

Federal Court Rejects Objections and Orders OFCCP to Disclose EEO-1 Reports

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Despite objections by thousands of employers and its own continuing review of records, the OFCCP has been ordered by a federal court to produce all EEO-1 Type 2 reports of federal prime contractors and first-tier subcontractors from 2016-2020 as requested by the Center for Investigative Reporting (“CIR”) through multiple FOIA submissions.

CIR filed litigation to enforce its FOIA request in December 2022 in the Northern District of California. On December 22, 2023, that court issued an order requiring OFCCP to produce the EEO-1 Type 2 reports, determining that the information included in the reports was not the type of “commercial” information protected from release under FOIA. Specifically, the court found that the reports were not exempt from disclosure under Exemption 4 of FOIA as the information in the reports is not “intrinsically valuable business information” and the headcounts in all industries and across broad job categories do not provide “commercial insight...specific to the operations of a federal contractor.” The court also rejected OFCCP’s assertion the data constituted trade secrets protected from disclosure and found no substantial risk of harm through the disclosure of competitive business secrets.

While the court initially required OFCCP to produce the EEO-1 Type 2 reports by January 19, 2024, the parties agreed to extend the deadline to February 20, to give OFCCP an opportunity to determine whether to appeal the decision. It is anticipated that an appeal of the decision will delay any required disclosure of the reports.

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