

**UNITED STATES CODE ANNOTATED**  
**TITLE 18. CRIMES AND CRIMINAL PROCEDURE**  
**PART I--CRIMES**  
**CHAPTER 93--PUBLIC OFFICERS AND EMPLOYEES**

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Current through P.L. 107-11, approved 5-28-01

§ 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

CREDIT(S)

2000 Main Volume

(June 25, 1948, c. 645, 62 Stat. 791; Sept. 12, 1980, Pub.L. 96-349, § 7(b), 94 Stat. 1158; Oct. 28, 1992, Pub.L. 102-550, Title XIII, § 1353, 106 Stat. 3970; Oct. 11, 1996, Pub.L. 104-294, Title VI, § 601(a)(8), 110 Stat. 3498.)

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL AND STATUTORY NOTES**

Revision Notes and Legislative Reports

1948 Acts. Based on section 176b of Title 15, U.S.C., 1940 ed., Commerce and Trade; section 216 of Title 18, U.S.C., 1940 ed.; section 1335 of Title 19, U.S.C., 1940 ed., Customs Duties (R.S. § 3167; Aug. 27, 1894, c. 349, § 24, 28 Stat. 557; Feb. 26, 1926, c. 27, § 1115, 44 Stat. 117; June 17, 1930, c. 497, Title III, § 335, 46 Stat. 701; Jan. 27, 1938, c. 11, § 2, 52 Stat. 8).

Section consolidates section 176b of Title 15, U.S.C., 1940 ed., Commerce and Trade; section 216 of Title 18, U.S.C., 1940 ed., and section 1335 of Title 19, U.S.C., 1940 ed., Customs Duties.

Words "or of any department or agency thereof" and words "such department or agency" were inserted so as to eliminate any possible ambiguity as to scope of section. (See definition of "department" and "agency" in section 6 of this title.)

References to the offenses as misdemeanors, contained in all of said sections, were omitted in view of definitive section 1 of this title.

The provisions of section 216 of Title 18, U.S.C., 1940 ed., relating to publication of income tax data by "any person", were omitted as covered by section 55(f)(1) of Title 26, U.S.C., 1940 ed., Internal Revenue Code.

Minor changes were made in translations and phraseology.

1980 Acts. House Report Nos. 96-870, 96-871, 96-872, 96-874, and 96-875, and House Conference Report No. 96-1234, see 1980 U.S. Code Cong. and Adm. News, p. 2716.

1992 Acts. House Report No. 102-760, House Conference Report No. 102-1017, and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3281.

1996 Acts. House Report No. 104-788, see 1996 U.S. Code Cong. and Adm. News, p. 4021.

#### References in Text

The Antitrust Civil Process Act, referred to in text, is Pub.L. 87-664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (section 1311 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables volume.

#### Amendments

1996 Amendments. Pub.L. 104-294, § 601(a)(8), substituted "fined under this title" for "fined not more than \$1,000".

1992 Amendments. Pub.L. 102-550, § 1353, inserted "any person acting on behalf of the Office of Federal Housing Enterprise Oversight," following "agency thereof".

1980 Amendments. Pub.L. 96-349 provided for punishment and removal from office of an agent of the Department of Justice as defined in the Antitrust Civil Process Act for disclosure of confidential information.

### **CROSS REFERENCES**

Automobile fuel economy federal officer or employee disclosures concerning violations of this section, see 49 USCA § 32912.

Cigarette ingredients, list supplied by maker to Secretary of Health and Human Services as subject to this section, see 15 USCA § 1335a.

Disclosure of confidential information concerning--

Air pollution prevention and control, steel industry, see 42 USCA § 7413.

Air pollution prevention and control, subpoenaed papers and documents, see 42 USCA § § 7607 and 7621.

Bumper standards, see 49 USCA § 32505.

Consumer product safety, see 15 USCA § 2055.

Deepwater ports, see 33 USCA § 1513.

Energy information, generally, see 15 USCA § § 771 and 773.

Energy information, methods or processes of energy supply, see 15 USCA § 796.

Energy producing companies, see 42 USCA § 7135.

Environmental pesticide control, see 7 USCA § 136h.

Exploration and commercial recovery of seabed mineral resources, see 30 USCA § 1423.

Federal Aviation Administration, see 49 USCA § 106.

Fire prevention and control, see 15 USCA § 2217.

Flammable fabrics standards, see 15 USCA § 1193.

Hazardous substances releases, see 42 USCA § 9604.

Hazardous wastes, see 42 USCA § 6927.

Importing noncomplying motor vehicles and equipment, see 49 USCA § 30141.

International energy supply, see 42 USCA § 6274.

Magnetic fusion energy, see 42 USCA § 9310.

Noise control, see 42 USCA § 4912.

Nonnuclear energy resources and technology, see 42 USCA § § 5916 and 5919.

Occupational safety and health inspections or proceedings, see 29 USCA § 664.

Odometers, see 49 USCA § 32708.

Pipeline safety, see 49 USCA § 60117.

Public water systems safety, see 42 USCA § 300j-4.

Recreational vessel manufacturers, see 46 USCA § 4309.

Theft prevention of passenger motor vehicles, see 49 USCA § 33116.

Toxic substances control, see 15 USCA § 2613.

Water pollution prevention and control, effluent limitations, see 33 USCA § 1318.

Water pollution prevention and control, international pollution abatement, see 33 USCA § 1320.

Water pollution prevention and control, sanitation devices, see 33 USCA § 1322.

Water pollution prevention and control, subpoenaed papers and documents, see 33 USCA § 1369.

Weather modification activities or attempts, see 15 USCA § 330b.

Wind energy systems, see 42 USCA § 9208.

Disclosure of income information by shareholders, see 26 USCA § 7213.

Motor vehicle consumer information investigations confidentiality, see 49 USCA § 32307.

National Transportation Safety Board disclosure of trade secrets related information, see 49 USCA § 1114.

