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(c) The Commission shall require payment in full prior to the commencement or continuation of work on a request if:

(1) It estimates or determines that the allowable charges will exceed \$250, unless the requester has a history of prompt payment of FOIA fees, in which case the Commission may obtain satisfactory assurance of prompt payment; or

(2) The requester has previously failed to pay fees within 30 days of the date of billing.

[40 FR 8171, Feb. 26, 1975, as amended at 52 FR 13830, Apr. 27, 1987]

§ 1610.17 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence, and matters involving personal privacy.

(b) Section 706(b) of title VII provides that the Commission shall not make public charges which have been filed. It also provides that (subsequent to the filing of a charge, an investigation, and a finding that there is reasonable cause to believe that the charge is true) nothing said or done during and as a part of the Commission's endeavors to eliminate any alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion may be made public by the Commission without the written consent of the parties concerned; nor may it be used as evidence in a subsequent proceeding. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of section 706(b) shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than 1 year.

(c) Section 709 of title VII authorizes the Commission to conduct investigations of charges filed under section 706, engage in cooperative efforts with State and local agencies charged with

the administration of State or local fair employment practices laws, and issue regulations concerning reports and record-keeping. Section (e) of section 709 provides that it shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under section 709 prior to the institution of any proceeding under the act involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of section 709(e) shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than 1 year.

(d) Special disclosure rules apply to the case files for charging parties, aggrieved persons on whose behalf a charge has been filed, and entities against whom charges have been filed. The special disclosure rules are available in the public reading areas of the Commission. Under sections 706 and 709, case files involved in the administrative process of the Commission are not available to the public.

(e) Each executed statistical reporting form required under part 1602 of this chapter, such as Employer Information Report EEO-1, etc., relating to a particular employer is exempt from disclosure to the public prior to the institution of a proceeding under title VII involving information from such form.

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) explicitly adopts the powers, remedies, and procedures set forth in sections 706 and 709 of title VII. Accordingly, the prohibitions on disclosure contained in sections 706 and 709 of title VII as outlined in paragraphs (b), (c), (d), and (e) of this section, apply with equal force to requests for information related to charges and executed statistical reporting forms filed with the Commission under the Americans with Disabilities Act.

(g) Requests for information relating to open case files covering alleged violations of the Equal Pay Act (29 U.S.C. 206(b)) or the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621

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et seq.) will ordinarily be denied under the seventh exemption of the Freedom of Information Act as investigatory records compiled for law enforcement purposes.

(h) The medical, financial, and personnel files of employees of the Commission are exempt from disclosure to the public.

[40 FR 8171, Feb. 26, 1975, as amended at 45 FR 40605, June 16, 1980; 56 FR 29579, June 28, 1991]

§ 1610.18 Information to be disclosed.

The Commission will provide the following information to the public:

(a) The Commission will make available for inspection and copying certain tabulations of aggregate industry, area, and other statistics derived from the Commission's reporting programs authorized by section 709(c) of title VII, provide that such tabulations: Were previously compiled by the Commission and are available in documentary form; comprise an aggregation of data from not less than three responding entities; and, do not reveal the identity of an individual or dominant entity in a particular industry or area;

(b) All blank forms used by the Commission;

(c) Subject to the restrictions and procedures set forth in §1610.19, all signed contracts, final bids on all signed contracts, and agreements between the Commission and State or local agencies charged with the administration of State or local fair employment practices laws;

(d) All final reports that do not contain statutorily confidential material in a recognizable form;

(e) All agency correspondence to members of the public, Members of Congress, or other persons not government employees or special government employees, except those containing information that would produce an invasion of privacy if made public;

(f) All administrative staff manuals and instructions to staff that affect members of the public unless the materials are promptly published and copies offered for sale; and

(g) All final votes of each Commissioner, for every Commission meeting, except for votes pertaining to filing

suit against respondents until such litigation is commenced.

[56 FR 29579, June 28, 1991, as amended at 63 FR 1342, Jan. 9, 1998]

§ 1610.19 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Commercial information provided to the Commission shall not be disclosed except in accordance with this section. For the purposes of this section, the following definitions apply:

(1) *Confidential commercial information* refers to records provided by a submitter containing information that is arguably exempt from disclosure under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* refers to any person or entity who provides confidential commercial information to the government. The term includes, but is not limited to, corporations, State governments, and foreign governments.

(b) *Notice to submitter.* Except as provided in paragraph (g) of this section, the Commission shall provide a submitter with explicit notice of a FOIA request for confidential commercial records whenever:

(1) The Commission reasonably believes that disclosure could cause substantial competitive harm to the submitter;

(2) The information was submitted prior to January 1, 1988, the records are less than 10 years old, and the submitter designated them as commercially sensitive; or

(3) The information was submitted after January 1, 1988, and the submitter previously, in good faith, designated the records as confidential commercial information. Such designations shall:

(i) Whenever possible, include a statement or certification from an officer or authorized representative of the company that the information is in fact confidential commercial information and has not been disclosed to the public; and

(ii) Expire ten years from the date of submission unless otherwise justified.

(c) *Notice to requester.* When notice is given to a submitter under this section, the requester shall be notified