

Frequently Asked Questions on Protecting Sensitive Information About Historic Properties Under Section 304 of the NHPA

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Synopsis

Section 304 of the NHPA protects certain sensitive information about historic properties from disclosure to the public when such disclosure could result in a significant invasion of privacy, damage to the historic property, or impede the use of a traditional religious site by practitioners.

Introduction

As a federal agency or other public official carries out its historic preservation responsibilities set forth in federal law and regulation, it often finds some kinds of information about historic properties should be protected from disclosure. There are several reasons for not releasing information about the location, character, or ownership of historic properties. For example, it may help prevent looting or disturbance of a site, or it may help ensure continued use of a site or area by traditional religious practitioners. As part of good planning practice, a federal agency should also begin thinking early about how it will manage and disseminate information generated in the course of review under Section 106 of the National Historic Preservation Act (NHPA).

The principal federal laws that can protect sensitive information about historic properties and archaeological resources are Section 304 of the National Historic Preservation Act and Section 9 of the Archeological Resources Protection Act. While there is some overlap between these two statutes (as discussed below), each focuses on specific kinds of information that can be withheld from general disclosure, and the former is utilized more often in Section 106 review. The following "Frequently Asked Questions" were developed by the Advisory Council on Historic Preservation (ACHP), in consultation with the National Park Service's National Register of Historic Places Program, to address use of Section 304 to protect sensitive information about historic properties.

I. Overview of Section 304:

1. What is Section 304?

Section 304 of the NHPA protects certain sensitive information about historic properties from disclosure to the public when such disclosure could result in a

significant invasion of privacy, damage to the historic property, or impede the use of a traditional religious site by practitioners. The intent of the Section is not to prohibit legitimate scientific or humanistic study, or to prohibit the right of certain parties to participate in Section 106 consultation or other historic preservation processes. Section 800.11(c) of the regulations implementing Section 106 of the NHPA, "Protection of Historic Properties" (36 CFR part 800) reiterates the statutory language of Section 304 and sets the process by which the ACHP is engaged in consultation on Section 304 matters.

Section 304 states that:

(a) The head of a Federal agency, or other public official receiving grant assistance pursuant to this division, after consultation with the Secretary [of the Interior], shall withhold from disclosure to the public information about the location, character, or ownership of a historic property if the Secretary and the agency determine that disclosure may-

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic property; or
- (3) impede the use of a traditional religious site by practitioners.

(b) When the head of a Federal agency or other public official determines that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with the Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this division.

(c) When information described in subsection (a) has been developed in the course of an agency's compliance with section 306107 or 306108 of this title [the NHPA], the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

2. Who are the parties in the Section 304 process?

- The public-- the public is any member of the general public requesting information. There are instances in which federal agency representatives may constitute the public for Section 304 purposes, e.g., other federal representatives who may be requesting information.

- The head of a federal agency or other public official receiving grant assistance pursuant to the NHPA (hereinafter, "official")-- the official is the entity that may withhold information under Section 304. "The head of a [f]ederal agency" customarily means an official that has been delegated the authority within

the agency to withhold information under Section 304. "Other public official" includes SHPOs, Tribal Historic Preservation Officers (THPOs), representatives of Certified Local Governments (as they are public officials receiving grant assistance under the NHPA), and the ACHP. Note that the official can only withhold information under Section 304 after consultation with the Secretary of the Interior.

- Secretary-- the Secretary is the Secretary of the Interior. For Section 304 purposes, the Secretary's representative is the Keeper of the National Register within the National Park Service (NPS).

3. What properties may be included within the scope of Section 304?

Section 304 protects information about the location, character, or ownership of historic properties, meaning those properties that are eligible for or listed in the National Register of Historic Places (National Register).

4. What does "eligible for listing in the National Register" mean for Section 304 purposes?

A property is eligible for listing in the National Register if it meets the National Register criteria. For purposes of Section 304, a property is determined to meet the National Register eligibility criteria if: (a) the official proposing to withhold information about it unilaterally determines that it meets the National Register eligibility criteria, (b) the property has been determined eligible through a Section 106 consensus determination, (c) the official and SHPO/THPO agree to such eligibility, or (d) the property is determined eligible through the formal process outlined in 36 CFR part 63. Courts have supported a unilateral determination of eligibility. As the Fifth Circuit noted, "[a] plain reading of section 106 . . . persuades us that property qualifies as eligible property on the basis of literal eligibility under the National Register criteria. Consequently, we conclude that eligible property is not restricted to property that has been officially determined eligible for inclusion in the National Register."

Any determination of eligibility for Section 304 purposes should be documented in writing. If the official seeking to withhold information under Section 304 has a question about the eligibility of a property, he or she may also contact the Keeper of the National Register. Keep in mind that once a property is determined eligible for listing in the National Register, and therefore information about the property may fall under the scope of Section 304, any decision to withhold information must be made by the official in consultation with the Keeper. An official may propose to temporarily withhold information about properties that are currently undergoing eligibility determinations by the Keeper, with the final decision whether to disclose such information dependent on the outcome of that

determination. Information about properties determined not to be eligible cannot be withheld under Section 304.

5. What is the nature and scope of the information that can be protected under Section 304?

Information about the location of a historic property means information that specifically places the property in its geographic setting, which may include street addresses, highway and route numbers, Universal Transverse Mercator (UTM) or Geographic Information System (GIS) coordinates, electronic maps, and descriptions, including photographs and drawings, of the property's position in relation to local landmarks or natural features such that it could be found.

Information about the character of a property is that which refers to its physical features, setting, age, use, purpose, or contents, such as artifacts. Information on ownership is self-explanatory (who owns the property), and is restricted as this knowledge could help locate the historic property or could result in unwelcome intrusion or attention. The protected information is not only textual but can also include maps, photographs, electronic media, and other images.

6. Why is information protected?

Information is protected under Section 304 to prevent a significant invasion of privacy, to prevent a risk of harm to the historic property, or to prevent impeding the use of a traditional religious site by practitioners. In making the subsequent decision as to whom the sensitive information may be provided, the official may consider the wider context of who is requesting the information on a historic property and why. For example, is the requestor a participant in a Section 106 consultation? In such a case, knowledge of the historic property's location, character, or ownership could help the party in working with the agency to make better informed decisions. Is the requestor an "outside" party with no necessary connection to a Section 106 review? What is the purpose of the request for information? Answers to such questions better allow the official to assess the Section 304-related risks that disclosure presents.

The official must consider whether release of the information could result in privacy invasion, harm to the property, or impede its traditional use. When considering what might constitute a "significant invasion of privacy," the official should consider what "privacy" means. Keep in mind that Section 304 is intended to protect the historic property and what makes it significant; the intent of this section is not necessarily to protect an individual's personal information unless it relates to protecting the resource. The agency should consider why the historic property is significant and to whom, and whether the disclosure may cause unwanted attention or pose a threat to the resource.

A "risk of harm" to the historic property is a risk of an adverse effect to the characteristics of the property that make it historic, as that term is described in 36 CFR § 800.5. It may include damage to the integrity of the historic property through, for example, removal of artifacts, pot hunting, or defacing a site.

Regarding how the disclosure of information could impede the use of a traditional religious site, the official should consider how practitioners are using the site. For example, is there a danger that confidential or special information that religious practitioners believe gives the site its significance may be disseminated indiscreetly? Are "private" rituals or specific behaviors that occur there in danger of being widely known and thus disclosure of those practices might cause the site to lose significance? This use does not have to be just a physical and immediate use; it can be a more spatially or temporally attenuated use (e.g., the use may depend on the view of the historic property from a distance and/or a particular direction rather than physical presence at the property). Broad deference should be given to the traditional religious practitioners' description of how the property is used by them and what may impede such use.

It is important to note that the invasion of privacy, risk of harm, or impediment to use of a traditional religious site need only be a reasonable possibility; it does not have to be a certainty. The official should consult with experts in the relevant field and/or traditional practitioners in evaluating these criteria, including the SHPO and/or THPO, Indian tribe, or Native Hawaiian organization, and the group that assigns significance to the historic property.

7. What information does Section 304 not protect?

Section 304 does not protect information about properties that are not historic—i.e., that are not listed in or determined eligible for listing in the National Register. Further, Section 304 does not protect information about properties that have not been evaluated for eligibility for listing in the National Register. Those that are considering sharing information about a property that they do not want to be more broadly disclosed, should be particularly mindful about this limit. They run the risk that their property is not determined eligible for listing in the National Register, as explained above, and therefore information about it will not be protected from disclosure by Section 304.

