AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

§ 266.9 Exemptions.

(a) Subsections 552a(j) and (k) of 5 U.S.C. 552a empower the Postmaster General to exempt systems of records meeting certain criteria from various other subsections of 5 U.S.C. 552a. With respect to systems of records so exempted, nothing in this part shall require compliance with provisions hereof implementing any subsections of 5 U.S.C. 552a from which those systems have been exempted.

(b) Paragraph (b)(1) of this section contains a summary of provisions of 5 U.S.C. 552a for which exemption is claimed for some systems of records pursuant to, and to the extent permitted by, subsections 552a(j) and (k) of 5 U.S.C. 552a. Paragraphs (b)(2) through (5) of this section identify the exempted systems of records, the exemptions applied to each, and the reasons for the exemptions:

(1) *Explanation of provisions under 5 U.S.C. 552a for which an exemption is claimed in the systems discussed below.*

(i) Subsection (c)(3) requires an agency to make available to the individual named in the records an accounting of each disclosure of records.

(ii) Subsection (c)(4) requires an agency to inform any person or other agency to which a record has been disclosed of any correction or notation of dispute the agency has made to the record in accordance with 5 U.S.C. 552a(d).

(iii) Subsections (d)(1) through (4) require an agency to permit an individual to gain access to records about the individual, to request amendment of such records, to request a review of an agency decision not to amend such records, and to provide a statement of disagreement about a disputed record to be filed and disclosed with the disputed record.

(iv) Subsection (e)(1) requires an agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose required by statute or executive order of the President.

(v) Subsection (e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs.

(vi) Subsection (e)(3) requires an agency to inform each person whom it asks to supply information of the authority under which the information is sought, the purposes for which the information will be used, the routine uses that may be made of the information, whether disclosure is mandatory or voluntary, and the effects of not providing the information.

(vii) Subsection (e)(4)(G) and (H) requires an agency to publish a FEDERAL REGISTER notice of its procedures whereby an individual can be notified upon request whether the system of records contains information about the individual, how to gain access to any record about the individual contained in the system, and how to contest its content.

(viii) Subsection (e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual.

(ix) Subsection (e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(x) Subsection (f) requires an agency to establish procedures whereby an individual can be notified upon request if any system of records named by the individual contains a record pertaining to the individual, obtain access to the record, and request amendment.

(xi) Subsection (g) provides for civil remedies if an agency fails to comply with the access and amendment provisions of subsections (d)(1) and (d)(3), and with other provisions of 5 U.S.C. 552a, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(xii) Subsection (m) requires an agency to cause the requirements of 5 U.S.C. 552a to be applied to a contractor operating a system of records to accomplish an agency function.

(2) Pursuant to subsection 552a(j)(2), *Emergency Management Records, USPS 500.300; Inspection Service Investigative*

File System, USPS 700.000; Mail Cover Program Records, USPS 700.100; and Inspector General Investigative Records, USPS 700.300, are exempt from subsections 552a (c)(3), (c)(4), (d)(1)–(4), (e)(1)–(3), (e)(4) (G) and (H), (e)(5), (e)(8), (f), (g), and (m) because the systems contain information pertaining to the enforcement of criminal laws. The reasons for exemption follow:

(i) Disclosure to the record subject pursuant to subsections (c)(3), (c)(4), or (d)(1)–(4) could:

(A) Alert subjects that they are targets of an investigation or mail cover by the Postal Inspection Service or an investigation by the Office of Inspector General;

(B) Alert subjects of the nature and scope of the investigation and of evidence obtained;

(C) Enable the subject of an investigation to avoid detection or apprehension;

(D) Subject confidential sources, witnesses, and law enforcement personnel to harassment or intimidation if their identities were released to the target of an investigation;

(E) Constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation;

(F) Intimidate potential witnesses and cause them to be reluctant to offer information;

(G) Lead to the improper influencing of witnesses, the destruction or alteration of evidence yet to be discovered, the fabrication of testimony, or the compromising of classified material; and

(H) Seriously impede or compromise law enforcement, mail cover, or background investigations that might involve law enforcement aspects as a result of the above.

(ii) Application of subsections (e)(1) and (e)(5) is impractical because the relevance, necessity, or correctness of specific information might be established only after considerable analysis and as the investigation progresses. As to relevance (subsection (e)(1)), effective law enforcement requires the keeping of information not relevant to a specific Postal Inspection Service investigation or Office of Inspector General investigation. Such information may be kept to provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the Office of Inspector General, Postal Inspection Service, and/or other agencies. As to accuracy (subsection (e)(5)), the correctness of records sometimes can be established only in a court of law.

(iii) Application of subsections (e)(2) and (e)(3) would require collection of information directly from the subject of a potential or ongoing investigation. The subject would be put on alert that he or she is a target of an investigation by the Office of Inspector General, or an investigation or mail cover by the Postal Inspection Service, enabling avoidance of detection or apprehension, thereby seriously compromising law enforcement, mail cover, or background investigations involving law enforcement aspects. Moreover, in certain circumstances the subject of an investigation is not required to provide information to investigators, and information must be collected from other sources.

(iv) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(v) Application of subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(vi) The provisions of subsection (g) do not apply because exemption from the provisions of subsection (d) renders the provisions on suits to enforce subsection (d) inapplicable.

(vii) If one of these systems of records is operated in whole or in part by a contractor, the exemptions claimed herein shall remain applicable to it (subsection (m)).

