

abstract: Primary: Individuals or Households. The collection of information is mandated by law for a petitioning relative to submit an affidavit on their relative's behalf. The executed form creates a contract between the sponsor and any entity that provides means-tested public benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: 539,500 principal I-864 responses at 3.8 hours per response and 195,000 dependent I-864 responses at .08 hours per response; and 215,800 I-864A responses at 1.75 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection(s)*: 2,443,350 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: April 10, 2001.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

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LEGAL SERVICES CORPORATION

Freedom of Information Policy—Grant Application Materials and Exemption 4

AGENCY: Legal Services Corporation.

ACTION: Notice of policy change.

SUMMARY: The Legal Services Corporation (LSC) is subject to the Freedom of Information Act (FOIA). Under FOIA and LSC regulations, a requested record may be withheld from disclosure if, inter alia, the record

contains trade secrets or commercial or financial information obtained from a person and is privileged or confidential. In the past, LSC policy has been to routinely withhold application materials submitted to LSC as part of the competitive bidding process from public disclosure pursuant to this exemption. For the reasons set forth below, LSC has decided that documents submitted by applicants as part of grant applications (the Proposal Narrative (Parts 1 & 2) on original grant applications and the Application Narrative (Parts A & B) for grant renewal applications) are generally not entitled to protection from disclosure in response to FOIA requests after grants have been awarded for a given application period.

DATES: Written comments must be received on or before May 17, 2001.

ADDRESSES: Written comments may be submitted by mail, fax or email to Dawn M. Browning at the addresses listed below.

FOR FURTHER INFORMATION CONTACT:

Dawn M. Browning, Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250; 202/336-8871 (phone); 202/336-8952 (fax); dbrowning@lsc.gov.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) is not a "department, agency, or instrumentality of the Federal Government." 42 U.S.C. 2996(d). LSC is, however, by the terms of its organic legislation, subject to the Freedom of Information Act (FOIA). Id. LSC has issued regulations¹ governing its basic FOIA procedures. See 45 CFR part 1602.

Under FOIA and LSC regulations, a requested record may be withheld from disclosure if, inter alia, the record contains trade secrets or commercial or financial information obtained from a person and is privileged or confidential. See 5 U.S.C. 552(b)(4); 45 C.F.R. 1602.9(a)(3). In the past, LSC policy has been to routinely withhold grant application materials submitted in connection with the competitive bidding process pursuant to this exemption. For the reasons set forth below, LSC has decided that documents

submitted by applicants as part of grant applications (the Proposal Narrative (Parts 1 & 2) on original grant applications and the Application Narrative (Parts A & B) for grant renewal applications) is generally not entitled to protection from disclosure in response to FOIA requests after grants have been awarded for a given application period. LSC will continue to review each request for this information on a case by case basis to ascertain whether there is anything extraordinary in a given narrative which merits withholding and will continue to provide persons and organizations whose applications have been requested opportunity to seek protection from disclosure some or all of the documents requested upon an individualized showing of competitive harm. However, LSC's general policy will be to release this information.

It should be noted that, since this policy change is not a "rule, regulation, guideline or instruction," LSC is not required by law to publish this policy notice or seek public comment. LSC is choosing to publish this interpretive policy statement in the **Federal Register** (and has also posted it on the LSC website at <http://www.lsc.gov>) in furtherance of LSC's interest in and policy of conducting its business in a fair and open manner. LSC invites interested parties to submit written comments on this matter.

Exemption 4 of FOIA is codified at 5 U.S.C. 552(b)(4) and provides that the requirement for disclosure of most public documents "does not apply to matters that are * * * trade secrets and commercial or financial information obtained from a person and privileged or confidential." According to FOIA case law, documents submitted to LSC for competitive bidding qualify as "commercial or financial information obtained from a person."² With that threshold met, the relevant analysis upon receipt of a request for competitive grant application documents is whether

² The Court of Appeals for D.C. has held that "commercial" and "financial" should be given their "ordinary meanings." *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983) (citing *Washington Post Co. v. HHS*, 690 F.2d 252, 266 (D.C. Cir. 1982)). Examples of documents which have been accepted as "commercial or financial information" include business sales statistics; research data; technical designs; customer and supplier lists; profit and loss data; overhead and operating costs; and information on financial conditions. See *Landfair v. United States Dep't of the Army*, 645 F. Supp. 325, 327 (D.D.C. 1986). The term "person" has been interpreted to include a wide range of entities, including private organizations such as grantees. See e.g. *Nadler v. FDIC*, 92 F.3d 93, 95 (2d Cir. 1996) (term "person" includes "an individual, partnership, corporation, association, or public or private organization other than an agency.")