Publication of income information, see 26 USCA § 6103.

Underground storage tanks, regulation of under Solid Waste Disposal Act, disclosure of confidential information concerning, see 42 USCA § 6991d.

### AMERICAN LAW REPORTS

Disclosure of information by Equal Employment Opportunity Commission or other agency as affected by 42 USCA § 2000e-8(e), making it unlawful for officer or employee of Commission to make public information obtained by Commission, prior to institution of proceeding involving such information. 47 ALR Fed 471.

Private contractor as 'authorized representative' of Administrator of Environmental Protection Agency for purpose of inspections conducted under § 114 of Clean Air Act (42 USCA § 7414). 72 ALR Fed 176.

Propriety of conducting OSHA plant discovery inspection by nonfederally employed expert. 50 ALR Fed 906.

What statutes specifically exempt agency records from disclosure, under 5 USCA § 552(b)(3). 47 ALR Fed 439.

### LIBRARY REFERENCES

#### Administrative Law

Exemptions to Freedom of Information Act disclosure, see Koch § 11.6.

Professional responsibility in administrative practice, see Koch § 1.13.

Protection for private information in public information system, see Koch § 11.7.

Public disclosure exemptions, see West's Federal Administrative Practice § 68.

#### American Digest System

United States  52.

Key Number System Topic No. 393.

#### Encyclopedias

United States, see C.J.S. § § 60, 61.

Administrative Law, 2 Am Jur 2d (1994) § 144.

Freedom of Information Act, 37A Am Jur 2d (1994) § § 124, 139, 175-178, 247, 363, 610.

Job Discrimination, 45B Am Jur 2d (1993) § § 2070, 2093.

Pipelines, 61 Am Jur 2d § 19.

Public Officers and Employees, 63A Am Jur 2d § 425-428.

Forms

Health, Education, and Welfare, 10A Fed Procedural Forms L Ed § 37:173.

Law Review and Journal Commentaries

Computers, copyright and tying agreements: An argument for the abandonment of the presumption of market power. Glen P. Belvis, 28 B.C.L.Rev. 265 (1987).

Intellectual Property Crimes. Anita M. Cream, 31 Am.Crim.L.Rev. 687 (1994).

Rethinking the rule against corporate privacy rights: Some conceptual quandries for the common law. Anita L. Allen, 20 J.Marshall L.Rev. 628 (1987).

Texts and Treatises

Explicit exception for disclosure in response to judicial subpoena, see Wright & Graham: Evidence § 5437.

Propriety of implying private right of action, see Wright, Miller & Cooper: Jurisdiction § 3531.

Administrative Procedure, 2 Fed Proc L Ed (1994) § 2:47.

Consumer Product Safety, 7 Fed Proc L Ed § 16:218.

Environmental Protection, 11A Fed Proc L Ed § § 32:1292, 1395, 1401, 2003.

Evidence, 12 Fed Proc L Ed § 33:341.

Food, Drug, and Cosmetics, 13 Fed Proc L Ed § 35:203.

Freedom of Information, 15 Fed Proc L Ed § § 38:131 to 134, 548.

Government Officers and Employees, 16 Fed Proc L Ed § 40:751.

Natural and Marine Resources, 24 Fed Proc L Ed § 56:96.

Navigable Waters, 25 Fed Proc L Ed § 57:390.

Procedure, 4 Am Law Prod Liab 3d § 50:16.

Overview of Federal Laws, 4A Am Law Prod Liab 3d § § 62:68, 78.

Agency and Court Proceedings, 15 RIA Employment Coord § § WS-15,245; 15,279.2.

Court Proceedings, 9A RIA Employment Coord § § EP-37,110; 37,147.1.

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**1. Constitutionality**

Statute prohibiting knowing disclosure by federal employees of confidential information coming to them within course of their employment is not impermissibly vague, as construed to require at least that government agency have official policy that information not be disclosed and to prohibit only knowing violations. *U.S. v. Wallington, C.A.5 (Tex.) 1989, 889 F.2d 573.*

**2. Power of Congress**

Congress having conferred property right to which chemical companies had no prior claim could condition such rights to accommodate agency practice. *Chevron Chemical Co. v. Costle*, C.A.3 (Del.) 1981, 641 F.2d 104, certiorari denied 101 S.Ct. 3110, 452 U.S. 961, 69 L.Ed.2d 972.

### **3. Officers or employees of United States**

Since state agencies which administered Medicaid program in California were not federal agencies, no basis existed to justify transforming officers and employees of those state agencies into federal officers and employees for purposes of this section and section 1306 of Title 42. *St. Michael's Convalescent Hospital v. State of Cal.*, C.A.9 (Cal.) 1981, 643 F.2d 1369.

Criminal statute prohibiting disclosure of confidential information by federal officers and employees did not apply to Vermont Department of Banking, Insurance and Securities and did not protect Department records regarding a corporation which were sought by subpoena in securities fraud action. *Walsh v. Chittenden Corp.*, D.Vt.1992, 799 F.Supp. 405.

### **4. Trade secrets**

Unless Navy had a right to subcontractor's data and drawings, they represented trade secrets of the subcontractor which can not be disclosed by the government. *Dowty Decoto, Inc. v. Department of Navy*, C.A.9 (Wash.) 1989, 883 F.2d 774.

Unit price information which had been submitted to the Department of Justice as part of contract proposal for providing litigation support services did not fall within exemption to the Freedom of Information Act and the Trade Secrets Act for trade secrets and commercial or financial information; release of information would not allow competitor to derive bidder's profit multiplier, and thus, would not cause bidder competitive harm. *Acumenics Research & Technology v. U.S. Dept. of Justice*, C.A.4 (Va.) 1988, 843 F.2d 800.

