



1

---

---

---

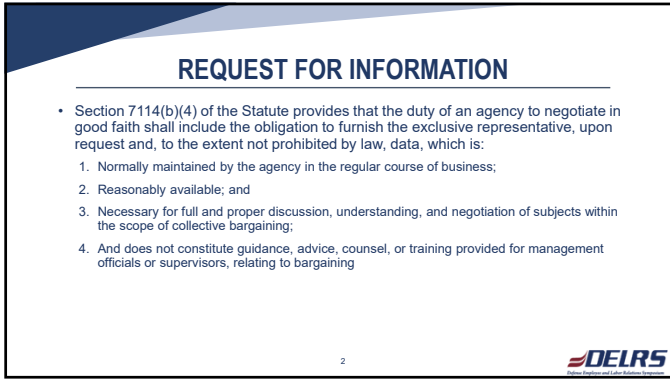
---

---

---

---

---



2

---

---

---

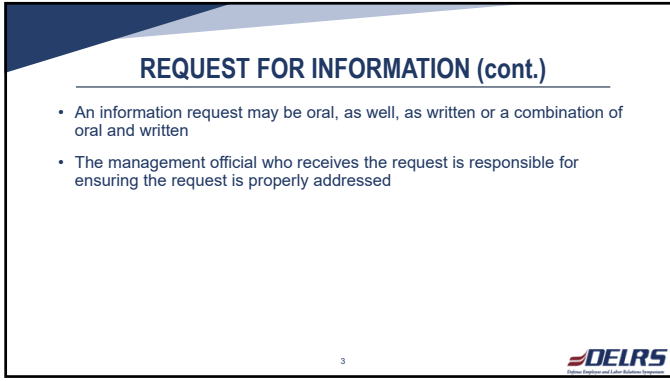
---

---

---

---

---



3

---

---

---

---

---

---


---

---

**NORMALLY MAINTAINED**

---

- Data is normally maintained if the agency:
  - Possesses and maintains the data;
  - In the regular course of business; and
  - Has the information within its control



4

---

---

---

---

---

---


---

---

**REASONABLY AVAILABLE**

---

- Data is not "reasonably available" if it is only available through extreme or excessive means
  - *Fed. Bureau of Prisons, Wash., D.C.*, 55 FLRA 1250 (2000)
  - *Dep't of HHS, SSA*, 36 FLRA 943 (1990).
- Data must exist and an Agency is not required to create data
- However, agency may be required to create documents from existing data (e.g., from computer database
  - *Dep't of the Air Force, Hdqts., Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 28 FLRA 306 (1987), rev'd on other grounds, FLRA v. Dep't of the Air Force, No. 87-1387 (D.C. Cir. Aug. 9, 1990).



5

---

---

---

---

---

---


---

---

**NECESSARY**

---

- Necessary for full and proper discussion, understanding, and negotiation of collective bargaining subjects.
  - *IRS, Wash., D.C. & IRS, Kan. City Serv. Ctr., Kan. City, Mo.*, 50 FLRA 661 (1995)
- All aspects of the union's "representational responsibilities" under the Statute to include:
  - Contract Administration
  - Processing a grievance
  - Representing an employee in response to proposed discipline
  - Determining whether to file a grievance or a ULP



6

---

---

---

---

---

---

---

---

**NECESSARY (cont.)**

---

- In addition, representational duties can include:
  - Monitor the employer's compliance with the contract
  - Investigate whether a grievance exists
  - Prepare for a grievance meeting
  - Decide whether to drop or prioritize a grievance
  - Prepare for an arbitration hearing

 Division of Employee and Labor Relations Services

7

---

---

---

---

---

---


---

---

**PARTICULARIZED NEED**

---

- To determine if requested data is "necessary," the Authority uses the "particularized need" standard
- A union satisfies the particularized need standard by: Articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the Statute
- See *IRS, Wash., D.C. & IRS, Kan. City Serv. Ctr., Kan. City, Mo.*, 50 FLRA 661 (1995).

