

shall normally be limited to the reasons given to the individual for not amending the record.

(3) Copies of the OSD Component's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedure outlined in paragraph (c)(3) of this section.

(4) Paragraph B of Chapter 11, DoD 5400.11-R, prescribes that all requests for participation in a matching program (either as a matching agency or a source agency) be submitted to the Defense Privacy Office for review and compliance. OSD Components will submit these requests through the Records Management Division.

(e) *Penalties*—(1) *Civil action*. (i) An individual may file a civil suit against the United States for:

(A) Refusal to amend a record.

(B) Improper denial of the access to a record.

(C) Failure to maintain a record accurately.

(ii) An individual may also file a suit against the United States for failure to implement a provision of the Privacy Act when such failure leads to an adverse determination.

(iii) If the individual's suit is upheld, the court may direct the United States to pay the court costs and lawyer's fees.

(iv) When the individual can show that personal damage was done because an OSD officer or employee failed to comply with the provisions of the Privacy Act of 1974, the United States may be assessed damages by the court at a minimum of \$1,000.

(2) *Criminal action*. (i) Criminal penalties may be imposed against an OSD officer or employee for willful unauthorized disclosure of information in the records, for failure to publish a notice of the existence of a record system in the FEDERAL REGISTER, or for gaining access to the individual's record under false pretenses (i.e., against any person who knowingly and willfully requests or obtains any record concerning another individual without legal authorization).

(ii) An OSD officer or employee may be fined up to \$5,000 for a violation as outlined in paragraph (e)(2)(i) of this section.

(3) *Litigation status sheet*. Whenever a complaint citing the Privacy Act of 1974 is filed in a U.S. District Court against the Department of Defense, a DoD Component, or any DoD employee, the responsible system manager shall promptly notify the Defense Privacy Office. The litigation status sheet in DoD 5400.11-R provides a standard format for this notification. (The initial litigation status sheet shall, as a minimum, provide the information required by items 1 through 6.) A revised litigation status sheet shall be provided at each stage of the litigation. When a court renders a formal opinion or judgment, copies of the judgment or opinion shall be provided to the Defense Privacy Office with the litigation status sheet reporting that judgment or opinion.

[51 FR 7070, Feb. 28, 1986, as amended at 54 FR 2101, Jan. 19, 1989; Redesignated at 56 FR 55631, Oct. 29, 1991, and amended at 56 FR 57801, Nov. 14, 1991]

### §311.7 Procedures for exemptions.

(a) *General information*. The Secretary of Defense designates those Office of the Secretary of Defense (OSD) systems of records which will be exempt from certain provisions of the Privacy Act. There are two types of exemptions, general and specific. The general exemption authorizes the exemption of a system of records from all but a few requirements of the Act. The specific exemption authorizes exemption of a system of records or portion thereof, from only a few specific requirements. If an OSD Component originates a new system of records for which it proposes an exemption, or if it proposes an additional or new exemption for an existing system of records, it shall submit the recommended exemption with the records system notice as outlined in §311.6. No exemption of a system of records shall be considered automatic for all records in the system. The systems manager shall review each requested record and apply the exemptions only when this will serve significant and legitimate Government purpose.

(b) *General exemptions*. The general exemption provided by 5 U.S.C. 552a(j)(2) may be invoked for protection of systems of records maintained by

law enforcement activities. Certain functional records of such activities are not subject to access provisions of the Privacy Act of 1974. Records identifying criminal offenders and alleged offenders consisting of identifying data and notations of arrests, the type and disposition of criminal charges, sentencing, confinement, release, parole, and probation status of individuals are protected from disclosure. Other records and reports compiled during criminal investigations, as well as any other records developed at any stage of the criminal law enforcement process from arrest to indictment through the final release from parole supervision are excluded from release.

(1) *System Identification and Name.* DWHS P42.0, "DPS Incident Reporting and Investigations Case Files".

*Exemption.* Portions of this system that fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a, Sections (c) (3) and (4); (d)(1) through (d)(5); (e)(1) through (e)(3); (e)(5); (f)(1) through (f)(5); (g)(1) through (g)(5); and (h) of the Act.

*Authority.* 5 U.S.C. 552a(j)(2).