"Trade secrets," within former section 1335 of Title 19, ordinarily meant an unpatented secret, commercially valuable plan, appliance, formula, or process, which was used for the making, preparing, compounding, treating, or processing of articles or materials which were trade commodities. *U.S. ex rel. Norwegian Nitrogen Products Co. v. U.S. Tariff Commission*, App.D.C.1925, 6 F.2d 491, 55 App.D.C. 366, vacated 47 S.Ct. 499, 274 U.S. 106, 71 L.Ed. 949.

Generalized assertions that release of contractor's contract line item prices (CLIN) would be substantial factor in virtually all future competitions and that competitors would use information to underbid contractor were insufficient to show likelihood of substantial competitive injury from injury so as to render information exempt from disclosure as trade secrets and commercial or financial information under exemption four of Freedom of Information Act (FOIA) and Trade Secrets Act. *McDonnell Douglas Corp. v. National Aeronautics & Space Admin.*, D.D.C.1995, 895 F.Supp. 319, vacated 88 F.3d 1278, 319 U.S.App.D.C. 215.

As long as only use of goods themselves is involved, rather than design information in which someone else may have proprietary rights, reverse engineering in no way violates any rights another party may have in trade secret.

Westech Gear Corp. v. Department of Navy, D.D.C.1989, 733 F.Supp. 390, affirmed 907 F.2d 1225, 285 U.S.App.D.C. 219.

Army ammunition plant telephone directory was not "confidential information" under the Trade Secrets Act or Freedom of Information Act exemption from disclosure, and Army's decision to release directory in response to FOIA request was thus proper, where release of information contained in directory could not cause competitive harm to company that supplied much of the information contained in directory, as contract at ammunition plant was not awarded competitively, but was always awarded to the company. Hercules, Inc. v. Marsh, W.D.Va.1987, 659 F.Supp. 849, affirmed 839 F.2d 1027.

Although it was conceivable that employee list could contain such extensive and detailed information that would so devastate a company if disclosed to the wrong person that it could be characterized as a "trade secret," list composed of "employees' names, their home addresses, and other confidential information" did not constitute a "trade secret" which could be misappropriated by union and others and thus employer had failed to state claim for misappropriation of trade secrets based upon union's appropriation of such list. C N A Financial Corp. v. Local 743 of Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, N.D.Ill.1981, 515 F.Supp. 942, 214 U.S.P.Q. 49.

In view of need for judicial determination of conduct violative of confidentiality of trade secrets, extraordinary remedy of cancellation of ongoing competitive procurement, and directing an agency to award, in effect, sole-source contract, is not appropriate. 1980, 59 Comp.Gen. 467.

#### **5. Processes, operations, and styles of work**

Employers' manning tables, department lists and projected promotions as contained in affirmative action program reports and compliance review reports constituted information pertaining to "processes, operations and styles of work" within meaning of this section penalizing unauthorized disclosure. Metropolitan Life Ins. Co. v. Utery, D.C.D.C.1976, 426 F.Supp. 150, order stayed, certiorari denied 97 S.Ct. 2198, 431 U.S. 924, 53 L.Ed.2d 238, affirmed and remanded 736 F.2d 727, 237 U.S.App.D.C. 118.

#### **6. Authorization by law--Generally**

This section does not forbid all interagency disclosure; it bars only disclosures which are not authorized by law. Shell Oil Co. v. Department of Energy, D.C.Del.1979, 477 F.Supp. 413, affirmed 631 F.2d 231, certiorari denied 101 S.Ct. 1730, 450 U.S. 1024, 68 L.Ed.2d 219.

#### **7. ---- Executive agreements, authorization by law**

Provision of this section making it a federal offense for an officer or employee of the United States or of any department or agency thereof to publish, divulge, disclose or make known in any manner or to any extent not authorized by law any information coming to him in course of his employment or official duties was inapplicable and, hence, did not operate to bar disclosure by United States Customs Service of information to Mexican officials pursuant to executive agreement with respect to sales of powdered milk to Mexican purchasers from bonded warehouses belonging to plaintiffs. Guerra v. Guajardo, S.D.Tex.1978, 466 F.Supp. 1046, affirmed 597 F.2d 769.

#### **8. ---- Rules and regulations, authorization by law**

Under this section, which precludes release of certain information not "authorized by law" properly promulgated, substantive agency regulations have force and effect of law; such regulation must be product of congressional grant of legislative authority, promulgated in conformity with procedural requirements imposed by Congress. *Chrysler Corp. v. Brown*, U.S. Del. 1979, 99 S.Ct. 1705, 441 U.S. 281, 60 L.Ed.2d 208, on remand 611 F.2d 439.

Regulation authorizing public disclosure of financial reports of nursing homes operating under financial reimbursement through federal Medicare program was "authorized by law" within meaning of this section, which provides for disclosure, in that there was a nexus between authorization contained within section 1306 of Title 42 and the disclosure regulation. *Parkridge Hospital, Inc. v. Califano*, C.A.6 (Tenn.) 1980, 625 F.2d 719.

Section 1306 of Title 42 which prohibits disclosure of any file, record, report or other paper, or any information obtained at any time by the Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services] except as the Secretary may by regulations prescribe, could at the very least reasonably be construed to contemplate promulgation of Secretary's regulation which provided that medicare cost reports be made available to public upon written request and thus, since regulation was entitled to force and effect of law, disclosure of medicare providers' costs reports, which contained detailed financial information, pursuant to regulation was not prohibited by this section. *Humana of Virginia, Inc. v. Blue Cross of Virginia*, C.A.4 (Va.) 1980, 622 F.2d 76.

To determine whether a regulation, pursuant to which a disclosure has been made, has the "force and effect of law" necessary to provide the authorization contemplated by this section, which bars only disclosures not authorized by law, the regulation must satisfy three requirements: first, it must be a substantive or legislative-type rule; second, it must be promulgated according to the rule-making requirements of section 553 of Title 5; and third, it must be promulgated pursuant to legislative authority delegated to the agency by Congress. *St. Mary's Hospital, Inc. v. Harris*, C.A.5 (Fla.) 1979, 604 F.2d 407.

