

The Paycheck Protection Program: FOIA and Potential Implications for Applicants and Investors

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The Paycheck Protection Program (PPP) has now seen three days of frenzy over application uncertainties, eligibility questions, and employee count/loan amount calculations. One item not mentioned, but worth discussing, is the public nature of the application and potential implications that has to applicants and investors. Specifically, all government institutions are subject to Freedom of Information Act (FOIA) requests (FOIA is a federal law that mandates open file access for many government agencies). In this alert we will discuss which provisions of a PPP loan are public and which are protected.

SBA 7(a) loan information is generally subject to Freedom of Information Act (FOIA) requests, with some exceptions (see [here](#) for more information). In sum, 1) loan applications are **not** subject to FOIA; 2) the application requires a list of all owners of 20 percent or more of the equity of the Applicant (all such owners will be required to disclose on the application: Owner Name; Title; Ownership Percentage; TIN (EIN or SSN, as applicable); and Address); and 3) borrowers identities will be disclosed, so theoretically a person could match up a borrower with a portfolio, etc.

More specifically, the **application itself** has disclosure (on page 3) that most parts of the application will be subject to FOIA requests ("Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or **unless the information is subject to disclosure under the Freedom of Information Act**"). Information about approved loans that will be released includes, among other things, the borrower's name (and the names of its officers, directors, stockholders, or partners), the amount of the

loan, and its purpose in general terms and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. **So, conceivably, if the borrower information disclosed under a FOIA request is sufficient to match up with portfolio companies on crunch base, then the answer is "yes."**

And, according to the SBA, the following relevant information is **generally available** upon request:

- Names and commercial street and email addresses of recipients of **approved** loans, SBIC licenses, Certificates of Competency, lease guarantees, surety bond guarantees, and requests for counseling.
- Names of officers, directors, stockholders, or partners of recipient firms.
- Kinds and amounts of loans, loan terms, interest rates (except on home disaster loans), maturity dates, general purpose, etc.
- Decisions, rulings, and records showing final Agency actions in specific factual situations if identifying details exempt from disclosure are first deleted.
- Awarded contracts: name of contractor, contract amounts, contract dates, and contracting agencies.
- Identity of participating banks.

The following information is not generally available, but restriction may be scaled based upon identity of the requestor (for example, if the information is being requested by the applicant or recipient of the 7(a) loan as opposed to a third party):

- Nonstatistical information on pending, declined, withdrawn, or canceled applications.
- Nonstatistical information on defaults, delinquencies, losses etc.

- Loan status, other than charged-off or paid-in-full.
- Personal and business tax returns.
- For viable ongoing businesses: Financial statements, credit reports, business plans, plant lay-outs, marketing strategy, advertising plans, fiscal projections, pricing information, payroll information, private sector experience and contracts, purchase information, banking information, corporate structure, research plans, and client list of applicant/recipient.
- For viable ongoing businesses: Commercial and financial information contained in Certificate of Competency records, Requests for Size Determinations, 8(a) Business Development Plans, loan applications, SBIC applications, and loan officer's reports.
- Internal documents not incorporated into final Agency action, pending internal recommendations on applications for assistance, SBA/attorney-client communications, pending litigation documents, and investigatory documents. Discretionary disclosure policy must be utilized.
- Personal history and financial statements, tax forms, resumes, all nongovernment career experience, communications regarding applicant's character, home and email addresses and telephone numbers, social security numbers, birth dates, and medical records.
- Portions of IG reports, audit reports, program investigation records, and any other records which, if released, would interfere with the gGovernment's law enforcement proceedings and/or would reveal the identity of a confidential source and documents relating to pending litigation and investigations.
- Financial information on portfolio companies.

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