

§ 501.724

to Executive Order 12958 (3 CFR, 1995 Comp., p. 333) and any future Executive orders that may be issued relating to the treatment of national security information, and all materials and information exempted from release to the public pursuant to the Privacy Act (5 U.S.C. 552a) or the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(g) *Updating discovery.* A party who has made an initial disclosure under paragraph (a) of this section or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired whenever:

(1) The party learns that in some material respect the information disclosed is incomplete or incorrect, if the additional or corrective information has not otherwise been made known to the other party during the discovery process or in writing; or

(2) Ordered by the Administrative Law Judge. The Administrative Law Judge may impose sanctions for failure to supplement or correct discovery.

(h) *Time limits.* All discovery, including all responses to discovery requests, shall be completed not later than 20 days prior to the date scheduled for the commencement of the hearing, unless the Administrative Law Judge finds on the record that good cause exists to grant additional time to complete discovery.

(i) *Effect of failure to comply.* No witness may testify and no document or exhibit may be introduced at the hearing if such witness, document, or exhibit is not listed in the prehearing submissions pursuant to paragraphs (b) and (c) of this section, except for good cause shown.

§ 501.724 Documents that may be withheld.

(a) Notwithstanding § 501.723(f), the Director or respondent may withhold a document if:

(1) The document is privileged;

(2) The document would disclose the identity of a confidential source; or

(3) The Administrative Law Judge grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

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(b) Nothing in paragraph (a) of this section authorizes the Director to withhold documents that contain material exculpatory evidence.

(c) *Withheld document list.* The Director and respondent shall provide the Administrative Law Judge, for review, a list of documents withheld pursuant to paragraphs (a)(1)–(3) of this section. The Administrative Law Judge shall determine whether any such document should be made available for inspection and copying.

§ 501.725 Confidential treatment of information in certain filings.

(a) *Filing document under seal.* (1) The Director may file any document or any part of a document under seal and/or seek a protective order concerning any document if disclosure of the document would be inconsistent with the protection of the public interest or if justice requires protection of any person, including a source or a party, from annoyance, threat, oppression, or undue burden or expense, or the disclosure of the information would be, or might reasonably lead to a disclosure, contrary to Executive Order 12958, as amended by Executive Order 13292, or other Executive orders concerning disclosure of information, Department regulations, or the Privacy Act, or information exempt from release under the Freedom of Information Act. The Administrative Law Judge shall allow placement of any such document under seal and/or grant a protective order upon a showing that the disclosure would be inconsistent with any such statute or Executive order, or that the harm resulting from disclosure would outweigh the benefits of disclosure.

(2) A respondent may file any document or any part of a document under seal and/or seek a protective order to limit such document from disclosure to other parties or to the public. The Administrative Law Judge shall allow placement of any document under seal and/or grant a protective order upon a showing that the harm resulting from disclosure would outweigh the benefits of disclosure.

(3) The Administrative Law Judge shall safeguard the security and integrity of any documents under seal or

protective order and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing a hearing or portions of a hearing to the public. Release of any information under seal or to the extent inconsistent with a protective order, in any form or manner, is subject to the sanctions and the exercise of the authorities as are provided with respect to ex parte communications under § 501.719.

(4) If the Administrative Law Judge denies placement of any document under seal or under protective order, any party, and any person whose document or material is at issue, may obtain interlocutory review by the Secretary's designee. In such cases the Administrative Law Judge shall not release or expose any of the records or documents in question to the public or to any person for a period of 20 days from the date of the Administrative Law Judge's ruling, in order to permit a party the opportunity either to withdraw the records and documents or obtain interlocutory review by the Secretary's designee and an order that the records be placed under seal or a protective order.

(5) Upon settlement, final decision, or motion to the Administrative Law Judge for good cause shown, all materials (including all copies) under seal or protective order shall be returned to the submitting parties, except when it may be necessary to retain a record until any judicial process is completed.

(6)(i) Written notice of each request for release of documents or materials under seal or subject to a protective order shall be given to the parties at least 20 days prior to any permitted release or prior to any access not specifically authorized under a protective order. A copy of each request for information, including the name, address, and telephone number of the requester, shall be provided to the parties.

(ii) Each request for access to protected material shall include the names, addresses, and telephone numbers of all persons on whose behalf the requester seeks access to protected information. The Administrative Law Judge may impose sanctions as provided under § 501.729 for failure to provide this information.

(b) *Application.* An application for a protective order or to place under seal shall be filed with the Administrative Law Judge. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

(1) *Procedure for supplying additional information.* The person making the application may be required to furnish in writing additional information with respect to the grounds for objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Administrative Law Judge shall otherwise order for good cause shown at or before the expiration of such 14-day period.

(2) *Confidentiality of materials pending final decision.* Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be placed under seal; shall be for the confidential use only of the Administrative Law Judge, the Secretary's designee, the applicant, the Director, and any other respondent and representative; and shall be made available to the public only in accordance with orders of the Administrative Law Judge or the Secretary's designee.

(3) *Public availability of orders.* Any final order of the Administrative Law Judge or the Secretary's designee denying or sustaining an application for confidential treatment shall be made public. Any prior findings or opinions relating to an application for confidential treatment under this section shall be made public at such time as the material as to which confidentiality was requested is made public.

§ 501.726 Motions.

(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied