

EXHIBIT B

U.S. Department of Labor

Occupational Safety and Health Administration
Tampa Area Office
5807 Breckenridge Parkway Suite A
Tampa, FL 33602



November 1, 2021

Lexi Friedman
Product Liability Department
20 North Orange Avenue, Suite 1600
Orlando, FL 32801

FOIA: 2021-F-07897

Dear Ms. Friedman:

This decision is in response to your Freedom of Information Act (FOIA) request dated April 27, 2021, requesting records concerning Brevard Window and Door. We located the records you seek and conducted a review of the material you requested. After reviewing this information, we have made the following release determination.

Under FOIA, “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt” 5 U.S.C. § 552(b). Where we have withheld pages entirely, it is because those pages contain no reasonably segregable information that may be released without creating the harm the indicated exemptions were designed to prevent.

We have determined pages may be released in full, pages may be released with redaction, with personal identifying information redacted pursuant to Exemption 7(C); with confidential business information redacted pursuant to Exemption 4; redacted pursuant to the attorney-client privilege under Exemption 5 and personal identifying information redacted pursuant to Exemption 7(C).

FOIA requires that agencies generally disclose records. Agencies may withhold requested records only if one or more of nine exemptions apply.

Exemption 4 protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” 5 U.S.C. § 552(b)(4). This exemption is intended to protect two categories of information in agency records: (1) trade secrets; and (2) certain confidential or privileged commercial information. We are withholding certain privileged or confidential information pursuant to Exemption 4. When applying this part of exemption 4, the terms “commercial or financial” should not be narrowly construed to include proprietary information only. Rather, they should be given their ordinary meaning.

Exemption 5 of FOIA allows an agency to withhold “inter-agency or intra-agency” information that would not be available to a party in litigation with the agency. 5 U.S.C. § 552(b)(5). As an initial matter, Exemption 5 requires the agency to determine whether the documents requested are normally privileged in the civil discovery context. This privilege protects confidential communications between a government attorney and a client agency that has sought the attorney’s advice. The privilege applies both to facts divulged by a client to the attorney and to opinions given by the attorney to the client based upon those facts. Federal agencies – no less than individuals and corporations – require confidential legal advice from their attorneys to function effectively. We have withheld the noted materials pursuant to Exemption 5’s attorney-client privilege because they are reflective of attorneys’ opinions and advice provided to the Department.

Exemption 7(C) permits an agency to withhold information contained in files compiled for law enforcement purposes if production “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). Thus, the purpose of Exemption 7(C) is to protect the privacy of any person mentioned in law enforcement records. In determining whether a protected privacy interest exists, we must evaluate not only the nature of the personal information found in the records, but also whether release of that information to the general public could affect that individual adversely. Thus, we must consider whether release of even seemingly innocuous personal information could lead to the harassment or annoyance of an individual through unsolicited inquiries. We find that release of personal identifying information withheld here reasonably could be expected to have a negative impact on an individual’s privacy.

Exemption 7(D) protects from disclosure information that reasonably could be expected to identify persons or entities providing data to the government in confidence or under circumstances implying confidentiality. 5 U.S.C. § 552(b)(7)(D). The applicability of Exemption 7(D) does not end with termination of an inspection because the potential harm or scrutiny that a confidential informant may be subjected is not dependent upon the phase of an inspection. Rather, potential harm may result from the mere fact that an individual communicated with the government. We have withheld the noted materials pursuant to Exemption 7(D) to protect from disclosure information that reasonably could be expected to identify persons or entities providing data to the government in confidence or under circumstances implying confidentiality.

The fees for this particular request totaled less than \$25.00; consequently, all fees have been waived.

If you have any questions about this FOIA determination please contact our office at 813-626-1177 or tampa.osh@dol.gov.

You have the right to appeal this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statements or arguments. The appeal should also include a copy of your initial request and a copy of this letter.

If you appeal, you may mail your appeal to: Solicitor of Labor, U.S. Department of Labor, Room N-2420, 200 Constitution Avenue, N.W., Washington, D.C. 20210 or fax your appeal to (202) 693-5538. Alternatively, you may email your appeal to foiaappeal@dol.gov; appeals submitted to any other email address will not be accepted. The envelope (if mailed), subject line (if emailed), or fax cover sheet (if faxed), and the letter indicating the grounds for appeal, should be clearly marked: "Freedom of Information Act Appeal."

In addition to filing an appeal, you may contact the Department's FOIA Public Liaison, Thomas G. Hicks, Sr. at (202) 693-5427 or hicks.thomas@dol.gov for assistance in resolving disputes.

You also may contact the Office of Government Information Services (OGIS) for assistance. OGIS offers mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may mail OGIS at the Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, MD 20740-6001. Alternatively, you may email or contact OGIS through its website at: ogis@nara.gov; Web: <https://ogis.archives.gov>. Finally, you can call or fax OGIS at: telephone: (202) 741-5770; fax: (202) 741-5769; toll-free: 1-877-684-6448.

It is also important to note that the services offered by OGIS, is not an alternative to filing an administrative FOIA appeal.

Respectfully,
**DANELLE
JINDRA**
Danelle Jindra
Area Director

Digitally signed by
DANELLE JINDRA
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Enclosure