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(b) That individuals requested to provide their social security numbers must be informed of:

(1) Whether providing social security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers; and

(3) The uses that will be made of the numbers.

### § 16.54 Employee standards of conduct.

Each component will inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an employee of the Department of Justice shall:

(a) Collect from individuals only the information that is relevant and necessary to discharge the responsibilities of the Department;

(b) Collect information about an individual directly from that individual whenever practicable;

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which the Department intends to use the information;

(3) The routine uses the Department may make of the information; and

(4) The effects on the individual, if any, of not providing the information;

(d) Ensure that the component maintains no system of records without public notice and that it notifies appropriate Department officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by the Department in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights, unless it is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Act, maintain an accounting in the specified form of all disclosures of records by the Department to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(j) Notify the appropriate Department official of any record that contains information that the Privacy Act does not permit the Department to maintain.

[Order No. 2156-98, 63 FR 29600, June 1, 1998; 63 FR 34965, June 26, 1998; 63 FR 51401, Sept. 25, 1998]

### § 16.55 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

## Subpart E—Exemption of Records Systems Under the Privacy Act

SOURCE: Order No. 645-76, 41 FR 12640, Mar. 26, 1976, unless otherwise noted.

### § 16.70 Exemption of the Office of the Attorney General System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5); and (g):

(1) General Files System of the Office of the Attorney General (JUSTICE/OAG-001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

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(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detec-

tion, apprehension, or legal obligations of duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

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

(8) From subsection (g) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[Order No. 31-85, 51 FR 751, Jan. 8, 1986]

### § 16.71 Exemption of the Office of the Deputy Attorney General System—limited access.

(a) The following systems of records and exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) Presidential Appointee Candidate Records System (JUSTICE/DAG-006).

(2) Presidential Appointee Records System (JUSTICE/DAG-007).

(3) Special Candidates for Presidential Appointments Records System (JUSTICE/DAG-008).

(4) Miscellaneous Attorney Personnel Records System (JUSTICE/DAG-011).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a Presidential appointee or Department attorney position. Access could reveal the identity of the source of the information and constitute a breach of the promise of confidentiality on the part of the Department of Justice. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

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(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate for a position which assists in determining whether that candidate should be nominated for appointment.

(c) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3) and (5); and (g):

(1) Drug Enforcement Task Force Evaluation and Reporting System (JUSTICE/DAG-003).

(2) General Files System of the Office of the Deputy Attorney General (JUSTICE/DAG-013).

(d) In addition, the Drug Enforcement Task Force Evaluation and Reporting System is exempt from 5 U.S.C. 552a(e)(4)(G) and (H). The exemptions for the Drug Enforcement Task Force Evaluation and Reporting System apply only to the extent that information is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (K)(2). The exemptions for the General Files System apply only to the extent that information is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5).

(e) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her could reveal investigative interest on the part of the Department of Justice, as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel. Further, making available to a record subject the accounting of disclosures could reveal the identity of a confidential source. In addition, release of an accounting of disclosures from the General Files System may reveal information that is properly classified pur-

suant to Executive Order 12356, and thereby cause damage to the national security.

(2) From subsection (c)(4) because these systems are exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in these systems relate to official Federal investigations. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. In addition, release of records from the General Files System may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security. Amendment of the records in either of these systems would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and may therefore be able to avoid detection, apprehension, or legal obligations or duties.

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(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H) because no access to these records is available under subsection (d) of the Privacy Act. (This exemption applies only to the Drug Enforcement Task Force Evaluation and Reporting System.)

(8) From subsection (g) because these systems of records are exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[Order No. 57-91, 56 FR 58305, Nov. 19, 1991]

**§ 16.72 Exemption of Office of the Associate Attorney General System—limited access.**

(a) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4); (d); (e)(1), (2), (3) and (5); and (g):

(1) General Files System of the Office of the Associate Attorney General (JUSTICE/AAG-001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her could reveal investigative interest on the part of the Department of Justice, as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel. Further, making available to a record subject the accounting of disclosures could reveal the identity of a confidential source. In addition, release of an accounting of disclosures may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. In addition, release of these records may reveal information that is properly classified pursuant to Executive Order 12356, and thereby cause damage to the national security. Amendment of the records in this system would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and may therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this

subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsection (g) because this system of records is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act.

[Order No. 57-91, 56 FR 58305, Nov. 19, 1991]

**§ 16.73 Exemption of Office of Legal Policy System—limited access.**

(a) The following system of records is exempt from 5 U.S.C 552a (d)(1), (2), (3) and (4); (e)(1) and (2), (e)(4)(G) and (H), (e)(5); and (g):

(1) Freedom of Information and Privacy Appeals Index (JUSTICE/OLP-001).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsections (d)(1), (2), (3), and (4) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement. Individual access to these records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously re-investigated.

(2) From subsections (e)(1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure

the relevance, accuracy, timeliness, and completeness of all information obtained.

(3) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

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

(5) From subsection (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(c) The following system of records is exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) U.S. Judges Records System (JUSTICE/OLP-002).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contracted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a judgeship. Access could reveal the identity of the source of the information and constitute a breach of the promised confidentiality on the part of the Department. Such breaches ultimately would restrict the free flow of information vital to the determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may seem irrelevant, when combined with other seemingly irrelevant

information, can on occasion provide a composite picture of a candidate which assists in determining whether that candidate should be nominated for appointment.

(e) The following system of records is exempt from U.S.C. 552a(c) (3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H) (e)(5); and (g):

(1) General Files System of the Office of Legal Policy (JUSTICE/OLP-003).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is

appropriate to retain all information since it may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigation process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsections (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations and duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

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

(8) From subsection (g) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g):

(1) Declassification Review System (JUSTICE/OLP-004).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552(j)(2), (k)(1), (k)(2), and (k)(5).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation e.g., destroy evidence, intimidate potential witnesses, or flee

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the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement and/or is properly classified pursuant to E.O. 12356. Individual access to these records might compromise ongoing investigations, reveal confidential sources or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation, or jeopardize national security or foreign policy interests. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information which may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the informa-

tion gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H), and (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[Order No. 34-85, 51 FR 754, Jan. 8, 1986. Redesignated by Order No. 6-86, 51 FR 15476, Apr. 24, 1986 and further redesignated and amended by Order No. 19-86, 51 FR 39373, Oct. 28, 1986]

### § 16.74 Exemption of Office of Intelligence Policy and Review Systems—limited access.

(a) The following systems of records is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f) and (g):

(1) Policy and Operational Records System (JUSTICE/OIPR-001);

(2) Foreign Intelligence Surveillance Act Records System (JUSTICE/OIPR-002);

(3) Litigation Records System (JUSTICE/OIPR-003); and

(4) Domestic Security/Terrorism Investigations Records System (JUSTICE/OIPR-004).

These exemptions apply only to the extent that information in those systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of the disclosure accounting would put the target of a surveillance or investigation on notice of the investigation or surveillance and would thereby seriously hinder authorized United States intelligence activities.

(2) From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because these provisions contemplate individual access to records and such access would compromise ongoing surveillances or investigations and reveal the sources and methods of an investigation.

(3) From subsection (e)(2) because, although this office does not conduct investigations, the collection efforts of agencies that supply information to this office would be thwarted if the agency were required to collect information with the subject's knowledge.

(4) From subsections (e)(3) and (e)(8) because disclosure and notice would provide the subject with substantial information which could impede or compromise an investigation. For example, an investigatory subject could, once made aware that an investigation was ongoing, alter his manner of engaging in intelligence or terrorist activities in order to avoid detection.

[Order No. 19-86, 51 FR 39374, Oct. 28, 1986]

**§ 16.75 Exemption of the Office of the Inspector General Systems/Limited Access.**

(a) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (5), and (8), and (g) of 5 U.S.C. 552a. In addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1) of 5 U.S.C. 552a:

(1) Office of the Inspector General Investigative Records (JUSTICE/OIG-001).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable exemption may be waived, either partially or totally, by the Office of the Inspector General (OIG).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the OIG, but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant in-

formation concerning the nature of the investigation, release could result in the destruction of documentary evidence, improper influencing of witnesses, endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel, the fabrication of testimony, flight of the subject from the area, and other activities that could impede or compromise the investigation. In addition, accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel, and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment

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of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OIG for the following reasons:

(i) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(ii) During the course of any investigation, the OIG may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information, as it may aid in establishing patterns of criminal activity, and can provide valuable leads for Federal and other law enforcement agencies.

(iii) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(i) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(ii) In certain circumstances the subject of an investigation cannot be required to provide information to inves-

tigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(iii) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, and thereby impede effective law enforcement.

(8) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2) and (k)(1) and (k)(2) of the Privacy Act.

(c) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Office of the Inspector General, Freedom of Information/Privacy Acts (FOI/PA) Records (JUSTICE/OIG-003).

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This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to official Federal investigations and law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by the Office of the Inspector General (OIG).

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

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(2) [Reserved]

[Order No. 63-92, 57 FR 8263, Mar. 9, 1992, as amended by Order No. 64-92, 57 FR 8263, Mar. 9, 1992]

### § 16.76 Exemption of Justice Management Division.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Controlled Substances Act Non-public Records (JUSTICE/JMD-002).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Public Law 91-513 (Controlled Substances Act), section 404(b) states that the nonpublic record "shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection."

(2) Information in this system consists of arrest records, including those of co-defendants. The records include reports of informants and investigations. Therefore, access could disclose investigative techniques, reveal the identity of confidential sources, and invade the privacy of third parties.

(c) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Security Clearance Information System (SCIS) (JUSTICE/JMD-008)—Limited access.

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(5).

(d) Exemption from subsection (d) is justified for the following reason:

(1) Access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation. Such knowledge might be harmful to the source who provided the information as well as violate the explicit or implicit promise of confidentiality made to the source during the investigation. Access may also reveal information relating to actual or potential criminal investigations.

(2) [Reserved]

(e) Consistent with the legislative purpose of the Privacy Act of 1974, the Justice Management Division will grant access to nonexempt material in SCIS records which are maintained by the Security Programs Staff. Disclosure will be governed by the Department's Privacy regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from this system will be made on a case-by-case basis.

(f) The following system of records is exempt from 5 U.S.C. 552a(d);

(1) Freedom of Information/Privacy Act Records System (JUSTICE/JMD-019).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(g) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d) because of the need to safeguard the identity of confidential informants and avoid interference with ongoing investigations or law enforcement activities by preventing premature disclosure of information relating to those efforts.

(2) [Reserved]

(h) Consistent with the legislative purpose of the Privacy Act of 1974, the Justice Management Division will grant access to non-exempt material in FOIA/PA records. Exemptions will apply only to the extent that other correspondence or internal memoranda retained with the request file contain

investigatory material for law enforcement purposes.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 9999, Feb. 18, 1977; Order No. 899-80, 45 FR 43703, June 30, 1980; Order No. 6-86, 51 FR 15476, Apr. 24, 1986]

**§ 16.77 Exemption of U.S. Trustee Program System—limited access.**

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g):

(1) U.S. Trustee Program Case Referral System, JUSTICE/UST-004.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) since an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsection (d) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously re-investigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In

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the interest of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement because the subject of the investigation would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

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

(8) From subsection (e)(8) because the individual notice requirement of this subsection could present a serious impediment to law enforcement in that this could interfere with the U.S. Attorney's ability to issue subpoenas.

(9) From subsections (f) and (g) because this system has been exempted from the access provisions of subsection (d).

[Order No. 1-87, 52 FR 3631, Feb. 5, 1987]

## § 16.78 Exemption of the Special Counsel for Immigration-Related, Unfair Employment Practices Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d).

(1) Central Index File and Associated Records, JUSTICE/OSC-001.

These exemptions apply to the extent that information in this system is sub-

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ject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries.

(2) From subsection (d) because access to the records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation.

[Order No. 10-88, 53 FR 7735, Mar. 10, 1988]

## § 16.79 Exemption of Pardon Attorney Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a(d):

(1) Executive Clemency Files (JUSTICE /OPA-001).

(2) Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA-003).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Executive Clemency Files contain investigatory and evaluative reports relating to applicants for Executive clemency. The FOI/PA Request File contains copies of documents from the Executive Clemency Files which have not been released either in whole or in part pursuant to certain provisions of the FOI/PA. Release of such information to the subject would jeopardize the integrity of the investigative process, invade the right of candid and confidential communications among officials concerned with recommending clemency decisions to the President, and disclose the identity of persons who furnished information to the Government under an express or implied

promise that their identities would be held in confidence.

(2) The purpose of the creation and maintenance of the Executive Clemency Files is to enable the Pardon Attorney to prepare for the President's ultimate decisions on matters which are within the President's exclusive jurisdiction by reason of Article II, Section 2, Clause 1 of the Constitution, which commits pardons to the exclusive discretion of the President.

[Order No. 26-88, 53 FR 51542, Dec. 22, 1988]

**§ 16.80 Exemption of Office of Professional Responsibility System—limited access.**

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f) and (g):

(1) Office of Professional Responsibility Record Index (JUSTICE/OPR-001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of the disclosure accounting would enable the subject of an investigation to gain information concerning the existence, nature and scope of the investigation and seriously hamper law enforcement efforts.

(2) From subsections (c)(4), (d), (e)(4)(G) and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations, reveal confidential informants and constitute unwarranted invasions of the personal privacy of third persons who provide information in connection with a particular investigation.

(3) From subsections (e)(1) and (5) because the collection of information during an investigation necessarily involves material pertaining to other persons or events which is appropriate in a thorough investigation, even though portions thereof are not ultimately connected to the person or event subject to the final action or rec-

ommendation of the Office of Professional Responsibility.

(4) From subsection (e)(2) because collecting the information from the subject would thwart the investigation by placing the subject on notice of the investigation.

(5) From subsections (e)(3) and (e)(8) because disclosure and notice would provide the subject with substantial information which could impede or compromise the investigation. For example, an investigatory subject occupying a supervisory position could, once made aware that a misconduct investigation was ongoing, put undue pressure on subordinates so as to preclude their cooperation with investigators.

(c) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Freedom of Information/Privacy Act (FOI/PA) Records (JUSTICE/OPR-002).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by OPR.

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential

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sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an enormous administrative burden by requiring investigations to be continuously reinvestigated.

[Order No. 58-81, 46 FR 3509, Jan. 15, 1981, as amended by Order No. 159-99, 64 FR 17977, Apr. 13, 1999]

**§ 16.81 Exemption of United States Attorneys Systems—limited access.**

(a) The following systems of records are exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), and (g):

(1) Citizen Complaint Files (JUSTICE/USA-003).

(2) Civil Case Files (JUSTICE/USA-005).

(3) Consumer Complaints (JUSTICE/USA-006).

(4) Criminal Case Files (JUSTICE/USA-007).

(5) Kline-District of Columbia and Maryland-Stock and Land Fraud Inter-relationship Filing System (JUSTICE/USA-009).

(6) Major Crimes Division Investigative Files (JUSTICE/USA-010).

(7) Prosecutor's Management Information System (PROMIS) (JUSTICE/USA-011).

