

Exemption B1

Training Presentation

March 11, 2020

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**U.S. Citizenship
and Immigration
Services**

Objective

- To understand how Exemption (b)(1) relates to immigration documents and to apply the exemption correctly.
- At the completion of this module you will be able to:
 - Define Exemption (b)(1)
 - Identify the Levels of Classification
 - Describe the Types of Information that are Protected
 - Understand the “Glomar” Response and its Application



Exemption (b)(1)

- Protects national security information (NSI) concerning the national defense or foreign policy, provided that it has been properly classified under Executive Order 12958, as amended (signed by the President on March 25, 2003).
- If encountered at NRC, FOIA requests with classified responsive records are to be processed by individuals with appropriate clearance, and not in FIRST.
- If you believe you have a classified document in a case you are working in FIRST, immediately lock your workstation and inform your supervisor. Do not send the case to your in-basket or send it to the administrative queue. Do not print anything. Immediately lock your workstation and inform your supervisor.
- NSI or suspected NSI material must be reviewed by individuals with proper NSI Security Clearances. See 5 U.S.C. 552 (b)(1)

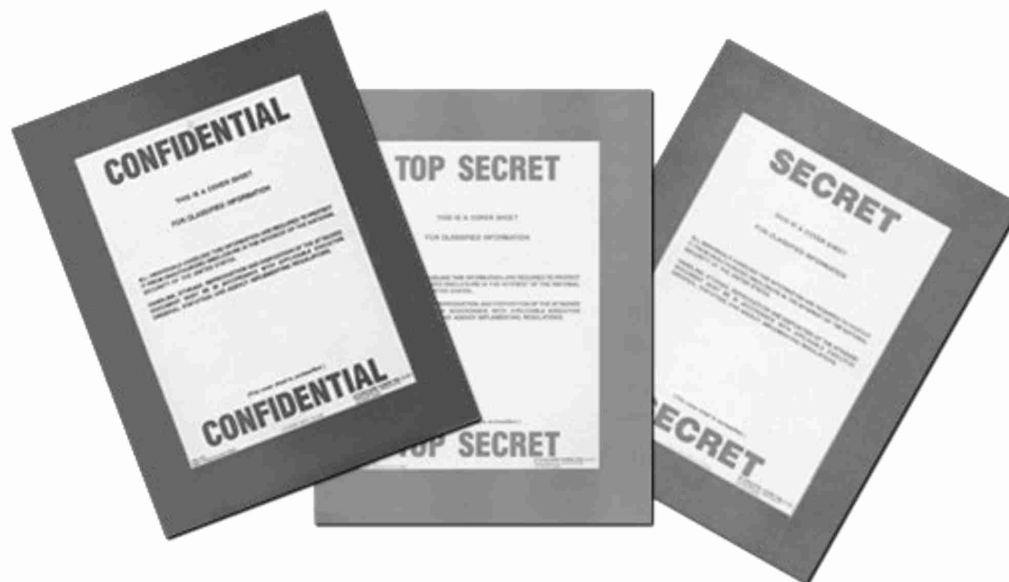


Executive Order 12958

- Classified National Security Information. This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information. (b)(7)(e)
- **Classification Levels**
 - **Top Secret** – Unauthorized release “reasonably could be expected to cause **exceptionally grave damage** to the national security.”
 - **Secret** – Unauthorized release “reasonably could be expected to cause **serious damage** to the national security.”
 - **Confidential** – Unauthorized release “reasonably could be expected to cause **damage** to the national security.”

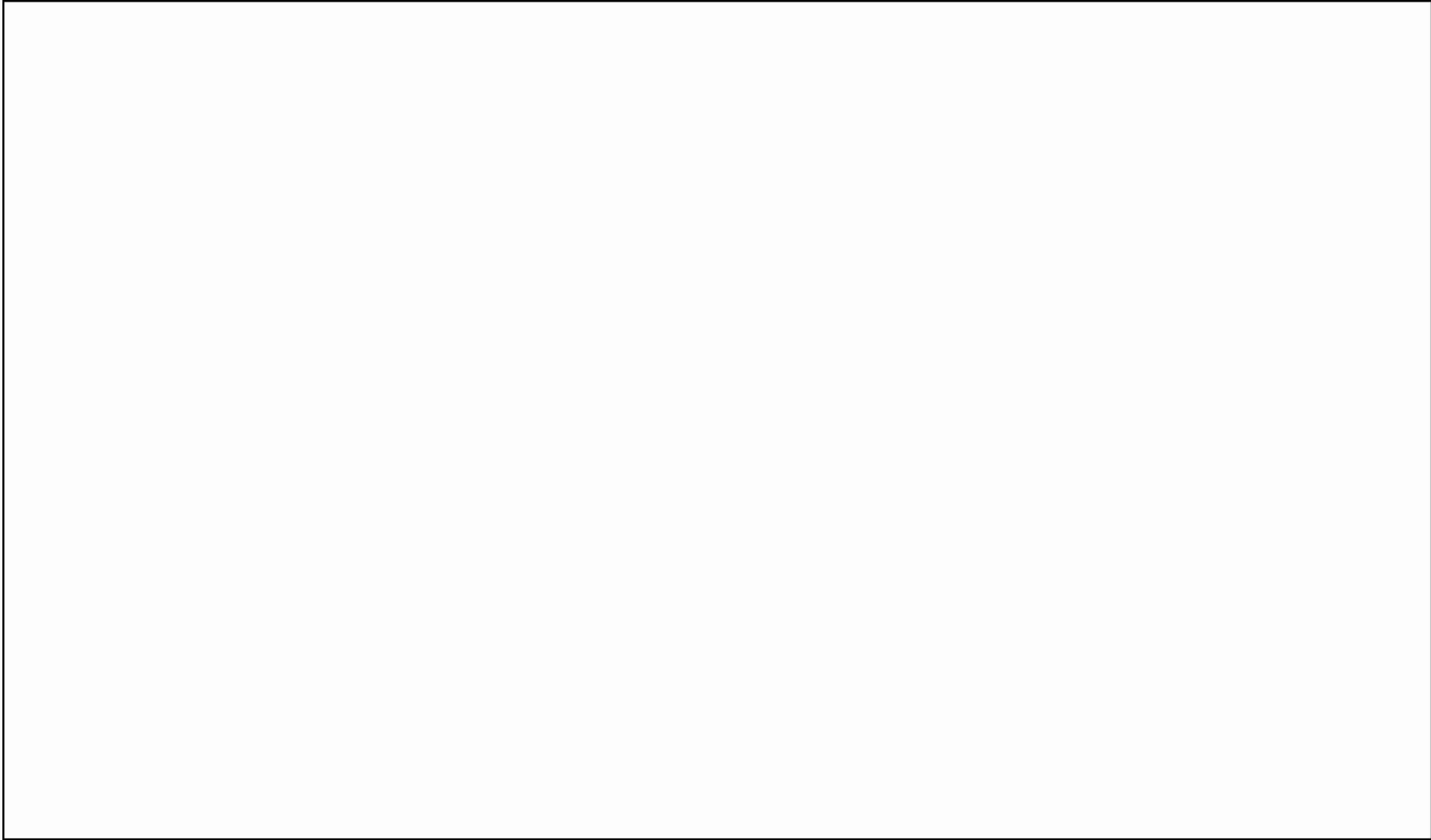


Classification Cover Sheets



Classified Documents

(b)(7)(e)



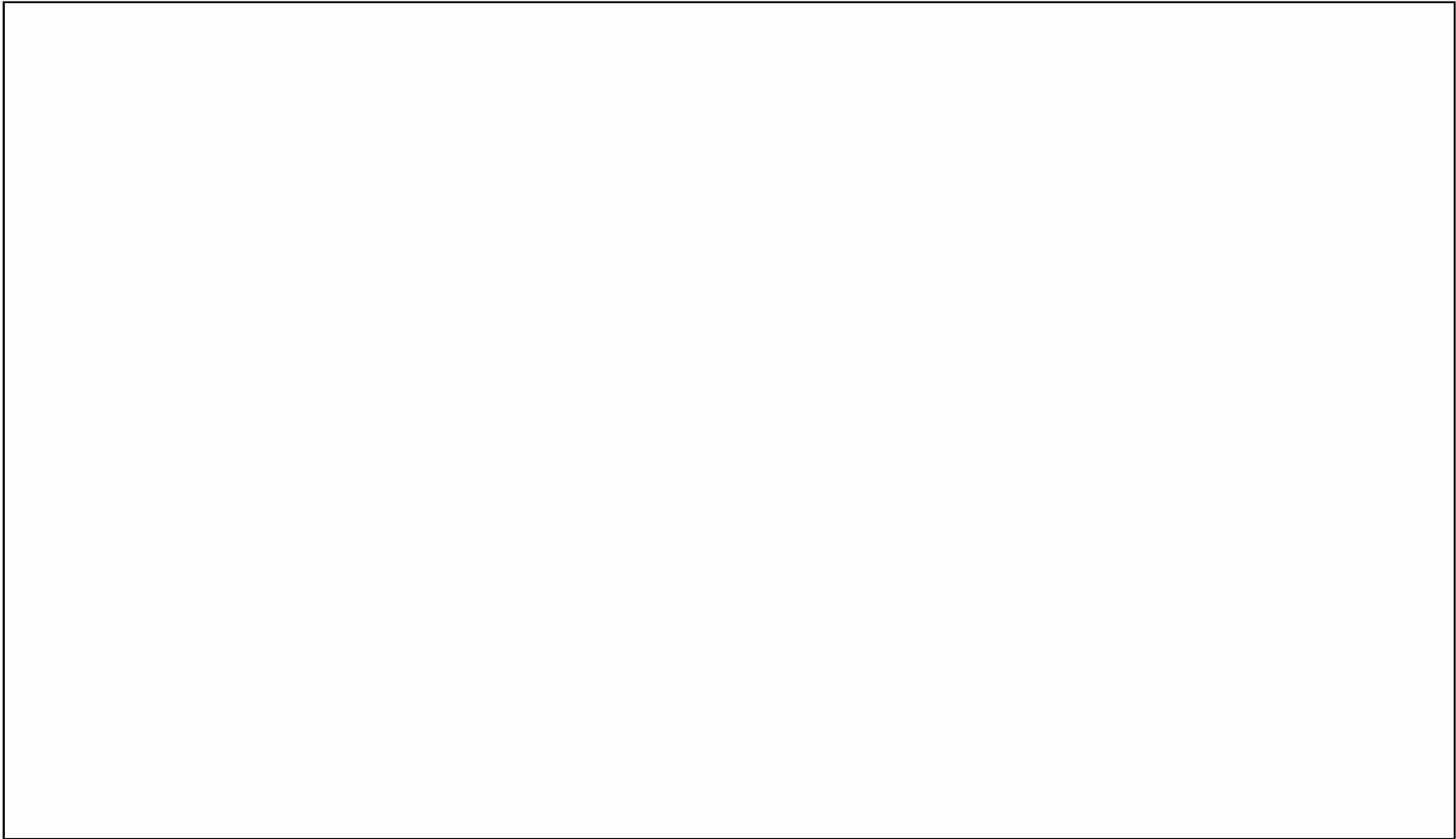
Not Protected

- Exemption (b)(1) **does not** protect:
 - Information we intended to classify.
 - Information that used to be classified, except as provided in Sec. 1.7(c), or
 - Information that should have been classified.
- There is automatic declassification of all information that is more than 25 years old (with exceptions to especially sensitive information). Sec. 3.3(a).
- Under President Bush’s Executive Order 13292, Declassified documents can be classified again. Also, restores the concept of “classify in doubt.”



Examples of Classified Material

(b)(7)(e)



The “Glomar” Response

- Principle holds that “an agency may properly deny a FOIA request by refusing to confirm or deny the existence of responsive records where, to do otherwise, could in and of itself cause harm.” *Gardels v. CIA (D.C. Circuit 1982)*
- The standard response is “This agency does not confirm or deny the existence of”
- Even if Glomar language is used, the requester must still be notified of the ability to appeal in the final action letter.



Not Classified Documents

- Documents marked “FOR OFFICIAL USE ONLY”
- Documents marked “LAW ENFORCEMENT SENSITIVE”
- Documents marked “Sensitive But Unclassified”
- Documents marked “Exempt from Disclosure”
- Documents marked “Do not release outside (agency)”

Note: Although these documents are not classified, they will *probably* have sensitive information exempt from release or disclosure under another FOIA exemption.



Segregation of Documents

- There is a general requirement that agencies segregate and release nonexempt information, unless the segregated information would have no meaning.
- Courts give agencies wide deference in determining the “releasability” of certain information but expect an effort to be made to release that which is suitable, in accordance with the spirit of FOIA.



Examples of Classified Documents

- This document was never classified.
- This page and the pages that follow are just to show you what classified NSI markings would look like.

CONFIDENTIAL

Memorandum

HOFMB 160/5-C

Subject	Prohibition of Release of Contractor Proposals Submitted in Response to an RFP - 41 U.S.C. Section 253b(m)	Date	OCT 25 1995
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To: Regional FOIA/PA Officers
SRO SRO WRO

From: Files and Forms Management (HOFMB)

for dissemination to all Freedom of Information Act (FOIA/PA) Officers in your area regarding responding to FOIA requests received by officers in response to which have effective

THIS DOCUMENT IS NOT CLASSIFIED

TRAINING PURPOSES ONLY

When responding to a request seek to withhold those documents in full and cite (b)(3) and 41 U.S.C. Section 253b(m) as the basis for denial of access. You should also indicate that you are withholding portions of these documents under 5 U.S.C. Section 552 (b) (4).

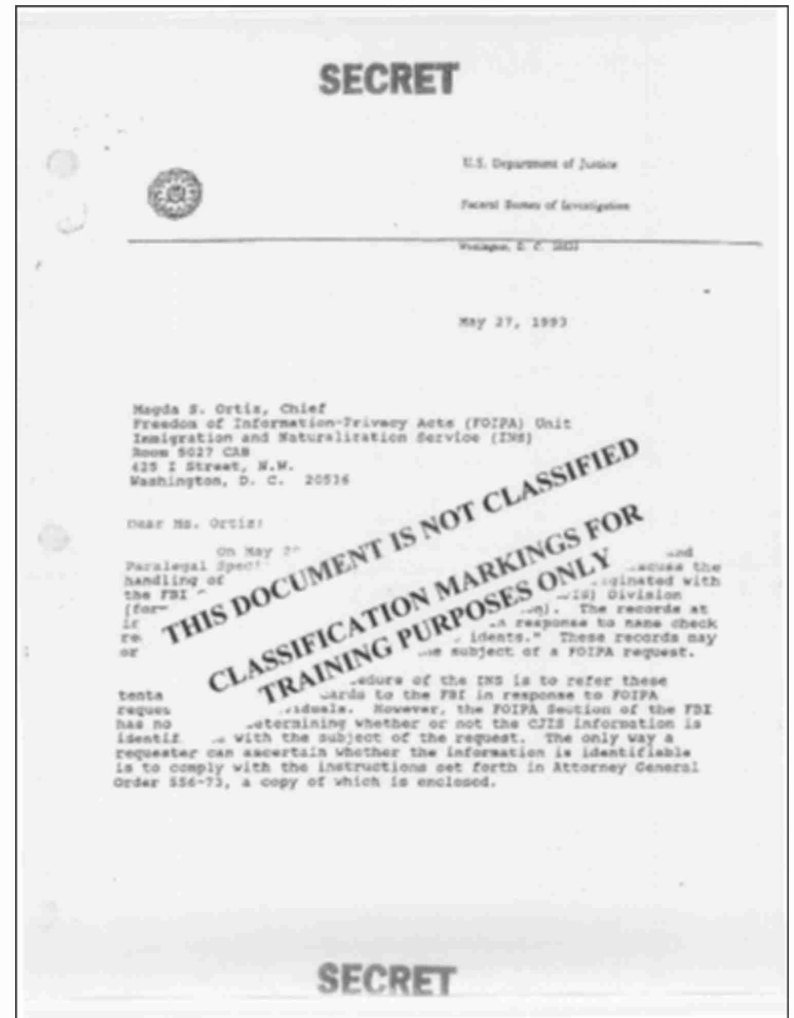
If however, a proposal is made part of the awarded contract, withholding under FOIA exemption (b)(3) is not applicable. In this instance, review the referenced proposals for release to the requester in accordance with 28 CFR 16.7 and withhold those portions found exempt from disclosure under the provisions of 5 U.S.C. 552 (b) (4).