*Reason.* The Defense Protective Service is the law enforcement body for the jurisdiction of the Pentagon and immediate environs. The nature of certain records created and maintained by the DPS requires exemption from access provisions of the Privacy Act of 1974. The general exemption, 5 U.S.C. 552a(j)(2), is invoked to protect ongoing investigations and to protect from access criminal investigation information contained in this record system, so as not to jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

(2) *System Identification and Name.* JS006.CND, Department of Defense Counternarcotics C4I System.

*Exemption.* Portions of this system that fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a, section (c) (3) and (4); (d)(1) through (d)(5); (e)(1) through (e)(3); (e)(4)(G) and (e)(4)(H); (e)(5); (f)(1) through (f)(5); (g)(1) through (g)(5) of the Act.

*Authority.* 5 U.S.C. 552a(j)(2).

*Reason.* From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede USSOUTHCOM's criminal law enforcement.

For subsections (c)(4) and (d) because notification would alert a subject to the fact that an investigation of that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

From subsections (e)(4) (G) and (H) because this system of records is exempt from the access provisions of subsection (d) pursuant to subsection (j).

From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going criminal investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

For compatibility with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness and completeness cannot apply to this record system. Information gathered in criminal investigations is often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in

prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to USSOUTHCOM's close liaison and working relationships with the other Federal, as well as state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

From subsection (e)(2) because collecting information to the greatest extent possible directly from the subject individual may or may not be practicable in a criminal investigation. The individual may choose not to provide information and the law enforcement process will rely upon significant information about the subject from witnesses and informants.

From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat inimical to established investigative methods and techniques.

From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the criminal investigative process. It is the nature of criminal law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(c) *Specific exemptions.* All systems of records maintained by any OSD Component shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to subsection (k)(1) of that section to the extent that the system contains any information properly classified under Executive Order 11265, "National Security Information," dated June 28, 1979, as amended, and required by the Executive Order to be kept classified in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified. The Secretary of Defense has designated the following OSD system of records described below specifically exempted from the appropriate provisions of the Privacy Act pursuant to the designated authority contained therein:

(1) *System identifier and name.* DGC 16, Political Appointment Vetting Files.

*Exemption.* Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections (d)(1) through (d)(5).

*Authority.* 5 U.S.C. 552a(k)(5).

*Reasons.* From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source.

(2) *SYSID-DWHS P28, SYSNAME.* The Office of the Secretary of Defense Clearance File.

*Exemption.* This system of records is exempt from subsections (c)(3) and (d)

of 5 U.S.C. 552a, which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning the specific information which would reveal the identity of the source.

*Authority.* 5 U.S.C. 552a(k)(5).

*Reasons.* This exemption is required to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(3) *SYSID-DGC 04, SYSNAME.* Industrial Personnel Security Clearance Case Files.

*Exemption.* All portions of this system which fall under 5 U.S.C. 552a(k)(5) are exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3); (d).

*Authority.* 5 U.S.C. 552a(k)(5).

*Reasons.* This system of records is exempt from subsections (c)(3) and (d) of section 552a of 5 U.S.C. which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of

determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(4) *SYSID-DWHS P32, SYSNAME.* Standards of Conduct Inquiry File.

*Exemption.* This system of records is exempted from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of: investigatory material compiled for law enforcement purposes; or investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or Federal contracts, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or otherwise be eligible, as a result of the maintenance of investigatory material compiled for law enforcement purposes, the material shall be provided to that individual, except to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

*Authority.* 5 U.S.C. 552a(k) (2) and (5).

*Reasons.* These exemptions are necessary to protect the confidentiality of the records compiled for the purpose of: enforcement of the conflict of interest statutes by the Department of Defense Standards of Conduct Counselor, General Counsel, or their designees; and determining suitability, eligibility or qualifications for Federal civilian employment, military service, or Federal contracts of those alleged to have violated or caused others to violate the

Standards of Conduct regulations of the Department of Defense.

(5) *SYSID-DUSDP 02, SYSNAME*. Special Personnel Security Cases.

*Exemption.* All portions of this system which fall under 5 U.S.C. 552a(k)(5) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3); (d).

*Authority.* 5 U.S.C. 552a(k)(5).

*Reasons.* This system of records is exempt from subsections (c)(3) and (d) of 5 U.S.C. 552a which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(6) *System Identification and Name*. DODDS 02.0, Educator Application Files.