(8) United States Attorney, District of Columbia Superior Court Division, Criminal Files (JUSTICE/USA-013).

(9) Pre-trial Diversion Program Files (JUSTICE/USA-014).

These exemptions apply to the extent that information in these systems is subject to exemption pursuant to U.S.C. 552a(j)(2), (k)(1) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for these systems, would permit the subject of a criminal investigation and/or civil case or matter under investigation, litigation, regulatory or administrative review or action, to obtain valuable information concerning the nature of that investigation, case or matter and present a serious impediment to law enforcement or civil legal activities.

(2) From subsection (c)(4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to the records contained in these systems would inform the subject of criminal investigation and/or civil investigation, matter or case of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies.

(4) From subsection (e)(1) because in the course of criminal investigations and/or civil investigations, cases or matters, the U.S. Attorneys often obtain information concerning the violation of laws or civil obligations other than those relating to an active case or matter. In the interests of effective law enforcement and civil litigation, it is necessary that the U.S. Attorneys retain this information since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought within the U.S. Attorneys' offices.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection,

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apprehension or legal obligations and duties.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(7) From subsections (e)(4) (G) and (H) because these systems of records are exempt from individual access pursuant to subsections (j) and (k) of the Privacy Act of 1974.

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the United States Attorneys' ability to issue subpoenas and could reveal investigative techniques and procedures.

(10) From subsection (f) because these systems of records have been exempted from the access provisions of subsection (d).

(11) From subsection (g) because these systems of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(c) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), and (g):

(1) Freedom of Information Act/Privacy Act Files (JUSTICE/USA-008)

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2).

(d) Because this system contains Department of Justice civil and criminal law enforcement, investigatory records, exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation and/or civil case or matter under investigation, in litigation, or under regulatory or administrative review or action to obtain valuable information concerning the nature of that investigation, case or matter, and present a serious impediment to law enforcement or civil legal activities.

(2) From subsection (c)(4) because an exemption is being claimed for subsection (d) of the Act (Access to Records), rendering this subsection inapplicable to the extent that this system of records is exempted from subsection (d).

(3) From subsection (d) because access to the records contained in these systems would inform the subject of a criminal or civil investigation, matter or case of the existence of such, and provide the subject with information that might enable him to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because in the course of criminal investigations and/or civil investigations, cases or matters, the U.S. Attorneys often obtain information concerning the violation of laws or civil obligations other than those relating to an active case or matter. In the interests of effective law enforcement and civil litigation, it is necessary that the U.S. Attorneys retain this information since it can aid in establishing patterns of activity and

provide valuable leads for other agencies and future cases that may be brought within the U.S. Attorneys' offices.

(5) From subsection (e)(2) because to collect information to the greatest extent possible from the subject individual of a criminal investigation or prosecution would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations and duties.

(6) From subsection (e)(3) because to provide individuals supplying information with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information, and endanger the life and physical safety of confidential informants.

(7) From subsections (e)(4) (G) and (H) because this system of records is exempt from the individual access provisions of subsection (d) and the rules provisions of subsection (f).

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would inhibit the ability of trained investigator and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the U.S. Attorneys' ability to issue subpoenas and could reveal investigative techniques and procedures.

(10) From subsection (f) because this system has been exempted from the in-

dividual access provisions of subsection (d).

(11) From subsection (g) because the records in this system are generally compiled for law enforcement purposes and are exempt from the access provisions of subsections (d) and (f), rendering subsection (g) inapplicable.

(e) The following systems of records are exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) Assistant U.S. Attorneys Applicant Records System (JUSTICE/USA-016).

(2) Appointed Assistant U.S. Attorneys Personnel System (JUSTICE/USA-017).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for an Assistant U.S. Attorney position. Access could reveal the identity of the source of the information and constitute a breach of the promise of confidentiality on the part of the Department of Justice. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate for a position which assists in determining whether that candidate should be nominated for appointment.

(g) Consistent with the legislative purpose of the Privacy Act of 1974, the Executive Office for United States Attorneys will grant access to nonexempt

material in records which are maintained by the U.S. Attorneys. Disclosure will be governed by the Department's Privacy regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal, civil or regulatory violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 716-77, 42 FR 23506, May 9, 1977; Order No. 738-77, 42 FR 38177, July 27, 1977; Order No. 6-86, 51 FR 15476, Apr. 24, 1986; Order No. 57-91, 56 FR 58306, Nov. 19, 1991]

**§ 16.82 Exemption of the National Drug Intelligence Center Data Base—limited access.**

(a) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4)(I); (e) (5) and (8); and (g) of 5 U.S.C. 552a. In addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1) and (e)(4)(I) of 5 U.S.C. 552a:

(1) National Drug Intelligence Center Data Base (JUSTICE/NDIC-001).

(2) [Reserved]

(b) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable ex-

emption may be waived, either partially or totally, by the National Drug Intelligence Center (NDIC). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the same reasons that the system is exempted from the provisions of subsection (d).

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsection (j)(2) of the Privacy Act.

(3) From subsection (d) because disclosure to the subject could alert the subject of an investigation pertaining to narcotic trafficking or related activity of the fact and nature of the investigation, and/or of the investigative interest of NDIC and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking); lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life and safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Finally, access to records could result in the release of properly classified information that could compromise the national defense or foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(4) From subsection (e)(1) because, in the course of its acquisition, collation, and analysis of information, NDIC will need to retain information not immediately shown to be relevant to counterdrug law enforcement to establish patterns of activity and to assist

other agencies charged with the enforcement of laws and regulations regarding drug trafficking and charged with the acquisition of intelligence related to international aspects of drug trafficking. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to law enforcement in that it would put the subject of an investigation, study or analysis on notice of the fact of such investigation, study, or analysis, thereby permitting the subject to engage in conduct intended to frustrate the activity; because, in some circumstances, the subject of an investigation may not be required to provide to investigators certain information; and because thorough analysis and investigation may require seeking information from a number of different sources.

(6) From subsection (e)(3) (to the extent applicable) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation and reveal the identity of confidential informants and endanger their lives and safety.

(7) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than have been published in the FEDERAL REGISTER. Should the subsection be so interpreted, exemption from this provision is necessary to protect the confidentiality of the sources of criminal and other law enforcement information and to protect the privacy and physical safety of witnesses and informants. Furthermore, greater specificity concerning the sources of properly classified records could compromise national defense or foreign policy.

(8) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes does not permit advance determination whether such information is

accurate or relevant, nor can such information be limited to that which is complete or apparently timely. Information of this type often requires further analysis and investigation to develop into a comprehensive whole that which is otherwise incomplete or even fragmentary. Moreover, its accuracy is continually subject to analysis and review, and, upon careful examination, seemingly irrelevant or untimely information may acquire added significance as additional information brings new details to light. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in collating and analyzing information and would impede the development of criminal intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement by revealing investigative techniques, procedures, or evidence.

(10) From subsection (g) to the extent that the system is exempt from subsection (d).

[Order No. 78-93, 58 FR 41038, Aug. 2, 1993]

**§ 16.83 Exemption of the Executive Office for Immigration Review System—limited access.**

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Executive Office for Immigration Review's Records and Management Information System (JUSTICE/EOIR-001).

This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k) (1) and (2).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (d) because access to information which has been properly classified pursuant to an Executive Order could have an adverse effect on the national security. In addition, from subsection (d) because unauthorized access to certain investigatory material could compromise ongoing or potential investigations; reveal

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the identity of confidential informants; or constitute unwarranted invasions of the personal privacy of third parties.

(2) From subsection (d) (2), (3), and (4) because the record of proceeding constitutes an official record which includes transcripts of quasi-judicial administrative proceedings, investigatory materials, evidentiary materials such as exhibits, decisional memoranda, and other case-related papers. Administrative due process could not be achieved by the ex parte "correction" of such materials by the individual who is the subject thereof.

(c) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Practitioner Compliant/Disciplinary Files (JUSTICE/EOIR 003). This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by the Executive Office for Immigration Review.

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of the investigation of an actual or potential criminal, civil, or regulatory violation or the existence of that investigation; of the nature and scope of the information and evidence obtained as to the subject's activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law and regulatory enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing

of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an enormous administrative burden by requiring investigations to be continuously reinvestigated.

[Order No. 18-86, 51 FR 32305, Sept. 11, 1986, as amended by Order No. 180-99, 64 FR 61787, Nov. 15, 1999]

### § 16.84 Exemption of Immigration Appeals System.

(a) The following system of records is exempt from 5 U.S.C. 552a(d) (2), (3) and (4):

(1) Decisions of the Board of Immigration Appeals (JUSTICE/BIA-001).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsections (d) (2), (3) and (4) because the decisions reflected constitute official records of opinions rendered in quasi-judicial proceedings. Administrative due process could not be achieved by the ex parte "correction" of such opinions by the subject of the opinion.

### § 16.85 Exemption of U.S. Parole Commission—limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f) and (g):

(1) Docket Scheduling and Control System (JUSTICE/PRC-001).

(2) Inmate and Supervision Files System (JUSTICE/PRC-003).

(3) Labor and Pension Case, Legal File, and General Correspondence System (JUSTICE/PRC-004).

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(4) Statistical, Educational and Developmental System (JUSTICE/PRC-006).

(5) Workload Record, Decision Result, and Annual Report System (JUSTICE/PRC-007).

These exemptions apply only to the extent that information in these systems is subject to exemptions pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because revealing disclosure of accountings to inmates and persons on supervision could compromise legitimate law enforcement activities and U.S. Parole Commission responsibilities.

(2) From subsection (c)(4) because the exemption from subsection (d) will make notification of disputes inapplicable.

(3) From subsection (d) because this is essential to protect internal processes by which Commission personnel are able to formulate decisions and policies with regard to federal prisoners and persons under supervision, to prevent disclosures of information to federal inmates or persons on supervision that would jeopardize legitimate correctional interests of security, custody, supervision, or rehabilitation, to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices, to allow private citizens to express freely their opinions for or against parole, to allow relevant criminal history type information of co-defendants to be kept in files, to allow medical, psychiatric and sociological material to be available to professional staff, and to allow a candid process of fact selection, opinion formulation, evaluation and recommendation to be continued by professional staff. The legal files contain case development material and, in addition to other reasons, should be exempt under the attorney-client privilege. Each labor or pension applicant has had served upon him the material in his file which he did not prepare and may see his own file at any time.

(4) From subsection (e)(2) because primary collection of information di-

rectly from federal inmates or persons on supervision about criminal sentence, criminal records, institutional performance, readiness for release from custody, or need to be returned to custody is highly impractical and inappropriate.

(5) From subsection (e)(3) because application of this provision to the operations and collection of information by the Commission which is primarily from sources other than the individual, is inappropriate.

(6) From subsections (e)(4) (G) and (H) because exemption from the access provisions of (d) makes publication of agency procedures under (d) inapplicable.

(7) From subsection (e)(8) because the nature of the Commission's activities renders notice of compliance with compulsory legal process impractical.

(8) From subsection (f) because exemption from the provisions of subsection (d) will render compliance with provisions of this subsection inapplicable.

(9) From subsection (g) because exemption from the provisions of subsection (d) will render the provisions on suits to enforce (d) inapplicable.

(c) Consistent with the legislative purpose of the Privacy Act of 1974 the U.S. Parole Commission will initiate a procedure whereby present and former prisoners and parolees may obtain copies of material in files relating to them that are maintained by the U.S. Parole Commission. Disclosure of the contents will be affected by providing copies of documents to requesters through the mails. Disclosure will be made to the same extent as would be made under the substantive exemptions of the Parole Commission and Reorganization Act of 1976 (18 U.S.C. 4208) and Rule 32 of the Federal Rules of Criminal Procedure. The procedure relating to disclosure of documents may be changed generally in the interest of improving the Commission's system of disclosure or when required by pending or future decisions and directions of the Department of Justice.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 14-78, 43 FR 45993, Oct. 5, 1978; Order No. 899-80, 45 FR 43703, June 30, 1980; Order No. 6-86, 51 FR 15477, Apr. 24, 1986]

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**§ 16.88 Exemption of Antitrust Division Systems—limited access.**

(a) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(4) (G) and (H), and (f):

(1) Antitrust Caseload Evaluation System (ACES)—Monthly Report (JUSTICE/ATR-006).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (k)(2).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because information in this system is maintained in aid of ongoing antitrust enforcement investigations and proceedings. The release of the accounting of disclosures made under subsection (b) of the Act would permit the subject of an investigation of an actual or potential criminal or civil violation to determine whether he is the subject of an investigation. Disclosure of the accounting would therefore present a serious impediment to antitrust law enforcement efforts.

(2) From subsection (d) because access to the information retrievable from this system and compiled for law enforcement purposes could result in the premature disclosure of the identity of the subject of an investigation of an actual or potential criminal or civil violation and information concerning the nature of that investigation. This information could enable the subject to avoid detection or apprehension. This would present a serious impediment to effective law enforcement since the subject could hinder or prevent the successful completion of the investigation. Further, confidential business and financial information, the identities of confidential sources of information, third party privacy information, and statutorily confidential information such as grand jury information must be protected from disclosure.

(3) From subsections (e)(4)(G) and (H), and (f) because this system is exempt from the individual access provisions of subsection (d).

(c) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(4)(G) and (H), and (f):

(1) Freedom of Information/Privacy—Requester/Subject Index File (JUSTICE/ATR-008).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (k)(2).

(d) Because this system contains Department of Justice civil and criminal law enforcement, investigatory records, exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the accounting of disclosures made under subsection (b) of the Act would permit the subject of an investigation of an actual or potential criminal or civil violation to determine whether he is the subject of an investigation. Disclosure of accounting would therefore present a serious impediment to antitrust law enforcement efforts.

(2) From subsection (d) because access to information in this system could result in the premature disclosure of the identity of the subject of an investigation of an actual or potential criminal or civil violation and information concerning the nature of the investigation. This information could enable the subject to avoid detection or apprehension. This would present a serious impediment to effective law enforcement since the subject could hinder or prevent the successful completion of the investigation. Further, confidential business and financial information, the identities of confidential sources of information, third party privacy information, and statutorily confidential information such as grand jury information must be protected from disclosure.

(3) From subsections (e)(4)(G) and (H), and (f) because this system is exempt from the individual access provisions of subsection (d).

[Order No. 2-86, 51 FR 884, Jan. 9, 1986]

**§ 16.89 Exemption of Civil Division Systems—limited access.**

(a) The following systems of records are exempted pursuant to 5 U.S.C.

552a(j)(2) from subsections (c) (3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G) and (H), (e)(5), (e)(8), and (g); in addition, the following systems of records are exempted pursuant to 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H):

(1) Civil Division Case File System, JUSTICE/CIV-001.

(2) Freedom of Information/Privacy Acts File System, JUSTICE/CIV-005.

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) Only that information which relates to the investigation, prosecution, or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy is exempted for the reasons set forth from the following subsections:

(1) *Subsection (c)(3)*. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him or her would inform that individual (and others to whom the subject might disclose the records) of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and others to avoid criminal penalties and civil remedies.