(3) Pursuant to subsection 552a(k)(2), *Labor Relations Records, USPS 200.000; Emergency Management Records, USPS 500.300; Inspection Service Investigative File System, USPS 700.000; Mail Cover Program Records, USPS 700.100; Inspector General Investigative Records, USPS 700.300; and Financial Transactions, USPS 860.000,* are exempt from certain

subsections of 5 U.S.C. 552a because the systems contain investigatory material compiled for law enforcement purposes other than material within the scope of subsection 552a(j)(2).

(i) *Emergency Management Records, USPS 500.300; Inspection Service Investigative File System, USPS 700.000; Mail Cover Program Records, USPS 700.100; and Inspector General Investigative Records, USPS 700.300,* are exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4) (G) and (H), and (f) for the same reasons as stated in paragraph (b)(2) of this section.

(ii) *Labor Relations Records, USPS 200.000,* is exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Application of the requirements at subsections (d)(1)-(4) would cause disruption of enforcement of the laws relating to equal employment opportunity (EEO). It is essential to the integrity of the EEO complaint system that information collected in the investigative process not be prematurely disclosed and that witnesses be free from restraint, interference, coercion, or reprisal.

(B) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply for the same reasons described in paragraph (b)(2)(iv) of this section.

(iii) *Financial Transactions, USPS 860.000,* is exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Disclosure to the record subject pursuant to subsections (c)(3) and (d)(1)–(4) would violate the non-notification provision of the Bank Secrecy Act, 31 U.S.C. 5318(g)(2), under which the Postal Service is prohibited from notifying a transaction participant that a suspicious transaction report has been made. In addition, the access provisions of subsections (c)(3) and (d)(1)–(4) would alert individuals that they have been identified as suspects or possible subjects of investigation and thus seriously hinder the law enforcement purposes underlying the suspicious transaction reports.

(B) This system is in compliance with subsection (e)(1) because maintenance of the records is required by law. Strict application of the relevance and necessity requirements of subsection (e)(1) to suspicious transactions would be impractical, however, because the relevance or necessity of specific information can often be established only after considerable analysis and as an investigation progresses.

(C) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(4) Pursuant to subsection 552a(k)(5), *Recruiting, Examining, and Placement Records, USPS 100.100; Labor Relations Records, USPS 200.000; Inspection Service Investigative File System, USPS 700.000; and Inspector General Investigative Records, USPS 700.300* are exempt from certain subsections of 5 U.S.C. 552a because the systems contain investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for employment, contracts, or access to classified information.

(i) *Recruiting, Examining, and Placement Records, USPS 100.100,* is exempt from subsections 552a(d)(1)–(4) and (e)(1) for the following reasons:

(A) During its investigation and evaluation of an applicant for a position, the Postal Service contacts individuals who, without an assurance of anonymity, would refuse to provide information concerning the subject of the investigation. If a record subject were given access pursuant to subsection (d)(1)–(4), the promised confidentiality would be breached and the confidential source would be identified. The result would be restriction of the free flow of information vital to a determination of an individual's qualifications and suitability for appointment to or continued occupancy of his or her position.

(B) In collecting information for investigative and evaluative purposes, it is impossible to determine in advance what information might be of assistance in determining the qualifications

and suitability of an individual for appointment. Information that seems irrelevant, when linked with other information, can sometimes provide a composite picture of an individual that assists in determining whether that individual should be appointed to or retained in a position. For this reason, exemption from subsection (e)(1) is claimed.

(C) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(ii) *Labor Relations Records, USPS 200.000,* is exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Application of the provisions at subsection (d)(1)–(4) would reveal to the EEO complainant the identity of individuals who supplied information under a promise of anonymity. It is essential to the integrity of the EEO complaint system that information collected in the investigative process not be prematurely disclosed and that witnesses be free from restraint, interference, coercion, or reprisal.

(B) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(iii) *Inspection Service Investigative File System, USPS 700.000; and Inspector General Investigative Records, USPS 700.300,* are exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4) (G) and (H), and (f) for the same reasons as stated in paragraph (b)(2) of this section.

(5) Pursuant to subsection 552a(k)(6), *Employee Development and Training Records, USPS 100.300; Personnel Research Records, 100.600; and Emergency Management Records, USPS 500.300* are exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) because the systems contain testing or examination material the disclosure of which would compromise the objectivity or fairness of the material. The reasons for exemption follow:

(i) These systems contain questions and answers to standard testing materials, the disclosure of which would compromise the fairness of the future use of these materials. It is not feasible to develop entirely new examinations after each administration as would be necessary if questions or answers were available for inspection and copying. Consequently, exemption from subsection (d) is claimed.

(ii) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

[70 FR 22513, Apr. 29, 2005]

§ 266.10 Computer matching.

(a) *General.* Any agency or Postal Service component that wishes to use records from a Postal Service automated system of records in a computerized comparison with other postal or non-postal records must submit its proposal to the Postal Service Manager Records Office. Computer matching programs as defined in paragraph (c) of § 262.5 must be conducted in accordance with the Privacy Act, implementing guidance issued by the Office of Management and Budget and these regulations. Records may not be exchanged for a matching program until all procedural requirements of the Act and these regulations have been met. Other matching activities must be conducted in accordance with the Privacy Act and with the approval of the Manager, Records Office. See paragraph (b)(6) of § 266.4.

(b) *Procedure for submission of matching proposals.* A proposal must include information required for the matching agreement discussed in paragraph (d)(1) of this section. The Inspection Service must submit its proposals for matching programs and other matching activities to the Postal Service Manager Records Office through: Independent Counsel, Inspection Service, U.S. Postal Service, 475 L'Enfant Plaza SW, Rm 3417, Washington, DC 20260–2181. All other matching proposals, whether