

which it should actually be filed will govern.

[51 FR 2364, Jan. 16, 1986. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57800, Nov. 14, 1991]

§ 310.51 General exemptions.

(a) *Use of the general exemptions.* (1) No DoD Component is authorized to claim the exemption for records maintained by the Central Intelligence Agency established by 5 U.S.C. 552a(j)(1) of the Privacy Act.

(2) The general exemption established by 5 U.S.C. 552a(j)(2) of the Privacy Act may be claimed to protect investigative records created and maintained by law-enforcement activities of a DoD Component.

(3) To qualify for the (j)(2) exemption, the system of records must be maintained by an element that performs as its principal function enforcement of the criminal law, such as U.S. Army Criminal Investigation Command (CIDC), Naval Investigative Service (NIS), the Air Force Office of Special Investigations (AFOSI), and military police activities. Law enforcement includes police efforts to detect, prevent, control, or reduce crime, to apprehend or identify criminals; and the activities of correction, probation, pardon, or parole authorities.

(4) Information that may be protected under the (j)(2) exemption include:

(i) Records compiled for the purpose of identifying criminal offenders and alleged offenders consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, parole, and probation status (so-called criminal history records);

(ii) Reports and other records compiled during criminal investigations, to include supporting documentation.

(iii) Other records compiled at any stage of the criminal law enforcement process from arrest or indictment through the final release from parole supervision, such as presentence and parole reports.

(5) The (j)(2) exemption does not apply to:

(i) Investigative records prepared or maintained by activities without pri-

mary law-enforcement missions. It may not be claimed by any activity that does not have law enforcement as its principal function.

(ii) Investigative records compiled by any activity concerning employee suitability, eligibility, qualification, or for individual access to classified material regardless of the principal mission of the compiling DoD Component.

(6) The (j)(2) exemption claimed by the law-enforcement activity will not protect investigative records that are incorporated into the record system of a nonlaw enforcement activity or into nonexempt systems of records (see paragraph (f)(2) of § 310.50). Therefore, all system managers are cautioned to comply with the various regulations prohibiting or limiting the incorporation of investigatory records into system of records other than those maintained by law-enforcement activities.

(b) *Access to records for which a (j)(2) exemption is claimed.* Access to investigative records in the hands of a law-enforcement activity or temporarily in the hands of a military commander or other criminal adjudicative activity shall be processed under 32 CFR part 286, The DoD Freedom of Information Act Program, provided that the system of records from which the file originated is a law enforcement record system that has been exempted from the access provisions of this part (see paragraph (h) of § 310.30, subpart D).

[51 FR 2364, Jan. 16, 1986. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57800, Nov. 14, 1991]

§ 310.52 Specific exemptions.

(a) *Use of the specific exemptions.* The specific exemptions permit certain categories of records to be exempted from certain specific provisions of the Privacy Act (see appendix D). To establish a specific exemption, the records must meet the following criteria (parenthetical references are to the appropriate subsection of the Privacy Act (5 U.S.C. 552a(k)):

(1) *The (k)(1).* Information specifically authorized to be classified under the DoD Information Security Program Regulation, 32 CFR part 159. (see also paragraph (c) of this section).