(2) *Subsections (c)(4), (e)(4) (G) and (H), and (g)*. These provisions are inapplicable to the extent that these systems of records are exempted from subsection (d).

(3) *Subsection (d)*. To the extent that information contained in these systems has been properly classified, relates to the investigation and/or prosecution of grand jury, civil fraud, and other law enforcement matters, disclosure could compromise matters which should be kept secret in the interest of national security or foreign policy; compromise confidential investigations or proceedings; hamper sensitive civil or criminal investigations; impede affirmative enforcement actions based upon alleged violations of regulations or of civil or criminal laws; reveal the identity of confidential sources; and result in unwarranted invasions of the privacy of others. Amendment of the

records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously re-investigated.

(4) *Subsection (e)(1)*. In the course of criminal or civil investigations, cases, or matters, the Civil Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(2)*. To collect information from the subject of a criminal investigation or prosecution would present a serious impediment to law enforcement in that the subject (and others to whom the subject might be in contact) would be informed of the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) *Subsection (e)(3)*. To comply with this requirement during the course of a criminal investigation or prosecution could jeopardize the investigation by disclosing the existence of a confidential investigation, revealing the identity of witnesses or confidential informants, or impeding the information gathering process.

(7) *Subsection (e)(5)*. In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(8) *Subsection (e)(8)*. To serve notice would give persons sufficient warning to evade law enforcement efforts.

(c) The following system of records is exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e)(1) and (e)(5); in addition, this system is also exempted pursuant to 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), and (e)(1).

Consumer Inquiry/Investigatory System, JUSTICE/CIV-006.

These exemptions apply only to the extent that information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(d) Only that information compiled for criminal or civil law enforcement purposes is exempted for the reasons set forth from the following subsections:

(1) *Subsections (c)(3)*. This system occasionally contains investigatory material based on complaints of actual or alleged criminal or civil violations. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him/her would inform that individual of the existence, nature, or scope of that investigation, and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties and civil remedies.

(2) *Subsections (c)(4)*. This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)*. Disclosure of information relating to the investigation of complaints of alleged violation of criminal or civil law could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously re-investigated.

(4) *Subsection (e)(1)*. In the course of criminal or civil investigations, cases,

or matters, the Civil Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(5)*. In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(e) The following system of records is exempt pursuant to 5 U.S.C. 552a (j)(2) and (k)(2) from subsection (d):

Congressional and Citizen Correspondence File, JUSTICE/CIV-007.

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C 552a (j)(2) and (k)(2).

(f) Only that portion of the Congressional and Citizen Correspondence File maintained by the Communications Office which consists of criminal or civil investigatory information is exempted for the reasons set forth from the following subsection:

(1) *Subsection (d)*. Disclosure of investigatory information would jeopardize the integrity of the investigative process, disclose the identity of individuals who furnished information to the government under an express or implied promise that their identities would be held in confidence, and result in an unwarranted invasion of the privacy of others. Amendment of the records would interfere with ongoing criminal

law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

[Order No. 27-88, 54 FR 113, Jan. 4, 1989]

**§ 16.90 Exemption of Civil Rights Division Systems.**

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission (JUSTICE/CRT-007).

This exemption applies to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d) because this system contains investigatory material compiled by the Equal Opportunity Commission pursuant to its authority under 42 U.S.C. 2000e-8, 42 U.S.C. 2000e-5(b), 42 U.S.C. 2000e-8(e), and 44 U.S.C. 3508 make it unlawful to make public in any manner whatsoever any information obtained by the Commission pursuant to the authority.

(c) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d) and (g):

(1) Central Civil Rights Division Index File and Associated Records (JUSTICE/CRT-001).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published for this system may enable the subject of an investigation to gain valuable information concerning the nature and scope of the investigation and seriously hamper law enforcement efforts.

(2) From subsection (d) because freely permitting access to records in this system would compromise ongoing investigations and reveal investigatory

techniques. In addition, these records may be subject to protective orders entered by federal courts to protect their confidentiality. Many of the records contained in this system are copies of documents which are the property of state agencies and were obtained under express or implied promises to strictly protect their confidentiality.

(3) From subsection (g) because exemption from the provision of subsection (d) will render the provisions on suits to enforce (d) inapplicable.

(e) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (d), and (g):

(1) Freedom of Information/Privacy Act Records (JUSTICE/CRT-010).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(f) Because this system contains Department of Justice civil and criminal law enforcement, investigatory records, exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting may enable the subject of an investigation to gain valuable information concerning the nature and scope of the investigation and seriously hamper law enforcement efforts.

(2) From subsection (d) because access to records in this system would compromise ongoing investigations and reveal investigative techniques. In addition, certain of these records may be subject to protective orders entered by Federal courts to protect their confidentiality, and many are copies of documents which are the property of State agencies and were obtained under express or implied promises to strictly protect their confidentiality. This system also contains investigatory material compiled by the Equal Opportunity Commission pursuant to its authority under 42 U.S.C. 2000e-8. Provisions of 42 U.S.C. 2000e-5(b), 42 U.S.C. 2000e-8(e), and 44 U.S.C. 3508 make it unlawful to make public in any manner whatsoever any information obtained by the Commission pursuant to the authority.

Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(3) From subsection (g) because exemption from subsection (d) will render the provisions on suits to enforce subsection (d) inapplicable.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 10000, Feb. 18, 1977; Order No. 8-82, 47 FR 44256, Oct. 7, 1982; Order No. 6-86, 51 FR 15477, Apr. 24, 1986]

**§ 16.91 Exemption of Criminal Division Systems—limited access, as indicated.**

(a) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a; in addition, the following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a:

(1) Central Criminal Division, Index File and Associated Records System of Records (JUSTICE/CRM-001)—Limited Access.

(2) General Crimes Section, Criminal Division, Central Index File and Associated Records System of Records (JUSTICE/CRM-004)—Limited Access.

These exemptions apply to the extent that information in those systems are subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) The systems of records listed under paragraphs (b)(1) and (b)(2) of this section are exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation, and

the information obtained, or the identity of witnesses and informants and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for these systems of records.

(2). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this subsection is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3). (d). Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, or the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4). (e)(1). The notices of these systems of records published in the FEDERAL REGISTER set forth the basic statutory or related authority for maintenance of this system. However, in the course of criminal or other law enforcement investigations, cases, and matters, the Criminal Division or its components will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information in these systems of records since it can aid in establishing patterns of criminal activity

and can provide valuable leads for federal and other law enforcement agencies.

(5). (e)(2). In a criminal investigation or prosecution, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6). (e)(3). The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7). (e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable to the extent that these systems of records are exempted from subsections (f) and (d).

(8). (e)(4)(I). The categories of sources of the records in these systems have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9). (e)(5). In the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information

can often only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal or other intelligence necessary for effective law enforcement.

(10). (e)(8). The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11). (f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules require pursuant to subsection (f) (2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(12). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

(13). In addition, exemption is claimed for these systems of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k)(1): Subsections

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(c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f) to the extent that the records contained in these systems are specifically authorized to be kept secret in the interests of national defense and foreign policy.

(c) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j) (2) from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a:

Criminal Division Witness Security File System of Records (JUSTICE/CRM-002).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(d) The system of records listed under paragraph (c) of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3) The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal violation, which may include those protected under the Witness Security Program, to determine whether he is the subject of a criminal investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, or the identity of witnesses and informants and the nature of their reports, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for these systems of records. Moreover, disclosure of the disclosure accounting to an individual protected under the Witness Security Program could jeopardize the effectiveness and security of the Program by revealing the methods and techniques utilized in relocating witnesses and could therefore jeopardize the ability to obtain, and to protect the confidentiality of, information compiled for purposes of a criminal investigation.

(2). (c)(4) Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable.

(3). (d) Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal violation, which may include those protected under the Witness Security Program, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, access to the records in these systems to an individual protected under the Witness Security Program could jeopardize the effectiveness and security of the Program by revealing the methods and techniques utilized in relocating witnesses and could therefore jeopardize the ability to obtain, and to protect the confidentiality of, information compiled for purposes of a criminal investigation.

(4). Exemption is claimed from subsection (e)(1) for the reasons stated in subsection (b)(4) of this section.

(5). (e)(2) In the course of preparing a Witness Security Program for an individual, much of the information is collected from the subject. However, the requirement that the information be collected to the greatest extent practicable from the subject individual would present a serious impediment to criminal law enforcement because the individual himself may be the subject of a criminal investigation or have been a participant in, or observer of, criminal activity. As a result, it is necessary to seek information from other sources. In addition, the failure to verify the information provided from the individual when necessary and to

seek other information could jeopardize the confidentiality of the Witness Security Program and lead to the obtaining and maintenance of incorrect and uninvestigated information on criminal matters.

(6). (e)(3) The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise or reveal the identity of witnesses and informants protected under the Witness Security Program.

(7). (e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable.

(8). (e)(4)(I). The categories of sources of the records in these systems have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in the system, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal law, enforcement information and of witnesses and informants protected under the Witness Security Program.

(9). Exemption is claimed from subsections (e)(5) and (e)(8) for the reasons stated in subsection (b)(9) and (b)(10) of this section.

(10). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records contained in these systems pertaining to him would inform the subject of an investigation of an actual or potential criminal violation, which may include those protected under the Witness Security Program, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful conduct and/or comple-

tion of an investigation pending or future, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, notices as to the existence of records contained in these systems to an individual protected under the Witness Security Program could jeopardize the effectiveness and security of the Program by revealing the methods and techniques utilized in relocating witnesses and could therefore jeopardize the ability to obtain, and to protect the confidentiality of, information compiled for purposes of a criminal investigation.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable.

(11). (g) Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable and is exempted for the reasons set forth for those subsections.

(e) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (4) (G), (H) and (I), (f), and (g) of 5 U.S.C. 552a:

Organized Crime and Racketeering Section, Intelligence and Special Services Unit, Information Request System of Records (JUSTICE/CRM-014).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(f) The system of records listed under paragraph (e) of this section is exempted for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal violation to determine whether he is the subject of a criminal investigation and would therefore present a serious impediment to law enforcement. The records in

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these systems contain the names of the subjects of the files in question and the system is accessible by name of the person checking out the file and by name of the subject of the file. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for these systems of records.

(2). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable.

(3). (d). Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation. This would present a serious impediment to effective law enforcement because it could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4). Exemption is claimed from subsections (e)(4) (G), (H) and (I) for the reasons stated in subsections (b)(7) and (b)(8) of this section.

(5). (f). These systems may be accessed by the name of the person who is the subject of the file and who may also be the subject of a criminal investigation. Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him, which may deal with an actual or potential criminal investigation or prosecution, must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of the investigation or prosecution pending or future. In addition mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to

subsection (f) (2) through (5) are inapplicable.

(6). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) of the Act this section is inapplicable and is exempted for the reasons set forth for those subsections.

(g) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(4), (d), (e)(4) (G), (H) and (I), (f) and (g) of 5 U.S.C. 552a.

File of Names Checked to Determine If Those Individuals Have Been the Subject of an Electronic Surveillance System of Records (JUSTICE/CRM-003).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(h) The system of records listed under paragraph (g) of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable to the extent that this system of records is exempted from subsection (d).

(2). (d). The records contained in this system of records generally consist of information filed with the court in response to the request and made available to the requestor. To the extent that these records have been so filed, no exemption is sought from the provisions of this subsection. Occasionally, the records contain pertinent logs of intercepted communications and other investigative reports not filed with the court. These records must be exempted because access to such records could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation and of the nature of the information and evidence obtained by the government. This would present a serious impediment to effective law enforcement because it could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses,

the destruction of evidence, or the fabrication of testimony.

(3). Exemption is claimed from subsections (e)(4) (G), (H) and (I) for the reasons stated in subsections (b)(7) and (b)(8) of this section.

(4). (f). The records contained in this system of records generally consist of information filed with the court and made available to the requestor. To the extent that these records have been so filed, no exemption is sought from the provisions of this subsection. Occasionally, the records contain pertinent logs of intercepted communications and other investigative reports not filed with the court. These records must be exempted from a requirement of notification as to their existence because such notice to an individual would be detrimental to the successful conduct and/or completion of a criminal investigation or prosecution pending or future. In addition, mere notice of the existence of such logs or investigative reports could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable to the extent that this system of records is exempted for subsection (d).

(6). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that this system of records is exempted from subsections (d) and (f).

(i) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G), (H), and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a:

(1) Information File on Individuals and Commercial Entities Known or Suspected of Being Involved in Fraudulent Activities System of Records (JUSTICE/CRM-006).

(2) The Stocks and Bonds Intelligence Control Card File System of Records (JUSTICE/CRM-021).

(3) Tax Disclosure Index File and Associated Records (JUSTICE/CRM-025).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(j) The systems of records listed in paragraphs (i)(1), (i)(2), and (i)(3) of this section are exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1)(c)(3) The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal violation to determine whether he is the subject of a criminal investigation, to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for this system of records.

(2)(c)(4) Since an exemption is being claimed for subsection (d) of the act (access to records), this section is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3)(d) Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper

influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4) Exemption is claimed from subsections (e) (1), (2), and (3), (e)(4) (G), (H), and (I), (e)(5) and (e)(8) for the reasons stated in subsections (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), and (b)(10) of this section.

(5)(f) Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an actual or potential criminal investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since an exemption is being claimed for subsection (d) of the act (access to records), the rules required pursuant to subsection (f) (2) through (5) are inapplicable to these systems of records.

(6)(g) Since an exemption is being claimed for subsections (d) (access to records) and (f) (Agency rules), this section is inapplicable and is exempted for the reasons set forth for those subsections.

(k) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a; in addition, the following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) from subsections (c) (3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f) of 5 U.S.C. 552a:

Organized Crime and Racketeering Section, Criminal Division, General Index File and Associated Records System of Records (JUSTICE/CRM-012).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(1).

(l) The system of records listed under paragraph (m)<sup>1</sup> of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). Exemption is claimed from subsections (c) (3) and (4) and (d) for the reasons stated in subsections (j)(1), (j)(2) and (j)(3) of this section.

(2). (e)(1). The notice for this system of records published in the FEDERAL REGISTER sets forth the basic statutory or related authority for maintenance of this system. However, in the course of criminal investigations, cases, and matters, the Organized Crime and Racketeering Section will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority, or may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information in this system of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies.

(3). Exemption is claimed from subsections (e) (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f) and (g) for the reasons stated in subsections (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11) and (b)(12) of this section.

(4). In addition, exemption is claimed for this system of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k)(1): Subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f) to the extent that the records contained in this system are specifically authorized to be kept secret in the interests of national defense and foreign policy.

(m) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (2) and (3), (e) (4) (G), (H) and (I), (e) (8), (f) and (g) of 5 U.S.C. 552a:

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<sup>1</sup> Paragraph (m) was redesignated as paragraph (k) at 44 FR 54046, Sept. 18, 1979.

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For Electronic Interceptions System of Records (JUSTICE/CRM-019).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(n) The system of records listed in paragraph (m) of this section is exempted for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an electronic interception to obtain valuable information concerning the interception, including information as to whether he is the subject of a criminal investigation, by means other than those provided for by statute. Such information could interfere with the successful conduct and/or completion of a criminal investigation, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for these systems of records.