CONFIDENTIAL



Examples of Classified Documents

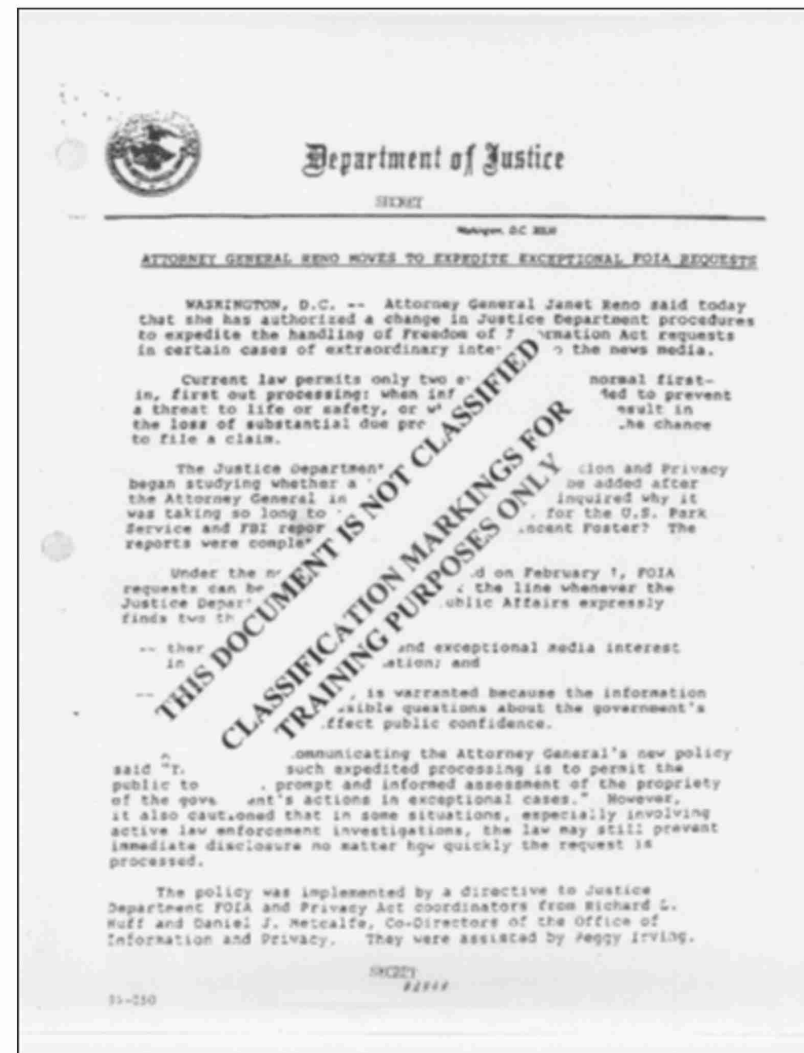
This document was never classified.



U.S. Citizenship
and Immigration
Services

Examples of Classified Documents

This document was never classified.



Examples of Classified Documents

(b)(7)(c)

This page was classified, but all classified portions have been segregated and marked with Exemption (b)(1).

2/13/96

~~SECRET~~ ~~CONFIDENTIAL~~

CLASSIFIED BY [redacted] 7/25/97
REASON: [redacted] ~~SECRET~~ ~~CONFIDENTIAL~~
DECLASSIFY ON: 25X 6

1 - Mr. R.L. Shreckelford
1 - Mr. R.L. Pence 2-11-72

TO LEGAT LONDON

FROM DIRECTOR FBI

ELECTION YEAR STRATEGY INFORMATION CENTER (EYSIC), IS - NEW LEFT.
FOR INFORMATION CAPTIONED ORGANIZATION LED BY RENNIE DAVIS,
KEY ACTIVIST AND CONVICTED CHICAGO SEVEN CONSPIRACY TRIAL DEFENDANT,
WAS FORMERLY NAMED ALLAMUCHY TRIBE AND HAS BEEN FORMED TO DIRECT
MOVEMENT ACTIVITIES DURING COMING ELECTION YEAR TO CULMINATE WITH
DEMONSTRATIONS AT REPUBLICAN NATIONAL CONVENTION, AUGUST NEXT.
SOURCES ADVISE JOHN LENNON, FORMER MEMBER OF THE BEATLES SINGING
GROUP, HAS CONTRIBUTED SEVENTY-FIVE THOUSAND DOLLARS TO ASSIST IN
FORMATION OF EYSIC. SOURCES ADVISE EYSIC LEADERS IN CONSTANT CONTACT
WITH LENNON. LENNON, BORN OCTOBER NINE, FORTY, ENGLAND, CURRENTLY
IN U.S. HOLDING H DASH ONE TEMPORARY VISA WHICH EXPIRES END
FEBRUARY, SEVENTY-TWO. LENNON HAS APPLIED B DASH TWO VISA INDICATING
INTENTION BECOME U.S. CITIZEN. (X)(u)

[redacted] b1

[redacted] b1

[redacted] b1

SULHM WITH AIRTEL COVER. REQUEST PERMISSION FROM SOURCES

1 - Foreign Liaison Desk (route through for review)
1 - 100- [redacted] (John Lennon)

RLP:plm
(6)

Classified by [redacted] SEE NOTE PAGE TWO
Declassify on: OADR ~~SECRET~~ 7/2/92
NOT RECORDED

CLASS. & EXT. BY [redacted]
REASON-FCIM II, 1-2.4.2
DATE OF REVIEW 2/9/81

5 FEB 18 1972

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE



Questions?



U.S. Citizenship
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Services



U.S. Citizenship and Immigration Services

Exemption B2

Training Presentation

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**U.S. Citizenship
and Immigration
Services**

Objective

To understand the purpose of Exemption (b)(2).



Exemption (b)(2)

- Exemption (b)(2) acts more like an exclusion than an exemption. For instance, a requester might want voluminous personnel policies that have nothing to do with how the agency governs the public. The agency could avoid having to spend money, time and resources processing, reviewing, printing and mailing the documents by citing Exemption (b)(2) and providing nothing.
- Exemption (b)(2) protects from mandatory disclosure records related “solely to the internal personnel rules and practices of an agency.” ***USCIS does not cite (b)(2) within documents.***



Questions?



U.S. Citizenship
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Services



U.S. Citizenship and Immigration Services

Exemption B3

Training Presentation

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**U.S. Citizenship
and Immigration
Services**

Objectives

- Understand how exemption (b)(3) relates to immigration documents and how to apply the exemption correctly.
- Describe the purpose of exemption (b)(3).
- Understand the purpose behind and application of Rule 6(e).
- Understand the purpose behind and application of 8 U.S.C. 1202(f).
- Understand the purpose behind and application of IRS Code 26 U.S.C.A. §6103.
- To understand how to process Tax Forms in FOIA cases.



Processing Legend



Processing Acronym Legend

WIF = Withhold in Full

RIF = Refer in Full

OOS = Out of Scope



Statutes

- Rule 6(E), Grand jury deliberation.
- 8 USC 1202(f), Department of State (DOS)
- 26 USC 6103, Internal Revenue Service (IRS)
- 41 USC 253B(M), Prohibits against disclosure of contract proposals.
- 8 USC 1304(b), Forms for registration and finger printings.