Further, it does not protect information that may be included in field notes or data analyses if that information is unrelated to the properties' location, character, or ownership, or general information that would not attract risk of theft or vandalism, impede the use by traditional practitioners, or cause a significant invasion of privacy. For example, most general factual information that describes why a

particular property is eligible for listing on the National Register would not be protected by Section 304. Information that is already publically available, for instance, already provided on plaques or other signage meant to be publically displayed to commemorate a place or note its significance for the public, would not be protected.

If information is already in the public realm but with very limited accessibility, it does not mean that it can no longer be protected from further disclosure. For instance, if sensitive information is held in local archives, it can still be protected under Section 304 from further disclosure to the general public. As long as the information meets the criteria to be protected under Section 304, the information should not be made more easily accessible to the general public.

Other federal laws, such as the exemptions in the Freedom of Information Act (FOIA) and the ARPA, protect information beyond the scope of Section 304. See Questions #19 and #20.

8. When can Section 304 be used?

An official uses Section 304 when considering the release of information that may fall within its scope. This could occur at any time during routine land management actions, in the Section 106 review process, during compliance with NEPA, or during project planning or implementation. While Section 304 is most often relevant in the Section 106 process during the identification and evaluation of historic properties, it also applies to information that is obtained during the assessment of effects and the consideration of alternatives to avoid, minimize, or mitigate any adverse effects. As noted below in Question #12, a federal agency may also implement Section 304 in accordance with exemption 3 under FOIA in response to a FOIA request.

As soon as the official begins to assemble or generate information about properties that have the potential to be determined historic during project planning and administration, it should start to think about how it will manage that information. Early in a Section 106 review an official can review Section 304's withholding criteria with consulting parties as appropriate so that these parties can assist the official in making informed decisions regarding management and treatment of sensitive information, as well as the possible need to proactively initiate consultation with the Keeper to determine whether certain sensitive information should be withheld from disclosure. The official should also consider, early in project planning, whether it needs to include restrictions or non-disclosure provisions in any contracts with its consultants in order to protect sensitive information.

Information does not have to originate from the official to be protected by Section 304. For example, the information can be provided from other consulting parties during a Section 106 review, or raised in government-to-government consultation between a federal agency and an Indian tribe. What matters for Section 304 is that the information is in the hands of the federal agency or other public official receiving NHPA assistance as defined in Section 304 and being considered by those entities for dissemination.

9. When should officials start thinking about Section 304?

As soon as the official begins to assemble or generate information about properties that have the potential to be determined historic during project planning and administration, it should start to think about how it will manage that information. Early in a Section 106 review an official can review Section 304's withholding criteria with consulting parties as appropriate so that these parties can assist the official in making informed decisions regarding management and treatment of sensitive information, as well as the possible need to proactively initiate consultation with the Keeper to determine whether certain sensitive information should be withheld from disclosure. The official should also consider, early in project planning, whether it needs to include restrictions or non-disclosure provisions in any contracts with its consultants in order to protect sensitive information.

10. Where does one go for more information?

While it was written before substantial changes were made to Section 304, the NPS Bulletin #29 includes useful guidance about restricting information about historic properties. The Keeper of the National Register within the NPS handles Section 304 consultation and is the appropriate point of contact for questions relating to the applicability of Section 304.

Federal agencies may also seek guidance regarding the applicability of Section 304 from their agency legal offices and from the agency's Federal Preservation Officer (FPO). A list of designated FPOs and their contact information are provided on the ACHP's website.

An agency or individual may also contact the ACHP at any time with questions about the Section 106 process and Section 304.

II. How to Use Section 304 to Protect Information:

11. How does an official use Section 304 to protect sensitive information?

The process through which Section 304 protects sensitive information typically works as follows. An official receives a request for information from a member of the public, or independently determines that information should be withheld. The official may consult with an appropriate group or groups in the relevant professional field, the land owner or applicant, or the groups or individuals who attach significance to the property to learn more about the sensitive nature of the requested information and the risk that its disclosure could pose. The official then determines specifically what information to withhold, prepares a draft redacted document or set of documents, develops documentation to support the official's rationale for the proposed withholding, and initiates consultation with the Keeper.