¹ LSC is authorized by Congress to issue regulations as necessary to carry out its mission. See 42 U.S.C. 2996(e). Since LSC is not a Federal agency, however, LSC is not subject to the requirements of the Administrative Procedures Act, which governs the rulemaking activities of Federal agencies. Rather, LSC is required to "afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the **Federal Register** at least 30 days prior to their effective date all its rules, regulations, guidelines and instructions." 42 U.S.C. 2999(g).

the information sought is "privileged or confidential."

In evaluating Exemption 4 cases, the D.C. Circuit Court has established two tests for determining whether documents are "privileged or confidential," identifying one test as applicable to documents which are submitted to the relevant agency pursuant to a requirement, and another test for documents which are voluntarily submitted to the relevant agency.³ Although "required information" and "voluntary information" were never explicitly defined in the cases which articulated these tests, the Department of Justice (DOJ) has concluded that a submitter's voluntary participation in an activity—such as seeking a government contract or applying for a grant or loan—does not govern whether any submission made in connection with that activity is "voluntary." DOJ has recommended that in examining the nature of a submitter's participation in an activity, agencies should focus on whether submission of the relevant information was required of those who chose to participate.

Pursuant to the DOJ guidelines and other federal case law, including federal case law from the District of Columbia,⁴ it is clear that the information submitted to LSC by applicants for competitive LSC grants would be considered "required" information, because recipients' receipt of grants is contingent upon the provision of the relevant information to LSC. Consequently, a determination of whether this information is "privileged or confidential" would involve the analysis for "required information" which was first articulated in the case of *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), and reiterated in the case of *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992). According to this test, "commercial or financial matter is 'confidential' for purposes of

Exemption 4 if disclosure of the information is likely to have either of the following effects: (1) To impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive process."

Because of the large amount of money LSC distributes and the substantial reliance of many programs on LSC funds for continuation, it is unlikely that the release of the narratives of applicants in response to FOIA requests will impair LSC's ability to receive applications in the future.⁵ Therefore, the next step of the analysis is whether the release of this information would "cause substantial harm to the competitive process."

In the case of *National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673 (1973), the U.S. Court of Appeals for the D.C. Circuit articulated general examples of situations that might constitute "substantial competitive harm." One such example would be a situation in which information disclosed pursuant to FOIA would be useful to a competitor in devising means to improve its competitive position at the expense of the business whose information was being released.⁶ The court noted that in this circumstance, such disclosure would reveal that business' secrets without providing it with similar access to the books and records of its competitor.⁷ "This competitive disadvantage is fundamentally unfair and would be likely to cause harm to the [business'] basic position."⁸ The court went on to state that:

The likelihood of substantial harm to [the applicants'] competitive positions * * * [is] virtually axiomatic * * * [where] disclosure would provide competitors with valuable insights into the operational strengths and weaknesses of [an applicant], while the [competitors] could continue in the

customary manner of 'playing their cards close to their chest.'⁹ Because LSC only intends to release information provided in the narrative of the applications after grants have been awarded for a given application period, LSC does not believe the release will cause "substantial competitive harm" to applicants as defined above in most cases.

Although federal courts have identified the disclosure of various types of documents to constitute "substantial competitive harm," the LSC application narratives which LSC proposes to release do not reach the level of detail and specificity of the kinds of documents for which release has been held to constitute this harm. The documents which have been identified by courts as properly cognizable under the competitive harm prong of the *National Parks* test include: detailed financial information such as an organization's assets, liabilities, and net worth; a company's actual costs, break-even calculations, profits and profit rates; data describing an organization's workforce which would reveal labor expenses, profit margins and competitive vulnerability; a company's selling prices, purchase activity and freight charges; a company's purchase records, including prices paid for advertising; technical and commercial data; information constituting the 'bread and butter' of a manufacturing company; currently unannounced and future products, proprietary technical information, pricing strategy and subcontractor information; raw research data used to support a pharmaceutical drug's safety and effectiveness information regarding an unapproved application to market the drug in a different manner, and sales and distribution data of a drug manufacturer; and technical proposals which are submitted, or could be used, in conjunction with offers on government contracts.¹⁰