(2). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable.

(3). (d). Access to the records contained in these systems would inform the subject of an electronic interception of the existence of such surveillance including information as to whether he is the subject of a criminal investigation by means other than those provided for by statute. This could interfere with the successful conduct and/or completion of a criminal investigation and therefore present a serious impediment to law enforcement.

(4). (e)(2). In the context of an electronic interception, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on non-

tice as to the existence of the investigation and this would therefore destroy the efficacy of the interception.

(5). (e)(3). The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential electronic interception or reveal the identity of witnesses or confidential informants.

(6). (e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable.

(7). Exemption is claimed from subsections (e)(4)(I) and (e)(8) for the reasons stated in subsections (b)(8) and (b)(10) of this section.

(8). (f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an electronic interception other than pursuant to statute must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation pending or future. In addition, mere notice of the fact of an electronic interception could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(9). (g). Since an exemption is being claimed for subsection (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsection (d) and (f).

(o) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)

(3) and (4), (d), (e) (2) and (3), (e) (4) (G), (H), and (I), (e)(8), (f) and (g) of 5 U.S.C. 552a; in addition the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) and (k)(2) from subsections (c)(3), (d), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a:

Witness Immunity Records System of Records (JUSTICE/CRM-022).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(1) and (k)(2).

(p) The system of records listed under paragraph (q)<sup>2</sup> of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3). Release of the accounting of disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for this system of records, (a) as to a witness for whom immunity has been proposed, would inform the individual of the existence of the proposed immunity prematurely, thus creating a serious impediment to effective law enforcement in that the witness could flee, destroy evidence, or fabricate testimony; and (b) as to a witness to whom immunity has been granted, or for whom it has been denied, would reveal the nature and scope of the activities, if any, of the witness known to the government, which would also create a serious impediment to effective law enforcement.

(2). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable to the extent that this system of records is exempted from subsection (d).

(3). (d). Access to the records contained in this system (a) as to a witness for whom immunity has been proposed, would inform the individual of the existence of the proposed immunity prematurely, thus presenting a serious impediment to effective law enforcement in that the witness could flee, destroy evidence, or fabricate testimony; and (b) as to a witness to whom immunity has been granted, or for whom it

has been denied, would reveal the nature and scope of the activities, if any, of the witness known to the government, which would also create a serious impediment to effective law enforcement.

(4). (e)(2). In a witness immunity request matter, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the immunity request and often the subject of the underlying investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(5). Exemption is claimed from subsections (e)(3), (e)(4)(G), (H) and (I), and (e)(8) for the reasons stated in subsections (b)(6), (b)(7), (b)(8) and (b)(10) of this section.

(6). (f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him (a) as to a witness for whom immunity has been proposed, would inform the individual of the existence of the proposed immunity prematurely, thus presenting a serious impediment to effective law enforcement in that the witness could flee, destroy evidence, or fabricate testimony; and (b) as to a witness to whom immunity has been granted, or for whom it has been denied, would reveal the nature and scope of the activity, if any, of the witness known to the government, which would also create a serious impediment to effective law enforcement.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f)(2) through (5) are inapplicable to this system of records to the extent that this system of records is exempted from subsection (d).

(7). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that this system of records is exempted for subsections (d) and (f).

<sup>2</sup> Paragraph (q) was redesignated as paragraph (o) at 44 FR 54046, Sept. 18, 1979.

(8). In addition, exemption is claimed for this system of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k)(1): subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f) to the extent that the records contained in this system are specifically authorized to be kept secret in the interests of national defense and foreign policy.

(q) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f), and (g):

(1) Freedom of Information/Privacy Act Records (JUSTICE/CRM-024)

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2).

(r) Because this system contains Department of Justice civil and criminal law enforcement, investigatory records, it is exempted for the reasons set forth from the following provisions of 5 U.S.C. 552a:

(1)(c)(3). The release of the disclosure accounting would present a serious impediment to law enforcement by permitting the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation and the information obtained, or to identify witnesses and informants.

(2)(c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records), this subsection is inapplicable to the extent that this system of records is exempted from subsection (d).

(3)(d). Access to records contained in this system would enable the subject of an investigation of an actual or potential criminal or civil case or regulatory violation to determine whether he or she is the subject of investigation, to obtain valuable information concerning the nature and scope of the investigation, and information or evidence obtained as to his/her activities, to identify witnesses and informants, or to avoid detection or apprehension. Such results could prevent the successful completion of the investigation, en-

danger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and thereby present a serious impediment to effective law enforcement. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4)(e)(1). In the course of criminal or other law enforcement investigations, cases, and matters, the Criminal Division will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority, or it may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(5)(e)(2). To collect information to the greatest extent practicable from the subject individual of a criminal investigation or prosecution would present a serious impediment to law enforcement. The nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(6) (e)(3). To provide individuals supplying information with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7)(e)(4) (G) and (H). These subsections are inapplicable to the extent that this system is exempt from the access provisions of subsection (d) and the rules provisions of subsection (f).

(8)(e)(4)(I). The categories of sources of the records in this system have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9) (e)(5). In the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would inhibit the ability of trained investigators, intelligence analysts, and government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal or other intelligence necessary for effective law enforcement.

(10)(e)(8). The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11)(f). This subsection is inapplicable to the extent that this system is exempt from the access provisions of subsection (d).

(12)(g). Because some of the records in this system contain information which was compiled for law enforcement purposes and have been exempted from the access provisions of subsection (d), subsection (g) is inapplicable.

(s) The following system of records is exempted from 5 U.S.C. 552a(d).

Office of Special Investigations Displaced Persons Listings (JUSTICE/CRM-027).

This exemption applies to the extent that the records in this system are subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(t) Exemption from subsection (d) is justified for the following reasons:

(1) Access to records contained in this system could inform the subject of the identity of witnesses or informants. The release of such information could present a serious impediment to effective law enforcement by endangering the physical safety of witnesses or informants; by leading to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; or by otherwise preventing the successful completion of an investigation.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 659-76, 41 FR 32423, Aug. 3, 1976; Order No. 11-78, 43 FR 38386, Aug. 28, 1978; Order No. 30-79, 44 FR 54046, Sept. 18, 1979; Order Nos. 6-86, 7-86, 51 FR 15475, 15477, Apr. 24, 1986]

**§ 16.92 Exemption of Land and Natural Resources Division System—limited access, as indicated.**

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d):

(1) Docket Card System (JUSTICE/LDN-003).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because that portion of the Docket Card System relating to enforcement of criminal provisions of the Refuse Act of 1899 (33 U.S.C. 407), section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), section 5 of the Outer Continental Shelf Act (43 U.S.C. 1151 et seq.), the Clean Air Act (42 U.S.C. 1857 et seq.) and the Noise Control Act of 1972 (42 U.S.C. 4901), is being exempted from access and contest; the provisions for disclosure of accounting is not applicable.

(2) From subsection (d) because of the need to safeguard the identity of confidential informants and to facilitate the enforcement of the criminal provisions of the above statutes.

(c) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (d):

(1) Freedom of Information/Privacy Act Records System. (Justice/LDN-005).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because that portion of the Freedom of Information/Privacy Act Records System that consists of investigatory materials compiled for law enforcement purposes is being exempted from access and contest; the provision for disclosure of accounting is not applicable.

(2) From subsection (d) because of the need to safeguard the identity of confidential informants and avoid interference with ongoing investigations or law enforcement activities by preventing premature disclosure of information relating to those efforts.

[Order No. 688-77, 42 FR 10000, Feb. 18, 1977]

**§ 16.93 Exemption of Tax Division Systems—limited access.**

(a) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of 5 U.S.C. 552a:

(1) Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases (JUSTICE/TAX-001)—Limited Access.

(2) Tax Division Special Projects Files (JUSTICE/TAX-005)—Limited Access.

These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) The systems of records listed under paragraphs (a)(1) and (a)(2) of this section are exempted for the reasons set forth below, from the following provisions of 5 U.S.C. 552a:

(1)(c)(3). The release of the disclosure accounting, for disclosures made pursu-

ant to subsection (b) of the Act, including those permitted under the routine uses published for those systems of records, would enable the subject of an investigation of an actual or potential criminal tax case to determine whether he or she is the subject of investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, and to determine the identity of witnesses or informants. Such access to investigative information would, accordingly, present a serious impediment to law enforcement. In addition, disclosure of the accounting would constitute notice to the individual of the existence of a record even though such notice requirement under subsection (f)(1) is specifically exempted for these systems of records.

(2)(c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this subsection is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3) (d)(1); (d)(2); (d)(3); (d)(4). Access to the records contained in these systems would inform the subject of an actual or potential criminal tax investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, and of the identity of witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection, apprehension and prosecution. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4)(e)(1). The notices for these systems of records published in the FEDERAL REGISTER, set forth the basic statutory or related authority for maintenance of these systems. However, in the course of criminal tax and

related law enforcement investigations, cases, and matters, the Tax Division will occasionally obtain information concerning actual or potential violations of law that may not be technically within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain some or all of such information in these systems of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(5)(e)(2). In a criminal tax investigation or prosecution, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, influence witnesses improperly, destroy evidence, or fabricate testimony.

(6)(e)(3). The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7)(e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable to the extent that these systems of records are exempted from subsection (f) and (d).

(8)(e)(4)(I). The categories of sources of the records in the systems have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal tax and related law en-

forcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9)(e)(5). In the collection of information for criminal tax enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. Furthermore, the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal tax information and related data necessary for effective law enforcement.

(10)(e)(8). The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11)(f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an actual or potential criminal tax, civil tax, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(12)(g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

(c) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of 5 U.S.C. 552a:

(1) Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases (JUSTICE/TAX-002)—Limited Access.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(d) The system of records listed under paragraph (c)(1) is exempted for the reasons set forth below, from the following provisions of 5 U.S.C. 552a:

(1)(c)(3). The release of the disclosure accounting, for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for this system of records, would enable the subject of an investigation of an actual or potential civil tax case to determine whether he or she is the subject of investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, and to determine the identity of witnesses or informants. Such access to investigative information would, accordingly, present a serious impediment to law enforcement. In addition, disclosure of the accounting would constitute notice to the individual of the existence of a record even though such notice requirement under subsection (f)(1) is specifically exempted for this system of records.

(2) (d)(1); (d)(2); (d)(3); (d)(4). Access to the records contained in this system would inform the subject of an actual or potential civil tax investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities and of the identity of witnesses or informants. Such access would, accordingly, provide informa-

tion that could enable the subject to avoid detection. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(3)(e)(1). The notices for this system of records published in the FEDERAL REGISTER set forth the basic statutory or related authority for maintenance of this system. However, in the course of civil tax and related law enforcement investigations, cases and matters, the Tax Division will occasionally obtain information concerning actual or potential violations of law that are not strictly or technically within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific case. In the interests of effective law enforcement, it is necessary to retain some or all of such information in this system of records since it can aid in establishing patterns of tax compliance and can provide valuable leads for Federal and other law enforcement agencies.

(4)(e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable to the extent that this system of records is exempted from subsection (f) and (d).

(5)(e)(4)(I). The categories of sources of the records in this system have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary in order to protect the confidentiality of the sources of civil tax and related law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(6)(f). Procedures for notice to an individual pursuant to subsection (f)(1) as

to existence of records pertaining to the individual dealing with an actual or potential criminal tax, civil tax, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or case, pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable to this system of records to the extent that this system of records is exempted from subsection (d).

(e) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4), (G), (e)(4)(H), (e)(4)(I), (e) (5) and (8), (f), and (g).

(1) Freedom of Information—Privacy Act Request Files (JUSTICE/TAX-004)

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(f) Because this system contains Department of Justice civil and criminal law enforcement, investigatory records, it is exempted for the reasons set forth from the following provisions of 5 U.S.C. 552a:

(1)(c)(3). The release of the disclosure accounting would present a serious impediment to law enforcement by permitting the subject of a investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation and the information obtained, or to identify witnesses and informants.

(2)(c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records), this subsection is inapplicable to the extent that this

system of records is exempted from subsection (d).

(3)(d). Access to records contained in this system would inform the subject of an actual or potential criminal tax investigation of the existence of that investigation, of the nature and scope of the investigation, of the information and evidence obtained as to his or her activities, and of the identity of witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection, apprehension, and prosecution. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, of the fabrication of testimony. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and imposes an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4)(e)(1). In the course of criminal tax and related law enforcement investigations, cases, and matters, the Tax Division will occasionally obtain information concerning actual or potential violations of law that may not be technically within its statutory or other authority, or it may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain some or all of such information since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(5)(e)(2). To collect information to the greatest extent practicable from the subject individual of a criminal investigation or prosecution would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, improperly influence witnesses,

destroy evidence, or fabricate testimony.

(6)(e)(3). To provide individuals supplying information with a form which includes the information required by subsection (e)(3) would constitute a serious impediment to law enforcement, i.e., it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7)(e)(4) (G) and (H). These subsections are inapplicable to the extent that this system is exempt from the access provisions of subsection (d) and the rules provisions of subsection (f).

(8)(e)(4)(I). The categories of sources of the records in this system have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e) (4) (I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary to protect the confidentiality of the sources of criminal tax and related law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9)(e)(5). In the collection of information for criminal tax enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. Furthermore, the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would inhibit the ability of government attorneys in exercising their judgement in reporting on information and investigations and impede the development of criminal tax information and related data necessary for effective law enforcement.

(10)(e)(8). The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11)(f). This subsection is inapplicable to the extent that this system is exempt from the access provisions of subsection (d).

(12)(g). Because the records in this system are generally compiled for law enforcement purposes and are exempt from the access provisions of subsection (d), subsection (g) is inapplicable.

[Order No. 742-77, 42 FR 40906, Aug. 12, 1977, as amended by Order No. 6-86, 51 FR 15478, Apr. 24, 1986]

**§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.**

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(8), (f) and (g).

(1) Central Records System (CRS) (JUSTICE/FBI-002).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552(j) and (k). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by the FBI.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest by not only the FBI, but also by the recipient agency. This would permit the record subject to take appropriate measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses or flee the area to avoid the thrust of the investigation.

(2)(i) From subsections (d), (e)(4) (G) and (H), (f) and (g) because these provisions concern individual access to investigative records, compliance with which could compromise sensitive information classified in the interest of national security, interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal

privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety to law enforcement personnel.

(ii) Also, individual access to non-criminal investigative records, e.g., civil investigations and administrative inquiries, as described in subsection (k) of the Privacy Act, could also compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a confidential source or sensitive investigative technique, or pose a potential threat to law enforcement personnel. In addition, disclosure of information collected pursuant to an employment suitability or similar inquiry could reveal the identity of a source who provided information under an express promise of confidentiality, or could compromise the objectivity or fairness of a testing or examination process.

(iii) In addition, from paragraph (d)(2) of this section, because to require the FBI to amend information thought to be incorrect, irrelevant or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(3) From subsection (e)(1) because:

(i) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(ii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(iii) In any investigation the FBI might obtain information concerning violations of law not under its jurisdiction, but in the interest of effective law enforcement, dissemination will be made to the agency charged with enforcing such law.

