U.S. Department of War
Office of Strategic Capital

Treatment of Confidential Information

Confidential business information shared with the Office of Strategic Capital (OSC) is protected by Federal laws, regulations, and Department of War (DoW) policies. OSC understands the importance of protecting business-sensitive information shared by applicants, potential applicants, borrowers, and others who submit information to OSC (collectively, "Submitters"). OSC complies with the Federal laws and regulations that protect this information and has adopted strict policies to ensure that confidential business information remains private and secure.

OSC often receives requests to sign non-disclosure agreements (NDAs) with Submitters. As a matter of policy, OSC does not enter into NDAs apart from those prepared by OSC counsel. Rather, all Federal employees at OSC are bound by the Trade Secrets Act (18 U.S.C. § 1905). The Trade Secrets Act makes Federal employees criminally liable for the unauthorized disclosure of business-sensitive information outside of the Federal Government. Under the Trade Secrets Act, Federal employees are barred from engaging in the unauthorized disclosure of "information [that] 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." Violations of the Trade Secrets Act may result in the loss of employment, fines, and imprisonment.

In addition to this criminal statute, OSC complies with its own strict information security and access policy, which limits the distribution of confidential business information to only those Federal employees, contractors and advisors whom OSC determines have a need to know such information. Therefore, even within OSC, DoW, and the broader Federal Government, access to confidential business information is restricted from wider distribution, except where disclosure is required by law.

As a Federal agency, DoW and OSC must comply with requests made pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the DoW FOIA Program regulations (32 CFR Part 286). Under FOIA, Federal agencies are required to disclose agency records requested by a member of the public, including information received from outside parties, unless FOIA specifically exempts the information from disclosure. FOIA Exemption 4 (5 U.S.C. § 552(b)(4)) exempts trade secrets and commercial or financial information obtained from a person that is privileged or confidential. **Consistent with the Supreme Court's ruling in *Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427 (2019), OSC hereby provides an express assurance of privacy to all Submitters: commercial or financial information submitted to OSC that is both customarily and actually treated as private by the Submitter will be received and maintained in confidence by OSC and will not be publicly disclosed, except as otherwise required by law.**

Upon receipt of a FOIA request for materials submitted by a Submitter, OSC and the appropriate DoW FOIA Requester Service Center will review the requested materials to determine whether they are exempt from disclosure. Whenever DoW determines that it may be required to disclose records containing information designated by the Submitter as confidential (or that DoW has reason to believe may be protected, DoW will provide the Submitter with written predisclosure notice pursuant to 32 CFR § 286.10(c) and afford the Submitter a reasonable time period to submit a detailed written statement specifying all grounds for withholding the information, including why the information is customarily and actually treated as private and what foreseeable harm would result from disclosure. Pursuant to 32 CFR § 286.10(e)(3), a Submitter who fails to respond within the specified time period shall be considered to have no objection to disclosure, and any written statement provided by the Submitter may itself be subject to disclosure under the FOIA (accordingly,

Submitters should appropriately mark any confidential commercial or financial information contained within their written objection statement). Please note that the final administrative decision with respect to the disclosure or redaction of the materials resides with the designated DoW Initial Denial Authority (IDA); however, if DoW decides to disclose information over the objection of a Submitter, it will provide advance written notice of intent to disclose, including a specified disclosure date, in accordance with 32 CFR § 286.10(g), and will promptly notify the Submitter whenever a requester files a lawsuit seeking to compel the disclosure of such information pursuant to 32 CFR § 286.10(h).

To facilitate the process of identifying and protecting confidential information exempt from disclosure under FOIA, and as required by 32 CFR § 286.10(b), Submitters should use good faith efforts to designate by appropriate markings, at the time of submission, any portion of their submission that they consider to be protected from disclosure under Exemption 4. Pursuant to 32 CFR § 286.10(b), these designations expire 10 years after the date of submission unless the Submitter requests and provides justification for a longer designation period (for example, to correspond with the tenor of a requested loan or loan guarantee). Submitters are advised to mark every page that contains confidential information as follows:

> *May contain trade secrets or commercial or financial information customarily and actually treated as private by the submitter that is privileged or confidential and exempt from public disclosure under 5 U.S.C. § 552(b)(4).*

Further, Submitters are advised to mark the first or cover page of each document or individual file, as applicable, as follows:

> *Notice of Restriction on Disclosure and Use of Data*
>
> *Pages [ ] of this document may contain trade secrets or commercial or financial information that is customarily and actually treated as private by the submitter, is provided to the Office of Strategic Capital (OSC) under an express assurance of privacy, and is privileged or confidential and exempt from public disclosure under 5 U.S.C. § 552(b)(4). Such information shall be used or disclosed only for evaluation or administration purposes, in accordance with a financial assistance or loan agreement between the submitter and the Government, or as otherwise required by law. Information that is not appropriately marked may be subject to disclosure unless otherwise protected under applicable law.*

Finally, pages that clearly do not contain trade secrets or commercial or financial information should be left unmarked. The failure to mark or separately identify any information as confidential shall not, by itself, preclude the application of any exemption from disclosure under FOIA or other applicable law.

OSC takes very seriously the confidentiality of all Submitters and will endeavor to protect it to the fullest extent required by Federal law. If you have any further questions or concerns, a meeting or conference call with OSC Legal may be arranged. All communications regarding this notice should be directed to OSDRE-osc-legal@groups.mail.mil. This notice is effective as of November 24, 2026.

* * * * *