

§ 1184.9 What are IMLS' policies regarding disclosure of confidential business information?

(a) *In general.* Confidential business information obtained by IMLS from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Confidential business information.* Commercial or financial information obtained by IMLS from a submitter that may be protected from disclosure under Exemption 4 of FOIA.

(2) *Submitter.* Any person or entity from whom IMLS obtains confidential business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of confidential business information.* A submitter of confidential business information will use good-faith efforts to designate, 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.* When required under paragraph (e) of this section, subject to the exceptions in paragraph (h) of this section, IMLS will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its confidential business information, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice will either describe the confidential business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* IMLS will give notice 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) IMLS has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* IMLS will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it must submit a detailed written statement to IMLS. The statement must specify all grounds for withholding any portion of the information under any exemption of FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by IMLS until after the agency's disclosure decision has been made will not be

considered by IMLS. Information provided by a submitter under this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* IMLS will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose confidential business information. If IMLS decides to disclose confidential business information over the objection of a submitter, IMLS will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the confidential 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) IMLS determines that the information should not be disclosed;

(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 FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, IMLS 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.* If a requester files a lawsuit seeking to compel the disclosure of confidential business information, IMLS will promptly notify the submitter of the filing of the lawsuit.

(j) *Corresponding notice to requesters.* If IMLS provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, IMLS will also notify the requester(s). If IMLS notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, IMLS will also notify the requester(s). If a submitter files a lawsuit seeking to prevent the disclosure of confidential business information, IMLS will notify the requester(s) of the filing of the lawsuit.

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