Any release of proprietary information under Nuclear Regulatory Commission's rule of practice relating to public inspection of documents containing proprietary information would be "authorized by law," within this section. *Westinghouse Elec. Corp. v. U. S. Nuclear Regulatory Commission*, C.A.3 1977, 555 F.2d 82.

Court properly decided that protection from disclosure should be accorded to affirmative action programs and equal employment opportunity reports filed by government contractors with Office of Federal Contract Compliance as required under regulations issued by Secretary of Labor pursuant to executive orders. *Westinghouse Elec. Corp. v. Schlesinger*, C.A.4 (Va.) 1976, 542 F.2d 1190, certiorari denied 97 S.Ct. 2199, 431 U.S. 924, 53 L.Ed.2d 239.

In order for a regulation to have force and effect of law so as to authorize disclosure of information without violating this section, it must be a substantive, rather than an interpretive rule, it must be issued pursuant to statutory authority, and its promulgation must conform with any procedural requirements imposed by Congress. *Louisiana Chemical Ass'n v. Bingham*, W.D.La. 1982, 550 F.Supp. 1136, affirmed 731 F.2d 280.

Within provision of this section barring disclosure of covered material unless disclosure is otherwise authorized by law, authorization for disclosure may be found in statute or regulation, but authorization in regulation must be substantive, not procedural, and must be promulgated pursuant to both statutory grant of quasi-legislative authority and procedural requirements of Administrative Procedure Act, sections 551 et seq. and section 701 et seq. of Title 5, and, as to latter criterion, there must be nexus between regulation and delegation of requisite legislative authority by Congress. *J. H. Lawrence Co. v. Smith*, D.C.Md. 1982, 545 F.Supp. 421.

Department of Health, Education, and Welfare [now Department of Health and Human Services] regulation authorizing disclosure of cost reports filed by hospitals participating in the Medicare program did not violate this section, since the regulation was substantive in nature, the disclosure which it authorized was contemplated by section 1306 of Title 42 precluding disclosure of Department files except as prescribed by Department regulations, and since the applicable procedural requirements were satisfied during the promulgation of the regulation. *St. Joseph's Hospital Health Center v. Blue Cross of Central New York, Inc.*, N.D.N.Y.1979, 489 F.Supp. 1052.

Because validly promulgated regulations satisfy authorization requirements of this section, disclosure of information under validly issued regulation is authorized by law for purposes of this section. *Westchester General Hospital, Inc. v. Department of Health, Ed. & Welfare*, M.D.Fla.1979, 464 F.Supp. 236.

Disclosure of information under a validly issued regulation, e.g., cost reports submitted by providers of medicare services to enable Secretary of Health, Education and Welfare [no Secretary of Health and Human Services] to determine amounts due such providers, is "authorized by law" for purposes of this section. *Doctors Hospital of Sarasota, Inc. v. Califano*, M.D.Fla.1978, 455 F.Supp. 476.

Administrative regulations regarding disclosure of documents may not limit scope of this section prohibiting government employee from disclosing trade secrets, processes, operations, etc., except as authorized by law. *Babcock & Wilcox Co. v. Rumsfeld*, N.D.Ohio 1976, 70 F.R.D. 595.

#### **9. ---- Economic Stabilization Act, authorization by law**

Members of Cost of Living Council were prohibited by 1973 amendment to Economic Stabilization Act, set out as a note under section 1904 of Title 12, from defining as nonproprietary, and thus not subject to public disclosure, information required to be furnished by firms to Securities and Exchange Commission, and Council members were not subject to prosecution under this section, providing criminal penalty for any government officer making unauthorized disclosure of any information required to be filed with an agency. *Consumers Union of U. S., Inc. v. Cost of Living Council*, Em.App.1974, 491 F.2d 1396, certiorari denied 94 S.Ct. 2387, 416 U.S. 984, 40 L.Ed.2d 761.

#### **10. ---- Energy Department information, authorization by law**

By virtue of section 7256 of Title 42 authorizing Secretary of Department of Energy to enter into contracts to carry out functions vested in Secretary, Department of Energy was "authorized by law" within meaning of this section to disclose confidential information to accounting firm in order to carry out function of monitoring oil producers to determine whether they were in compliance with petroleum price and allocation regulations. *Coastal States Gas Corp. v. Department of Energy*, S.D.Tex.1979, 480 F.Supp. 813, motion denied 609 F.2d 736.

Disclosure by United States Customs Service of information to Mexican officials pursuant to executive agreement respecting sales to Mexican purchasers of powdered milk from bonded warehouses belonging to plaintiffs was not likely to impair ability of United States to obtain necessary information in future or to cause substantial harm to plaintiffs' competitive position and, hence, was not exempt as being "confidential" in nature. *Guerra v. Guajardo*, S.D.Tex.1978, 466 F.Supp. 1046, affirmed 597 F.2d 769.

**11. ---- Federal Reports Act, authorization by law**

Since Federal Reports Act, section 3501 et seq. of Title 44, directly controls exchanges between administrative agencies, it appears that this section was designed to apply only to public disclosures of trade secret material. *Emerson Elec. Co. v. Schlesinger*, C.A.8 (Mo.) 1979, 609 F.2d 898.

**12. ---- Federal Rules of Civil Procedure, authorization by law**

Any information that is discoverable in a civil suit under the Federal Rules of Civil Procedure, Title 28, cannot be said to be confidential information under this section proscribing disclosure of such by an officer or employee of the United States or of any department or agency thereof. *Exchange Nat. Bank of Chicago v. Abramson*, D.C.Minn.1969, 295 F.Supp. 87.

This section did not provide basis for preventing disclosure of report prepared by nonparty consulting firm in connection with settlement of antitrust claim against producers of titanium mill products where disclosure pursuant to discovery rules was a disclosure authorized by law, which the terms of this section permitted. *Grumman Aerospace Corp. v. Titanium Metals Corp. of America*, E.D.N.Y.1981, 91 F.R.D. 84.

