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MEMORANDUM

TO: Agency Procurement Staff and other interested persons

FROM: John St. C. White, PE
Michael B. Spicer

DATE: May 9, 2019

RE: Procurement Policy Statement 2019-1
Guidance Regarding Personal Data Identifiers and Other
Sensitive Information in CPO Filings

Here is a new Procurement Policy Statement treating documents submitted in connection with requests for a CPO's protest decision, resolution of contract controversy, or other written determination. It requires deletion or redaction of sensitive information, including personal data identifiers, from all such documents before they are submitted to the CPO.

The Policy Statement is effective immediately. Please contact SFAA's Office of General Counsel ((803) 734-1261) with any questions.

STATE OF SOUTH CAROLINA

Guidance Regarding Personal Data Identifiers and Other Sensitive Information in CPO Filings

STATEMENT OF POLICY

Section 11-35-410 of the Consolidated Procurement Code provides for public access to procurement information. Specifically, it declares that procurement information must be a public record to the extent required by Chapter 4 of Title 30 (the Freedom of Information Act, or “FOIA”). Sub-sections 11-35-410(B) and (D) describe categories of procurement information or documents that are exempted from disclosure, or that need not be disclosed, pursuant to FOIA. The Materials Management Office has published a FOIA Document Guide for procurement officers in the Information Technology Management Office and the State Procurement Office. The Guide treats disclosure of procurement information pursuant to a FOIA request, but is silent as to certain other sensitive information, sometimes called “personal data identifiers.”¹

Chief Procurement Officers must issue written determinations, including protest decisions, resolutions of contract controversies, and orders for the suspension or debarment. Many of these determinations follow hearings or administrative reviews

¹ Code Section 16-13-510(D), a criminal statute, contains the following definition of personal identifying information, which informs our determination of what information should be redacted:

“Personal identifying information” means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of this State, when the data elements are neither encrypted nor redacted:

- (1) social security number;
- (2) driver's license number or state identification card number issued instead of a driver's license;
- (3) financial account number, or credit card or debit card number in combination with any required security code, access code, or password that would permit access to a resident's financial account; or
- (4) other numbers or information which may be used to access a person's financial accounts or numbers or information issued by a governmental or regulatory entity that uniquely will identify an individual.

where parties have submitted documentary evidence supporting or opposing the CPO's decision. When the CPO posts his decision, those documents may be attached as exhibits. The information in the documents is available to anyone viewing the determination. Occasionally those documents contain personal data identifiers.

We adopt the following guidance regarding personal data identifiers and other sensitive information in documents filed with, or submitted in connection with, a request for a CPO's written determination.

Parties shall not include, or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with or submitted to the CPO:

1. Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.
2. Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (*i.e.*, John S.) should be used.
3. Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.
4. Home Addresses. If a home address must be included, only the city and state should be used.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The CPOs and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.