



U.S. Merit Systems Protection Board

Sensitive Content Policy

Effective: September 25, 2025

I. PURPOSE

The purpose of this policy is to ensure that parties' submissions containing sensitive content, as that term is defined below, are limited to relevant and admissible evidence necessary to adjudicate an appeal before the Merit Systems Protection Board (MSPB or Board) and that such submissions are included in the record only after other options have been evaluated.

II. DEFINITIONS

a. Audio and video evidence

Audio and video evidence includes evidence that:

- i. is not written; and
- ii. must be submitted according to the formatting and submission requirements set forth in policies posted to the MSPB's website. *See* 5 C.F.R. §§ 1201.14(h)(3) and 1201.26(c).

b. e-Appeal

The e-filing and case management system for MSPB. This system enables individuals to file new appeals and for parties to an appeal to file pleadings and view the electronic case record, including issuances from MSPB. e-Appeal is a closed system that collects and maintains records as part of an MSPB system of records and is subject to the provisions of the Privacy Act of 1974. Access to cases in e-Appeal is limited to the parties participating in a Board proceeding who have registered as e-filers with the MSPB and authorized individuals providing legal support as designated representatives. *See* 5 C.F.R. § 1201.14(b).

c. Judge

Any person authorized by the Board to hold a hearing or to decide a case without a hearing, including the Board or any member of the Board, an administrative law judge appointed under 5 U.S.C. § 3105, or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. *See* 5 C.F.R. § 1201.4(a). Judges



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in the regional and field offices hear and decide initial appeals and other assigned cases as provided for in the Board's regulations. *Id.* at §§ 1200.10(c), 1201.41.

d. Party

A person, an agency, or an approved intervenor, who is participating in a Board proceeding. The term “approved intervenor” applies to the Office of Personnel Management and to the Office of Special Counsel when those organizations are participating in a Board proceeding. *See* 5 C.F.R. § 1201.4(e). For purposes of this policy, “party” includes the designated representatives of the party.

e. Pleadings

- i. A pleading is a written submission setting out claims, allegations, arguments, or evidence.
- ii. Pleadings include briefs, motions, petitions, attachments, and responses. *See* 5 C.F.R. § 1201.4(b).
- iii. For purposes of this policy, a pleading includes attachments that reproduce photographs, pictures, drawings, illustrations, or other non-written content.

f. Sensitive Content

Sensitive content includes:

- i. nudity or sexual content;
- ii. vulgar or profane language;
- iii. gore or violent content;
- iv. identifying information and/or photos of minors; or
- v. otherwise explicit or graphic content.

Sensitive Content, as defined by this policy, is separate and distinct from Sensitive Security Information (SSI), which is a category of information defined and safeguarded by the Transportation Security Administration (TSA) under 49 C.F.R. § 1520.5.

g. Submission

For purposes of this policy, “submission” includes a pleading or evidence, including audio and video evidence, that a party intends to file via e-Appeal.



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III. SCOPE

This policy covers any initial appeals, pleadings, or other submissions that parties wish to file via e-Appeal in the adjudication of an MSPB appeal.

IV. RESPONSIBILITIES OF THE PARTIES

- a. The party filing a submission has the primary responsibility to determine whether the submission has sensitive content as defined by this policy.
- b. If the submission is deemed to have sensitive content, the filing party must first file a statement:
 - i. explaining in detail the sensitive nature of the submission and its relevance; and
 - ii. suggesting alternatives to the submission of sensitive content, if applicable, such as a written declaration or affidavit summarizing the contents, stipulations as to their contents, or appropriate redactions.
- c. The non-filing party or parties may respond to the statement within a reasonable time or within the deadline set by the judge.

V. AUTHORITY OF THE MSPB JUDGE

- a. In determining whether a submission containing sensitive content may be included in the record consistent with this policy, the judge has discretion to conduct an *in camera* inspection.
- b. The judge may determine that a submission with sensitive content will be excluded from the record and reject the submission.
- c. The judge may suggest alternatives to the submission that has sensitive content. Alternatives include a written declaration or affidavit summarizing the contents, the parties' stipulations as to their contents, or appropriate redactions.
- d. The judge may permit the submission to be filed but seal the record. *See generally Social Security Administration v. Doyle*, 45 M.S.P.R. 258 (1990) (explaining the factors considered in deciding whether to seal the record).



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- e. The judge may, either *sua sponte* or on the motion of a party, require the appellant's anonymity in the interest of a third party's privacy. *See, e.g., Pinegar v. Federal Election Commission*, 105 M.S.P.R. 677, ¶ 10 (2007).
- f. This list is not intended to be exclusive or to limit the judge's discretion.