Any information that is discoverable under rule 26, Federal Rules of Civil Procedure, Title 28, is not confidential information, within this section imposing criminal liability on government officer for disclosing confidential information, even if information is exempt from disclosure under section 552 of Title 5. *Pleasant Hill Bank v. U. S.*, W.D.Mo.1973, 58 F.R.D. 97.

**13. ---- Freedom of Information Act, authorization by law**

If documents, containing salary survey information obtained by Board of Governors of Federal Reserve System from private research group for purpose of determining salaries for Federal Reserve bank employees, were not exempt from disclosure under Freedom of Information Act's exemption under section 552 of Title 5 for confidential commercial information, disclosure of information would not violate this section since only the disclosure of information which fits into exemption under section 552 of Title 5 could constitute unauthorized disclosure and thus activate provisions of this section. *9 to 5 Organization for Women Office Workers v. Board of Governors of Federal Reserve System*, C.A.1 (Mass.) 1983, 721 F.2d 1.

Determination whether this section was applicable to information concerning employment of women and minorities by government contractor and concerning the availability of an exemption of such material from disclosure under the Freedom of Information Act, section 552 of Title 5, should be made in the first instance by the agencies from which the information was requested. *Chrysler Corp. v. Schlesinger*, C.A.3 (Del.) 1979, 611 F.2d 439.

This section must be considered independent of the exemptions under the Freedom of Information Act, section 552 of Title 5, and congruence of this section with the exemption in the Freedom of Information Act for trade secrets and confidential and commercial data is immaterial, though issue remains whether this section is within the group of statutes described in the exemption, as amended, applicable to matters specifically exempted from disclosure by statute. *Sears, Roebuck & Co. v. General Services Administration*, C.A.D.C.1977, 553 F.2d 1378, 180 U.S.App.D.C. 202, certiorari denied 98 S.Ct. 74, 434 U.S. 826, 54 L.Ed.2d 84.

Material qualifying for exemption under the Freedom of Information Act, section 552 of Title 5, for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" falls within the material disclosure of which is prohibited under this section which prohibits under criminal penalty the disclosure by any federal employee of confidential trade and financial information supplied federal agency. *Westinghouse Elec. Corp. v. Schlesinger*, C.A.4 (Va.) 1976, 542 F.2d 1190, certiorari denied 97 S.Ct. 2199, 431 U.S. 924, 53 L.Ed.2d 239.

For disclosure purposes, Trade Secrets Act, an independent prohibition on the disclosure of information within its scope, and the Freedom of Information Act (FOIA) are treated as coextensive. *General Dynamics Corp., Space Systems Div. v. U.S. Dept. of Air Force*, D.D.C.1992, 822 F.Supp. 804, vacated.

Trade Secrets Acts, by joinder with Freedom of Information Act exemption for material specifically exempted from disclosure by statute [5 U.S.C.A. § 552(b)(3)], could not protect from mandatory disclosure information that was determined not to fall within protection of Freedom of Information exemption for confidential information [5 U.S.C.A. § 552(b)(4)], where parties had agreed that confidential information exemption and Trade Secrets Acts were co extensive. *AT & T Information Systems, Inc. v. General Services Admin.*, D.D.C.1986, 627 F.Supp. 1396.

This section bars disclosure of government material unless disclosure is otherwise authorized by law and the Freedom of Information Act, section 552 of Title 5, does not constitute such authorization, if material falls within exemption of trade secrets and privileged or confidential commercial or financial information. *J. H. Lawrence Co. v. Smith*, D.C.Md.1982, 545 F.Supp. 421.

Since only the disclosure of information which fit into one of the nine exemptions contained in the Freedom of Information Act, section 552 of Title 5 constituted unauthorized disclosures that might activate the provisions of this section, invocation of which added nothing to the defendant's claim that certain of the documents responsive to plaintiff's request were protected from disclosure beyond that which might be established under the exemptions of section 552 of Title 5. *9to5 Organization for Women Office Workers v. Board of Governors of Federal Reserve System*, D.C.Mass.1981, 527 F.Supp. 1163.

This section making it a criminal offense for an employee of the United States, or one of its agencies, to release trade secrets and certain other forms of confidential commercial and financial information except insofar as such disclosure is authorized by law does not afford a basis for exempting disclosure of documents under the Freedom of Information Act, section 552 of Title 5. *United Technologies Corp., Pratt & Whitney Aircraft Group v. Marshall*, D.C.Conn.1979, 464 F.Supp. 845, remanded.

If the information an agency seeks to withhold from public disclosure is not specifically mentioned in this section prohibiting disclosure by federal employees of confidential trade secrets, etc., this section cannot exempt the information from release under exemption from disclosure requirements of Freedom of Information Act, section 552 of Title 5, for matters specifically exempted from disclosure by section 552 of Title 5. *Westchester General Hospital, Inc. v. Department of Health, Ed. & Welfare*, M.D.Fla.1979, 464 F.Supp. 236.

This section prohibiting disclosure by any federal employee of confidential trade and financial information supplied federal agency and provision of Freedom of Information Act, section 552 of Title 5, exempting from disclosure trade secrets and commercial or financial information obtained from a person and privileged or confidential, are equivalent in scope. *Westchester General Hospital, Inc. v. Department of Health, Ed. and Welfare*, M.D.Fla.1977, 434 F.Supp.

435.

Those portions of employers' affirmative action program reports and compliance review reports which were exempt from mandatory disclosure only by virtue of Freedom of Information Act exemption, section 552 of Title 5, for personnel, medical or similar files, disclosure of which would constitute clearly unwarranted invasion of personal privacy and which did not also come within exemption for trade secrets and commercial or financial information which is privileged or confidential were not within ambit of this section penalizing unauthorized disclosures. *Metropolitan Life Ins. Co. v. Usery*, D.C.D.C.1976, 426 F.Supp. 150, order stayed, certiorari denied 97 S.Ct. 2198, 431 U.S. 924, 53 L.Ed.2d 238, affirmed and remanded 736 F.2d 727, 237 U.S.App.D.C. 118.