Intent & Compromise

- The Intent:
 - FOIA cannot override a law that says withhold.
 - When FOIA was passed in 1966, government agencies were in a panic...“What does this mean, can we keep nothing secret anymore?”
 - In response, Congress passed FOIA with, “an intent of transparency in government.”
- The Compromise:
 - Exemption (b)(3) incorporates the various nondisclosure provisions that are contained in other federal statutes.



All or Nothing

- But then, government agencies were saying, “everything was exempt because of (b)(3).”
- The Supreme Court disagreed.
 - They said, “a statute has to specifically describe what must not be disclosed.”
 - They also said, “the description of what must not be disclosed has to be in actual words, not left to intuition.”



Subparts

- Exemption (b)(3) has two subparts.
 - You should know the difference between the two because knowing whether a statute falls under subpart (A) or subpart (B) will determine how you apply (b)(3).



Subpart (A)

- Subpart (A):
 - Refers to a type of statute that leaves no discretion in determining whether to withhold.
 - We must withhold the information, sometimes neither confirming nor denying the existence of the information.



Subpart (B)

- Subpart (B):
 - Refers to the type of statute that establishes criteria for withholding information, or refers to certain matters to be withheld, and allows agencies some discretion in disclosing segregable portions of non-exempt information.



Court Interpretation

- If the statute itself does not specify whether information is partially exempt or fully exempt, the courts will decide.
 - Sometimes the court says Subpart (A), and sometimes Subpart (B), and even sometimes, Subparts (A) and (B).
- You do not have to worry about whether an exemption (3) statute falls under Subpart (A) or (B).

Note: Refer to the Exemptions (b)(3) section of the case processing guide for assistance.



Familiarity with Other Laws

- We do not always cite (b)(3). However, when we do, we must justify our decision by the language of the statute, not the Freedom of Information Act.
 - If it is a Part (A) Statute, we WIF the information.
 - If it is a Part (B) Statute, the agency's exercise of discretion is governed not by the FOIA, but by the language of the withholding statute.



Exemption (b)(3) Application

- Examples of Subpart (A):
 - The Census Act, prohibits release of any identifying information collected during the national census.
 - The Civil Rights Act of 1964, prohibits release of information concerning matters pending before the EEOC.
- Examples of Subpart (B):
 - Patent Statutes prohibit disclosure of pending patent applications, but only as long as they are pending.
 - The National Security Act prohibits the disclosure of intelligence sources and methods.



Annual Report Requirement

- Number of times (b)(3) was cited, broken down by which statute was cited with (b)(3).
- Description of whether a court has upheld the decision of the agency, to withhold information, under each of the statutes cited.
- Concise description of the scope of any information withheld.

Note: We do not cite (b)(3) if something else is available.



Exemption (b)(3) Court Cases

- *Beltranea v. U.S. Department of State*:
 - Properly cited Exemption(b)(3) and Section 222(f) of the Immigration and Nationality Act, which "forbids [defendant] from disclosing information pertaining to the issuance or refusal of Visas to the public."
- *Judicial Watch, Inc. v. SSA*:
 - The court holds that SSA properly refused to disclose a list of employers who received "no-match" letters pursuant to exemption (3) in conjunction with Section 6103 of the Internal Revenue Code, which prohibits release of tax return information.



Exemption (b)(3) and Federal Rule of Criminal Procedure 6(e)

- Grand Juries are how a government tests the case they are building against a suspect before an audience of citizens to determine if there is enough evidence to proceed against them.
- We need to be careful what we release.
 - We don't want to tip our hand to individuals we are investigating. Thus, (b)(3) and Rule 6(e) should be remembered for protecting grand jury deliberative materials.
- This falls under subpart (A).



Grand Jury, Deliberative

- The protection is intended to be broad:
 - Transcript, information which would reveal identities of witnesses or jurors, substance of the testimony, strategy or direction of the investigation, deliberations or questions of the jurors.
 - Fund for Constitutional Government v. National Archives and Records Service.
- Subpart (A):
 - The statute is written in such a way that we do not have discretion.
 - If it is a grand jury document that is deliberative, we withhold it in full.



Practical Application of (b)(3) & Rule 6(e), Federal Rules of Criminal Procedure

- We very rarely cite Exemption (b)(3) in conjunction with Rule 6(e).
- Most of the grand jury material we see has been filed with the court; therefore, it cannot be withheld as it is now a matter of public record.



Rule 6(e) Means WIF:

- The defense argued the government should release all segregable portions of non-exempt information.
- The government argued 6(e) is a subpart (A) statute.
- The court agreed with the government, and said, “the government is excused from the reasonably segregable requirement” when dealing with rule 6(e).”

Note: You will very rarely see grand jury deliberative information; however, if you do, WIF.



(b)(3), 8 U.S.C. 1202(f)

- Information pertains to the issuance or refusal of a visa or permit to enter the United States.
 - As such, it is specifically exempt from disclosure under Section 222(f) of the Immigration and Nationality Act (Title 8 USC Section 1202(f)).
 - Therefore, also exempt from disclosure under subsection (b)(3) of the Freedom of Information Act (FOIA).

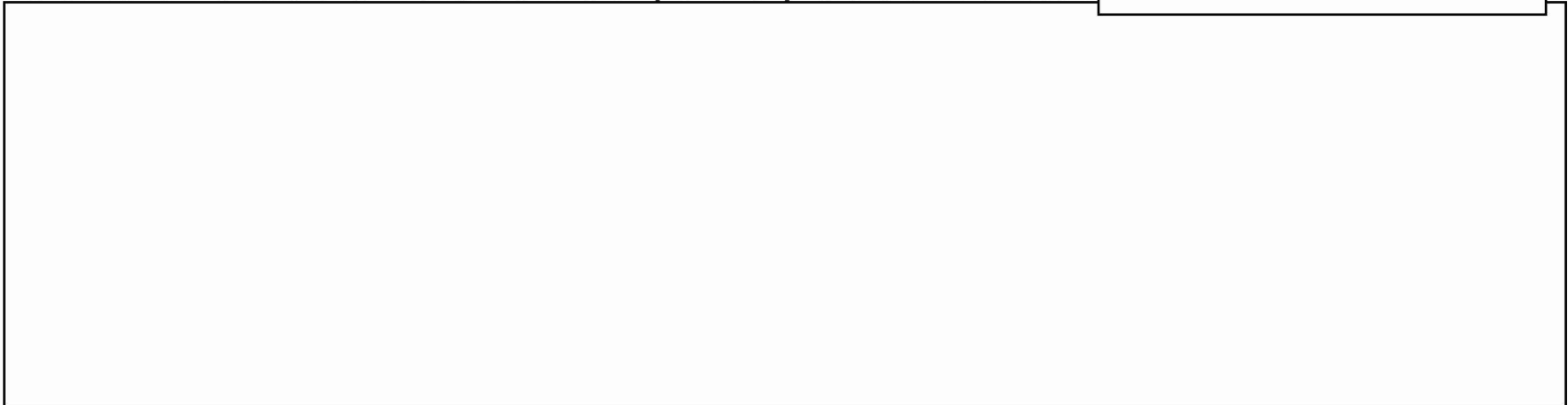


When Will You Encounter 8 U.S.C. § 1202(f) in FOIA Processing?

- Applies to Department of State documents pertaining to visas to enter the U.S., which includes the following:

- Refugee documents. (b)(3)

- Sensitive but Unclassified (SBU) documents.



Other Statutory Prohibitions

- We cannot disclose to a third party whether a person has applied for asylum or refugee status.
 - “Third party” does not include any other federal government agency or attorney acting on behalf of the government.
- We cannot disclose to a third party whether a person has applied for Temporary Protected Status.
- We cannot disclose to a third party whether a person has applied for protection under the Violence Against Women Act(VAWA).



