

DOL Appeals EEO-1 FOIA Ruling to Ninth Circuit Court of Appeals

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On February 15, 2024, the U.S. Department of Labor (DOL) filed a notice of appeal to the Ninth Circuit Court of Appeals, seeking review of a district court ruling that ordered the DOL to release federal contractors' 2016–2020 Type 2 Consolidated EEO-1 Reports to the Center for Investigative Reporting and one of its reporters.

Quick Hits

- On February 15, 2024, the DOL filed an appeal to the Ninth Circuit, contesting an order requiring the DOL to release contractors' 2016–2020 Type 2 Consolidated EEO-1 Reports.
- The DOL also requested a stay of a February 20, 2024, production deadline pending appeal. Accordingly, the DOL has not released the EEO-1 Type 2 Reports at issue.

The DOL filed its appeal after the U.S. District Court for the Northern District of California held that the contractors' [Type 2 Reports](#) were not [exempt from disclosure](#) under Exemption 4 of the Freedom of Information Act (FOIA) or the Trade Secrets Act. The [district court](#) had ordered the DOL to produce the reports by February 20, 2024. However, on February 15, 2024, the DOL filed a motion to stay the production deadline pending the appeal. On February 16, 2024, the district court temporarily stayed the production and gave the plaintiffs until February 23, 2024, to respond. In their opposition, the plaintiffs asked the court to deny the DOL's request or, in the alternative, to impose certain conditions, including a request for expedited proceedings in the Ninth Circuit.

In its motion to stay, the DOL asserted that the district court had not given an "ordinary or common" meaning to the term "commercial," as required by Ninth Circuit precedent. The DOL stated that the district court had also erred by "focus[ing] on the specific format and use of the EEO-1 report[s] rather than the inherent nature of the information" that the reports contained, and by "dismiss[ing] the argument that diversity data has inherent commercial significance." The DOL further pointed to a "considerable body of case law" that had reached the opposite conclusion. Finally, the DOL challenged the finding by the district court that FOIA Exemption 4 and the Trade Secrets Act were no longer coextensive.

It will likely be the summer of 2024, at the earliest, before the Ninth Circuit issues a ruling, unless there are expedited proceedings.

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