(iv) In interviewing individuals or obtaining other forms of evidence during

an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(4) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(5) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with undercover investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(6) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(c) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (m):

(1) Electronic Surveillance (Elsur) Indices (JUSTICE/FBI-006).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of accounting disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, resulting in a serious impediment to law enforcement.

(2) From subsections (c)(4), (d), (e)(4) (G) and (H), and (g) because these provisions concern an individual's access to records which concern him and such access to records in this system would

compromise ongoing investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(3) From subsection (e)(1) because these indices must be maintained in order to provide the information as described in the "routine uses" of this particular system.

(4) From subsections (e) (2) and (3) because compliance is not feasible given the subject matter of the indices.

(5) From subsection (e)(5) because this provision is not applicable to the indices in view of the "routine uses" of the indices. For example, it is impossible to predict when it will be necessary to utilize information in the system and, accordingly it is not possible to determine when the records are timely.

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

(7) From subsection (m) for the reasons stated in subsection (b)(7) of this section.

(e) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), and (g):

(1) Identification Division Records System (JUSTICE/FBI-009).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the reasons stated in subsection (d)(1) of this section.

(2) From subsections (c)(4), (d), (e)(4) (G) and (H), (f) and (g) because these provisions concern an individual's access to records which concern him. Such access is directed at allowing the subject of a record to correct inaccuracies in it. Although an alternate system of access has been provided in 28 CFR 16.30 to 34 and 28 CFR 20.34, the vast majority of records in this system concern local arrests which it would be

inappropriate for the FBI to undertake to correct.

(3) From subsection (e)(1) because it is impossible to state with any degree of certainty that all information on these records is relevant to accomplish a purpose of the FBI, even though acquisition of the records from state and local law enforcement agencies is based on a statutory requirement. In view of the number of records in the system it is impossible to review them for relevancy.

(4) From subsection (e)(2) because the records in the system are necessarily furnished by criminal justice agencies due to their very nature.

(5) From subsection (e)(3) because compliance is not feasible due to the nature of the records.

(6) From subsection (e)(5) because the vast majority of these records come from local criminal justice agencies and it is administratively impossible to ensure that the records comply with this provision. Submitting agencies are, however, urged on a continuing basis to ensure that their records are accurate and include all dispositions.

(7) From subsection (e)(8) because the FBI has no logical manner to ascertain whether process has been made public and compliance with this provision would in any case, provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

(g) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G) and (H), (e)(8), (f), and (g):

This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(3).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the reasons stated in subsection (d)(1) of this section.

(2) From subsections (c)(4), (d), (e)(4) (G) and (H), and (g) for the reasons stated in subsection (d)(2) of this section. When records are properly subject

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to access by the individual, an alternate means of access is provided in subsection (i) of this section.

(3) From subsection (e)(1) because information contained in this system is primarily from state and local records, and it is for the official use of agencies outside the Federal Government in accordance with 28 U.S.C. 534.

(4) From subsections (e) (2) and (3) because it is not feasible to comply with these provisions given the nature of this system.

(5) From subsection (e)(8) for the reasons stated in subsection (d)(6) of this section.

(i) Access to computerized criminal history records in the National Crime Information Center is available to the individual who is the subject of the record pursuant to procedures and requirements specified in the Notice of Systems of Records compiled by the National Archives and Records Service and published under the designation:

(j) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G) and (H), (f) and (g):

(1) National Center for the Analysis of Violent Crime (NCAVC) (JUSTICE/FBI-015).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(k) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because providing the accounting of disclosures to the subject could prematurely reveal investigative interest by the FBI and other law enforcement agencies, thereby providing the individual an opportunity to impede an active investigation, destroy or alter evidence, and possibly render harm to violent crime victims and/or witnesses.

(2) From subsections (d), (e)(4) (G) and (H), and (f) because disclosure to the subject could interfere with enforcement proceedings of a criminal justice agency, reveal the identity of a confidential source, result in an unwarranted invasion of another's privacy, reveal the details of a sensitive investigative technique, or endanger the life and safety of law enforcement personnel, potential violent crime vic-

tims, and witnesses. Disclosure also could prevent the future apprehension of a violent or exceptionally dangerous criminal fugitive should he or she modify his or her method of operation in order to evade law enforcement. Also, specifically from subsection (d)(2), which permits an individual to request amendment of a record, because the nature of the information in the system is such that an individual criminal offender would frequently demand amendment of derogatory information, forcing the FBI to continuously retrograde its criminal investigations in an attempt to resolve questions of accuracy, etc.

(3) From subsection (g) because the system is exempt from the access and amendment provisions of subsection (d).

(4) From subsection (e)(1) because it is not always possible to establish relevance and necessity of the information at the time it is obtained or developed. Information, the relevance and necessity of which may not be readily apparent, frequently can prove to be of investigative value at a later date and time.

National Crime Information Center (NOIC) (JUSTICE/FBI-001).

(l) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d), (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g).

(1) FBI Counterdrug Information Indices System (CIIS) (JUSTICE/FBI-016)

(2) [Reserved]

(m) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest by not only the FBI, but also by the recipient agency. This would permit the record subject to take appropriate measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses or flee the area to avoid the thrust of the investigation.

(2) From subsection (c)(4) to the extent it is not applicable because an exemption is being claimed from subsection (d).

(3)(i) From subsections (d), (e)(4) (G) and (H) because these provisions concern individual access to records, compliance with which could compromise sensitive information, interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

(ii) In addition, from paragraph (d), because to require the FBI to amend information thought to be incorrect, irrelevant or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(4)(i) From subsection (e)(1) because it is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(ii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed otherwise. It is only after the information is assessed that its relevancy and necessity in a specified investigative activity can be established.

(iii) In any investigation the FBI might obtain information concerning violations of law not under its jurisdiction, but in the interest of effective law enforcement, dissemination will be made to the agency charged with enforcing such law.

(iv) In interviewing individuals or obtaining other forms of evidence during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigations

or to an investigative activity under the jurisdiction of another agency.

(5) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual often can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to principally rely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3) because disclosure would provide the subject with information which could impede or compromise the investigation. The individual could seriously interfere with undercover investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(9) From subsection (f) to the extent that this system is exempt from the provisions of subsection (d).

(10) From subsection (g) to the extent that this system of records is exempt from the provisions of subsection (d).

(n) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2), and 3; (e)(4) (G) and (H); (e) (5) and (8); and (g):

(1) National DNA Index System (NDIS) (JUSTICE/FBI-017).

(2) [Reserved]

(o) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available the accounting of disclosures of records to the subject of the record would prematurely place the subject on notice of the investigative interest of law enforcement agencies, provide the subject with significant information concerning the nature of the investigation, or permit the subject to take measures to impede the investigation (e.g., destroy or alter evidence, intimidate potential witnesses, or flee the area to avoid investigation and prosecution), and result in a serious impediment to law enforcement.

(2)(i) From subsections (c)(4), (d), (e)(4) (G) and (H), and (g) because these provisions concern an individual's access to records which concern him/her and access to records in this system would compromise ongoing investigations. Such access is directed at allowing the subject of the record to correct inaccuracies in it. The vast majority of records in this system are from the DNA records of local and State NDIS agencies which would be inappropriate and not feasible for the FBI to undertake to correct. Nevertheless, an alternate method to access and/or amend records in this system is available to an individual who is the subject of a record pursuant to procedures and requirements specified in the Notice of Systems of Records compiled by the National Archives and Records Administration and published in the FEDERAL REGISTER under the designation: National DNA Index System (NDIS) (JUSTICE/FBI-017)

(ii) In addition, from paragraph (d)(2) of this section, because to require the FBI to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde investigations attempting to resolve questions of accuracy, etc.

(iii) In addition, from subsection (g) to the extent that the system is exempt from the access and amendment provisions of subsection (d).

(3) From subsection (e)(1) because:

(i) Information in this system is primarily from State and local records and it is for the official use of agencies outside the Federal Government.

(ii) It is not possible in all instances to determine the relevancy or necessity of specific information in the early stages of the criminal investigative process.

(iii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary, and vice versa. It is only after the information is assessed that its relevancy in a specific investigative activity can be established.

(iv) Although the investigative process could leave in doubt the relevancy and necessity of evidence which had been properly obtained, the same information could be relevant to another investigation or investigative activity under the jurisdiction of the FBI or another law enforcement agency.

(4) From subsections (e)(2) and (3) because it is not feasible to comply with these provisions given the nature of this system. Most of the records in this system are necessarily furnished by State and local criminal justice agencies and not by individuals due to the very nature of the records and the system.

(5) From subsection (e)(5) because the vast majority of these records come from State and local criminal justice agencies and because it is administratively impossible for them and the FBI to insure that the records comply with this provision. Submitting agencies are urged and make every effort to insure records are accurate and complete; however, since it is not possible to predict when information in the indexes of the system (whether submitted by State and local criminal justice agencies or generated by the FBI) will be matched with other information, it is not possible to determine when most of them are relevant or timely.

(6) From subsection (e)(8) because the FBI has no logical manner to determine whenever process has been made public and compliance with this provision would provide an impediment to law enforcement by interfering with ongoing investigations.

(p) The National Instant Criminal Background Check System (NICS), (JUSTICE/FBI-018), a Privacy Act system of records, is exempt:

(1) Pursuant to 5 U.S.C. 552a(j)(2), from subsections (c) (3) and (4); (d); (e) (1), (2) and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g); and

(2) Pursuant to 5 U.S.C. 552a(k) (2) and (3), from subsections (c)(3), (d), (e)(1), and (e)(4) (G) and (H).

(q) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(3). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the accounting of disclosures would place the subject on notice that the subject is or has been the subject of investigation and result in a serious impediment to law enforcement.

(2) From subsection (c)(4) to the extent that it is not applicable since an exemption is claimed from subsection (d).

(3)(i) From subsections (d) and (e)(4) (G) and (H) because these provisions concern an individual's access to records which concern the individual and such access to records in the system would compromise ongoing investigations, reveal investigatory techniques and confidential informants, invade the privacy of persons who provide information in connection with a particular investigation, or constitute a potential danger to the health or safety of law enforcement personnel.

(ii) In addition, from subsection (d)(2) because, to require the FBI to amend information thought to be not accurate, timely, relevant, and complete, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative burden by forcing the agency to continuously update its investigations attempting to resolve these issues.

(iii) Although the Attorney General is exempting this system from subsections (d) and (e)(4) (G) and (H), an alternate method of access and correction has been provided in 28 CFR, part 25, subpart A.

(4) From subsection (e)(1) because it is impossible to state with any degree of certainty that all information in these records is relevant to accomplish a purpose of the FBI, even though acquisition of the records from state and local law enforcement agencies is based on a statutory requirement. In view of the number of records in the system, it is impossible to review them for relevancy.

(5) From subsections (e) (2) and (3) because the purpose of the system is to verify information about an individual. It would not be realistic to rely on information provided by the individual. In addition, much of the information contained in or checked by this system is from Federal, State, and local criminal history records.

(6) From subsection (e)(5) because it is impossible to predict when it will be necessary to use the information in the system, and, accordingly, it is not possible to determine in advance when the records will be timely. Since most of the records are from State and local or other Federal agency records, it would be impossible to review all of them to verify that they are accurate. In addition, an alternate procedure is being established in 28 CFR, part 25, subpart A, so the records can be amended if found to be incorrect.

(7) From subsection (e)(8) because the notice requirement could present a serious impediment to law enforcement by revealing investigative techniques and confidential investigations.

(8) From subsection (g) to the extent that, pursuant to subsections (j)(2), (k)(2), and (k)(3), the system is exempted from the other subsections listed in paragraph (p) of this section.

[Order No. 40-80, 45 FR 5301, Jan. 23, 1980, as amended by Order No. 64-81, 46 FR 20540, Apr. 6, 1981; Order No. 63-81, 46 FR 22362, Apr. 17, 1981; Order No. 67-81, 46 FR 30495, June 9, 1981; Order No. 15-85, 50 FR 31361, Aug. 2, 1985; Order No. 6-86, 51 FR 15479, Apr. 24, 1986; Order No. 94-94, 59 FR 47081, Sept. 14, 1994; Order No. 124-96, 61 FR 65180, Dec. 11, 1996; Order No. 155-98, 63 FR 65062, Nov. 25, 1998]

**§ 16.97 Exemption of Bureau of Prisons Systems—limited access.**

(a) The following systems of records are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (H), (e)(8), (f) and (g):

(1) Custodial and Security Record System (JUSTICE/BOP-001).

(2) Industrial Inmate Employment Record System (JUSTICE/BOP-003).

(3) Inmate Administrative Remedy Record System (JUSTICE/BOP-004).

(4) Inmate Central Record System (JUSTICE/BOP-005).

(5) Inmate Commissary Accounts Record System (JUSTICE/BOP-006).

(6) Inmate Physical and Mental Health Record System (JUSTICE/BOP-007).

(7) Inmate Safety and Accident Compensation Record System (JUSTICE/BOP-008).

(8) Federal Tort Claims Act Record System (JUSTICE/BOP-009).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because inmates will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and Bureau of Prisons responsibilities.

(2) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(3) From subsection (d) because exemption from this subsection is essential to protect internal processes by which Bureau personnel are able to formulate decisions and policies with regard to federal prisoners, to prevent disclosure of information to federal inmates that would jeopardize legitimate correctional interests of security, custody, or rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(4) From subsection (e)(2) because primary collection of information directly from federal inmates about criminal sentences or criminal records is highly impractical and inappropriate.

(5) From subsection (e)(3) because in view of the Bureau of Prisons' responsibilities, application of this provision to its operations and collection of information is inappropriate.

(6) From subsection (e)(4)(H) because exemption from provisions of subsection (d) will make publication of agency procedures under this subsection inapplicable.

(7) From subsection (e)(8) because the nature of Bureau of Prisons law enforcement activities renders notice of compliance with compulsory legal process impractical.

(8) From subsection (f) because exemption from provisions of subsection (d) will render compliance with provisions of this subsection inapplicable.

(9) From subsection (g) because exemption from provisions of subsection (d) will render provisions of this subsection inapplicable.

(c) The following system of records is exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(5) and (e)(8), and (g). In addition, the following system of records is exempted pursuant to 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), and (e)(1):

Bureau of Prisons Access Control Entry/Exit, (JUSTICE/BOP-010).

(d) These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) or (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g. public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the BOP. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for similar reasons as those enumerated in paragraph (3).

(2) From subsection (c)(4) to the extent that exemption from subsection (d) will make notification of corrections or notations of disputes inapplicable.

(3) From the access provisions of subsection (d) to the extent that exemption from this subsection may appear to be necessary to prevent access by record subjects to information that may jeopardize the legitimate correctional interests of safety, security, and good order of Bureau of Prisons facilities; to protect the privacy of third parties; and to protect access to relevant information received from third parties, such as other Federal State, local and foreign law enforcement agencies, Federal and State probation and judicial offices, the disclosure of which may permit a record subject to evade apprehension, prosecution, etc.; and/or to otherwise protect investigatory or law enforcement information, whether received from other third parties, or whether developed internally by the BOP.