Cite Exemption (b)(6)

- In those instances, listed on the previous slide, we do not cite (b)(3) plus the statute.
- For example: What if an agent of the Cuban government wanted to find out if certain people from Cuba have applied for asylum?
- Would we tell a husband that his estranged wife has applied for protection under the VAWA?
 - No, we cite Exemption (b)(6) because it is a clearly unwarranted invasion of personal privacy.
 - If we tell him we are withholding certain information because of the requirements of VAWA, we just told him what he wanted to know.



Exemption (b)(3) 26 U.S.C. § 6103

- 26 U.S.C. § 6103, is sometimes a Subpart (A) statute to the extent a person generally is not entitled to access to tax returns or return information of other taxpayers.
- Background:
 - The IRS had a particular concern with aspects of its internal practices getting released through FOIA. Therefore, there is a lot of litigation regarding the interplay of (b)(3) and this section of the tax code.
 - The IRS's concern was that individuals would obtain information through FOIA requests and use that information inappropriately, maybe even illegally.



IRS (b)(3) Court Cases

- IRS withheld discriminant function scores, used to determine which cases should be audited, should not be released.
 - Release of the information would provide the requestor with knowledge of how to avoid an audit.
- IRS also withheld memoranda reflecting the scope and direction of an investigation against an individual, any document determining his tax liability, any memoranda of interviews with informants and witnesses and any correspondence between IRS and the state law enforcement agency.
- IRS won both cases.



26 U.S.C. § 6103

- Individuals are not entitled to tax return information, even regarding themselves, if release would impair IRS enforcement or provide insight into how the IRS selects returns for audits.

Note: Depending on the court case, parts of 26 U.S.C. § 6103 have been interpreted as Sub-part A, and parts as Sub-part B.



When Will You Encounter 26 U.S.C. § 6103 in FOIA Processing?

- Applies to third-party requestors seeking information relating to companies/businesses that have filed petitions for non-immigrant workers or immigrant petitions for alien workers (I-129 and I-140's), which includes the following:
 - If the individual requests the I-140 filed on his or her behalf, 26 U.S.C.A. § 6103 does not apply if you find evidence in the file that the beneficiary worked for the petitioner.
 - If sponsors file an affidavit of support and their tax returns, those go in the alien's file. If the alien requests a copy of the file, it is a first party request. In that case, we would cite Exemption (b)(6), but not (b)(3) and 26 U.S.C. § 6103.



Overused in 2014

- Sample size of 14% (250 of 1770 cases) that used the (b)(3) 26 USC § 6103 exemption.
 - 46 times, (b)(3) 26 USC § 6103 was cited inaccurately.
 - 2 times, the subject was owner or part owner of the company (i.e. would know the Tax ID number).
 - 1 time, was a copy of the subject's own W-2.
 - 43 times, cited on personal tax return prepared by a Certified Public Accountant (CPA) or other professional.



1040 vs. 1120

- A 1040 is an individual tax form, and individuals have personal privacy protection.
- An 1120 is a corporate tax form, and corporations do not have personal privacy protection.



Corporate Tax Return

Corporation, partnership...

- Generally, corporations are not entitled to personal privacy protection, but
 - A family restaurant might be incorporated and you can protect with (b)(6), but
 - Two large corporations might form a partnership.



Taxpayer Identification Numbers (TIN) and Federal Employer Identification Number (EIN)

- Unless you have proof the subject of record worked for the company, redact the company's TIN/EIN by applying exemption (b)(3) 26 U.S.C. § 6103.
 - Proof of employment may be a paystub, W-2, or the like.
 - Forms ETA 750 and ETA 9089 are not proof of employment.



W-2

- Arthur worked for Cyberthink (in 2010).
- The Employer's Federal ID number (FIN) is on the W-2 and matches the corporate tax return (for 2010).
- Therefore, do not redact the FIN on the corporate tax return.

Form W-2 Wage and Tax Statement 2010

a Control number 0418-X254		Void	c Employer's name, address, and ZIP code CYBERTHINK INC 1125 US HIGHWAY 22 WRST BRIDGEWATER NJ 08807	
b Employer's identification number 22-34716		d Employee's social security number ---		
13 Salaried employee	Retirement plan	14 Other		
12 See Instrs. for Box 12		e Employee's name, address, and ZIP code Arthur Ritus 42 Perth Way Bridgewater, NJ 08808		

CYBERTHINK, INC. 22-34716 Page 1

Part A Cost of Goods Sold (See page 14 of instructions)

Inventory at beginning of year	1	12,192,359.
Changes	2	
Cost of labor	3	1,637,243.
Federal section 263A costs (attach schedule)	4	
Other costs (attach schedule) SEE CONSOLIDATED INCOME AND DEDUCTIONS	5	15,961,585.
Net. Add lines 1 through 5	6	29,791,187.
Inventory at end of year	7	10,650,283.
Cost of goods sold. Subtract line 7 from line 6. Enter here and on line 2, page 1	8	19,140,904.

Check all methods used for valuing closing inventory:

Cost as described in Regulations section 1.471-3

Lower of cost or market as described in Regulations section 1.471-4

Other (Specify method used and attach explanation.)

Check if there was a write-down of subnormal goods as described in Regulations section 1.471-2(c):

Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970):

Check if LIFO inventory method was used for this tax year, enter percentage (or amount) of closing inventory computed under LIFO: 91

Identify if produced or acquired for resale, do the rules of section 263A apply to the corporation? Yes No

Were there any changes in determining quantities, cost, or valuations between opening and closing inventory? Yes No

Attach explanation: Yes No



Bottom of Form 1120, Corporate Tax Return Example I

PAYMENTS	g Credit for federal telephone excise tax paid (attach Form 8913)	32g	4,073.	32h	208,073.
	33 Estimated tax penalty (see instructions). Check if Form 2220 is attached		<input checked="" type="checkbox"/>	33	79.
	34 Amount owed. If line 32h is smaller than the total of lines 31 and 33, enter amount owed			34	
	35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid			35	69,356.
	36 Enter amount from line 35 you want: Credited to 2007 estimated tax	69,356.	Refunded ▶	36	0.

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			May the IRS discuss this return with the preparer shown below (see instructions)?	
	Signature of officer	Date	Vice-President	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Paid Preparer's Use Only	Preparer's signature ▶ Scott Chansoda CPA	Date 3/11/07	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTN P00042363
	Firm's Name (or name, if self-employed), address, and ZIP code ▶ Scott Chansoda, CPA, Chtd 855 Parkway Avenue Ewing, NJ 08618-2395	EIN 12-3456789		Phone no. 609-882-6874
	BAA For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. DPCA005L 071306 Form 1120 (2006)			

- This CPA (an individual) signed and provided his EIN.
 - This makes the EIN a personal identifier.
 - The subject does not work for the CPA.
 - Per IRS release the PTIN, it is public information.
 - PTIN: P+8 digits
 - SSN: 9 digits
- Note: If the subject did work for the CPA, you could release the EIN.
- Since the EIN is a personal identifier, and our subject did not work for the CPA, redact (b)(6), not (b)(3) + 26 USC 6103.



Bottom of Form 1120, Corporate Tax Return

Example II

A Y M E N T S	g Credit for federal telephone excise tax paid (attach Form 8913)	32g	4,073.	32h	208,073.
	33 Estimated tax penalty (see instructions). Check if Form 2220 is attached		<input checked="" type="checkbox"/>	33	79.
	34 Amount owed. If line 32h is smaller than the total of lines 31 and 33, enter amount owed			34	
	35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid			35	69,356.
	36 Enter amount from line 35 you want credited to 2007 estimated tax	69,356.	Refunded ▶	36	0.

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			May the IRS discuss this return with the preparer shown below (see instructions)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Signature of officer	Date	Title	
			Vice-President	

Paid Preparer's Use Only	Preparer's signature ▶ Joe Taxpayer	Date	3/11/07	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN	P00042363
	Firm's Name (or name of self-employed), address, and ZIP code	Tax Consultants, INC 855 Parkway Avenue Ewing, NJ 08618-2395			FIN	12-3456789

BAA For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. CPCA2006L 071306 Form 1120 (2006)

- This an individual (CPA) signed and provided company's name and EIN.
 - This EIN belongs to the company.
 - The subject does not work for the CPA's firm.
 - Per IRS release the PTIN, it is public information.
 - PTIN: P+8 digits
 - SSN: 9 digits
- Note: If the subject did work for the CPA's firm, you could release the EIN.
- Since the EIN belongs to the company, and our subject did not work for the CPA, redact (b)(3) + 26 USC 6103, not (b)(6).



