

Exemption 4 of the FOIA protects “trade secrets and commercial or financial information obtained from a person (that is) privileged or confidential.” This exemption is intended to protect the interests of both the government and submitters of information. The exemption also affords protection to those submitters who are required to furnish commercial or financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure. The exemption covers two broad categories of information in federal agency records: (1) trade secrets and (2) information which is (a) commercial or financial; (b) obtained from a person; and (c) privileged or confidential. DOE regulations require that we contact any firm submitting this type of information and give them the opportunity to identify proprietary financial or commercial information contained therein. Portage, Inc. has identified the redacted information as being proprietary information subject to withholding under Exemption 4.

The redacted information shown in the enclosure, if released, would likely cause substantial harm to the competitive and financial position of Portage, Inc. Release could allow a competitor to more easily predict how Portage, Inc. might bid in similar future solicitations and to adjust its future competitive bids accordingly. In addition, this type of information is held in the strictest confidence by Portage, Inc and is not customarily released to the general public.

DOE regulations provide that documents exempt from disclosure under the FOIA shall not be released unless the DOE determines that such disclosure is in the public interest. However, we do not make the usual public interest inquiry in Exemption 4 cases because disclosure of confidential or proprietary data under this exemption is prohibited under 18 U.S.C. Section 1905 of the Trade Secrets Act. In this case, because the redacted information falls under Exemption 4, we are prohibited by the Trade Secrets Act from considering whether it is nonetheless in the public interest to disclose the information.

Personal information, such as names of contractor employees, (not in the public domain) was withheld pursuant to Exemption 6 because its disclosure would constitute a clearly unwarranted invasion of personal privacy. The purpose of Exemption 6 is to protect “individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.” To determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy, any public interest in disclosure must be balanced against the privacy interest, which would be invaded by disclosure of the information. Release of this information pertaining to the Portage, Inc., employees may cause harassment and unwarranted solicitation. Also, release of this information would not shed light on the operations of the federal government as Portage, Inc., is not a government agency, but a private entity under contract which provides a variety of important, and sometimes vital, goods and services to the federal government. Since its release will not reveal anything of significance to the public, the interest in protecting against the invasion of privacy which would result to the individuals in question, far outweighs the public interest in such disclosure.