

**DoD Comments on  
OGE Emergency clearance notice and request for agency and public comment.  
Proposed OGE Form 201-A**

**OGE Form 201-A:**

The U.S. Office of Government Ethics (OGE) previously stated that public financial disclosure reports were exempt from release under the Freedom of Information Act of 1967 (5 U.S.C. § 552)(FOIA), pursuant to 5 C.F.R., Part 2604. However, in the proposed OGE Form 201-A, OGE affirmatively notes that “[t]hese records are available under [FOIA] ....” Please explain this change in legal interpretation and impact on OGE’s administration of the Government-wide OGE system of records. Since public financial disclosure reports are releasable under FOIA, what is the need for the OGE Form 201-A and its additional requirements beyond a regular FOIA request?

The form fails to discuss filing extensions, which are to be made publically available by section 8(a)(2) of the Stop Trading on Congressional Knowledge (STOCK) Act. While OGE informally encouraged ethics programs to annotate extensions on the face of the public financial disclosure or periodic transaction reports (OGE Form 278/278-Ts), OGE did not mandate the practice. Therefore, the OGE Form 201-A needs to include reference to the publicly available extensions posted online in MAX.GOV. If not, please confirm that extensions not annotated on OGE Form 278/278-Ts will be searchable but may not be downloaded without a request pursuant to OGE Form 201 for Other Covered Records.

**Warning:**

Please consider rephrasing this provision. For example, consider replacing the current warning language with: “**WARNING:** *Any intentionally false or misleading statement, certification, or response you provide in this form is a violation of law punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. § 1001).*” This is the more traditional and succinct warning for section 1001 violations and is a better risk mitigation strategy since it affirmatively enunciates the applicable penalties. Minimally, please replace “official government form” to specify that by “government” OGE means United States Federal government, such as “official U.S. Government form.”

**Privacy Act Statement:**

We recommend that the Privacy Act statement explicitly provide notice to the requester that the filer may seek disclosure of the information gathered on the OGE Form 201-A, in compliance with the existing OGE Form 278 Privacy Act statement. For example, consider including the statement: “*A filer may inspect applications for access to and disclosure of his or her own form upon request.*” Our recommendation is that OGE amend its System of Records Notice, OGE/GOVT-1, to add this disclosure as a new routine use.

The reason for this recommendation is the Stop Trading on Congressional Knowledge Act amendments to the Ethics in Government Act (EIGA) do not alter the last sentence in section 105(b) of EIGA, which states: “*Any such application shall be made available to the public throughout the period during which the report is available to the public.*” This sentence requires that requests for information, whether through the OGE Form 201 or electronic proposed OGE

Form 201-A, be made publically available for the same length of time that the reports they are requesting are publically available. Public posting of the OGE Form 278/278-Ts creates a heightened potential for misuse of the filer's financial and personal information. Filers now have a more compelling interest in knowing the identity of the individuals who gain access to their forms so that they can closely and regularly monitor their financial assets and accounts. It is now far more likely that filers will request this information. Accordingly, we strongly recommend that OGE make disclosure to filers and agency ethics officials a routine use. This is consistent with existing OGE regulations, Privacy Act statements, and customary practice.

*See OGE Form 201 Privacy Act Statement (“The information on this form itself may be publicly disclosed pursuant to proper request under section 105(b) of the Ethics in Government Act or as otherwise authorized by law.”); OGE Form 278 Privacy Act Statement (“You may inspect applications for public access of your own form upon request.”); and 5 C.F.R. § 2634.603(d)(“Applications for the inspection of or copies of public reports shall also be made available to the public throughout the period during which the report itself is made available, utilizing the procedures in paragraph (c) of this section.”).*

**Requests for Other Related Records:**

What will OGE's response be for requests on an existing OGE Form 201 for reports filed on or after January 1, 2012. Will the requester be denied access or a copy except through the OGE Form 201-A?