

**DATES:** This Final Rule is effective March 17, 2003.

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**SUPPLEMENTARY INFORMATION:** LSC is subject to the Freedom of Information Act (FOIA) by the terms of the Legal Services Corporation Act. 42 U.S.C. 2996d(g).<sup>1</sup> LSC has implemented FOIA by adopting regulations which contain the rules and procedures the Corporation follows in making agency records available to the public under FOIA. As part of an overall review of LSC's regulations, LSC determined that a variety of amendments to LSC's FOIA regulation are in order and Part 1602 was assigned a high priority for rulemaking. In light of the above, at the August 24, 2002, meeting of the Board of Directors, the Board identified Part 1602 as an appropriate subject for rulemaking and LSC subsequently announced that it was initiating a Notice and Comment rulemaking to consider revisions to its FOIA regulations. Subsequently, LSC published a Notice of Proposed Rulemaking (NPRM) on November 18, 2002 (67 FR 69498).

LSC received seven comments on the NPRM, all of which generally supported the proposed revisions. Upon receipt of the comments, LSC drafted a Final Rule for the consideration of the Operations and Regulations Committee of the Board of Directors. This Final Rule was adopted by the Board of Directors at its meeting of February 1, 2003.

#### Submitter's Rights Process

Pursuant to current LSC practice, if a request is received for the grant application records of a current or prospective recipient, LSC provides that applicant with an opportunity to request that some or all of the records requested be withheld from disclosure prior to LSC sending its response to the requester. This practice, which is consistent with current FOIA law, is not described or discussed in the regulations. The submitter's rights process affords important rights to grant applicants and also impacts requesters who have to wait until the submitter's rights process has been completed to obtain releasable records subject to this process. LSC believes that it is

important, therefore, for this process to be explicitly set forth in Part 1602. Accordingly, LSC proposed to add a new section 1602.14, Submitter's rights process, to formally incorporate the Corporation's current practice into the regulations.

At the outset, LSC notes that its submitter's rights process is based on the submitter's rights process outlined in Federal Executive Order No. 12,600 (June 23, 1987). E.O. 12,600 required Federal agencies to "establish procedures to notify submitters of records containing confidential information [information arguably subject to FOIA Exemption 4] \* \* \* when those records are requested under the Freedom of Information Act \* \* \*." (Emphasis added) Although LSC is not a Federal agency, and, therefore, not subject to E.O. 12,600, LSC chose to develop a policy consistent with the Order. LSC believes that grant application records are the only records likely to contain "confidential information," the release of which could cause competitive harm. Thus, the current submitter's rights process is only invoked in relation to requests for grant application information, but not other records submitted by recipients. LSC proposed to keep the process limited to requests for grant application materials, but specifically invited comment on whether there are other records submitted by recipients which would likely be subject to withholding under Exemption 4.

LSC received five comments specifically addressing this issue. Two of the five comments supported the proposed submitter's rights section as proposed. The other three comments all supported the proposed section while also urging LSC to broaden the process to cover any information submitted by grantees and which might be subject to any exemption from disclosure under FOIA. Although the commenters make good points about specific records being likely to be exempt from disclosure, LSC is not persuaded that the submitter's rights process should be extended to cover records other than grant applications and exemption 4 information, disclosure of which could cause competitive harm.

Some of the information specifically referenced by the commenters, such as client names, financial records, etc., are already specifically protected from disclosure under 509(i) of the appropriations act (thus implicating FOIA exemption 3—information specifically protected from disclosure by law). LSC already knows not to disclose this information and believes that including requests for records that

would be subject to this disclosure to the submitter's rights process would only add unnecessary administrative obstacles to fulfilling its obligations under FOIA. Moreover, whether information contained in client files, statements of facts, 1644 disclosure forms, and personnel files (examples mentioned by at least one commenter) would be subject FOIA exemption 6 (personal privacy) information or exemption 7 (law enforcement/personal privacy) information is a question which is properly decided by the Corporation under FOIA exemptions on a case-by-case basis under the case law interpreting FOIA. To date, LSC has experienced no problems concerning releasing or withholding requested information contained in recipient provided records. Accordingly, LSC declines to broaden the proposed submitter's rights process beyond the circumstances envisioned by the Executive Order and has been implemented at LSC.

Accordingly, LSC adopts new section 1602.14 as proposed. Under the new section, when the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation will provide prompt written notice of the request to the submitter in order to afford the submitter with an opportunity to object to the disclosure of the requested records (or any portion thereof). If a submitter who has received notice of a request for the submitter's records objects to the disclosure of the records (or any portion thereof), the submitter will have to submit a written detailed statement identifying the information for which disclosure is objected to and specifying the grounds for withholding the information under the confidential information exemption of FOIA or this Part. The submitter's statement will have to be provided to LSC within seven business days of the date of the notice from the Corporation and if the submitter fails to respond to the notice from LSC within that time, LSC will deem the submitter to have no objection to the disclosure of the information.

Upon receipt of written objection to disclosure by a submitter, LSC will be required to consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC will be required to give the submitter written notice that the Corporation was rejecting the submitter's withholding request (including an explanation of why the

<sup>1</sup> Absent this authority, LSC would not otherwise be subject to FOIA since LSC is not an agency, department or instrumentality of the Federal government. 42 U.S.C. 2996d(e)(1).