§ 612.8 Business information.

(a) In general. Business information obtained by the Foundation from a submitter of that information will be disclosed under the FOIA only under this section’s procedures.

(b) Definitions. For purposes of this section:

(1) “Business Information” means commercial or financial information obtained by the Foundation from a submitter that may be protected from disclosure under Exemption 4 of the FOIA and § 612.7(a)(4).

(2) “Submitter” means any person or entity from whom the Foundation obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) Designation of business information. A submitter of business information must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) Notice to submitters. The Foundation will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information whenever required under this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information.

(e) Where notice is required. Notice will be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Foundation has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) Opportunity to object to disclosure. NSF will allow a submitter a reasonable time, consistent with statutory requirements, to respond to the notice described in paragraph (d) of this section. If a submitter has any objection to disclosure, it must submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, must show why the information is a trade secret, or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be a record subject to disclosure under the FOIA.

(g) Notice of intent to disclose. The Foundation will consider a submitter’s objections and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever it decides to disclose business information over the objection of a submitter, the Foundation will give the submitter written notice, which will include:
§612.9 Appeals.

(a) Appeals of denials. You may appeal a denial of your request to the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. You must make your appeal in writing and it must be received by the Office of the General Counsel within ten days of the receipt of the denial (weekends, legal holidays, and the date of receipt excluded). Clearly mark your appeal letter and the envelope “Freedom of Information Act Appeal.” Your appeal letter must include a copy of your written request and the denial together with any written argument you wish to submit.

(b) Responses to appeals. A written decision on your appeal will be made by the General Counsel. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) When appeal is required. If you wish to seek review by a court of any denial, you must first appeal it under this section.

§612.10 Fees.

(a) In general. NSF will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. If fees are applicable, NSF will itemize the amounts charged. NSF may collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) Definitions. For purposes of this section:

(1) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because NSF has reasonable cause to doubt a requester’s stated use, NSF will provide the requester a reasonable opportunity to submit further clarification.

(2) Direct costs means those expenses that an agency actually incurs in searching for and duplicating (and, in