 Division of Employee and Labor Relations Services

8

---

---

---

---

---

---


---

---

**PARTICULARIZED NEED**

---

- The Union must state, with specificity:
  - Why it needs the data;
  - How it will use the data; and
  - How the data's use relates to the union's representational responsibilities under the Statute
- See *U.S. Customs Serv., S. Cent. Region, New Orleans District, New Orleans, La.*, 53 FLRA 789 (1997); *Dep't of HHS, SSA, N.Y. Region, N.Y., N.Y.*, 52 FLRA 1133 (1997); *U.S. DOL, Wash., D.C.*, 51 FLRA 462 (1995)
- Conclusory statements or bare assertions that data is relevant are not sufficient
- Explanation must be sufficient to enable agency to make reasoned judgment whether the data must be disclosed
  - *IRS, Wash., D.C. & IRS, Kan. City Serv. Ctr., Kan. City, Mo.*, 50 FLRA 661 (1995)

 Division of Employee and Labor Relations Services

9

---

---

---

---

---

---

---


---

### SCOPE OF REQUEST

---

**Scope of Request:**

- The Union may be required to specify:
  - Type of data requested;
  - Time period (e.g., weeks, months, years) for which the data is requested;
  - Organizational area (e.g., department, region, office) for which the data is requested
- *U.S. Customs Serv., S. Cent. Region, New Orleans Dist., New Orleans, La., 53 FLRA 789 (1997).*

 10

10

---

---

---

---

---

---


---

---

### AGENCY RESPONSE

---

- Agency must:
  - Respond to information request
    - *SSA, Balt., Md. & SSA, Office of Hearings & Appeals, Kan. City, Mo., 60 FLRA 674 (2005)*
  - Inform union if requested information does not exist
    - *SSA, Dallas Reg. Dallas, Tex., 51 FLRA 1219 (1996)*
  - Articulate any countervailing non-disclosure interests
    - *DOJ, Fed. Bureau of Prisons, FCI, Forrest City, Ark., 57 FLRA 808 (2002)*

 11

11

---

---

---

---

---

---


---

---

### AGENCY RESPONSE (cont.)

---

- While the Union may attempt to set a deadline for the receipt of the information requested, the Agency is only required to provide the information within a reasonable amount of time as determined by the size and intricacy of the information being requested
- Updates should be provided to the union on the progress of fulfilling the information request, especially if the request will take more than 30 days to complete

 12

12

---

---

---

---

---


---

---

---

**PRIVACY ACT**

- Information is not releasable if the release would violate the Privacy Act. However, documents may be sanitized to permit disclosure.
  - U.S. DOJ, *Fed. Bureau of Prisons, Fed. Detention Ctr., Houston, Tex.*, 60 FLRA 91 (2004); U.S. *Dep't of VA, VA Med. Ctr., Dallas, Tex.*, 51 FLRA 945 (1996).



13

---

---

---

---

---


---

---

---

**PRIVACY ACT (cont.)**

- One of the exceptions to the Privacy Act is the Freedom of Information Act (FOIA). If the information is subject to disclosure under FOIA, the Privacy Act does not prohibit its release. However, exemption 6 of FOIA protects personal, medical and similar information from being disclosed, if their disclosure would constitute a clear unwarranted invasion of personal privacy
- The Agency must demonstrate:
  - The information sought is contained in a system of records within the meaning of the Privacy Act;
  - The disclosure would affect employee privacy interests; and
  - The nature and significance of those privacy interests



14

---

---

---

---

---


---

---

---

**PRIVACY ACT (cont.)**

- If the Agency makes these showings, the burden shifts to the union to:
  - Identify a public interest recognized under FOIA. The definition of a public interest under FOIA does not include collective bargaining under the Statute. FOIA requires the public interest to be informative to public citizens as to the mismanagement of the Agency
  - Demonstrate how the disclosure will serve that public interest
  - Once the parties have made their respective showings under the Privacy Act, the Authority will balance the privacy interests that may argue against disclosure against the public interest that favors disclosure. If the privacy interests outweigh the public interest, the Authority will find that disclosure is prohibited by the Privacy Act. If the Authority finds that the public interest outweighs the privacy interests, then disclosure is not barred by the Privacy Act



15

---

---

---

---

---

---

---

---



16

---

---

---

---

---

---

---

---



17

---

---

---

---

---

---

---

---