Based on the foregoing analysis, LSC no longer considers it appropriate under FOIA to routinely withhold the information contained in the Proposal Narrative or Application Narrative of LSC competitive grant applications once the grant decisions for a given application period have been made. While, as noted above, LSC will continue to review each request for such documents on a case by case basis and will continue to provide persons and organizations whose applications have

³ See *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (articulating test which is now applied to documents submitted pursuant to a requirement), and *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (creating new test to be applied to documents submitted voluntarily).

⁴ See, e.g., *Martin Marietta Corp. v. Dalton*, 974 F. Supp. 37, 39 (D.D.C. 1997); *McDonnell Douglas Corp. v. NASA*, 981 F. Supp. 12, 15 (D.D.C. 1997); *McDonnell Douglas Corp. v. NASA*, 895 F. Supp. 319, 325–26 (D.D.C. 1995); *Chemical Waste Management Inc. v. Leary*, 1995 WL 115894 (D.D.C. Feb. 28, 1995); *TRIFID Corp. v. National Imagery & Mapping Agency*, 10 F. Supp. 2d 1087, 1098–1101 (E.D. Mo. 1998); and *Source One Management v. U.S. Dept. of Interior*, No. 92–Z–2101, transcript at 6 (D. Colo. Nov. 10, 1993) (all holding that information submitted in application for government contract was "required" information).

⁵ Courts have generally given substantial deference to agency determinations about whether such disclosures would impair the relevant agency's ability to receive applications in the future, noting that (1) agencies have an incentive not to release information which will impair their ability to receive future applications, and (2) government contracting involves millions of dollars and the release of application information is unlikely to dissuade all potential applicants. See e.g., *Martin Marietta Corp. v. Dalton*, 974 F. Supp. 37, 39–40 (D.D.C. 1997); *McDonnell Douglas Corp. v. NASA*, 981 F. Supp. 12, 15 (1997); *C.C. Distributors v. Kinzinger*, 1995 WL 405445, *4 (D.D.C. 1995); *McDonnell Douglas Corp. v. NASA*, 895 F. Supp. 319 (1995); and *Racal-Milgo Gov't Systems, Inc. v. Small Business Admin.*, 559 F. Supp. 4, 6 (D.D.C. 1981).

⁶ *National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 678, note 18 (1973).

⁷ Id.

⁸ Id.

⁹ Id. at page 684.

¹⁰ Freedom of Information Act Guide & Privacy Act Overview, U.S. Department of Justice Office of Information and Privacy, May 2000 Edition, pages 208–09.

been requested the opportunity to seek protection from disclosure some or all of the the documents requested, LSC anticipates that it will release this information in most cases.

Interested persons are invited to comment on this matter. LSC reserves the right to further amend this policy in the future, as appropriate.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 01-9425 Filed 4-16-01; 8:45 am]

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LIBRARY OF CONGRESS

Notice: Competition/Russian Leadership Program Alumni Activities

Authority: Sec. 1(a)(2), Pub. L. 106-554, 114 Stat. 2763, 2763A-119-120 (22 U.S.C. 2542a note, 2 U.S.C. 1151).

SUMMARY: The Russian Leadership Program (RLP) at the Library of Congress was authorized by Public Law 106-31; Public Law 106-113; Public Law 106-554 to foster a mutual exchange of ideas and opinions among political leaders and citizens of Russia and the United States. A description of RLP Program can be found at <http://www.loc.gov/rlp>. The Russian Leadership Program (RLP) currently has over 3,600 alumni in 88 of the 89 regions of Russia. In an effort to promote development of local and regional networks of RLP participants, the Program sponsored 10 regional alumni conferences in 2000. The conferences were held in Moscow, St Petersburg, Ekaterinburg, Novosibirsk, Tomsk, Ulan Ude, Rostov-on-the Don, Samara, Nizhny Novgorod, and Vladivostok. The RLP is considering continuing and expanding alumni activities through the development of electronic communications and the identification of alumni training needs, sources of regional network building and discrete projects which benefit from partnerships with American organizations active in the region. The Library of Congress is seeking interested participants to identify these needs and relevant community-building projects and develop network-building activities.