(4) From the amendment provisions of subsection (d) because amendment of the records would interfere with law enforcement operations and impose an impossible administrative burden. In addition to efforts to ensure accuracy so as to withstand possible judicial scrutiny, it would require that law enforcement and investigatory information be continuously reexamined, even where the information may have been collected from the record subject. Also, where records are provided by other Federal criminal justice agencies or other State, local and foreign jurisdictions, it may be administratively impossible to ensure compliance with this provision.

(5) From subsection (e)(1) to the extent that the BOP may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(6) From subsection (e)(2) because primary collection of information directly from the record subject is often highly impractical, inappropriate and could result in inaccurate information.

(7) From subsection (e)(3) because compliance with this subsection may impede the collection of information that may be valuable to law enforcement interests.

(8) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance as an investigation progresses or with the passage of time, and could be relevant to future law enforcement decisions.

(9) From subsection (e)(8) because the nature of BOP law enforcement activities renders notice of compliance with compulsory legal process impractical and could seriously jeopardize institution security and personal safety and/or impede overall law enforcement efforts.

(10) From subsection (g) to the extent that the system is exempted from subsection (d).

(e) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e)(5) and (e)(8), (f) and (g):

Telephone Activity Record System (JUSTICE/BOP-011).

(f) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and/or (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, the applicable exemption may be waived, either partially or totally, by the BOP. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) to the extent that this system of records is exempt from subsection (d), and for such reasons as those cited for subsection (d) in paragraph (f)(3) below.

(2) From subsection (c)(4) to the extent that exemption from subsection (d) makes this exemption inapplicable.

(3) From the access provisions of subsection (d) because exemption from

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this subsection is essential to prevent access of information by record subjects that may invade third party privacy; frustrate the investigative process; jeopardize the legitimate correctional interests of safety, security, and good order to prison facilities; or otherwise compromise, impede, or interfere with BOP or other law enforcement agency activities.

(4) From the amendment provisions from subsection (d) because amendment of the records may interfere with law enforcement operations and would impose an impossible administrative burden by requiring that, in addition to efforts to ensure accuracy so as to withstand possible judicial scrutiny, it would require that law enforcement information be continuously reexamined, even where the information may have been collected from the record subject. Also, some of these records come from other Federal criminal justice agencies or State, local and foreign jurisdictions, or from Federal and State probation and judicial offices, and it is administratively impossible to ensure that the records comply with this provision.

(5) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely solely upon information furnished by the individual concerning his/her own activities since it may result in inaccurate information.

(6) From subsection (e)(3) because in view of BOP's operational responsibilities, application of this provision to the collection of information is inappropriate. Application of this provision could provide the subject with substantial information which may in fact impede the information gathering process or compromise an investigation.

(7) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Material which may seem unrelated, irrelevant or incomplete when collected may

take on added meaning or significance at a later date or as an investigation progresses. Also, some of these records may come from other Federal, State, local and foreign law enforcement agencies, and from Federal and State probation and judicial offices and it is administratively impossible to ensure that the records comply with this provision. It would also require that law enforcement information be continuously reexamined even where the information may have been collected from the record subject.

(8) From subsection (e)(8) because the nature of BOP law enforcement activities renders impractical the notice of compliance with compulsory legal process. This requirement could present a serious impediment to law enforcement such as revealing investigative techniques or the existence of confidential investigations, jeopardize the security of third parties, or otherwise compromise law enforcement efforts.

(9)-(10) [Reserved]

(11) From subsections (f) and (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

(g) The following system of records is exempt pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2), and (3), (e)(5) and (e)(8), and (g) of 5 U.S.C. 552a. In addition, the following system of records is exempt pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1) of 5 U.S.C. 552a:

Bureau of Prisons, Office of Internal Affairs  
Investigative Records, JUSTICE/BOP-012

(h) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable exemption may be waived, either partially or totally, by the Office of Internal Affairs (OIA). Exemptions from the

particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the OIA but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in activities that would impede or compromise law enforcement such as: the destruction of documentary evidence; improper influencing of witnesses; endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel; fabrication of testimony; and flight of the subject from the area. In addition, release of disclosure accounting could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could provide the subject of an investigation with information concerning law enforcement activities such as that relating to an actual or potential criminal, civil or regulatory violation; the existence of an investigation; the nature and scope of the information and evidence obtained as to his activities; the identity of confidential sources, witnesses, and law enforcement personnel; and information that may enable the subject to avoid detection or apprehension. Such disclosure would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the de-

struction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OIA for the following reasons:

(i) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(ii) During the course of any investigation, the OIA may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIA should retain this information as it may aid in establishing patterns of criminal activity, and can provide valuable leads for Federal and other law enforcement agencies.

(iii) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) From subsection (e)(2) because, in some instances, the application of this

provision would present a serious impediment to law enforcement for the following reasons:

(i) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(ii) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(iii) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigation report, and thereby impede effective law enforcement.

(8) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investiga-

tion techniques, procedures, and/or evidence.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), and (k)(2) of the Privacy Act.

(i) Consistent with the legislative purpose of the Privacy Act of 1974 (Pub. L. 93-579) the BOP has initiated a procedure whereby federal inmates in custody may gain access and review their individual prison files maintained at the institution of incarceration. Access to these files will be limited only to the extent that the disclosure of records to the inmate would jeopardize internal decision-making or policy determinations essential to the effective operation of the Bureau of Prisons; to the extent that disclosure of the records to the inmate would jeopardize privacy rights of others, or a legitimate correctional interest of security, custody, or rehabilitation; and to the extent information is furnished with a legitimate expectation of confidentiality. The Bureau of Prisons will continue to provide access to former inmates under existing regulations as is consistent with the interests listed above. Under present Bureau of Prisons regulations, inmates in federal institutions may file administrative complaints on any subject under the control of the Bureau. This would include complaints pertaining to information contained in these systems of records.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 6-86, 51 FR 15479, Apr. 24, 1986; Order No. 113-96, 61 FR 6316, Feb. 20, 1996; Order No. 114-96, 61 FR 6317, Feb. 20, 1996; Order No. 115-96, 61 FR 6319, Feb. 20, 1996]

**§ 16.98 Exemption of the Drug Enforcement Administration (DEA)—limited access.**

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (d):

(1) Automated Records and Consummated Orders System/Diversion Analysis and Detection System (ARCOS/DADS) (Justice/DEA-003)

(2) Controlled Substances Act Registration Records (Justice/DEA-005)

(3) Registration Status/Investigatory Records (Justice/DEA-012)

(b) These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of the disclosure accounting would enable the subject of an investigation to gain valuable information concerning the nature and scope of the investigation and seriously hamper the regulatory functions of the DEA.

(2) From subsection (d) because access to records contained in these systems may provide the subject of an investigation information that could enable him to avoid compliance with the Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513).

(c) Systems of records identified in paragraphs (c)(1) through (c)(6) below are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(5), (e)(8) and (g) of 5 U.S.C. 552a. In addition, systems of records identified in paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) below are also exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d) and (e)(1). Finally, systems of records identified in paragraphs (c)(1), (c)(2), (c)(3) and (c)(5) below are also exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) from subsections (c)(3), (d) and (e)(1):

(1) Air Intelligence Program (Justice/DEA-001)

(2) Investigative Reporting and Filing System (Justice/DEA-008)

(3) Planning and Inspection Division Records (Justice/DEA-010)

(4) Operations Files (Justice/DEA-011)

(5) Security Files (Justice/DEA-013)

(6) System to Retrieve Information from Drug Evidence (Stride/Ballistics) (Justice/DEA-014)

(d) Exemptions apply to the following systems of records only to the extent that information in the systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2): Air Intelligence Program (Justice/DEA-001); Planning and Inspection Division Records (Justice/DEA-010); and Secu-

rity Files (Justice/DEA-013). Exemptions apply to the Investigative Reporting and Filing System (Justice/DEA-008) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(1). Exemptions apply to the Operations Files (Justice/DEA-011) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Exemptions apply to the System to Retrieve Information from Drug Evidence (STRIDE/Ballistics) (Justice/DEA-014) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of disclosure accounting would provide to the subjects of an investigation significant information concerning the nature of the investigation and thus would present the same impediments to law enforcement as those enumerated in paragraph (d)(3) regarding exemption from subsection (d).

(2) From subsection (c)(4) to the extent that it is not applicable because an exemption is being claimed from subsection (d).

(3) From the access provisions of subsection (d) because access to records in this system of records would present a serious impediment to law enforcement. Specifically, it could inform the record subject of an actual or potential criminal, civil, or regulatory investigation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. Similarly, it may alert collateral suspects yet unprosecuted in closed cases. It could prevent the successful completion of the investigation; endanger the life, health, or physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; or it may simply reveal a sensitive investigative technique. In addition, granting access to

such information could result in the disclosure of confidential/security-sensitive or other information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. From the amendment provisions of subsection (d) because amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the DEA for the following reasons:

(i) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations during which DEA may obtain properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(ii) During the DEA's investigative activities DEA may detect the violation of either drug-related or non-drug related laws. In the interests of effective law enforcement, it is necessary that DEA retain all information obtained because it can aid in establishing patterns of activity and provide valuable leads for Federal and other law enforcement agencies or otherwise assist such agencies in discharging their law enforcement responsibilities. Such information may include properly classified information, the retention of which could be in the interests of national defense and/or foreign policy.

(5) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(i) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or

apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(ii) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts must be obtained from other sources.

(iii) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful prosecution.

(6) From subsection (e)(3) because the requirements thereof would constitute a serious impediment to law enforcement in that they could compromise the existence of an actual or potential confidential investigation and/or permit the record subject to speculate on the identity of a potential confidential source, and endanger the life, health or physical safety or either actual or potential confidential informants and witnesses, and of investigators/law enforcement personnel. In addition, the notification requirement of subsection (e)(3) could impede collection of that information from the record subject, making it necessary to collect the information solely from third party sources and thereby inhibiting law enforcement efforts.

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal

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investigation to the subject of the investigation, and could reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1) and (k)(2) of the Privacy Act.

(e) The following systems of records are exempt from 5 U.S.C. 552a (d)(1) and (e)(1):

(1) Grants of Confidentiality Files (GCF) (Justice/DEA-017), and

(2) DEA Applicant Investigations (Justice/DEA-018).

(f) These exemptions apply only to the extent that information in these systems is subject to exception pursuant to 5 U.S.C. 552a(k)(5). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning an applicant for a grant of confidentiality with DEA. By permitting access to information which may reveal the identity of the source of that information—after a promise of confidentiality has been given—DEA would breach the promised confidentiality. Ultimately, such breaches would restrict the free flow of information which is vital to a determination of an applicant's qualifications for a grant.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluation purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other apparently irrelevant information, can on occasion provide a composite picture of an applicant which assists in determining whether a grant of confidentiality is warranted.

(g) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(5), (e)(8) and (g) of 5 U.S.C. 552a. In addition, this system of records is exempted pursuant to the provisions of 5

U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1):

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(h) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the reasons given in paragraphs (b)(1) and (d)(1).

(2) From subsection (c)(4) to the extent that is not applicable because an exemption is being claimed from subsection (d).

(3) From subsection (d) for the reasons given in paragraphs (b)(2), (d)(3), and (f)(1).

(4) From subsection (e)(1) for reasons given in paragraphs (d)(4) and (f)(2).

(5) From subsection (e)(2) for reasons given in paragraph (d)(5).

(6) From subsection (e)(3) for reasons given in paragraph (d)(6).

(7) From subsection (e)(5) for reasons given in paragraph (d)(7).

(8) From subsection (e)(8) for the reasons given in paragraph (d)(8).

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1) and (k)(2) of the Privacy Act.

[Order No. 88-94, 59 FR 29717, June 9, 1994, as amended by Order No. 127-97, 62 FR 2903, Jan. 21, 1997]

**§ 16.99 Exemption of the Immigration and Naturalization Service Systems-limited access.**

(a) The following systems of records of the Immigration and Naturalization Service are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4)(G) and (H), (e) (5) and (8), and (g):

(1) The Immigration and Naturalization Service Alien File (A-File) and Central Index System (CIS), JUSTICE/INS-001A.

(2) The Immigration and Naturalization Service Index System, JUSTICE/INS-001 which consists of the following subsystems:

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- (i) Agency Information Control Record Index.
- (ii) Alien Enemy Index.
- (iii) Congressional Mail Unit Index.
- (iv) Air Detail Office Index.
- (v) Anti-smuggling Index (general).
- (vi) Anti-smuggling Information Centers Systems for Canadian and Mexican Borders.
- (vii) Border Patrol Sectors General Index System.
- (viii) Contact Index.
- (ix) Criminal, Narcotic, Racketeer and Subversive Indexes.
- (x) Enforcement Correspondence Control Index System.
- (xi) Document Vendors and Alterers Index.
- (xii) Informant Index.
- (xiii) Suspect Third Party Index.
- (xiv) Examination Correspondence Control Index.
- (xv) Extension Training Enrollee Index.
- (xvi) Intelligence Index.
- (xvii) Naturalization and Citizenship Indexes.
- (xviii) Personnel Investigations Unit Indexes.
- (xix) Service Look-Out Subsystem.
- (xx) White House and Attorney General Correspondence Control Index.
- (xxi) Fraudulent Document Center Index.
- (xxii) Emergency Reassignment Index.
- (xxiii) Alien Documentation, Identification, and Telecommunication (ADIT) System.

The exemptions apply to the extent that information in these subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published for these subsystems would permit the subject of a criminal or civil investigation to obtain valuable information concerning the nature of that investigation and present a serious impediment to law enforcement.

(2) From subsection (c)(4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to the records contained in these subsystems would inform the subject of a criminal or civil investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and present a serious impediment to law enforcement.

(4) From subsection (e)(1) because in the course of criminal or civil investigations, the Immigration and Naturalization Service often obtains information concerning the violation of laws other than those relating to violations over which INS has investigative jurisdiction. In the interests of effective law enforcement, it is necessary that INS retain this information since it can aid in establishing patterns of criminal activity and provide valuable leads for those law enforcement agencies that are charged with enforcing other segments of the criminal law.

(5) From subsection (e)(2) because in a criminal or civil investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection or apprehension.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life or physical safety of confidential informants.

(7) From subsections (e)(4) (G) and (H) because these subsystems of records are exempt from individual access pursuant to subsection (j) of the Privacy Act of 1974.

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time,

seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the Immigration and Naturalization Service's ability to issue administrative subpoenas and could reveal investigative techniques and procedures.

(10) From subsection (g) because these subsystems of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(11) In addition, these systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H) to the extent they are subject to exemption pursuant to 5 U.S.C. 552a(k)(1). To permit access to records classified pursuant to Executive Order would violate the Executive Order protecting classified information.

(c) The Border Patrol Academy Index Subsystem is exempt from 5 U.S.C. 552a (d) and (f).

This exemption applies only to the extent that information in this subsystem is subject to exemption pursuant to 5 U.S.C. 552a(k).