*Exemption.* All portions of this system which fall within 5 U.S.C. 552a(k)(5) may be exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3); (d).

*Authority.* 5 U.S.C. 552a(k)(5).

*Reasons.* It is imperative that the confidential nature of evaluation and investigatory material on teacher application files furnished the Department of Defense Dependent Schools (DoDDS) under promises of confidentiality be exempt from disclosure to the individual to insure the candid presentation of information necessary to make determinations involving applicants suitability for DoDDS teaching positions.

(7) *System Identification and Name*. DODDS 25.0, DoDDS Internal Review Office Project File.

*Exemption.* Portions of this system that fall within the provisions of 5 U.S.C. 552a(k)(2) are exempt from the following subsections (c)(3), (d), (e)(4)(G), (e)(4)(H), and (f).

*Authority.* 5 U.S.C. 552a(k)(2).

*Reasons.* From subsection (c)(3) because the release of a disclosure accounting would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by cooperating agencies. This would greatly impede the IRO's criminal law enforcement effectiveness.

From subsection (e)(4)(G) and (e)(4)(H), because notification would alert a subject to the fact that an investigation of that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

From subsection (d) and (f), because access to records and agency rules for access and amendment of records unfairly impede the DoDDS IRO criminal investigation activities. Requiring DoDDS IRO to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to the individual relating to an on-going criminal investigation. The conduct of a successful investigation leading to the indictment of a criminal offender would be jeopardized by agency rules requiring verification of record disclosure of the record to the subject, and record amendment procedures, as normally apply under the requirements of 5 U.S.C. 533(b)(1), (2), and (3), (c) and (e).

(8) *System identifier and name*. DWHS P29, Personnel Security Adjudications File.

*Exemption.* Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections (d)(1) through (d)(5).

*Authority.* 5 U.S.C. 552a(k)(5).

*Reasons.* From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

(9) *System identifier and name.* JS004SECDIV, Joint Staff Security Clearance Files.

*Exemption.* Portions of this system of records are exempt pursuant to the provisions of 5 U.S.C. 552a(k)(5) from subsections 5 U.S.C. 552a(d)(1) through (d)(5).

*Authority.* 5 U.S.C. 552a(k)(5).

*Reasons.* From subsections (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

(10) *System identifier and name:* DFMP 26, Vietnamese Commando Compensation Files.

(i) *Exemption:* Information classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(1).

(iii) *Reasons:* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 12958, as implemented by DoD 5200.1-R, may cause damage to the national security.

(11) *System identifier and name:* DUSP 11, POW/Missing Personnel Office Files.

(i) *Exemption:* Information classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(1).

(iii) *Reasons:* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 12958, as implemented by DoD 5200.1-R, may cause damage to the national security.

[51 FR 7070, Feb. 28, 1986, as amended at 55 FR 25303, June 21, 1990; 56 FR 25629, June 5, 1991; 56 FR 32966, July 18, 1991. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57801, Nov. 14, 1991; 57 FR 24547, June 10, 1992; 58 FR 59658, Nov. 10, 1993; 60 FR 36051, July 13, 1995; 60 FR 54198, Oct. 20, 1995; 61 FR 3814, Feb. 2, 1996; 62 FR 46446, Sept. 3, 1997; 62 FR 59579, Nov. 4, 1997]

#### § 311.8 Information requirements.

The Defense Privacy Office shall establish requirements and deadlines for DoD privacy reports. These reports shall be licensed in accordance with DoD Directive 5000.19.

### PART 312—OFFICE OF THE INSPECTOR GENERAL (OIG) PRIVACY PROGRAM

Sec.

- 312.1 Purpose.
- 312.2 Definitions.
- 312.3 Procedure for requesting information.
- 312.4 Requirements for identification.
- 312.5 Access by subject individuals.
- 312.6 Fees.
- 312.7 Request for correction or amendment.
- 312.8 OIG review of request for amendment.
- 312.9 Appeal of initial amendment decision.
- 312.10 Disclosure of OIG records to other than subject.
- 312.11 Penalties.
- 312.12 Exemptions.
- 312.13 Ownership of OIG investigative records.
- 312.14 Referral of records.

*AUTHORITY:* Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

*SOURCE:* 56 FR 51976, Oct. 17, 1991, unless otherwise noted.