This section making it a federal offense for United States officer or employee to disclose confidential information acquired in course of employment or official duties is not a statutory exception to the Freedom of Information Act, section 552 of Title 5, contemplated by exemption therein with respect to matters specifically exempted from disclosure by statute and this section did not preclude disclosure of government contractor's equal employment opportunity report to the Joint Reporting Committee. *Crown Cent. Petroleum Corp. v. Kleppe*, D.C.Md.1976, 424 F.Supp. 744.

Requests by special counsel to the president to Internal Revenue Service to inspect income tax returns of named taxpayers were not exempted from disclosure by this section prescribing penalties for disclosure of confidential information, and were not exempted from disclosure by section 6103 of Title 26 designed to prevent disclosure of information contained either in tax returns or in documents filed in conjunction therewith, and therefore, such requests were subject to disclosure under Freedom of Information Act, section 552 of Title 5. *Tax Reform Research Group v. Internal Revenue Service*, D.C.D.C.1976, 419 F.Supp. 415.

This section prohibiting unauthorized disclosure of any information by a federal employee is not sufficiently specific to come within Freedom of Information Act exemption, section 552(b) of Title 5, pertaining to matters that are specifically exempted from disclosure by statute. *Neal-Cooper Grain Co. v. Kissinger*, D.C.D.C.1974, 385 F.Supp. 769.

Section 1401 of Title 15 making confidential all information which is obtained by the Secretary of Transportation pursuant to defect investigations and which relate to trade secrets or other matters referred to in this section imposing criminal sanction for disclosure of confidential information harmonizes with Freedom of Information Act, section 552 of Title 5, relating to trade secrets and commercial and financial information. *Ditlow v. Volpe*, D.C.D.C.1973, 362 F.Supp. 1321.

This section relating to prohibition against general disclosure of confidential information does not prevent disclosure of information authorized to be disclosed under other laws including the Freedom of Information Act, section 552 of Title 5. *M. A. Schapiro & Co. v. Securities and Exchange Commission*, D.C.D.C.1972, 339 F.Supp. 467.

This section making officer liable criminally if he discloses investigatory material where not authorized by law does not establish exemption from the Freedom of Information Act, section 552 of Title 5, but merely penalizes disclosure of nonexempt material. *Frankel v. Securities and Exchange Commission*, S.D.N.Y.1971, 336 F.Supp. 675, reversed on other grounds 460 F.2d 813, certiorari denied 93 S.Ct. 125, 409 U.S. 889, 34 L.Ed.2d 146.

Raw scores, scoring scheme and quality point scores of hearing aids tested by Veterans' Administration contained

data available to any persons with resources and facilities to perform tests and did not contain trade secrets or other information prohibited from disclosure by this section coming to government official or employee and therefore would not be exempted from disclosure under the Freedom of Information Act, section 552 of Title 5, as matters specifically exempted from disclosure by statute. *Consumers Union of U. S., Inc. v. Veterans Administration*, S.D.N.Y.1969, 301 F.Supp. 796, appeal dismissed 436 F.2d 1363.

**14. ---- Federal Communications Commission information, authorization by law**

Confidential documents obtained by administrative subpoenas in connection with Federal Trade Commission proceeding charging respondents with having maintained and reenforced noncompetitive market structure and having exercised monopoly power in refining crude oil into petroleum products would be sufficiently protected by this section and section 46 of Title 15 and protective order which was entered by the administrative law judge, as modified by the Commission, and which provided for ten days notice where possible prior to release of respondents' confidential documents pursuant to court process or congressional process or request. *F. T. C. v. Anderson*, D.C.D.C.1977, 442 F.Supp. 1118, reconsideration denied, affirmed in part, remanded in part on other grounds 631 F.2d 741, 203 U.S.App.D.C. 159, on remand.

Disclosure by the Federal Communications Commission of information which it deems relevant to senate committee's investigation pursuant to former sections 190b and 190d of Title 2 would be "authorized by law" within the meaning of this section, and, therefore, would not be prohibited by this section, however, such authorization does not constitute a requirement that the Commission divulge to the committee confidential information, and the Commission is free to withhold that information in its discretion. 1955, 41 Op.Atty.Gen., July 15.

**15. ---- Federal Trade Commission information, authorization by law**

This section would not bar disclosure by Federal Trade Commission, to state attorneys general, of investigative files relating to corporation. *Jaymar- Ruby, Inc. v. F. T. C.*, N.D.Ind.1980, 496 F.Supp. 838.

Section 48 of Title 15, Commerce and Trade is an authorization for the release of confidential corporate records, falling within the provision of this section "authorized by law". 1980 (Counsel-Inf. Op.) 4B Op.O.L.C. 735.

**16. ---- Informers, authorization by law**

Identity and location of persons having knowledge of matters pertaining to an action are not privileged, except in possible instance of informers. *Federal Deposit Ins. Corp. v. St. Paul Fire & Marine Ins. Co.*, W.D.Okla.1971, 53 F.R.D. 260.

**17. ---- International Trade Commission information, authorization by law**

Under former section 1336 of Title 19, requiring notice of hearing on petition for increase of tariff on particular commodity and opportunity to interested parties to be heard, Tariff Commission [now International Trade Commission] could not refuse to give opposing interested parties a copy of petition, and opposition was entitled to facts privately presented to Commission, notwithstanding former section 1335 of Title 19. *U.S. ex rel. Norwegian Nitrogen Products Co. v. U.S. Tariff Commission*, App.D.C.1925, 6 F.2d 491, 55 App.D.C. 366, vacated 47 S.Ct.

499, 274 U.S. 106, 71 L.Ed. 949.