DATES: Responses must be received by May 1, 2001.

ADDRESSES: The Library of Congress, Contracts & Logistics Service, COTR: Morgan Day, C&L, 101 Independence Avenue, SE., Washington, DC 20540-9410.

FOR FURTHER INFORMATION CONTACT:

Ruth Nelson of Contracts and Logistics, Library of Congress, Washington, DC

20540-9410. Email address: rune@loc.gov.

SUPPLEMENTARY INFORMATION:

Respondents should have broad experience in the Russian Federation, and be knowledgeable about its institutions, language, and culture. Respondents should have experience with programs in the regions of Russia and demonstrate a familiarity with existing American and internationally-sponsored regional activities. The funding made available by the Library would cover travel, per diem, support of regionally-based offices, and program materials. Respondents may be asked to work collaboratively with a third party in addition to the Library to fulfill RLP Alumni program. This Request for Information (RFI) shall close to response 14 days after publication. Interested parties should send written expressions of interest to Ruth Nelson at rune@loc.gov. The written expression of interest should address capabilities, experience, and language expertise of current staff, etc. as outlined above. Submissions should be limited to 6 pages. The Library shall entertain expressions of interest reflecting individual or collaborative approaches. The intent of this sources sought synopsis is to determine if any sources exist, therefore, no solicitation is available. Consequently, any responses failing to provide the aforementioned data but instead is submitted as a routine letter requesting a copy of the solicitation will be ignored. Written responses must be submitted to the Contracting Officer by the deadline at the address shown above. Reference: RFI-011.

Dated: April 4, 2001.

James H. Billington,

The Librarian of Congress.

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LIBRARY OF CONGRESS

Notice: Competition/Russian Leadership Program 2001

Authority: Sec. 1(a)(2), Pub. L. 106-554, 114 Stat. 2763, 2763A-119-120 (22 U.S.C. 2542a note, 2 U.S.C. 1151).

SUMMARY: The Russian Leadership Program (RLP) at the Library of Congress was authorized by Public Law 106-31; Public Law 106-113; Public Law 106-554 to foster a mutual exchange of ideas and opinions among political leaders and citizens of Russia and the United States. A description of RLP Program can be found at <http://www.loc.gov/rlp>. The RLP is considering continuing its

U.S. Congress/Russian Parliamentary exchange program for 2001 and expanding exchanges to include members of the Russian Judiciary. The Library is seeking to identify interested participants to develop hosting arrangements and programmatic support for exchanges in the following areas: rule of law, education, environmental issues, agriculture/land reform, public health policy, federalism, tax/budget, and other major policy issues of mutual concern to the U.S. and the Russian Federation. The Library anticipates between 6 and 12 delegations composed of approximately 8-10 individuals from the highest levels of the Russian government and regions.

DATES: Responses must be received by May 1, 2001.

ADDRESSES: The Library of Congress, Contracts & Logistics Service, COTR: Morgan Day, C&L, 101 Independence Avenue, SE., Washington, DC 20540-9410.

FOR FURTHER INFORMATION CONTACT:

Ruth Nelson of Contracts and Logistics, Library of Congress, Washington, DC 20540-9410. Email address: rune@loc.gov.

SUPPLEMENTARY INFORMATION:

Respondents should have broad experience with the Russian Federation, and be knowledgeable about its institutions, language, and culture. Respondents should have experience planning and hosting high level officials with demonstrated expertise in two or more of the above subject areas and demonstrated ability to arrange and secure appropriate meetings at federal and state levels. The funding made available by the Library would cover travel, per diem, interpretation, preparation and translation of program materials. Respondents may be asked to work collaboratively with a third party in addition to the Library to execute the exchange. The Library does not anticipate any need for coordination in Russia for purposes of the exchange. This Request for Information (RFI) shall close to response 14 days after publication. Interested parties should send written expressions of interest to Ruth Nelson at rune@loc.gov. The written expression of interest should address capabilities, experience, and language expertise of current staff, etc. as outlined above. Submissions should be limited to 6 pages. The Library shall entertain expressions of interest reflecting individual or collaborative approaches. The intent of this sources sought synopsis is to determine if any sources exist, therefore, no solicitation is available. Consequently, any