this matter. If you have any questions, please contact us via email at OFCCP_NO_FOIA@dol.gov, or by telephone at (202) 693-0101.

[Quoted text hidden]

Victoria Baranetsky <vbaranetsky@revealnews.org>

Thu, Jun 30, 2022 at 11:38 AM

To: Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov>

Cc: wevans@revealnews.org, smusgrave@revealnews.org

Bcc: Brendan Gilligan <bgilligan@revealnews.org>

Thank you for your response. I would like to confirm: (1) **when in July**, does the agency anticipate publishing this announcement on the federal register?; (2) will the agency be producing the records on a rolling

basis?; and, (3) can the agency please point to the agency regulations it is using for guidance on its procedure in this case.

While we appreciate the attention and resources now allocated to this matter, I will note that this request is now **multiple years old**. And given the decision from N.D. Cal is on point, we are dismayed and confused by the agency's decision to withhold these records claiming that they have no "binding effect." See OFCCP Letter to CIR, dated June 15, 2022 (stating N.D. Cal. "addressed only 10 EEO-1 reports of select companies from 2016 and does not have any binding effect as to the other EEO-1 reports"). The agency has provided absolutely no reasoning as to why identical forms should not be released simply because they are more numerous and from a different calendar year than those at issue in Judge Westmore's order. I cannot imagine the Northern District of California would find a meaningful distinction, but instead would only see this decision as the agency ignoring the law of the circuit. See *Gonzalez v. Arizona*, 677 F.3d 383, 389 n.4 (9th Cir. 2012) (en banc), *aff'd sub nom. Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013) (discussing law of the circuit); see also *Barapind v. Enomoto*, 400 F.3d 744, 751 (9th Cir. 2005) (en banc).

Regards,
Victoria

On Mon, Jun 27, 2022 at 2:34 PM Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov> wrote:

[Quoted text hidden]

[Quoted text hidden]

Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov>

Wed, Jul 6, 2022 at 8:49 AM

To: vbaranetsky@revealnews.org

Cc: wevans@revealnews.org, smusgrave@revealnews.org

Dear Ms. Baranetsky,

Thank you for your email dated June 30, 2022. We write to address the questions you raised. We plan to publish our announcement on the Federal Register by the end of July. The Federal Register controls its own publication schedule, so it is difficult to provide more precision than that.

We anticipate beginning production on a rolling basis starting 30 days after publication of the Federal Register notice. However, until we see how many objections we receive and whether they are from individual submitters or trade associations on behalf of their members, we cannot provide precise details on what the rolling production will look like. As we indicated in our earlier email, we will begin production of the Type 2 reports of those EEO-1 submitters who do not object, or do not have objections raised on their behalf within 30 days of the publication of the notice in the Federal Register. For submitters that do object, as we said in our email, OFCCP will need to do individualized analyses of the objections. If OFCCP determines that the objections do not meet the standards for FOIA Exemption 4, OFCCP will notify the submitter that it intends to disclose. At that point, submitters may file reverse FOIA actions against OFCCP to prevent disclosure.

The relevant agency regulations regarding these procedures are found at 29 C.F.R. § 70.26.

[Quoted text hidden]

Shawn Musgrave <smusgrave@revealnews.org>

Fri, Aug 5, 2022 at 10:49 AM

To: Office of Federal Contract Compliance Programs <ofccp_no_foia@dol.gov>

Cc: vbaranetsky@revealnews.org, wevans@revealnews.org

Hello,

Please advise on the status of OFCCP's publication to the Federal Register on this matter. In prior correspondence, the government indicated it would publish a notice by the end of July. To our knowledge, this notice has not been published.

Best,
Shawn

[Quoted text hidden]

--
Shawn Musgrave
First Amendment Fellow
Admitted in California
Pronouns: he/him/his
c: (510) 809-3165



OFCCP NO FOIA <OFCCP_NO_FOIA@dol.gov>

Fri, Aug 5, 2022 at 12:37 PM

To: Shawn Musgrave <smusgrave@revealnews.org>, OFCCP NO FOIA <OFCCP_NO_FOIA@dol.gov>

Cc: "vbaranetsky@revealnews.org" <vbaranetsky@revealnews.org>, "wevans@revealnews.org" <wevans@revealnews.org>

Good afternoon,

We would like to inform you that OFCCP sent our Federal Register Notice to the Federal Register for publication yesterday. Once we receive a publication date, we will contact you with that information.