If the official and the Keeper both agree that disclosure of the information meets the criteria for withholding, then the official withholds the information from disclosure. Once the official has made the decision to withhold, the NPS reviews the relevant information and, after consulting with the official, determines who may have access to the information (in whole or redacted form). Such access may be given for NHPA purposes (e.g., the information will be used to inform consulting parties about agency determinations under Section 106 of the NHPA). The party that requested the information would then be informed about these determinations to withhold and who, if anyone, would have access to the withheld information.

The Keeper consults with the ACHP in this process of determining withholding and access when the information at issue was developed in the course of an agency's compliance with Section 106 or Section 110(f) of the NHPA.

12. Why does Section 304 start with the presumption to disclose information to the public?

FOIA provides members of the public the right to access federal records, so it creates a presumption that information will be disclosed, except to the extent that such records (or portions thereof) are protected from public disclosure by exemptions found in FOIA. One such exemption under FOIA provides that an agency may withhold records "specifically exempted from disclosure by statute." Section 304 of the NHPA restricts the disclosure of certain information that may harm historic properties, as the NHPA has declared the preservation of historic properties to be in the public interest. It is important to note that FOIA includes required time limits for agency response and appeals that can impact the schedule of the Section 304 analysis when a FOIA request has prompted the possible release of information.

13. What happens if the official and the Keeper do not agree?

If the official and the Keeper do not agree on whether disclosure of certain information meets the criteria for withholding, then the information will not be withheld under Section 304. The decision to withhold information requires agreement by the official and the Keeper. The ACHP's opinion on this matter is advisory only.

14. Can an official make a decision to withhold information under Section 304 without consulting with the Keeper?

No. An official cannot legally withhold sensitive information from the public under Section 304 without consulting the Keeper and securing agreement. Also, under Section 304, once a decision to withhold is made by both the official and the Keeper, the Keeper makes the final decision as to who, if anyone, may have access to the withheld information.

III. Using Section 304 in the Section 106 Process:

15. How should an official ensure confidentiality in the Section 106 context?

The official should attempt to utilize Section 304 where appropriate to ensure the confidentiality of sensitive information. The official should explain to stakeholders how and what information can be kept confidential under Section 304. Prior to gathering sensitive information, for example, federal agencies should disclose to consulting parties the criteria for determining who may have access to information that has been withheld. To the extent feasible, officials should also be flexible in consultation. In some situations, it may be appropriate to allow parties to provide information verbally, or allow the official to inspect but not retain a copy of the information, if there is a concern that the written record may not be protected from disclosure.

16. How else might an official protect sensitive information in the Section 106 process?

An official may ask consulting parties to voluntarily restrict access or disclosure of sensitive information, or may seek to develop a contract with a private party that includes enforceable non-disclosure provisions.

A federal agency must make sure that any determination, finding, or agreement made in the Section 106 process is supported by sufficient documentation to allow any reviewing party to understand its basis. In that context, and as a practical matter, a federal agency may seek voluntary agreement among its consulting parties to treat certain information as confidential and such information will be provided only on a "need to know" basis. An agency may utilize other means as well as Section 304 to protect a historic property from harm. For instance, a Section 106 agreement may protect a historic property from harm via inclusion of

stipulations providing for more anti-looting patrols in the area or restricting permits for climbing near a Traditional Cultural Property (TCP) during the time(s) of its traditional use. A federal agency may also contract with parties that are not subject to Section 304 or FOIA, e.g., private organizations, neighborhood associations, applicants, consultants, to prevent those parties from releasing sensitive information that the agency has provided to them. Such a contract may be enforceable against the private parties and serve to protect sensitive information from further disclosure by those parties. But these contracts would not prevent the federal agency from disclosing information in response to a FOIA request unless the agency completed the Section 304 process.

17. What is the ACHP's role?

When the information requested was developed in the course of an agency's compliance with Section 106 or Section 110(f) of the NHPA, the Keeper consults the ACHP in determining whether and/or what information to withhold pursuant to 36 CFR § 800.11(c)(2). The agency provides the ACHP with available information, including, if available, the views of the SHPO/THPO, Indian tribes, Native Hawaiian organizations, and other relevant parties related to the confidentiality concern. The ACHP then reviews the information, including the NPS' comments, and provides its views to the NPS within 30 days on whether it agrees or disagrees with the proposed decisions regarding withholding and access to withheld information. The ACHP may also propose additional information that it believes should be withheld from the general public, or alternatively may propose that some information slated for withholding not be withheld. However, the final decision on whether to withhold information under Section 304 is made by the Keeper and the agency.

18. If sensitive information about a historic property is not provided to the SHPO, what role does the SHPO have in the Section 106 process?

Where a federal agency, pursuant to Section 304, withholds certain information from the SHPO, the SHPO may elect to not provide its views regarding those aspects of a Section 106 review related to the property at issue where it lacks sufficient information to formulate a position. The federal agency may then consult with the ACHP in lieu of the SHPO regarding the consideration of historic properties with protected information and, if necessary, consult with the Keeper on eligibility questions.

19. What happens to sensitive information provided to contractors or consultants?

Section 304 does not impose withholding requirements on private contractors or consultants. Section 304 would not prohibit those parties from releasing sensitive information that has been provided to them during any stage in project planning or implementation. Thus, once sensitive information is released to private contractors or consultants, Section 304 no longer applies to the withholding of that information by the private contractor or consultant. Consequently, an official may consider developing a legally enforceable contract, or insert non-disclosure provisions in such a contract with its contractor or consultant to protect sensitive information. An official does not need to make a formal Section 304 determination prior to including a non-disclosure provision in a contract with its contractor or consultant because such provision would restrict only the ability of the contractor or consultant from releasing information, and not the official.

IV. Access to Information; Relationship of Section 304 to Other Laws:

20. What happens to sensitive information provided to contractors or consultants?

Section 800.11(c)(3) of the Section 106 regulations recognizes that other federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. It states that, "[w]hen applicable, those authorities shall govern public access to information developed in the Section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants." Thus, when another federal law, such as ARPA, requires a federal agency to withhold specific information, or an exemption under FOIA applies in a certain situation, that information, although raised in the Section 106 context, may be withheld from public disclosure under those other authorities.

Further, if information is not able to be withheld under Section 304, a state law might otherwise authorize state officials to withhold information, for example, about a property not eligible for the National Register. In this situation, it is necessary to consider who is holding the information at issue. Generally, state laws authorizing the withholding of sensitive information apply to state agencies, not to federal agencies, regardless of the location of the resource about which the information pertains.

21. How does Section 304 compare to or differ from the confidentiality provisions in ARPA?

ARPA provides for the protection of archaeological resources and sites that are on public lands and Indian lands, and fosters increased cooperation and the exchange

of information between governmental authorities, the professional archaeological community, and private individuals.

Section 9 of ARPA requires withholding information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under ARPA or under any other provision of federal law unless the federal land manager concerned determines that such disclosure would further the purpose of ARPA and not create a risk of harm to the resource or site where the resource is located. However, a governor of any state may make a written request to receive certain otherwise protected information about resources in his or her state as long as he or she commits to adequately protect the confidentiality of such information to protect the resource from commercial exploitation.

ARPA's confidentiality provision protects information about the nature and location of archaeological resources, which are defined in the statute as any material remains of past human life or activities which are of archaeological interest and at least 100 years old. The regulations implementing ARPA, "Protection of Archeological Resources"(43 CFR part 7) state further that, "[o]f archaeological interest means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation. Material remains means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated."

ARPA's confidentiality provision applies only to information about archaeological resources located on specified lands, whereas Section 304 is not limited by property ownership or location. ARPA's confidentiality provision protects information about the nature and location of archaeological resources; it does not explicitly protect information regarding property ownership. Further, ARPA applies to information regarding "archaeological resources," which are defined differently from the NHPA's "historic properties"(although many "archaeological resources" may also qualify as "historic properties"); thus, a property about which sensitive information is withheld under ARPA does not have to be eligible for or listed in the National Register.

Finally, ARPA's confidentiality provision *requires* information to be withheld if it meets the law's criteria. Section 304 specifically *allows* disclosure of protected information as determined by the Keeper. For Section 106 purposes, if ARPA's

Section 9 applies, then it governs access to sensitive information about archaeological resources. If an official proposes to withhold information about property ownership of a historic archaeological resource, or proposes to withhold sensitive information about historic properties other than historically significant archaeological resources, then he or she may utilize Section 304.

