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(f) *Furnishing disclosure accountings to the individual.* (1) Make available to the individual to whom the record pertains all disclosure accountings except when:

(i) The disclosure has been made to a law enforcement activity under paragraph (g) of § 310.22 and the law enforcement activity has requested that disclosure not be made; or

(ii) The system of records has been exempted from the requirement to furnish the disclosure accounting under the provisions of § 310.26(b).

(2) If disclosure accountings are not maintained with the record and the individual requests access to the accounting, prepare a listing of all disclosures (see paragraph (b) of this section) and provide this to the individual upon request.

Subpart F—Exemptions

§ 310.26 Use and establishment of exemptions.

(a) *Types of exemptions.* (1) There are three types of exemptions permitted by the Privacy Act (5 U.S.C. 552a).

(i) An access exemption that exempts records compiled in reasonable anticipation of a civil action or proceeding from the access provisions of the Act.

(ii) General exemptions that authorize the exemption of a system of records from all but certain specifically identified provisions of the Act (see appendix D).

(iii) Specific exemptions that allow a system of records to be exempted only from certain designated provisions of the Act (see appendix D).

(2) Nothing in the Act permits exemption of any system of records from all provisions of the Act.

(b) *Establishing exemptions.* (1) The access exemption is self-executing. It does not require an implementing rule to be effective.

(2) Neither a general nor a specific exemption is established automatically for any system of records. The Heads of the DoD Components maintaining the system of records must make a determination whether the system is one for which an exemption properly may be claimed and then propose and establish an exemption rule for the system. No system of records within the Department of Defense shall be considered exempted until the Head of the Component has approved the exemption and an exemption rule has been published as a final rule in the FEDERAL REGISTER (See § 310.30(e).)

(3) Only the Head of the DoD Component or an authorized designee may claim an exemption for a system of records.

(4) A system of records is considered exempt only from those provision of the Privacy Act (5 U.S.C. 552a) that are identified specifically in the Component exemption rule for the system and that are authorized by the Privacy Act.

(5) To establish an exemption rule, see § 310.31.

(c) *Blanket exemption for classified material.* (1) Component rules shall include a blanket exemption under 5 U.S.C. 552a(k)(1) of the Privacy Act from the access provisions (5 U.S.C. 552a(d)) and the notification of access procedures (5 U.S.C. 522a(e)(4)(H)) of the Act for all classified material in any systems of records maintained.

(2) Do not claim specifically an exemption under section 552a(k)(1) of the Privacy Act for any system of records. The blanket exemption affords protection to all classified material in all system of records maintained.

(d) *Provisions from which exemptions may be claimed.* The Head of a DoD Component may claim an exemption from any provision of the Act from which an exemption is allowed (see appendix D).

(e) *Use of exemptions.* (1) Use exemptions only for the specific purposes set forth in the exemption rules (see paragraph (b) of § 310.31).

(2) Use exemptions only when they are in the best interest of the Government and limit them to the specific portions of the records requiring protection.

(3) Do not use an exemption to deny an individual access to any record to which he or she would have access under 32 CFR part 286.

(f) *Exempt records in non-exempt systems.* (1) Exempt records temporarily in the custody of another Component are considered the property of the originating Component. Access to these records is controlled by the system notices and rules of the originating Component.

(2) Exempt records that have been incorporated into a nonexempt system of records are still exempt but only to the extent to which the provisions of the Act for which an exemption has been claimed are identified and an exemption claimed for the system of records from which the record is obtained and only when the purposes underlying the exemption for the record are still valid and necessary to protect the contents of the record.

(3) If a record is accidentally misfiled into a system of records, the system notice and rules for the system in which it should actually be filed shall govern.

§ 310.27 Access exemption.

(a) An individual is not entitled to access information that is compiled in reasonable anticipation of a civil action or proceeding.

(b) The term ''civil action or proceeding'' is intended to include court proceedings, preliminary judicial steps, and quasi-judicial administrative hearings or proceedings (i.e., adversarial proceedings that are subject to rules of evidence).

(c) Any information prepared in anticipation of such actions or proceedings, to include information prepared to advise the DoD Component officials of the possible legal or other consequences of a given course of action, is protected.

(d) The exemption is similar to the attorney work-product privilege except that it applies even when the information is prepared by nonattorneys.

(e) The exemption does not apply to information compiled in anticipation of criminal actions or proceedings.

§ 310.28 General exemption.

(a) *Use of specific exemptions*. A DoD Component is not 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.

(b) 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.

(c) To qualify for the (j)(2) exemption, the system of records must be maintained by a DoD Component, or element thereof, that performs as its principal function any activity pertaining to the enforcement of criminal laws, such as the U.S. Army Criminal Investigation Command, the Naval Investigative Service, the Air Force Office of Special Investigations, and military police activities. However, where DoD offices perform multiple functions, but have an investigative component, such as the DoD Inspector General Defense Criminal Investigative Service or Criminal Law Divisions of Staff Judge Advocates Offices, the exemption may be claimed. Law enforcement includes police efforts to detect, prevent, control, or reduce crime, to apprehend or identify criminals; and the activities of military trial counsel, correction, probation, pardon, or parole authorities.

(d) Information that may be protected under the (j)(2) exemption includes:

(1) 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);

(2) Reports and other records compiled during criminal investigations, including supporting documentation.

(3) 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 pre-sentence and parole reports.

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

(1) Investigative records prepared or maintained by activities without primary law-enforcement missions. It may not be claimed by any activity that does not have law enforcement as its principal function except as indicated in paragraph (c) of this section.

(2) 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.

§ 310.29 Specific exemptions.

