

Freedom of Information Act (FOIA)

Question: Section VIII.D.1 of the General Terms to the 2014 NOFAs indicates that documentation and other information regarding each application will be available in accordance with FOIA. Since all proposals submitted will contain proprietary and confidential information, would proposals be exempted from this requirement? Alternatively, will the applicant be able to submit a redacted version that excludes proprietary and confidential information? Or would the applicant receive notice of a FOIA request in order to limit disclosure?

Answer: Information required to be submitted to a Federal agency for participation in a Federal program may be withheld from release to the public pursuant to FOIA Exemption b(3) or b(4), depending upon when a FOIA request is made relative to a selection decision. Exemption 3 incorporates certain nondisclosure provisions contained in Federal statutes other than the FOIA. Section 103 of the HUD Reform Act prohibits, during any selection process, disclosure of any covered selection information regarding such selection, directly or indirectly, to any person not authorized by the Secretary to receive such information. Therefore, prior to a selection decision, selection information will not be released to the public in response to a FOIA request pursuant to FOIA Exemption b(3). However, once a selection decision is made by HUD, selection information is subject to public disclosure pursuant to the FOIA.

Prior to release of any selection information submitted to the agency, HUD will notify the submitter that their selection information is responsive to a FOIA request and provide the submitter 10 business days to object to release of the information pursuant to FOIA Exemption b(4). The submitter must establish in their objection with sufficient detail that release of identified selection information to the public would cause the submitter substantial competitive harm. If the submitter provides a legally adequate objection pursuant to FOIA Exemption b(4), HUD will not release the identified selection information to the FOIA requester.