

Comment from Government Member James L. Anderson on Protected Materials in Public Rulemaking Dockets

December 14, 2020

The FDIC recommends the removal of this sentence on page 5: “To reduce the risk that agencies will inadvertently disclose protected material, agencies should describe what kinds of personal and confidential commercial information qualify as protected material and should clearly notify the public about their treatment of protected material.”

Reason for removal: The FDIC would prefer not to require the agencies to expressly enumerate the “kinds of personal and confidential commercial information [that] qualify as protected material” since, as their own analysis states, FOIA and PA determinations must be made on a case-by-case basis. The possible factual scenarios that can and do occur are virtually limitless, thereby making attempts to pigeon-hole by “kinds” an ultimately futile exercise. Redactions should be made the old-fashioned way under the FOIA: by applying the definitions of exemptions pursuant to the relevant statutes, regulations and case-law to the specific facts at hand.

The FDIC recommends adding the following sentence at the end of item 6 on page 7, “In addition, all redactions made pursuant to FOIA include citations to the specific exemption(s) being applied.”