

Approved OMB 2020-0003  
Approval expires 01/31/2014

**REQUEST FOR SUBSTANTIATION FROM AN AFFECTED BUSINESS IN RESPONSE  
TO A REQUEST UNDER THE FREEDOM OF INFORMATION ACT**

**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 (FOIA) Request XX-FOI-XXXXX-XX

Dear (Addressee):

The U.S. Environmental Protection Agency ("EPA" or "Agency") has received a request under the FOIA for certain records [**if submitted by the business whose information it is:** that you submitted to the EPA] [**if submitted by an entity other than the business whose information it is:** in EPA's possession] pertaining to [**description of the information that is the subject of the advance or final confidentiality determination**]. [**If information has been claimed as CBI:** You have claimed (all or part) of this information as confidential business information ("CBI").] [**If no claim has been made:** In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [**if submitted by the business whose information it is:** the information you submitted to the EPA] [**if submitted by an entity other than the business whose information it is:** this information in EPA's possession] is confidential business information ("CBI").] Under the EPA regulations, 40 C.F.R. Part 2, Subpart B, the FOIA request has been initially denied to afford you an opportunity to provide comments to [**If no claim has been made:** claim this information as CBI and] substantiate your claim(s) 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 the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings above with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a

page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter will be disclosed to the requestor without further notice to you. Please note that if a page, document, group or class of documents claimed by you to be CBI contains a significant amount of information which (appropriate legal office) determines is not CBI, your CBI claim regarding that page, document, group or class of documents may be denied.

For each item or class of information that you continue to claim as CBI, please answer the following questions, giving as much detail as possible. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to meet the requirements listed above so as to be entitled to confidential treatment:

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 the 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 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? If so, specify which.
5. 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?
6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
7. For each item or 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?
8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

9. Whether you assert t the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.
10. If you believe any information to be (a) trade secret (s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret (s).
11. Explain 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).

[For contract-related CBI: Enclosed is the EPA Class Determination 1-95 entitled, *Confidentiality of Certain Business Information Submitted by Contractors and Prospective Contractors*, which addresses the treatment of different types of information related to contracts. You may consider reviewing Class Determination 1-95 as you develop your response.]

Please note that you bear the burden of substantiating your confidentiality claim(s). Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

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 without the consent from the FOIA requester. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the 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 provided in your response as confidential, it may be made available to the public without further notice to you.

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

Sincerely,

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(Signature and Title and Office Name and Address)

[Enclosure]

SAMPLE LETTER B  
Generic Substantiation

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

Re: \_\_\_\_\_

Dear (Addressee):

The U.S. Environmental Protection Agency (“EPA” or “Agency” is seeking to determine the entitlement to confidentiality of [description of the information that is the subject of the advance or final confidentiality determination] [if submitted by the business whose information it is: that you submitted to the EPA] [if submitted by an entity other than the business whose information it is: in EPA’s possession.] [If information has been claimed as CBI: You have claimed (all or part) of this information as confidential business information (“CBI”).] [If no claim has been made: In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [if submitted by the business whose information it is: the information you submitted to the EPA] [if submitted by an entity other than the business whose information it is: this information in EPA’s possession] is confidential business information (“CBI”).]

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

Sincerely,

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(Signature and Title and Office Name and Address)

[Enclosure]