The United States Tariff Commission [now United States International Trade Commission] was not prohibited by former section 1335 of Title 19 from placing in the hands of the War Trade Board for appropriate use trade secrets which had come into the possession of the Commission in the course of the exercise of its official functions. 1919, 31 Op.Atty.Gen. 541.

#### **18. ---- Reconstruction Finance Corporation information, authorization by law**

The authority to liquidate the assets of the Reconstruction Finance Corporation conferred by former sections 608 and 609 of Title 15 and Act July 30, 1953, c. 282, § 102(c), 67 Stat. 230, included by implication authority to disclose borrowers' financial and profit and loss statements, if efficient and economical liquidation was determined to require such disclosure and disclosure pursuant to such law within the meaning of this section and would, therefore, not have been prohibited by this section. 1953, 41 Op.Atty.Gen., December 1.

#### **19. ---- Miscellaneous information authorized by law**

Trade Secrets Act prohibits only public disclosure of drug-approval application, it does not bar internal agency use of submitted data. *Tri-Bio Laboratories, Inc. v. U.S.*, C.A.3 (Pa.) 1987, 836 F.2d 135, certiorari denied 109 S.Ct. 57, 488 U.S. 818, 102 L.Ed.2d 35.

This section which generally forbids disclosure of government information "unless authorized by law" was applicable to action brought by nursing homes seeking to enjoin public disclosure of financial reports required to be filed by nursing homes operating under financial reimbursement through federal Medicare program. *Parkridge Hospital, Inc. v. Califano*, C.A.6 (Tenn.) 1980, 625 F.2d 719.

Environmental Protection Agency's (EPA) disclosure, in response to Freedom of Information Act (FOIA) request, of secondary lead smelting plant's production rate data was not prohibited by Trade Secrets Act, as disclosure was authorized by law, particularly Clean Water Act (CWA) and regulations promulgated thereunder, which permitted disclosure of such effluent data. *RSR Corp. v. Browner*, S.D.N.Y.1996, 924 F.Supp. 504, affirmed, vacated.

The Federal Mine Safety and Health Review Commission is a quasi-judicial body authorized and directed to make findings of fact, and therefor there is sufficient authorization by law within the meaning of this section to publish in its opinions and orders evidence, such as financial information derived from a copy of a tax return, which would otherwise be protected from disclosure. 1979 (Counsel-Inf.Op.) 3 Op.O.L.C. 201.

#### **20. Disclosure to state authority**

Former section 216 of this title did not preclude Social Security Board from making information obtained under authority of Social Security Act, section 301 et seq. of Title 42, available to state authorities. 1937, 39 Op.Atty.Gen. 1.

#### **21. Knowledge or intent**

Appropriate culpability for violation of statute prohibiting federal employees from disclosing confidential information must at least include knowledge that information is "confidential," in sense that its disclosure is forbidden by agency official policy or by regulation or law. *U.S. v. Wallington*, C.A.5 (Tex.) 1989, 889 F.2d 573.

## **22. Manner of invoking privilege**

A claim of privilege by government must be formally lodged by head of governmental department that has control over matter, after actual personal consideration by that officer. *Federal Deposit Ins. Corp. v. St. Paul Fire & Marine Ins. Co.*, W.D.Okla.1971, 53 F.R.D. 260.

## **23. Private cause of action**

This section did not afford private right of action to enjoin disclosure in violation of its provisions. *Chrysler Corp. v. Brown*, U.S.Del.1979, 99 S.Ct. 1705, 441 U.S. 281, 60 L.Ed.2d 208, on remand 611 F.2d 439.

This section does not confer private cause of action, but may provide standard by which to judge legality of proposed agency disclosures and can at best be construed to create federal law of right of nondisclosure, not of nonuse by agency. *Chevron Chemical Co. v. Costle*, C.A.3 (Del.) 1981, 641 F.2d 104, certiorari denied 101 S.Ct. 3110, 452 U.S. 961, 69 L.Ed.2d 972.

This section does not imply a private right of action. *Bruce v. U. S.*, C.A.8 (Mo.) 1980, 621 F.2d 914.

This section does not afford an implied private civil right of action to enjoin disclosures which might violate it. *Florida Medical Ass'n, Inc. v. Department of Health, Ed. & Welfare*, M.D.Fla.1979, 479 F.Supp. 1291.

This section provided no private civil cause of action. *Westchester General Hospital, Inc. v. Department of Health, Ed. & Welfare*, M.D.Fla.1979, 464 F.Supp. 236.

Civil cause of action would not be implied under this section in favor of medicare provider, which claimed that regulation permitting disclosure of its annual medicare "cost reports" to requesting third parties violated this section, a criminal statute designed solely to prevent government employees from surreptitiously divulging privileged information and never intended as a vehicle for challenging administrative agency regulation. *St. Mary's Hospital, Inc. v. Califano*, S.D.Fla.1978, 462 F.Supp. 315, affirmed 604 F.2d 407.

## **24. Judicial review of administrative action**

Defense Logistics Agency's decision to disclose government contractor's reports concerning affirmative action programs and general composition of its work force was reviewable under Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, in view of placing substantive limits on disclosure of such information by this section. *Chrysler Corp. v. Brown*, U.S.Del.1979, 99 S.Ct. 1705, 441 U.S. 281, 60 L.Ed.2d 208, on remand 611 F.2d 439.

Documents submitted to the Environmental Protection Agency in connection with application for hazardous waste facility permit were not entitled to confidentiality under the Trade Secrets Act [18 U.S.C.A. § 1905], and EPA did not act arbitrarily or capriciously, on abuse its discretion, in making negative confidentiality determination, inasmuch as, inter alia, applicant failed to make satisfactory showing that it had taken reasonable measures to protect the confidentiality of the information and that the information was not obtainable by other legitimate means without applicant's consent. *Alcolac, Inc. v. Wagoner*, W.D.Mo.1985, 610 F.Supp. 745.