Respectfully,

Kelechi Ahaghotu | Supervisory Government Information Specialist

Branch Chief of Information Services

Department of Labor

Office of Federal Contract Compliance Programs

Division of Management and Administrative Programs

From: Shawn Musgrave <smusgrave@revealnews.org>

Sent: Friday, August 5, 2022 1:50 PM

To: OFCCP NO FOIA <OFCCP_NO_FOIA@DOL.GOV>

Cc: vbaranetsky@revealnews.org; wevans@revealnews.org

Subject: Re: FOIA 872421 OFCCP Response to CIR

CAUTION - The sender of this message is external to the DOL network.

Please use care when clicking on links and responding with sensitive information.

Send suspicious email to spam@dol.gov.

Hello,

Please advise on the status of OFCCP's publication to the Federal Register on this matter.

In prior correspondence, the government indicated it would publish a notice by the end of July.

To our knowledge, this notice has not been published.

Best,

Shawn

On Wed, Jul 6, 2022 at 8:46 AM Office of Federal Contract Compliance Programs

<ofccp_no_foia@dol.gov> wrote:

Dear Ms. Baranetsky,

Thank you for your email dated June 30, 2022. We write to address the questions you raised. We plan to publish our announcement on the Federal Register by the end of July. The Federal Register controls its own publication schedule, so it is difficult to provide more precision than that.

We anticipate beginning production on a rolling basis starting 30 days after publication of the Federal Register notice. However, until we see how many objections we receive and whether they are from individual submitters or trade associations on behalf of their members, we cannot provide precise details on what the rolling production will look like. As we indicated in our earlier email, we will begin production of the Type 2 reports of those EEO-1 submitters who do not object, or do not have objections raised on their behalf within 30 days of the publication of the notice in the Federal Register. For submitters that do object, as we said in our email, OFCCP will need to do individualized analyses of the objections. If OFCCP determines that the objections do not meet the standards for FOIA Exemption 4, OFCCP will notify the submitter that it intends to disclose. At that point, submitters may file reverse FOIA actions against OFCCP to prevent disclosure. The relevant agency regulations regarding these procedures are found at 29 C.F.R. § 70.26. If you have any questions, please contact us via email at OFCCP_NO_FOIA@dol.gov, or by telephone at (202) 693-0101.

Sincerely,

Kelechi Ahaghotu

Branch Chief of Information Services

Division of Management and Administrative Programs

--
Dara Gray
First Amendment Fellow
c: (404) 395-2356

the
center for investigative
reporting

Exhibit N



Dara Gray <dgray@revealnews.org>

RE: FOIA 872421

1 message

Dara Gray <dgray@revealnews.org>
To: Dara Gray <dgray@revealnews.org>

Tue, Nov 15, 2022 at 3:39 PM

----- Forwarded message -----

From: **Office of Federal Contract Compliance Programs** <ofccp_no_foia@dol.gov>
Date: Tue, Nov 1, 2022 at 9:34 AM
Subject: RE: FOIA 872421
To: <Wevans@revealnews.org>

Dear Mr. Evans:

As part of its final response, OFCCP intends to release to you the names of those federal contractors that objected under an applicable FOIA exemption and whose data was removed from public release.

Cordially,

Bruce Andersen

From: Will Evans <wevans@revealnews.org>
Sent: Tuesday, October 18, 2022 4:56 PM
To: OFCCP NO FOIA <OFCCP_NO_FOIA@DOL.GOV>
Subject: re: FOIA 872421

CAUTION: This email originated from outside of the Department of Labor. Do not click (select) links or open attachments unless you recognize the sender and know the content is safe. Report suspicious emails through the "Report Phishing" button on your email toolbar.

Dear Mr. Andersen,

When providing responsive records for my previous requests of EEO-1 data, your office's past practice has been to provide a list of companies that objected to the release of their EEO-1 data. We expect that you will do so for request #87242 as well. Please let me know if that's correct.

Thank you,

Will

--

Will Evans

reporter

Reveal from The Center for Investigative Reporting

cell: 510-333-9584

www.revealnews.org

--

Will Evans

reporter

Reveal from The Center for Investigative Reporting

cell: 510-333-9584

www.revealnews.org