

of 5 U.S.C. 552a (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

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

(4) *Reasons.* From subsection (c)(3) because it will enable DIS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(i) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (d) and (f) because requiring DIS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DIS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 881, Jan. 5, 1981; 46 FR 35641, July 10, 1981. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 57 FR 33124, July 27, 1992; 61 FR 2916, Jan. 30, 1996; 61 FR 3814, Feb. 2, 1996]

§ 321.15 DIS implementation policies.

(a) *General.* The implementation of the Privacy Act of 1974 within DIS is as prescribed by DoD Directive 5400.11. This section provides special rules and information that extend or amplify DoD policies with respect to matters of particular concern to the Defense Investigative Service.

(b) *Privacy Act rules application:* Any request which cites neither Act, concerning personal record information in a system or records, by the individual to whom such information pertains, for access, amendment, correction, accounting of disclosures, etc., will be governed by the Privacy Act of 1974, DoD Directive 5400.11 and these rules exclusively. Requests for like information which cite only the Freedom of Information Act will be governed by the Freedom of Information Act DoD Regulation 5400.7R. Any denial or exemption of all or part of a record from notification, access, disclosure, amendment or other provision, will also be processed under these rules, unless court order or other competent authority directs otherwise.

(c) [Reserved]

(d) *First amendment rights.* No DIS official or element may maintain any information pertaining to the exercise by an individual of his rights under the First Amendment without the permission of that individual unless such collection is specifically authorized by statute or necessary to and within the scope of an authorized law enforcement activity.

(e) *Standards of accuracy and validation of records.* (1) All individuals or elements within DIS which create or maintain records pertaining to individuals will insure that they are reasonably accurate, relevant, timely and complete to serve the purpose for which they are maintained and to assure fairness to the individual to whom they pertain. Information that is not pertinent to a stated purpose of a system of records will not be maintained within those records. Officials compiling investigatory records will make every reasonable effort to assure that only reports that are impartial, clear, accurate, complete, fair and relevant with respect to the authorized purpose of such records are included, and that

reports not meeting these standards or serving such purposes are not included in such records.

(2) Prior to dissemination to an individual or agency outside DoD of any record about an individual (except for a Freedom of Information Act action or access by a subject individual under these rules) the disclosing DIS official will by review, make a reasonable effort to assure that such record is accurate, complete, timely, fair and relevant to the purpose for which they are maintained.

(f) *The defense central index of investigations (DCII)*. It is the policy of DIS, as custodian, that each DoD component or element that has direct access to or contributes records to the DCII (DIS 5-02), is individually responsible for compliance with The Privacy Act of 1974 and DoD Directive 5400.11 with respect to requests for notification, requests for access by subject individuals, granting of such access, request for amendment and corrections by subjects, making amendments or corrections, other disclosures, accounting for disclosures and the exercise of exemptions, insofar as they pertain to any record placed in the DCII by that component or element. Any component or element of the DoD that makes a disclosure of any record whatsoever to an individual or agency outside the DoD, from the DCII, is individually responsible to maintain an accounting of that disclosure as prescribed by The Privacy Act of 1974 and DoD Directive 5400.11 and to notify the element placing the record in the DCII of the disclosure. Use of and compliance with the procedures of the DCII Disclosure Accounting System will meet these requirements. Any component or element of DoD with access to the DCII that, in response to a request concerning an individual, discovers a record pertaining to that individual placed in the DCII by another component or element, may refer the requester to the DoD component that placed the record into the DCII without making an accounting of such referral, although it involves the divulging of the existence of that record. Generally, consultation with, and referral to, the component or element placing a record in the DCII should be effected by any component

receiving a request pertaining to that record to insure appropriate exercise of amendment or exemption procedures.

(g) *Investigative operations*. (1) DIS agents must be thoroughly familiar with and understand these rules and the authorities, purposes and routine uses of DIS investigative records, and be prepared to explain them and the effect of refusing information to all sources of investigative information, including subjects, during interview, in response to questions that go beyond the required printed and oral notices. Agents shall be guided by reference (f) §321.2, in this respect.