## **25. Jurisdiction**

Federal contractor's action to enjoin Department of Labor from disclosing documents substantially similar to affirmative action plan requested under Freedom of Information Act [5 U.S.C.A. § 552] by women's group without first determining whether requested disclosure would violate Trade Secrets Act [18 U.S.C.A. § 1905] was not ripe for review where evaluation of documents as trade secrets was subsequently required, additional disclosure could not be made without first granting contractor opportunity to challenge action in court, and hardship to contractor in delaying review was minimal. *Gulf Oil Corp. v. Brock*, C.A.D.C.1985, 778 F.2d 834, 250 U.S.App.D.C. 213.

Government contractor's claim against government seeking to prevent alleged violation of this section were not "disguised" contract claims, and, therefore, district court had jurisdiction of suit brought by government contractor which sought injunctive relief to prevent that alleged violation, since action was not in essence on contract and was outside scope of section 1346(a)(2) of Title 28. *Megapulse, Inc. v. Lewis*, C.A.D.C.1982, 672 F.2d 959, 217 U.S.App.D.C. 397.

Navy contractor's complaint seeking injunctive, mandamus and declaratory relief against Navy, which allegedly improperly threatened to disclose contractor's trade secrets by its announced action of removing restrictive legends from drawings that contractor developed under navy contracts, contained sufficient allegations to confer jurisdiction under the Trade Secrets Act, 18 U.S.C.A. § 1905 through the Administrative Procedure Act, 5 U.S.C.A. § 551 et seq., permitting district court to issue injunction to preserve status quo pending determination of merits of the action; fact that the dispute concerned drawings provided under a contract did not mean that the action arose out of that contract. *Conax Florida Corp. v. U.S.*, D.D.C.1985, 625 F.Supp. 1324, on reconsideration 641 F.Supp. 408, affirmed 824 F.2d 1124, 263 U.S.App.D.C. 144.

Suit to enjoin alleged violation of this section providing fine for unauthorized disclosure of information and alleged violation of Freedom of Information Act, section 552 of Title 5, and federal agency regulations was within jurisdiction of federal district court under section 1331 of Title 28, where injury sought to be prevented was sufficiently alleged to be in excess of \$10,000. *Burroughs Corp. v. Schlesinger*, E.D.Va.1975, 403 F.Supp. 633.

## **26. Proper parties**

Equal Employment Opportunity Commission was not proper party to employer's suit alleging violation of this section prohibiting disclosure of confidential information by officers or employees of United States, and employer's claim against Commission would be dismissed, pending appropriate and timely motion to join individual commissioners as parties. *Associated Dry Goods Corp. v. Equal Employment Opportunity Commission*, E.D.Va.1976, 419 F.Supp. 814.

## **27. Summary judgment**

In action by government subcontractor seeking to enjoin Department of Defense from disclosing certain documents and materials pursuant to request from competitor under Freedom of Information Act, section 552 of Title 5, questions of material fact existed as to whether intended disclosures would violate this section prohibiting government employee from divulging trade secrets, processes, operations, etc., except as authorized by law, precluding summary judgment. *Babcock & Wilcox Co. v. Rumsfeld*, N.D. Ohio 1976, 70 F.R.D. 595.

## **28. Questions of law**

Whether governmental privilege is rightfully invoked is a question of law for court. *Federal Deposit Ins. Corp. v. St. Paul Fire & Marine Ins. Co.*, W.D. Okla. 1971, 53 F.R.D. 260.

## **29. Injunction**

In action by government contractor which sought injunctive relief to prevent alleged violation of this section, injunctive relief, preliminary or permanent, was available in district court. *Megapulse, Inc. v. Lewis*, C.A.D.C. 1982, 672 F.2d 959, 217 U.S.App.D.C. 397.

Operators of multifamily housing projects whose mortgages were insured by the Federal Housing Administration and who were required by the Administration to annually submit detailed financial reports had no right to bring a private action to enjoin an alleged violation of this section making it illegal for a government employee to disclose to any extent not authorized by law any information coming to him in the course of his employment, which information concerns or relates to the amount or source of any income, profits, losses, or expenditures of any persons; review under section 701 et seq. of Title 5 was sufficient to safeguard any interest that this section was supposed to protect. *Charles River Park A, Inc. v. Department of Housing and Urban Development*, C.A.D.C. 1975, 519 F.2d 935, 171 U.S.App.D.C. 286.

Navy contractor bringing action for injunctive, mandamus and declaratory relief against Navy, which allegedly threatened to disclose contractor's trade secrets by its announced action of removing restrictive legends from drawings the contractor developed under navy contracts, would be granted preliminary injunction preserving status quo pending determination of merits of the action. *Conax Florida Corp. v. U.S.*, D.D.C. 1985, 625 F.Supp. 1324, on reconsideration 641 F.Supp. 408, affirmed 824 F.2d 1124, 263 U.S.App.D.C. 144.

Record failed to suggest a basis for viable concern on plaintiff's part that government's disclosure of plaintiff's computer software was about to occur and thus plaintiff could not obtain injunctive relief on count alleging violation of this section. *Management Science America, Inc. v. Pierce*, N.D. Ga. 1984, 598 F.Supp. 223, affirmed 778 F.2d 792.

Provider of health care services to medicare beneficiaries established a substantial likelihood of success on merits of its claim that regulation requiring disclosure of medicare costs reports was invalid, in view of fact that it was likely that such disclosure would violate this section prohibiting disclosure by any federal employee of confidential trade and financial information supplied by federal agency. *Westchester General Hospital, Inc. v. Department of Health, Ed. and Welfare*, M.D. Fla. 1977, 434 F.Supp. 435.

On application for preliminary injunction, in action seeking to prevent disclosure by Customs Service to foreign government of information furnished Service by importer for permission to import fertilizer, balancing of harms which might be inflicted by grant or denial of preliminary injunction tipped scale toward denial of injunction. Neal-Cooper Grain Co. v. Kissinger, D.C.D.C.1974, 385 F.Supp. 769.

18 U.S.C.A. § 1905

18 USCA § 1905

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