(d) Exemptions for the particular subsections are justified for the following reasons.

(1) From subsection (d) because exemption is claimed only for those testing and examination materials used to determine an individual's qualifications for retention and promotion in the Immigration and Naturalization Service. This is necessary to protect the integrity of testing materials and to insure fair and uniform examinations.

(2) From subsection (f) because the subsystem of records has been exempt-

ed from the access provisions of subsection (d).

(e) The Orphan Petitioner Index and Files (Justice/INS-007) system of records is exempt from 5 U.S.C. 552a(d). This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(1).

(f) Exemption from paragraph (d) of this section is claimed solely because of the possibility of receipt of classified information during the course of INS investigation of prospective adoptive parents.

Although it would be rare, prospective adoptive parents may originally be from foreign countries (for example) and information received on them from their native countries may require classification under Executive Order 12356 which safeguards national security information. If such information is relevant to the INS determination with respect to adoption, the information would be kept in the file and would be classified accordingly. Therefore, access could not be granted to the record subject under the Privacy Act without violating E.O. 12356.

(g) The Office of Internal Audit Investigations Index and Records (Justice/INS-002) system of records is exempt under the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5) and (8); and (g), but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in the system are subject to exemption therefrom. In addition, this system of records is also exempt under the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in the system are subject to exemption therefrom.

(h) The following justification apply to the exemptions from particular subsections:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosure could permit the subject of an actual or potential criminal or civil investigation to obtain valuable information concerning the existence and nature of the investigation, the fact

that individuals are subjects of the investigation, and present a serious impediment to law enforcement.

(2) From subsection (c)(4) to the extent that the exemption from subsection (d) is applicable. Subsection (c)(4) will not be applicable to the extent that records in the system are properly withholdable under subsection (d).

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of a criminal or civil investigation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to their activities; of the identity of confidential sources, witnesses and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. Such disclosures would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to these records could result in a disclosure that would constitute an unwarranted invasion of the privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because in the course of criminal or civil investigations, the Immigration and Naturalization Service often obtains information concerning the violation of laws other than those relating to violations over which INS has investigative jurisdiction, in the interests of effective law enforcement, it is necessary that INS retain this information since it can aid in establishing patterns of criminal activity and provide valuable leads for those law enforcement agencies that are charged with enforcing other segments of the criminal law.

(5) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection or apprehension.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment of criminal law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life or physical safety of confidential informants.

(7) From subsection (e)(5) because in the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to criminal law enforcement as this could interfere with the Immigration and Naturalization Service's ability to issue administrative subpoenas and could reveal investigative techniques and procedures.

(9) From subsection (g) for those portions of this system of records that were compiled for criminal law enforcement purposes and which are subject to exemption from the access provisions of subsections (d) pursuant to subsection (j)(2).

(i) The Law Enforcement Support Center Database (LESC) (Justice/INS-023) system of records is exempt under the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4); (d); (e) (1), (2), (3), (5), (8) and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in the system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in the system are subject to exemption therefrom.

(j) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) of this section.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) of this section.

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of a criminal or civil investigation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to their activities; and of information that may enable the subject to avoid detection or apprehension. Such disclosures would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation or other law enforcement operation such as deportation or exclusion. In addition, granting access to these records could result in a disclosure that would constitute an unwarranted invasion of the privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) of this section.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) of this section.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to criminal law enforcement in that it could compromise the existence of a confidential investigation.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) of this section.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) of this section.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

(k) The Attorney/Representative Complaint/Petition File (JUSTICE/INS-022) system of records is exempt under the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in this system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in this system are subject to exemption therefrom.

(l) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) of this section.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) of this section.

(3) From the access and amendment provisions of subsection (d) for reasons stated in paragraph (h)(3) of this section.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) of this section.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) of this section.

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(6) From subsection (e)(3) for reasons stated in paragraph (h)(6) of this section.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) of this section.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) of this section.

(9) From subsection (g) to the extent that the system is exempt from the access and amendment provisions of subsection (d).

(m) The Worksite Enforcement Activity and Records Index (LYNX) (JUSTICE/INS-025) system of records is exempt under the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in this system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in this system are subject to exemption therefrom.

(n) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) of this section.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) of this section.

(3) From the access and amendment provisions of subsection (d) for reasons stated in paragraph (h)(3) of this section.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) of this section.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) of this section.

(6) From subsection (e)(3) for reasons stated in paragraph (h)(6) of this section.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) of this section.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) of this section.

(9) From subsection (g) to the extent that the system is exempt from the access and amendment provisions of subsection (d).

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 10001, Feb. 18, 1977; Order No. 6-84, 49 FR 20812, May 17, 1984; Order No. 25-88, 53 FR 41161, Oct. 20, 1988; Order No. 137-97, 62 FR 34169, June 25, 1997; Order No. 142-97, 62 FR 44083, Aug. 19, 1997; Order No. 196-2000, 65 FR 21139, Apr. 20, 2000; Order No. 197-2000, 65 FR 21140, Apr. 20, 2000]

### § 16.100 Exemption of Office of Justice Programs—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Civil Rights Investigative System (JUSTICE/OJP-008).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemption from subsection (d) is claimed since access to information in the Civil Rights Investigative System prior to final administrative resolution will deter conciliation and compliance efforts. Consistent with the legislative purpose of the Privacy Act of 1974, decisions to release information from the system will be made on a case-by-case basis and information will be made available where it does not compromise the complaint and compliance process. In addition, where explicit promises of confidentiality must be made to a source during an investigation, disclosure will be limited to the extent that the identity of such confidential sources will not be compromised.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 5-78, 43 FR 36439, Aug. 17, 1978; Order No. 43-80, 45 FR 6780, Jan. 30, 1980; Order No. 6-86, 51 FR 15479, Apr. 24, 1986]

### § 16.101 Exemption of U.S. Marshals Service Systems—limited access, as indicated.

(a) The following system of records is exempt from 5 U.S.C. 552(a)(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g):

(1) Warrant Information System (JUSTICE/USM-007).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of disclosure accounting for disclosure made pursuant to subsection (b) of the Act, including those permitted under routine uses published for this system of records would permit a person to determine whether he is the subject of a criminal investigation, and to determine whether a warrant has been issued against him, and therefore present a serious impediment to law enforcement.

(2) From subsection (c)(4) since an exemption is being claimed for subsection (d) of the Act, this section is inapplicable.

(3) From subsection (d) because access to records would inform a person for whom a federal warrant has been issued of the nature and scope of information obtained as to his activities, of the identity of informants, and afford the person sufficient information to enable the subject to avoid apprehension. These factors would present a serious impediment to law enforcement in that they would thwart the warrant process and endanger lives of informants etc.

(4) From subsections (e)(1) and (e)(5) because the requirements of these subsections would present a serious impediment to law enforcement in that it is impossible to determine in advance what information collected during an investigation will be important or crucial to the apprehension of Federal fugitives. In the interest of effective law enforcement, it is appropriate in a thorough investigation to retain seemingly irrelevant, untimely, or inaccurate information which, with the passage of time, would aid in establishing patterns of activity and provide investigative leads toward fugitive apprehension and assist in law enforcement activities of other agencies.

(5) From subsection (e)(2) because the requirement that information be collected to the greatest extent practical from the subject individual would

present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the warrant and would therefore be able to avoid detection or apprehension.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal identity of confidential informants.

(7) From subsections (e)(4) (G) and (H) since an exemption is being claimed for subsections (f) and (d) of the Act, these subsections are inapplicable.

(8) From subsection (e)(8) because the individual notice requirement of this subsection would present a serious impediment to law enforcement in that it would give persons sufficient warning to avoid warrants, subpoena, etc.

(9) From subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to him dealing with warrants must be exempted because such notice to individuals would be detrimental to the successful service of a warrant. Since an exemption is being claimed for subsection (d) of the Act the rules required pursuant to subsections (f) (2) through (5) are inapplicable to this system of records.

(10) From subsection (g) since an exemption is being claimed for subsection (d) and (f) this section is inapplicable and is exempted for the reasons set forth for these subsections.

(c) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f)(2) and (g):

(1) Witness Security System (JUSTICE/USM-008).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting for

disclosures made pursuant to subsection (b) of the Act including those permitted under routine uses published for this system of records would hamper the effective functioning of the Witness Security Program which by its very nature requires strict confidentiality vis-a-vis the records.

(2) From subsection (c)(4) for the reason stated in (b)(2) of this section.

(3) From subsection (d) because the U.S. Marshals Service Witness Security Program aids efforts of law enforcement officials to prevent, control or reduce crime. Access to records would present a serious impediment to effective law enforcement through revelation of confidential sources and through disclosure of operating procedures of the program, and through increased exposure of the program to the public.

(4) From subsection (e)(2) because in the Witness Security Program the requirement that information be collected to the greatest extent possible from the subject individual would constitute an impediment to the program, which is sometimes dependent on sources other than the subject witness for verification of information pertaining to the witness.

(5) From subsection (e)(3) for the reason stated in (b)(6) of this section.

(6) From subsection (e)(4) (G) and (H) for the reason stated in (b)(7) of this section.

(7) From subsection (e)(8) for the reason stated in (b)(8) of this section.

(8) From subsection (f)(2) since an exemption is being claimed for subsection (d) of the Act the rules required pursuant to subsection (f) (2) through (5) are inapplicable to this system of records.

(9) From subsection (g) for the reason stated in (b)(10) of this section.

(e) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (f) and (g) and may be additionally exempt from subsection (e)(8):

(1) Internal Investigations System (JUSTICE/USM-002)—Limited access.

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5) or (j)(2).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) where the release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act would reveal a source who furnished information to the Government in confidence.

(2) From subsection (c)(4) for the reason stated in (b)(2) of this section.

(3) From subsection (d) because access to information in this system which was obtained from a confidential source would impede the effective investigation into employee conduct for purposes of determining suitability, eligibility, or qualifications for Federal employment in that it would inhibit furnishing of information by sources which desire to remain confidential.

(4) From subsection (e)(2) because the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to compromise the investigation and avoid detection or apprehension.

(5) From subsection (e)(3) for the reason stated in (b)(6) of this section.

(6) From subsections (e)(4) (G) and (H) for the reason stated in (b)(7) of this section.

(7) From subsection (e)(8) because the individual notice requirement of this subsection would present a serious impediment to law enforcement in that the subject of the investigation would be alerted as to the existence of the investigation and therefore be able to compromise the investigation and avoid detection, subpoena, etc.

(8) From subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records dealing with investigations of criminal or civil law violations would enable the individual to compromise the investigation and evade detection or apprehension. Since an exemption is being claimed for subsection (d) of the Act, the rules required pursuant to subsections (f)(2)

through (f)(5) are not applicable to this system.

(9) From subsection (g) for the reason stated in (b)(10) of this section.

(g) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g):

(1) U.S. Marshals Service Threat Analysis Information System (JUSTICE/USM-009).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting would permit a person to determine whether he or she has been identified as a specific threat to USMS protectees and to determine the need for countermeasures to USMS protective activities and thereby present a serious impediment to law enforcement.

(2) From subsection (c)(4) because it is inapplicable since an exemption is being claimed for subsection (d).

(3) From subsection (d) because to permit access to records would inform a person of the nature and scope of information obtained as to his or her threat-related activities and of the identity of confidential sources, and afford the person sufficient information to develop countermeasures to thwart protective arrangements and endanger lives of USMS protectees, informants, etc. To permit amendment of the records would interfere with ongoing criminal law enforcement and impose an impossible administrative burden requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because the collection of investigatory information used to assess the existence, extent and likelihood of a threat situation necessarily includes material from which it is impossible to identify and segregate information which may not be important to the conduct of a thorough assessment. It is often impossible to determine in advance if all information collected is accurate, relevant, timely and complete but, in the interests of developing effective

protective measures, it is necessary that the U.S. Marshals Service retain this information in order to establish patterns of activity to aid in accurately assessing threat situations. The restrictions of subsections (e) (1) and (5) would impede the protective responsibilities of the Service and could result in death or serious injury to Marshals Service protectees.

(5) From subsection (e)(2) because to collect information from the subject individual would serve notice that he or she is identified as a specific threat to USMS protectees and would enable the subject individual to develop countermeasures to protective activities and thereby present a serious impediment to law enforcement.

(6) From subsection (e)(3) because to inform individuals as required by this subsection would enable the subject individual to develop countermeasures to USMS protective arrangements or identify confidential sources and thereby present a serious impediment to law enforcement.

(7) From subsections (e)(4) (G) and (H) because they are inapplicable since an exemption is being claimed for subsections (d) and (f) of the Act.

(8) From subsection (e)(8) because to serve notice would give persons sufficient warning to develop countermeasures to protective arrangements and thereby present a serious impediment to law enforcement through compromise of protective procedures, etc.

(9) From subsection (f) because this system of records is exempt from the provisions of subsection (d).

(10) From subsection (g) because it is inapplicable since an exemption is being claimed for subsections (d) and (f).

(i) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (d):

(1) Judicial Facility Security Index System (JUSTICE/USM-010)

These exemptions apply only to the extent that information in this system is exempt pursuant to 5 U.S.C. 552a(k)(5).

(j) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) only to the extent that release of the disclosure accounting would reveal the identity of a confidential source.

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(2) From subsection (d) only to the extent that access to information would reveal the identity of a confidential source.

(k) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g):

(1) U.S. Marshals Service Freedom of Information/Privacy Act (FOIA/PA) Files (JUSTICE/USM-012).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(2) and (k)(5).

(l) Because this system contains Department of Justice civil and criminal law enforcement, investigatory records, exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the existence and nature of the investigation and present a serious impediment to law enforcement.

(2) From subsection (c)(4) because that portion of this system which consists of investigatory records compiled for law enforcement purposes is being exempted from the provisions of subsection (d), rendering this provision not applicable.

(3) From subsection (d) because to permit access to investigatory records would reveal the identity of confidential sources and impede ongoing investigative or law enforcement activities by the premature disclosure of information related to those efforts. To permit amendment of the records would interfere with ongoing criminal law enforcement and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because it is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide leads in criminal investigations.

(5) From subsection (e)(2) because to collect information from the subject individual would serve notice that he or she is the subject of criminal investigative or law enforcement activity and thereby present a serious impediment to law enforcement.

(6) From subsection (e)(3) because to inform individuals as required by this subsection would enable the subject individual to identify confidential sources, reveal the existence of an investigation, and compromise law enforcement efforts.

(7) From subsections (e)(4) (G) and (H) because they are inapplicable since an exemption is being claimed for subsections (d) and (f) for investigatory records contained in this system.

(8) From subsection (e)(8) because to serve notice would give persons sufficient warning to evade law enforcement efforts.

(9) From subsection (f) because investigatory records contained in this system are exempt from the provisions of subsection (d).

(10) From subsection (g) because it is inapplicable since an exemption is being claimed for subsections (d) and (f).

(m) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f) and (g):

(1) U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files (JUSTICE/USM-013).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) or (k)(5).

