

§ 312.8

(c) Incomplete requests shall not be honored, but the requester shall be contacted for the additional information needed to process the request.

(d) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(e) Nothing in the amendment process is intended or designed to permit a collateral attack upon what has already been the subject of a judicial or quasi-judicial determination. However, while the individual may not attack the accuracy of the judicial or quasi-judicial determination, he or she may challenge the accuracy of the recording of that action.

§ 312.8 **OIG review of request for amendment.**

(a) A written acknowledgement of the receipt of a request for amendment of a record will be provided to the requester within 10 working days, unless final action regarding approval or denial will constitute acknowledgement.

(b) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or DoD components shown by disclosure accounting records to have received copies of the record, or to whom disclosure has been made, will be notified of the amendment by the responsible OIG official.

(c) Where there is a determination to deny all or a portion of a request to amend a record, OIG will promptly advise the requesting individual of the specifics of the refusal and the reasons; and inform the individual that he/she may request a review of the denial(s) from the OIG designated official.

§ 312.9 **Appeal of initial amendment decision.**

(a) All appeals of an initial amendment decision should be addressed to the Assistant Inspector General for Investigations, ATTN: FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202-2884. The appeal should be concise

32 CFR Ch. I (7-1-98 Edition)

and should specify the reasons the requester believes that the initial amendment action by the OIG was not satisfactory. Upon receipt of the appeal, the designated official will review the request and make a determination to approve or deny the appeal.

(b) If the OIG designated official decides to amend the record, the requester and all previous recipients of the disputed information will be notified of the amendment. If the appeal is denied, the designated official will notify the requester of the reason of the denial, of the requester's right to file a statement of dispute disagreeing with the denial, that such statement of dispute will be retained in the file, that the statement will be provided to all future users of the file, and that the requester may file suit in a federal district court to contest the OIG decision not to amend the record.

(c) The OIG designated official will respond to all appeals within 30 working days or will notify the requester of an estimated date of completion if the 30 day limit cannot be met.

§ 312.10 **Disclosure of OIG records to other than subject.**

No record containing personally identifiable information within a OIG system of records shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent of the individual subject of the record or as provided for in the Act and DoD 5400.11-R (32 CFR part 286a).

§ 312.11 **Penalties.**

(a) An individual may bring a civil action against the OIG to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any records with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of the Privacy Act. The court may order correction or amendment of records. The court may enjoin the OIG from withholding the records and order the production of the record.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D),

the United States shall be liable for the actual damages sustained, but in no case less than the sum of \$1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the OIG who discloses material, which he/she knows is prohibited from disclosure, or who willfully maintains a system of records without compliance with the notice requirements.

(d) Criminal penalties may be imposed against any person who knowingly and willfully requests or obtains any record concerning another individual from an agency under false pretenses.

(e) All of these offenses are misdemeanors with a fine not to exceed \$5,000.

§ 312.12 Exemptions.

(a) *Exemption for classified records.* Any record in a system of records maintained by the Office of the Inspector General which falls within the provisions of 5 U.S.C. 552a(k)(1) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f) to the extent that a record system contains any record properly classified under Executive Order 12958 and that the record is required to be kept classified in the interest of national defense or foreign policy. This specific exemption rule, claimed by the Inspector General under authority of 5 U.S.C. 552a(k)(1), is applicable to all systems of records maintained, including those individually designated for an exemption herein as well as those not otherwise specifically designated for an exemption, which may contain isolated items of properly classified information

(b) The Inspector General of the Department of Defense claims an exemption for the following record systems under the provisions of 5 U.S.C. 552a(j) and (k)(1)-(7) from certain indicated subsections of the Privacy Act of 1974. The exemptions may be invoked and exercised on a case by case basis by the Deputy Assistant Inspector General for Investigations or the Director, Investigative Support Directorate and Freedom of Information Act/Privacy Act Division Chief which serves as the Systems Program Managers. Exemptions

will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of the records system.

(c) No personal records releasable under the provisions of The Freedom of Information Act (5 U.S.C. 552) will be withheld from the subject individual based on these exemptions.

(d) *System Identifier:* CIG-04

(1) *System name:* Case Control System.

(2) *Exemption:* Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), (I), (e)(5), (e)(8), (f), and (g).

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

(4) *Reasons:* 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 OIG's criminal law enforcement.

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

(6) From subsection (e)(1) because the nature of the criminal and/or civil 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 OIG's close liaison and working relationships with other Federal, 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