National Science Foundation

§ 612.8

(B) The identity of firms or individuals investigated for alleged irregularities involving NSF grants, contracts or other matters when no indictment has been obtained, no civil action has been filed against them by the United States, or no government-wide public suspension or debarment has occurred;

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by the NSF Office of the Inspector General.

(iii) The exclusions contained in 5 U.S.C. 552(c)(1) and (2) may also apply to these records.

(8) Exemption 8—5 U.S.C. 552(b)(8). Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) Exemption 9—5 U.S.C. 552(b)(9). Records containing geological and geophysical information and data, including maps, concerning wells.

(b) Deletion of exempt portions and identifying details. Any reasonably segre-geable portion of a record will be pro-vided to requesters after deletion of the portions which are exempt. Whenever any final opinion, order, or other mate-rials required to be made available re-lates to a private party or parties and the release of the name(s) or other identifying details will constitute a clearly unwarranted invasion of per-sonal privacy, the record shall be pub-lished or made available with such identifying details left blank, or shall be published or made available with ob-viously fictitious substitutes and with a notication such as the following: Names of parties and certain other identifying details have been removed (and fictitious names substituted) in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

§ 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 com-mercial or financial information ob-tained by the Foundation from a sub-mitter that may be protected from disclo-rese under Exemption 4 of the FOIA and §612.7(a)(4).

(2) Submitter means any person or en-try from whom the Foundation ob-tains business information, directly or indirectly. The term includes corpora-tions; state, local, and tribal govern-ments; 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 rea-sonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Ex-emption 4. These designations will ex-pire ten years after the date of the sub-mission unless the submitter requests, and provides justification for, a longer designation period.

(d) Notice to submitters. The Founda-tion will provide a submitter with prompt written notice of a FOIA re-quest or administrative appeal that seeks its business information where- ever required under this section, in order to give the submitter an oppor-tunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the busi-ness information requested or include copies of the requested records or record portions containing the infor-mation.

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

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

(2) The Foundation has reason to be-lieve that the information may be pro-ected from disclosure under Exemp-tion 4.

(f) Opportunity to object to disclosure. NSF will allow a submitter a reason-able time, consistent with statutory requirements, to respond to the notice de-scribed in paragraph (d) of this sec-tion. 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 nondisclosure 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:
   (1) A statement of the reason(s) why the submitter's disclosure objections were not sustained;
   (2) A description of the business information to be disclosed; and
   (3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(h) Exceptions to notice requirements. The notice requirements of paragraphs (d) and (g) of this section will not apply if:
   (1) The Foundation determines that the information should not be disclosed (the Foundation protects from disclosure to third parties information about specific unfunded applications, including pending, withdrawn, or declined proposals);
   (2) The information lawfully has been published or has been officially made available to the public;
   (3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or
   (4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the Foundation will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) Notice of FOIA lawsuit. Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Foundation will promptly notify the submitter(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Foundation will notify the requester(s).

§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). You must clearly mark your appeal letter and the envelope or your electronic submission as a “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