(n) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting for disclosures pursuant to the routine uses published for this system would permit the subject of a criminal or civil case or matter under investigation, or a case or matter in litigation, or under regulatory or administrative review or action, to obtain valuable information concerning the nature of that investigation, case or matter, and present a serious impediment to law enforcement or civil legal activities, or reveal a confidential source.

(2) From subsection (c)(4) because the exemption claimed for subsection (d) will make this section inapplicable.

(3) From subsection (d) because to permit access to records contained in this system would provide information concerning litigation strategy, or case development, and/or reveal the nature of the criminal or civil case or matter under investigation or administrative review, or in litigation, and present a serious impediment to law enforcement or civil legal activities, or reveal a confidential source.

(4) From subsection (e)(2) because effective legal representation, defense, or claim adjudication necessitates collecting information from all individuals having knowledge of the criminal or civil case or matter. To collect information primarily from the subject individual would present a serious impediment to law enforcement or civil legal activities.

(5) From subsection (e)(3) because to inform the individuals as required by this subsection would permit the subject of a criminal or civil matter under investigation or administrative review to compromise that investigation or administrative review and thereby impede law enforcement efforts or civil legal activities.

(6) From subsections (e)(4) (G) and (H) because these provisions are inapplicable since this system is exempt from subsections (d) and (f) of the Act.

(7) From subsection (e)(8) because to serve notice would give persons sufficient warning to compromise a criminal or civil investigation or administrative review and thereby impede law enforcement of civil legal activities.

(8) From subsection (f) because this system of records is exempt from the provisions of subsection (d).

(9) From subsection (g) because it is inapplicable since an exemption is claimed for subsections (d) and (f).

(o) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (5) and (g):

(1) U.S. Marshals Service Prisoner Transportation System (JUSTICE/USM-003).Q P='02'≤

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(p) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) where the release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act would reveal a source who furnished information to the Government in confidence.

(2) From subsection (c)(4) to the extent that the system is exempt from subsection (d).

(3) From subsection (d) because access to records would reveal the names and other information pertaining to prisoners, including sensitive security information such as the identities and locations of confidential sources, *e.g.*, informants and protected witnesses; and disclose access codes, data entry codes and message routing symbols used in law enforcement communications systems to schedule and effect prisoner movements. Thus, such a compromise of law enforcement communications systems would subject law enforcement personnel and other prisoners to harassment and possible danger, and present a serious threat to law enforcement activities. To permit amendment of the records would interfere with ongoing criminal law enforcement and impose an impossible administrative burden by requiring that information affecting the prisoner's security classification be continuously re-investigated when contested by the prisoner, or by anyone on his behalf.

(4) From subsections (e) (1) and (5) because the security classification of prisoners is based upon information collected during official criminal investigations; and, in the interest of ensuring safe and secure prisoner movements it may be necessary to retain information the relevance, necessity, accuracy, timeliness, and completeness of which cannot be readily established, but which may subsequently prove useful in establishing patterns of criminal activity or avoidance, and thus be essential to assigning an appropriate security classification to the prisoner. The restrictions of subsection (e) (1) and (5) would impede the information collection responsibilities of the

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USMS, and the lack of all available information could result in death or serious injury to USMS and other law enforcement personnel, prisoners in custody, and members of the public.

(5) From subsection (e)(2) because the requirement to collect information from the subject individual would impede the information collection responsibilities of the USMS in that the USMS is often dependent upon sources other than the subject individual for verification of information pertaining to security risks posed by the individual prisoner.

(6) From subsection (g) to the extent that the system is exempt from subsection (d).

(q) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2), (3), (e)(5) and (e)(8) and (g):

(1) U.S. Marshals Service Prisoner Processing and Population Management System (JUSTICE/USM-005).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(r) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting would permit the subject of a criminal proceeding to determine the extent or nature of law enforcement authorities' knowledge regarding his/her alleged misconduct or criminal activities. The disclosure of such information could alert the subject to devise ways in which to conceal his/her activities and/or prevent law enforcement from learning additional information about his/her activities, or otherwise inhibit law enforcement efforts. In addition, where the individual is the subject of an ongoing or potential inquiry/investigation, such release could reveal the nature thereof prematurely, and may also enable the subject to determine the identity of witnesses and informants. Such disclosure could compromise the ongoing or potential inquiry/investigation, endanger the lives of witnesses and informants, or otherwise impede or thwart law enforcement efforts.

(2) From subsection (c)(4) to the extent that the system is exempt from subsection (d).

(3) From subsection (d) because to permit unlimited access would permit the subject of a criminal proceeding to determine the extent or nature of law enforcement authorities' knowledge regarding his/her alleged misconduct or criminal activities. The disclosure of such information could alert the subject to devise ways in which to conceal his/her activities and/or prevent law enforcement from learning additional information about his/her activities, or otherwise inhibit law enforcement efforts. Disclosure would also allow the subject to obtain sensitive information concerning the existence and nature of security measures and jeopardize the safe and secure transfer of the prisoner, the safety and security of other prisoners, informants and witnesses, law enforcement personnel, and the public. In addition, disclosure may enable the subject to learn prematurely of an ongoing or potential inquiry/investigation, and may also permit him/her to determine the identities of confidential sources, informants, or protected witnesses. Such disclosure could compromise the ongoing or potential inquiry/investigation, endanger the lives of witnesses and informants, or otherwise impede or thwart law enforcement efforts. Disclosure may also constitute an unwarranted invasion of the personal privacy of third parties. Further, disclosure would reveal access codes, data entry codes and message routing symbols used in law enforcement communications systems. Access to such codes and symbols would permit the subject to impede the flow of law enforcement communications and compromise the integrity of law enforcement information, and thus present a serious threat to law enforcement activities. To permit amendment of the records would expose security matters, and would impose an impossible administrative burden by requiring that security precautions, and information pertaining thereto, be continuously re-evaluated if contested by the prisoner, or by anyone on his or her behalf. Similarly, to permit amendment could interfere with ongoing or potential inquiries/investigations by requiring that

such inquiries/investigations be continuously reinvestigated, or that information collected (the relevance and accuracy of which cannot readily be determined) be subjected to continuous change.

(4) From subsections (e)(1) and (5) because the system may contain investigatory information or information which is derived from information collected during official criminal investigations. In the interest of effective law enforcement and litigation, of securing the prisoner and of protecting the public, it may be necessary to retain information the relevance, necessity, accuracy, timeliness and completeness of which cannot be readily established. Such information may nevertheless provide investigative leads to other Federal or law enforcement agencies, or prove necessary to establish patterns of criminal activity or behavior, and/or prove essential to the safe and secure detention (and movement) of prisoners. Further, the provisions of (e)(1) and (e)(5) would restrict the ability of the USMS in exercising its judgment in reporting information during investigations or during the development of appropriate security measures, and thus present a serious impediment to law enforcement efforts.

(5) From subsection (e)(2) because the requirement to collect information from the subject individual would impede the information collection responsibilities of the USMS which is often dependent upon sources other than the subject individual for verification of information pertaining to security risks posed by the individual prisoner, to alleged misconduct or criminal activity of the prisoner, or to any matter affecting the safekeeping and disposition of the individual prisoner.

(6) From subsection (e)(3) because to inform individuals as required by this subsection could impede the information gathering process, reveal the existence of an ongoing or potential inquiry/investigation or security procedure, and compromise law enforcement efforts.

(7) From subsection (e)(8) because to serve notice would give persons sufficient warning to compromise an ongoing or potential inquiry/investigation

and thereby evade and impede law enforcement and security efforts.

(8) From subsection (g) to the extent that the system is exempt from subsection (d).

(s) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (3), (e) (5) and (e) (8) and (g):

Joint Automated Booking Stations,  
Justice/USM-014

(t) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Where compliance would not interfere with or adversely affect the law enforcement process, the USMS may waive the exemptions, either partially or totally. Exemption from the particular subsections are justified for the following reasons:

(1) From subsections (c)(3) and (d) to the extent that access to records in this system of records may impede or interfere with law enforcement efforts, result in the disclosure of information that would constitute and unwarranted invasion of the personal privacy of collateral record subjects or other third parties, and/or jeopardize the health and/or safety of third parties.

(2) Where access to certain records may be appropriate, exemption from the amendment provisions of subsection (d)(2) is necessary to the extent that the necessary and appropriate justification, together with proof of record inaccuracy, is not provided, and/or to the extent that numerous, frivolous requests to amend could impose an impossible administrative burden by requiring agencies to continuously review booking and arrest data, much of which is collected from the arrestee during the arrest.

(3) From subsection (e)(1) to the extent that it is necessary to retain all information in order not to impede, compromise, or interfere with law enforcement efforts, e.g., where the significance of the information may not be readily determined and/or where such information may provide leads or assistance to Federal and other law enforcement agencies in discharging their law enforcement responsibilities.

(4) From subsection (e)(2) because, in some instances, the application of this

provision would present a serious impediment to law enforcement since it may be necessary to obtain and verify information from a variety of sources other than the record subject to ensure safekeeping, security, and effective law enforcement. For example, it may be necessary that medical and psychiatric personnel provide information regarding the subject's behavior, physical health, or mental stability, etc. To ensure proper care while in custody, or it may be necessary to obtain information from a case agent or the court to ensure proper disposition of the subject individual.

(5) From subsection (e)(3) because the requirement that agencies inform each individual whom it asks to supply information of such information as is required by subsection (e)(3) may, in some cases, impede the information gathering process or otherwise interfere with or compromise law enforcement efforts, e.g., the subject may deliberately withhold information, or give erroneous information.

(6) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability to collect information for law enforcement purposes and may prevent the eventual development of the necessary criminal intelligence or otherwise impede effective law enforcement.

(7) From subsection (e)(8) to the extent that such notice may impede, interfere with, or otherwise compromise law enforcement and security efforts.

(8) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

(u) Consistent with the legislative purpose of the Privacy Act of 1974, the United States Marshals Service will grant access to nonexempt material in records which are maintained by the Service. Disclosure will be governed by

the Department's Privacy Regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal, civil or regulatory violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 8-83, 48 FR 19024, Apr. 27, 1983; Order No. 10-86, 51 FR 20275, June 4, 1986; Order No. 11-86, 51 FR 20277, June 4, 1986; Order No. 61-92, 57 FR 3284, Jan. 29, 1992; Order No. 66-92, 57 FR 20654, May 14, 1992; Order No. 105-95, 60 FR 30467, June 9, 1995]

**§ 16.102 Exemption of Drug Enforcement Administration and Immigration and Naturalization Service Joint System of Records.**

(a) The following system of records is exempted pursuant to provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H), and (I), (e)(5) and (8), (f), (g), and (h) of 5 U.S.C. 552a; in addition the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552 (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a.

(1) Automated Intelligence Record System (Pathfinder), JUSTICE/DEA-INS-111.

These exemptions apply to the extent that information in those systems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) The system of records listed under paragraph (a) of this section is exempted, for the reasons set forth from the following provisions of 5 U.S.C. 552a:

(1)(c)(3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for these systems of records.

(2)(c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this subsection is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3)(d). Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, or the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4)(e)(1). The notices of these systems of records published in the FEDERAL REGISTER set forth the basic statutory or related authority for maintenance of this system. However, in the course of criminal or other law enforcement investigations, cases, and matters, the Immigration and Naturalization Service or the Drug Enforcement Administration will occasionally obtain information concerning actual or potential

violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information in these systems of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies.

(5)(e)(2). In a criminal investigation or prosecution, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6)(e)(3). The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7)(e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable to the extent that these systems of records are exempted from subsections (f) and (d).

(8)(e)(4)(I). The categories of sources of the records in these systems have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9)(e)(5). In the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal or other intelligence necessary for effective law enforcement.

(10)(e)(8). The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11)(f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsections (f) (2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(12)(g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted

for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

(13)(h). Since an exemption is being claimed for subsection (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

(14) In addition, exemption is claimed for these systems of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k)(1): subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) to the extent that the records contained in these systems are specifically authorized to be kept secret in the interests of national defense and foreign policy.

[Order No. 742-77, 42 FR 40907, Aug. 12, 1977]

**§ 16.103 Exemption of the INTERPOL-United States National Central Bureau (INTERPOL-USNCB) System.**

(a) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(5) and (8), (f) and (g):

(1) The INTERPOL-United States National Central Bureau (INTERPOL-USNCB) (Department of Justice) INTERPOL-USNCB Records System (JUSTICE/INTERPOL-001).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(2), and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of accounting disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement.

(2) From subsections (c)(4), (d), (e)(4) (G), and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations reveal

investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(3) From subsection (e)(1) because information received in the course of an international criminal investigation may involve a violation of state or local law, and it is beneficial to maintain this information to provide investigative leads to state and local law enforcement agencies.

(4) From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigation by placing the subject on notice.

(5) From subsection (e)(3) because supplying an individual with a statement of the intended use of the requested information could compromise the existence of a confidential investigation, and may inhibit cooperation.

(6) From subsection (e)(5) because the vast majority of these records come from local criminal justice agencies and it is administratively impossible to ensure that the records comply with this provision. Submitting agencies are, however, urged on a continuing basis to ensure that their records are accurate and include all dispositions.

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

[Order No. 8-82, 47 FR 44255, Oct. 7, 1982, as amended by Order No. 6-86, 51 FR 15479, Apr. 24, 1986]

### Subpart F—Public Observation of Parole Commission Meetings

SOURCE: 42 FR 14713, Mar. 16, 1977, unless otherwise noted.

#### § 16.200 Definitions.

As used in this part:

(a) The term *Commission* means the U.S. Parole Commission and any subdivision thereof authorized to act on its behalf.

(b) The term *meeting* refers to the deliberations of at least the number of

Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(c) Specifically included in the term *meeting* are:

(1) Meetings of the Commission required to be held by 18 U.S.C. 4203(a);

(2) Special meetings of the Commission called pursuant to 18 U.S.C. 4204(a)(1);

(3) Meetings of the National Commissioners in original jurisdiction cases pursuant to 28 CFR 2.17(a);

(4) Meetings of the entire Commission to determine original jurisdiction appeal cases pursuant to 28 CFR 2.27; and

(5) Meetings of the National Appeals Board pursuant to 28 CFR 2.26.

(6) Meetings of the Commission to conduct a hearing on the record in conjunction with applications for certificates of exemption under section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959, and section 411 of the Employee Retirement Income Security Act of 1974 (28 CFR 4.1-17 and 28 CFR 4a.1-17).<sup>1</sup>

(d) Specifically excluded from the term *meeting* are:

(1) Determination made through independent voting of the Commissioners without the joint deliberation of the number of Commissioners required to take such action, pursuant to § 16.201;

(2) Original jurisdiction cases determined by sequential vote pursuant to 28 CFR 2.17;

(3) Cases determined by sequential vote pursuant to 28 CFR 2.24 and 2.25;

(4) National Appeals Board cases determined by sequential vote pursuant to 28 CFR 2.26;

(5) Meetings of special committees of Commissioners not constituting a quorum of the Commission, which may be established by the Chairman to report and make recommendations to the Commission or the Chairman on any matter.

(6) Determinations required or permitted by these regulations to open or

<sup>1</sup>Part 4a was removed at 44 FR 6890, Feb. 2, 1979.