(2) All sources may be advised that the subject of an investigative record may be given access to it, but that the identities of sources may be withheld under certain conditions. Such advisement will be made as prescribed in §321.2(f), and the interviewing agent may not urge a source to request a grant of confidentiality. Such pledges of confidence will be given sparingly and then only when required to obtain information relevant and necessary to the stated purpose of the investigative information being collected.

(h) *Non-system information on individuals*. The following information is not considered part of personal records systems reportable under the Privacy Act of 1974 and may be maintained by DIS members for ready identification, contact, and property control purposes only. If at any time the information described in this paragraph is to be used for other than these purposes, that information must become part of a reported, authorized record system. No other information concerning individuals except that described in the records systems notice and this paragraph may be maintained within DIS.

(1) Identification information at doorways, building directories, desks, lockers, nametags, etc.

(2) Identification in telephone directories, locator cards and rosters.

(3) Geographical or agency contact cards.

(4) Property receipts and control logs for building passes, credentials, vehicles, weapons, etc.

(5) Temporary personal working notes kept solely by and at the initiative of individual members of DIS to facilitate their duties.

(i) *Notification of prior recipients.* Whenever a decision is made to amend a record, or a statement contesting a DIS decision not to amend a record is received from the subject individual, prior recipients of the record identified in disclosure accountings will be notified to the extent possible. In some cases, prior recipients cannot be located due to reorganization or deactivations (e.g., U.S. Military Assistance Command, Vietnam). In these cases, the personnel security element of the receiving Defense Component will be sent the notification or statement for appropriate action.

(j) *Ownership of DIS Investigative Records.* Personnel security investigative reports shall not be retained by DoD recipient organizations. Such reports are considered to be the property of the investigating organization and are on loan to the recipient organization for the purpose for which requested. All copies of such reports shall be destroyed within 120 days after the completion of the final personnel security determination and the completion of all personnel action necessary to implement the determination. Reports that are required for longer periods may be retained only with the specific written approval of the investigative organization.

(k) *Consultation and referral.* DIS system of records may contain records originated by other components or agencies which may have claimed exemptions for them under the Privacy Act of 1974. When any action that may be exempted is initiated concerning such a record, consultation with the originating agency or component will be effected. Where appropriate such records will be referred to the originating component or agency for approval or disapproval of the action.

[40 FR 55546, Nov. 28, 1975, as amended at 46 FR 35641, July 10, 1981. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57803, Nov. 14, 1991]

PART 322—PRIVACY ACT SYSTEMS OF RECORDS—DISCLOSURES AND AMENDMENT PROCEDURES—SPECIFIC EXEMPTIONS, NATIONAL SECURITY AGENCY

Sec.

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AUTHORITY: Pub. L. 93-579; 88 Stat. 1896 (5 U.S.C. 552a).

SOURCE: 40 FR 44294, Sept. 25, 1975, unless otherwise noted. Redesignated at 56 FR 55631, Oct. 29, 1991.

§322.1 Purpose and scope.

(a) The purpose of this rule is to comply with and implement title 5 U.S.C. 552a, sections (f) and (k), hereinafter identified as the Privacy Act. It establishes the procedures by which an individual may be notified whether a system of records contains information pertaining to the individual; defines times, places and requirements for identification of the individual requesting records, for disclosure of requested records where appropriate; special handling for medical and psychological records; for amendment of records; appeal of denials of requests for amendment; and provides a schedule of fees to be charged for making copies of requested records. In addition, this rule contains the exemptions promulgated by the Director, NSA, pursuant to 5 U.S.C. 552a(k), to exempt Agency systems of records from subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f) of section 552a.

(b) The procedures established and exemptions claimed apply to systems of records for which notice has been published in the FEDERAL REGISTER pursuant to the Privacy Act. Requests from individuals for records pertaining