22. Who should a member of the public contact in a federal agency to request access to information about historic properties?

If a member of the public wants to request information from a federal agency, he or she should contact the agency's FOIA office. If the information being requested relates to a historic property, the citizen should copy the agency's FPO in his or her request to the FOIA office. If the citizen has questions about the location, character, or ownership of a historic property, or if he or she would like to know who within the agency can make a decision to release or withhold such information under Section 304, the citizen should contact the agency's FPO.

To find an agency's FOIA office contact, visit this website: <http://www.foia.gov/report-makerequest.html>. A list of agency FPOs is available on this website: <http://www.achp.gov/fpoagencyinfo.html>.

23. How can a member of the public locate contact information for non-federal officials to request access to information about historic properties?

If a member of the public wants to request information from non-federal officials, he or she should contact that office directly. A resource for locating contact information for SHPOs is the National Conference of State Historic Preservation Officers (<http://ncshpo.org/>). A resource for locating contact information for THPOs is the National Association of Tribal Historic Preservation Officers (<http://nathpo.org/>).

24. Can an official withhold information about historic properties from the private landowner?

Yes, an official can withhold sensitive information through the Section 304 process from a private landowner. Note that a private landowner can condition the access he or she grants to a federal agency, tribe, or other party to survey his or her property. For example, one condition of that access might be providing the landowner with whatever information is uncovered about cultural resources that may be located on his or her property, but such access restriction could only be made in accordance with applicable federal and state law including Section 304. A federal agency should consider conditioning any access agreement with a specific reference to Section 304 and the agency's ability to withhold sensitive information as appropriate.

Under Section 304, the Keeper and the official determine what information to withhold, and the Keeper determines who may have access to that information, which may or may not include the private landowner. Without going through the Section 304 decision making process, a federal agency cannot withhold information about historic properties in the Section 106 context from disclosure in response to a FOIA request (unless another applicable law prevents such disclosure). Further, recall that Section 304 does not protect information about properties that are not determined eligible for or listed in the National Register. Therefore, depending on the results of the survey, information about unevaluated, non-eligible, or non-listed properties cannot be withheld from disclosure to the landowner (or other parties) under Section 304.

Generally, outside of the Section 304 context (where the information about eligible properties is not sensitive), a private landowner should be notified when a property that is located on his or her property is determined eligible for listing in the National Register. This is not just as a matter of courtesy, but also a matter of ensuring the owner does not inadvertently harm the property, to possibly encourage rehabilitation with available tax credits, or to encourage voluntary preservation in place.

25. How should sensitive information be treated in an otherwise public document, such as a NEPA document?

Information that is withheld under Section 304 needs to be redacted from public documents, including NEPA documents. However, as determined by NPS, it may be provided in an appendix or a separate document to specific recipients as authorized by NPS.

26. What happens if a state law prohibits or conflicts with the withholding of certain information under Section 304?

The NHPA is a federal law and, as such, preempts a state law that directly conflicts with the provisions of the NHPA, including Section 304, or a state law that, if enforced, would frustrate the purpose of the NHPA. Therefore, Section 304 preempts any state law that prohibits or conflicts with its provisions.

27. How is confidentiality handled when parties have different policies on confidentiality?

The scope and limits of Section 304 remain the same regardless of the withholding official. Agencies and officials may have different policies on confidentiality. When multiple federal agencies are responsible for Section 106 review of an undertaking, the agencies should develop a plan that specifies how sensitive information will be identified, collected, and treated; which agency or agencies will consult with relevant parties to identify risks of disclosure of that

information; and which agency will (if need be) initiate consultation with the Keeper under Section 304. Further, any land managing federal agencies should identify other confidentiality requirements that might be applicable to sensitive information, such as ARPA.

The official should consider any request made by any party to withhold information. The scope, limits, and process for withholding information under Section 304 are the same regardless of the requesting entity. If one consulting party raises potential concerns about the sensitivity of information, the official should initiate its analysis, in consultation with that party and any other relevant parties, to determine whether the information should be withheld under Section 304.

Multiple officials involved in a Section 106 review may be authorized by the NHPA to withhold information under Section 304. Each official is responsible for conducting its own Section 304 determination unless, as noted above, the officials are able to develop a plan for consulting with the Keeper and protecting sensitive information collaboratively.