Compensation of Officers

- Since we know Arthur worked for Cyberthink, we can release the EIN.
- We still protect personal financial information, redact (b)(6).
- You will redact Shareholder information, including personal earnings, compensation of officers and stock holdings.

Note: This information can be located on various "Schedules", including Schedule K, K-1, E, L & M-2 etc.

- EIN's are also known as:
 - Taxpayer Identification Numbers (TIN)
 - Federal Employer Identification Number (FEIN)

(b)(6)

Form 1120 (2010) **CYBERTHINK INC** 22-34716 Page 2

Schedule A Cost of Goods Sold (See page 14 of instructions.)

1	Inventory at beginning of year	1	292,778
2	Purchases	2	1,423,719
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	122,903
6	Total. Add lines 1 through 5	6	1,838,491
7	Inventory at end of year	7	325,670
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on line 2, page 1	8	1,512,821

Check all methods used for valuing closing inventory:
 Cost as described in Regulations section 1.471-3
 Lower of cost or market as described in Regulations section 1.471-4
 Other (Specify method used and attach explanation.)

Check if there was a write-down of abnormal goods as described in Regulations section 1.471-7(a)
 Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970)
 If the LIFO inventory method was used for this tax year, enter percentage for amount of closing inventory computed under LIFO: %
 If property is produced or acquired for resale, do the rules of section 263A apply to the corporation?
 Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation. Yes No

Schedule C Dividends and Special Deductions (See page 15 of instructions.)

	(a) Dividends received	(b) %	(c) Special deductions (see instructions)
1	Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)	70	
2	Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)	80	
3	Dividends on debt-financed stock of domestic and foreign corporations (section 2454)		
4	Dividends on certain preferred stock of less-than-20%-owned public utilities	42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities	48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction	70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction	80	
8	Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (section 2459)	100	
9	Total. Add lines 1 through 8. See page 16 of instructions for limitation		
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1980	100	
11	Dividends from certain FSCs that are subject to the 100% deduction (section 2456)(1)	100	
12	Dividends from affiliated group members subject to the 100% deduction (section 2456)(2)	100	
13	Other dividends from foreign corporations not included on lines 1, 6, 7, 8, or 11		
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)		
15	Foreign dividend gross-up (section 78)		
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (section 2454)		
17	Other dividends		
18	Deduction for dividends paid on certain preferred stock of public utilities		
19	Total dividends. Add lines 1 through 17. Enter here and on line 4, page 1		
20	Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on line 20, page 1		

Schedule E Compensation of Officers (See instructions for line 12, page 1.)
 Note: Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1, Form 1120) are \$500,000 or more.

(a) Name of officer	(b) Social security number	(c) Percent of line devoted to business	(d) Amount of compensation
1 YONG SOO KANG			
KAY SOON KANG			
2 Total compensation of officers			
3 Compensation of officers claimed on Schedule A and elsewhere on return			
4 Subtract line 3 from line 2. Enter this result here and on line 12, page 1			

Form 1120 (2010)



Securities and Exchange Commission (SEC) Forms

- If you see one of these, you are always dealing with a large corporation, and (b)(6) will not apply.
- If you see an EIN on an 8-K or 10-K, withhold it, unless there is evidence the subject worked for the company.

Table of Contents	
UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549	
FORM 10-K	
(Mark One)	
<input checked="" type="checkbox"/>	ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 For the fiscal year ended December 31, 2008
<input type="checkbox"/>	TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 Commission File Number 001-34099
HELTER & SHIDDEN HOLDINGS, INC. (Exact name of registrant as specified in its charter)	
PENNSYLVANIA (State or other jurisdiction of incorporation or organization)	12-3456789 (IRS Employer Identification No.)
1000 Commerce Drive, Suite 500 Pittsburgh, PA (Address of principal executive offices)	15275 (Zip Code)
Registrant's telephone number, including area code: (412) 787-2100	
Securities registered pursuant to Section 12(b) of the Act:	
Title of each class Common Stock, \$ 01 par value	Name of exchange on which registered NYSE Alternext
Securities registered pursuant to Section 12(g) of the Act: None	
Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in a definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. <input type="checkbox"/>	
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):	
Large accelerated filer <input type="checkbox"/> Accelerated filer <input type="checkbox"/> Non-accelerated filer <input checked="" type="checkbox"/> Smaller reporting company <input type="checkbox"/>	
Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
The voting stock of the registrant was not traded publicly as of June 30, 2008.	
The number of shares of the registrant's Common Stock, par value \$ 01 per share, outstanding as of February 27, 2009 was 2,606,717 shares.	
DOCUMENTS INCORPORATED BY REFERENCE	
Portions of the registrant's Proxy Statement, prepared for the Annual Meeting of Shareholders scheduled for May 14, 2009 to be filed with the Commission are incorporated by reference into Part III of this report.	



ETA Form 9089 U.S. Department of Labor

- Release the Employer's FEIN on pg.1 if you have proof your subject worked for the company. (b)(3) (b)(6)
- Redact attorney Firm EIN on pg.2 regardless of whether the subject worked for the petitioning company or not.

OMB Approval: 1205-0451 Application for Permanent Employment Certification
 Expiration Date: 11/30/2017
 ETA Form 9089
 U.S. Department of Labor

Please read and review the filing instructions before completing this form. A copy of the instructions can be found at <http://www.foreignlaborcert.dola.gov/pdf/9089inst.pdf>

Employing or continuing to employ an alien unauthorized to work in the United States is illegal and may subject the employer to criminal prosecution, civil money penalties, or both.

A. Refiling Instructions

1. Are you seeking to utilize the filing date from a previously submitted Application for Alien Employment Certification (ETA 750)? Yes No

1-A. If Yes, enter the previous filing date

1-B. Indicate the previous SWA or local office case number OR if not available, specify state where case was originally filed.

B. Schedule A or Shepherd Information

1. Is this application in support of a Schedule A or Shepherd Occupation? Yes No

If Yes, do NOT send this application to the Department of Labor. All applications in support of Schedule A or Shepherd Occupations must be sent directly to the appropriate Department of Homeland Security office.

C. Employer Information (Headquarters or Main Office)

1. Employer's name
PYRAMID TECHNOLOGY SOLUTIONS, INC

2. Address 1
3535 E. 59TH STREET

Address 2
SUITE A

3. City INDIANAPOLIS State/Province IN Country UNITED STATES OF AMERICA Postal code 46216

4. Phone number 317-282-9980 Extension 304

5. Number of employees 168 6. Year commenced business 1998

7. FEIN (Federal Employer Identification Number) [Redacted] 8. NAICS Code 541511

9. Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, or incorporators, and the alien? Yes No

D. Employer Contact Information (This section must be filled out. This information must be different from the agent or attorney information listed in Section E).