(a) *Use of specific exemptions*. The specific exemption established by 5 U.S.C. 552a(k) of the Privacy Act may be claimed to protect records that meet the following criteria (parenthetical references are to the appropriate subsection of the Act:

(1) *(k)(1)*. Information subject to 5 U.S.C. 552(b)(1), (DoD 5200.1-R) (see also paragraph (c) of this section).

(2) *(k)(2)*. Investigatory information compiled for law-enforcement purposes, other than information that is covered by the general exemption (see § 310.28). If an individual is denied any right, privilege or benefit he or she is otherwise entitled by Federal law or for which he or she would otherwise be eligible as a result of the maintenance of the information, the individual shall be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This exemption provides limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(i) The information must be compiled for some investigative law enforcement purpose, such as a criminal investigation by a DoD office, whose principal function is not law enforcement, or a civil investigation.

(ii) The exemption does not apply to investigations conducted solely for the purpose of a routine background investigation (see paragraph (a)(5) of this section), but will apply if the investigation is for the purpose of investigating DoD personnel who are suspected of violating statutory or regulatory authority.

(iii) The exemption can continue to be claimed even after the investigation has concluded and there is no future likelihood of further enforcement proceedings.

(3) *(k)(3)*. Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3056, ''Powers, Authorities, and Duties of United States Secret Service.''

(4) *(k)(4)*. Records maintained solely for statistical research or program evaluation purposes and that are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records that may be disclosed under 13 U.S.C. 6, ''Information for other Federal Departments and Agencies.

(5) *(k)(5)*. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source.

(i) This exemption permits protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

(ii) This exemption is applicable not only to investigations conducted prior to the hiring of an employee, but it also applies to investigations conducted to determine continued employment suitability or eligibility.

(6) *(k)(6)*. Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process.

(7) *(k)(7)*. Evaluation material used to determine potential for promotion in the Military Services, but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(b) *Promises of confidentiality*. (1) Only the identity of sources that have been given an express promise of confidentiality may be protected from disclosure under paragraphs (a)(1), (5), and (7) of this section. However, the identity of sources who were given implied promises of confidentiality in inquiries conducted before September 27, 1975, also may be protected from disclosure.

(2) Ensure promises of confidentiality are not automatically given but are used sparingly. Establish appropriate procedures and identify fully categories of individuals who may make

such promises. Promises of confidentiality shall be made only when they are essential to obtain the information sought (see 5 CFR part 736).

(c) *Access to records for which specific exemptions are claimed.* Deny the individual access only to those portions of the records for which the claimed exemption applies.

Subpart G—Publication Requirements

§ 310.30 Federal Register publication.

(a) *What must be published in the* FEDERAL REGISTER. (1) Four types of documents relating to the Privacy Program must be published in the FEDERAL REGISTER:

(i) DoD Component Privacy Procedural rules;

(ii) DoD Component exemption rules; and

(iii) System notices.

(iv) Match notices (See subpart L to this part).

(2) See DoD 5025.1–M,[9] ''Directive Systems Procedures'' and Administrative Instruction (AI) No. 102,[10] ''Office of the Secretary of Defense Federal Register System'' for information pertaining to the preparation of documents for publication in the FEDERAL REGISTER.

(b) *The effect of publication in the* FEDERAL REGISTER. Publication of a document in the FEDERAL REGISTER constitutes official public notice of the existence and content of the document.

(c) *DoD Component rules.* (1) Component Privacy Program procedures and Component exemption rules are subject to the rulemaking procedures prescribed in AI 102.

(2) System notices are not subject to formal rulemaking and are published in the FEDERAL REGISTER as ''Notices,'' not rules.

(3) Privacy procedural and exemption rules are incorporated automatically into the CFR. System notices are not published in the CFR.

(d) *Submission of rules for publication.* (1) Submit to the DPO, ODA&M, all proposed rules implementing this part in proper format (see DoD 5025.1–M and AI 102) for publication in the FEDERAL REGISTER.

(2) This part has been published as a final rule in the FEDERAL REGISTER. Therefore, incorporate it into your Component rules rather than by republication (see AI 102).

(3) DoD Component procedural rules that simply implement this Regulation need only be published as final rules in the FEDERAL REGISTER (see DoD 5025.1–M and AI 102). If the Component procedural rule supplements this part in any manner, they must be published as a proposed rule before being published as a final rule.

(4) Amendments to Component rules are submitted like the basic rules.

(5) The DPO submits the rules and amendments thereto to the FEDERAL REGISTER for publication.

(e) *Submission of exemption rules for publication.* (1) No system of records within the Department of Defense shall be considered exempt from any provision of this part until the exemption and the exemption rule for the system has been published as a final rule in the FEDERAL REGISTER.

(2) Submit exemption rules in proper format to the DPO. All exemption rules are coordinated with the DoD Office of General Counsel. After coordination, the DPO shall submit the rules to the FEDERAL REGISTER for publication.

(3) Exemption rules require publication both as proposed rules and final rules (see AI 102).

(4) § 310.31(b) discusses the content of an exemption rule.

(5) Submit amendments to exemption rules in the same manner used for establishing these rules.

(f) *Submission of system notices for publication.* (1) System notices are not subject to formal rulemaking procedures. However, the Privacy Act (5 U.S.C. 552a) requires a system notice be published in the FEDERAL REGISTER of the existence and character of a new or altered system of records. Until publication of the notice, DoD Components shall not begin to operate the system of records (i.e., collect and use the information). The notice procedures require:

(i) The system notice describes what kinds of records are in the system, on whom they are maintained, what uses

[9] See footnote 1 to § 310.1.

[10] See footnote 1 to § 310.1.