

SAMPLE LETTER A PLUS INQUIRY IF BUSINESS WANTS TO ASSERT A CBI CLAIM AND QUESTION ABOUT EMISSION/EFFLUENT DATA

REQUEST FOR SUBSTANTIATION FROM AN AFFECTED BUSINESS IN RESPONSE TO A REQUEST UNDER THE FREEDOM OF INFORMATION ACT PLUS INQUIRY IF BUSINESS WANTS TO ASSERT A CBI CLAIM AND QUESTION ABOUT EMISSION/EFFLUENT DATA

(date stamp)

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BY CERTIFIED U.S. MAIL; RETURN RECEIPT REQUESTED

(Name, title, and address of the [designated] representative of the affected business)

Re: Freedom of Information Act (AFOIA@) Request XX-RIN-XXXXX-XX

Dear (Addressee):

The U.S. Environmental Protection Agency (AEPA@ or AAgency@) has received a request under the FOIA for certain records that you submitted to EPA pertaining to **[description of the information that is the subject of the advance or final confidentiality determination]**. You have claimed ~~(all or part)~~ of this information as confidential business information (ACBI@). In accordance with applicable EPA regulations (40 C.F.R. Part 2, Subpart B), the request has been initially denied to afford you an opportunity to substantiate your claim before a(n) ~~(advance or final)~~ confidentiality determination is made. In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, EPA has determined that you might be expected to assert a claim that some or all of the information you submitted to EPA is confidential business information (ACBI@). Under the EPA regulations, the FOIA request has been initially denied to afford you an opportunity to claim this information as CBI.

If you make a CBI claim, you must substantiate your claim as described below. This letter is to notify you that the EPA (appropriate legal office) will be making a(n) (advance or final) confidentiality determination concerning this information. If you feel that some or all of the above information is entitled to confidential treatment, please specify which portions of the information you consider confidential. Please be specific by page, paragraph, and sentence when identifying the information subject to your claim. Any information not specifically identified as subject to a confidentiality claim will be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to your claim, please answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as

confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If the business asserts that the information is voluntarily submitted information, whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.
8. Any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

Please note that you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response **ACONFIDENTIAL@** or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.

Your comments must be postmarked or hand delivered to this office, or e-mailed to (e-mail address), by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information.

Should you have any questions concerning this matter, please call me at (telephone number).

Sincerely,

(Signature and Title and Office Name and Address)