1. Contact's last name First name Middle initial
Vedlamuri [Redacted]

2. [Redacted]

3. [Redacted]

4. [Redacted]

5. [Redacted]

ETA Form 9089 This Certification is valid from 02/08/2015 to 03/06/2016 Page 1 of 14
 ETA Case Number: A-15033-47565

OMB Approval: 1205-0451 Application for Permanent Employment Certification
 Expiration Date: 11/30/2017
 ETA Form 9089
 U.S. Department of Labor

E. Agent or Attorney Information (if applicable)

1. Agent or attorney's last name First name Middle initial
Chugh Navneet S

2. Firm name
The Chugh Firm

3. Address 1
15925 Carmenita Road

Address 2

4. Phone number 5622291220 Extension

5. Address 1
15925 Carmenita Road

Address 2

6. City Cerritos State/Province CA Country UNITED STATES OF AMERICA Postal code 90703

7. E-mail address
carmen@chugh.com

F. Prevailing Wage Information (as provided by the State Workforce Agency)

1. Prevailing wage tracking number (if applicable)
P10014189943926

2. SOC/NET(OES) code
15-1132

3. Occupation Title
Software Developers, Applications 4. Skill Level
Level IV

5. Prevailing wage Per (Choose only one)
\$ 105,539.00 Hour Week Bi-Weekly Month Year

6. Prevailing wage source (Choose only one)
 OES CBA Employer Conducted Survey DBA SCA Other

6-A. If Other is indicated in question 6, specify:

7. Determination date
08/18/2014 8. Expiration date
06/30/2015

G. Wage Offer Information

1. Offered wage From: To: (Optional) Per: (Choose only one)
\$ 105,539.00 \$ Hour Week Bi-Weekly Month Year

H. Job Opportunity Information (Where work will be performed)

1. Primary worksite (where work is to be performed) address 1
3535 E. 59TH STREET, SUITE A

Address 2
OTHER UNANNUNCIATED LOCATIONS THROUGH OUT THE U.S

2. City INDIANAPOLIS State IN Postal code 46216

3. Job title
SR. APPLICATION DEVELOPER

4. Education, minimum level required:
 None High School Associate's Bachelor's Master's Doctorate Other

4-A. If Other is indicated in question 4, specify the education required:

4-B. Major field of study
CA, CIS, CS OR RLTD., MATH OR ANY ENGG

5. Is training required for the job opportunity? Yes No

5-A. If Yes, number of months of training required:

ETA Form 9089 This Certification is valid from 09/08/2015 to 03/06/2016 Page 2 of 14
 ETA Case Number: A-15033-47565



U.S. Citizenship
and Immigration
Services

Form 1040

(b)(6)

A Form 1040 is filed by an individual.

- If it belongs to a third party, redact (b)(6).

Note: If no I-864A has been filed by the third party spouse, redact the spouse's name (b)(6)

- If it belongs to your subject, release.

Form 1040		Department of the Treasury — Internal Revenue Service		U.S. Individual Income Tax Return 2008		(99)	IRS Use Only — Do not write or stamp in this space.
For the year Jan 1 - Dec 31, 2008, or other tax year beginning		, 2008, ending		, 20		OMB No. 1545-0074	
Label (See instructions.)	Your first name	Mr.	Last name				
	Bradley						
Use the IRS label. Otherwise, please print or type.							
Presidential Election Campaign							
Filing Status							
Check only one box.							
Exemptions							
If more than four dependents see instructions.							
Income							
Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.							
If you did not get a W-2, see instructions.							
Enclose, but do not attach, any payment. Also, please use Form 1040-V.							
Adjusted Gross Income							
BAA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see instructions.							
FD/A0112 10/13/08 Form 1040 (2008)							



U.S. Citizenship
and Immigration
Services

EIC

- If it belongs to a third party, WIF (b)(6).

Note: Disclosing the form provides invasive information about a person's economic status.

(b)(6)

SCHEDULE EIC (Form 1040A or 1040)		Earned Income Credit Qualifying Child Information		DMB No. 1545-0674 2003 Attachment Sequence No. 43
Department of the Treasury Internal Revenue Service (20)		Complete and attach to Form 1040A or 1040 <i>only if you have a qualifying child.</i>		
Name(s) _____ ILAC A _____				
Before you begin: See the instructions for Form 1040A, line 41, or Form 1040, line 63, to make sure that (a) you can take the EIC and (b) you have a qualifying child.				
<ul style="list-style-type: none"> • If you take the EIC even though you are not eligible, you may not be allowed to take the credit for up to 10 years. See back of schedule for details. • It will take us longer to process your return and issue your refund if you do not fill in all lines that apply for each qualifying child. • Be sure the child's name on line 1 and social security number (SSN) on line 2a agree with the child's social security card. Otherwise, at the time we process your return, we may reduce or disallow your EIC. If the name or SSN on the child's social security card is not correct, call the Social Security Administration at 1-800-772-1213. 				
Qualifying Child Information				
		Child 1		Child 2
		First name Last name	First name Last name	
1 Child's name If you have more than two qualifying children, you only have to list two to get the maximum credit.		<div style="border: 1px solid black; height: 100px; width: 100%;"></div>		
2a Child's SSN The child must have an SSN as defined on page 43 of the Form 1040A instructions or page 47 of the Form 1040 instructions unless the child was born and died in 2003. If your child was born and died in 2003 and did not have an SSN, enter "Died" on this line and attach a copy of the child's birth certificate.				
b Child's year of birth				
3 If the child was born before 1985— a Was the child under age 24 at the end of 2003 and a student? b Was the child permanently and totally disabled during any part of 2003?				
4 Child's relationship to you (for example, son, daughter, grandchild, niece, nephew, foster child, etc.)				
5 Number of months child lived with you in the United States during 2003 <ul style="list-style-type: none"> • If the child lived with you for more than half of 2003 but less than 7 months, enter "7" • If the child was born or died in 2003 and your home was the child's home for the entire time he or she was alive during 2003, enter "12" 				
		You may also be able to take the additional child tax credit if your child (a) is under age 17 at the end of 2003, (b) is claimed as your dependent on line 6c of Form 1040A or Form 1040, and (c) is a U.S. citizen or resident alien. For more details, see the instructions for line 42 of Form 1040A or line 65 of Form 1040.		
For Paperwork Reduction Act Notice, see Form 1040A or 1040 instructions.				Schedule EIC (Form 1040A or 1040) 2003



U.S. Citizenship
and Immigration
Services

Small Business

- A small business can file Schedule C as part of their Form 1040.
- If it belongs to a third party, redact (b)(6).

(b)(6)

OMB No. 1545-0047
2000
Attachment
Sequence No. **03**

SCHEDULE C Profit or Loss From Business
(Form 1040)
(Sole Proprietorship)
Partnerships, joint ventures, etc., must file Form 1065 or Form 1065-B.
Department of the Treasury Internal Revenue Service (IRS) Attach to Form 1040 or Form 1041. See instructions for Schedule C (Form 1040).

Name of proprietor: **USED CAR DEALER** Social security number (SSN):

Principal business or profession, including product or service (see page C-1 of the instructions):
USED CAR DEALER

Business name, if no separate business name, leave blank:
ALL STAR AUTO SALES

Business address (including suite or room no., city, town or post office, state, and ZIP code):

Accounting method: (1) Cash (2) Accrual (3) Other (specify):

Did you "materially participate" in the operation of this business during 2000? If "No," see page C-2 for limit on losses: Yes No

If you started or acquired this business during 2000, check here:

Part I Income

- Gross receipts or sales. Caution: If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see page C-2 and check here.
- Returns and allowances.
- Subtract line 2 from line 1.
- Cost of goods sold (from line 42 on page 2).
- Gross profit. Subtract line 4 from line 3.
- Other income, including Federal and state gasoline or fuel tax credit or refund (see page C-2).
- Gross income. Add lines 5 and 6.

Part II Expenses. Enter expenses:

Expense	Enter expense	Enter nondeductible amount included on line 24b (see page C-5)
8 Advertising	a	
9 Bad debts from sales or services (see page C-3)	9	
10 Car and truck expenses (see page C-3)	10	
11 Commissions and fees	11	
12 Depreciation	12	
13 Depreciation and section 179 expense deduction (not included in Part III) (see page C-3)	13	
14 Employee benefit programs (other than on line 13)	14	
15 Insurance (other than health)	15	
16 Interest:		
a Mortgage (paid to banks, etc.)	16a	
b Other	16b	
17 Legal and professional services	17	
18 Office expense	18	
19 Total expenses before expenses for business use of your home		
20 Tentative profit (loss). Subtract line 19 from line 7.		
21 Expenses for business use of your home. Attach Form 8829.		
22 Net profit or (loss). Subtract line 21 from line 19.		

Enter nondeductible amount included on line 24b (see page C-5):

Subtract line 24c from line 24b:

Utilities

Wages (less employment credit)

Other expenses (from line 48 on page 2)

Enter on line 24c (from line 48 on page 2) B through 27 in columns.

23 If a profit, enter on Form 1040, line 12, and also on Schedule SE, line 2 (statutory employees, see page C-5). Estates and trusts, enter on Form 1041, line 3.

24 If a loss, you must go to line 32.

25 If you have a loss, check the box that describes your investment in this activity (see page C-5).

26 If you checked 25a, enter the loss on Form 1040, line 13, and also on Schedule SE, line 2 (statutory employees, see page C-5). Estates and trusts, enter on Form 1041, line 3.

27 If you checked 25b, you must attach Form 8829.

For Paperwork Reduction Act Notice, see Form 1040 instructions.



U.S. Citizenship
and Immigration
Services

Questions?





U.S. Citizenship and Immigration Services

Exemption B4

Training Presentation

March 11, 2020

WARNING: This training presentation is ~~FOR OFFICIAL USE ONLY (FOUO)~~ and is intended for internal National Records Center use only. It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with Department of Homeland Security policy relating to Sensitive But Unclassified (SBU) information and is not to be released to the public or other personnel who do not have a valid need to know without prior approval from the FOIA Officer.



**U.S. Citizenship
and Immigration
Services**

Objective

To understand the nature of Exemption (b)(4), how it relates to USCIS documents and to apply the exemption appropriately.



Refer the case to the Significant Interest Group (SIG)

- We use Exemption (b)(4) for requests relating to government contracts with private businesses.
- SIG processes FOIA requests involving government contracts. If you encounter a FOIA request that appears to be seeking commercial or financial information related to a government contract, advise your supervisor and do not attempt to process the request.



Exemption (b)(4)

- Protects:
 - Trade secrets and/or
 - Information that is
 - commercial or financial. (prong 1)
 - obtained from a person. (prong 2)
 - privileged or confidential. (prong 3)
- Protects interests of government: We need complete and precise submission of business, financial and technical information to make good decisions.
- Protects interests of submitters: Prevents distribution of vital company information to competitors.



Prongs and Definitions

- After the court listed the three parts, or “prongs” of the test, there was a flurry of litigation that defined certain terms in ways that a reasonable person would never have guessed.
- For example – Prong 2, “Obtained from a person,” “Person” has been defined to mean “individuals as well as a wide range of entities, including corporations, banks, state governments, and Native American tribes or nations, who provide information to the government.”



The Trades Secret Act

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311- 1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, **divulges**, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; ***shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.***



A Trade Secret

- The act defines a trade secret as information, including a plan, formula, process, or device that:
 - derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and
 - is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Examples:

- Design drawing of airplane fuel pumps.
- Drug manufacturing information including chemical composition and stability testing.
- Report on computation of mileage rate prepared by private company and utilized by IRS.



Commercial or Financial Information

- Commercial means anything “pertaining or relating to or dealing with commerce.”
- Profit/nonprofit status of the owner of the document is not a relevant factor.
- Owner of documents should have a commercial interest in the records.
- Includes not only corporate or business related information, but personal commercial or financial information.



Confidential or Privileged

- Information is confidential (*not National Security Information*) if its release:
 - Would impair the government's ability to get necessary information in the future, OR
 - Could cause substantial harm to the competitive position of the submitter.
- (b)(4) protects some information that is not considered confidential. If information could be considered *privileged* from discovery, (b)(4) can still cover it, for instance:
 - A company's critical self-evaluation of its products
 - Attorney work product
- Advice prepared by a specialist in the company for the government as a client



Substantial Competitive Harm

- Data describing a company's workforce and labor costs.
- Currently unannounced and future products.
- Company's break even calculations.



The Processor's Quandary

The term “substantial competitive harm” has been re-defined by lawsuits.

- In the DOJ Freedom of Information Act Guide, you will see citation after citation of what happened in a court case.
- Contractors frequently specify what they want us to withhold. The processor sometimes has to read cases to support the decision to withhold, or to explain to the contractor why we *cannot* hold it.



The Court Says

- An agency's listing of in-flight medical emergencies is not commercial. The "mere fact that an event occurs in connection with a commercial operation does not automatically transform documents regarding that event into commercial information."
- Information may qualify as commercial even if the provider's interest in gathering, processing, and reporting the information is non-commercial.



They are supposed to mark it

Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall –

- Mark the title page with the following legend:
 - This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of -- or in connection with -- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and
- Mark each sheet of data it wishes to restrict with the following legend:

Note: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.



Regulations and Precedents

- The applicable regulation is FAR 52.215-1(e). FAR stands for Federal Acquisition Regulation.
- If a document is properly marked, a court will give more weight to our withholding decision, because the company is indicating an expectation of confidentiality, and making it more difficult for USCIS attorneys to justify why we released it.
- On the other hand, just because a document is marked does not necessarily mean we can withhold the information.



Procurement-Sensitive Information

- 41 U.S.C. § 423(a) forbids knowingly disclosing contractor bid or proposal information or source selection information **before** the award of a contract.
- The protection extends to government, contractors, and formerly covered persons who may have advised or recommended.
- Other laws such as the Privacy Act (5 U.S.C. 552a) and the Trade Secrets Act (18 U.S.C. 1905) may preclude release of information both before and after award.



Other Exemptions May Apply

- For example, If psychological profiles of certain personnel are required to be submitted as part of the bid, that is Privacy Act information. Exemption (b)(6) applies.
- •41 USC § 253b(m) prohibits the release of contractor proposals unless the winning bid is incorporated by reference in the contract. To apply that statute to a FOIA case, we use Exemption (b)(3) and quote 41 USC § 253b(m).



Some Things are Always Exempt

- We may not knowingly disclose contractor bid or proposal information or source selection information **before** a contract has been awarded.
- If a person has voluntarily submitted information to us and they would not normally disclose that to the public, then it is categorically exempt from disclosure.



Different Standards for Disclosure

- There are two primary court cases which defined “confidential.” You may hear them referred to as “National Parks” and “Critical Mass.” These two cases, among other things, set a standard for disclosure of information voluntarily given as whatever “would customarily not be released to the public by the person from whom it was obtained.”
- If it was not voluntarily given, we have to go back to evaluating the information for confidentiality, and substantial harm to the competitive position of the company.



Critical Mass

Established a distinction between voluntary and required submissions:

- Voluntarily submitted information is categorically protected if not “customarily” disclosed to the public. Burden is on the Government.



National Parks

- Impairment Prong: disclosure would impair the Government's ability to obtain necessary information in the future
- Competitive Harm Prong: disclosure would cause substantial harm to a competitive interest of the submitter.



We Have to Prove It

- The submitter does not have the burden of proving they submitted information voluntarily, nor do they have to identify the submission as voluntary before they submit it.
- The government has the burden of proving the submission was required to get the contract.



Some Things we Have to Give

- If information has been made public by other federal agencies, or if a statute or regulation requires that we release it.
- If Federal Acquisition Regulations have required the release of certain information, such as the overall contract price for the winning bid, for certain contracts.



Notifying the Contractor

- After we finish redacting a contract document using exemption (b)(4), we do not immediately put it in the mail to our requester. We have to inform the company: EO 12600 requires us to give the bidder or submitter the opportunity to “articulate the harm” that could be caused if we release the information.
 - Notifying the contractor
 - We write to them and send a copy, or we send an email with an attachment.
 - They may make objections, point by point, page by page, quoting case law.
 - Next, we must respond to the contractor.



Responding

If they disagree:

- We could decide to withhold the information for the reasons the submitter gave us, or we could decide to release it anyway.
- If we decide to release it anyway, we document the basis in law of our decision and the reasons we decided to release it and send the decision to the contractor.
- The contractor then has the right to file a “Reverse FOIA” lawsuit to keep the government from releasing the information.



Questions?



U.S. Citizenship
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