

(c) In the absence of an agreement to pay required anticipated costs, the time for responding to a request begins on resolution of this agreement to pay.

(d) The fees may be paid by check, draft or postal money order payable to the Treasurer of the United States. Remittance will be forwarded to the office designated in § 319.5(e).

[51 FR 44064, Dec. 8, 1986. Redesignated at 56 FR 56595, Nov. 6, 1991 and 56 FR 57799, Nov. 14, 1991, and amended at 56 FR 56595, Nov. 6, 1991]

#### § 319.12 General exemptions. [Reserved]

#### § 319.13 Specific exemptions.

(a) All systems of records maintained by the Director Intelligence Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not specifically designated for exemption may contain isolated information which has been properly classified.

(b) The Director, Defense Intelligence Agency, designated the systems of records listed below for exemptions under the specified provisions of the Privacy Act of 1974, as amended (Pub. L. 93-579):

(c) *System identification and name:* LDIA 0271, Investigations and Complaints.

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

(2) *Authority:* 5 U.S.C. 552a(k) (2) and (5).

(3) *Reasons:* The reasons for asserting these exemptions are to ensure the integrity of the Inspector General process within the Agency. The execution requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough and timely resolution of the complaint or in-

quiry. Disclosures from this system can enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Also, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals not to seek redress for wrongs through Inspector General channels for fear of retribution or harassment.

(d) [Reserved]

(e) *System identifier and name:* LDIA 0660, Security and Counterintelligence Files.

(1) *Exemption:* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2), (k)(5) and (k)(6) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(2) *Authority:* 5 U.S.C. 552a(k)(2), (k)(5) and (k)(6).

(3) *Reasons:* The reasons for asserting these exemptions are to ensure the integrity of the adjudication process used by the Agency to determine the suitability, eligibility or qualification for Federal service with the Agency and to make determinations concerning the questions of access to classified materials and activities. The proper execution of this function requires that the Agency have the ability to obtain candid and necessary information in order to fully develop or resolve pertinent information developed in the process. Potential sources, out of fear or retaliation, exposure or other action, may be unwilling to provide needed information or may not be sufficiently frank to be a value in personnel screening, thereby seriously interfering with the proper conduct and adjudication of such matters; and protects information used for medical, psychological evaluations, security questionnaires and polygraph testing.

(f) [Reserved]

(g) *System identifier and name:* LDIA 10-0001, Equal Opportunity, Diversity and Alternate Dispute Resolution Records.

(1) *Exemption:* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2).

However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

The specific sections of 5 U.S.C. 552a from which the system is to be exempted are 5 U.S.C. 552a (c)(3) and (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (f), and (g).

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

(3) *Reasons*: (i) From subsection (c)(3) because to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prospective interest by DIA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (c)(4), (d), and (f) because providing access to this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of

the source would be held in confidence. This exemption will protect the identities of certain sources that would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his/her records and the reasons therefore necessitate the exemptions of this system of records from the requirements of the other cited provisions.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal investigation.

(v) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(vi) From subsections (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise). In addition, this system of records is exempt from the access provisions of subsection (d).

(vii) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at

diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(viii) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to the individual and record amendment procedures for this record system.

(ix) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(h) *System identifier and name:* LDIA 10-0002, Foreign Intelligence and Countereintelligence Operation Records.

(1) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) The specific sections of 5 U.S.C. 552a from which the system is to be exempted are 5 U.S.C. 552a (c)(3) and (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (f), and (g).

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

(3) *Reasons:* (i) From subsection (c)(3) because to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prospective interest by DIA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (c)(4), (d), and (f) because providing access to this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources that would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his/her records and the reasons therefore necessitate the exemptions of this system of records from the requirements of the other cited provisions.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal investigation.

(v) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(vi) From subsections (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise). In addition, this system of records is exempt from the access provisions of subsection (d).

(vii) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(viii) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules re-

lating to verification of record, disclosure of the record to the individual and record amendment procedures for this record system.

(ix) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(i) *System identifier and name:* LDIA 0900, Accounts Receivable, Indebtedness and Claims.

(1) *Exemption:* During the course of accounts receivable, indebtedness or claims actions, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this system, the DIA hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary system of which they are a part.

(2) *Authority:* 5 U.S.C. 552a(k)(2) through (k)(7).

(3) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(j) *System identifier and name:* LDIA 0010, Information Requests-Freedom of Information Act (FOIA) and Privacy Act.

(1) *Exemption:* During the course of information requests-FOIA and Privacy Act actions, exempt records/material from other systems of records may become part of this system of records. For such records/material, DIA hereby claims the same exemptions as is claimed for the systems from which such records/material are derived.

(2) *Authority:* 5 U.S.C. 552a(k)(2) through (k)(7).

(3) *Reasons:* Records in a system of records are only exempted from pertinent provisions of 5 U.S.C. 552a to the extent such provisions are identified and an exemption claimed. In general, exemptions claimed protect properly classified information relating to national defense and foreign policy; avoid interference during the conduct of criminal, civil, or administrative actions or investigations; ensure protective services provided the President and others are not compromised; protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; preserve the confidentiality and integrity of Federal testing materials; and safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule(s) for the systems of records from which the records/materials was derived will identify the specific reasons why the records/materials are exempt from provisions of 5 U.S.C. 552a.

(k) *System identifier and name:* LDIA 12-0002, Privacy and Civil Liberties Case Management System.

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

(2) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(3) The reasons for asserting these exemptions is to ensure the integrity of the privacy and civil liberties process. The execution requires that information be provided in a free and open

manner without fear of retribution or harassment in order to facilitate a just, thorough, and timely resolution of the complaint or inquiry. Disclosures from this system can enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying, or fabricating evidence or documents. In addition, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals not to seek redress for wrongs through privacy and civil liberties channels for fear of retribution or harassment.

(1) *System identifier and name:* LDIA 0209, Litigation Case Files.

(1) *Exemptions:* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or which he would otherwise be eligible, as a result of maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This exemption provides limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d)(1)(2)(3)(4)(5), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I). Exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this case record, the Defense Intelligence Agency hereby claims the same exemptions for the records from

those ‘other’ systems that are entered into this system, as claimed for the original primary systems of records, which they are a part.

(2) *Authority*: 5 U.S.C. 552a(j)(2), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(3) *Reasons*: The reason for asserting these exemptions (k)(2) and (k)(5) is to ensure the integrity of the litigation process.

[56 FR 56595, Nov. 6, 1991, as amended at 76 FR 49659, Aug. 11, 2011; 77 FR 15591, Mar. 16, 2012; 77 FR 57014, 57016, Sept. 17, 2012]

## PART 320—NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY (NGA) PRIVACY

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*AUTHORITY*: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 552a).

*SOURCE*: 66 FR 52681, Oct. 17, 2001, unless otherwise noted.

*EDITORIAL NOTE*: Nomenclature changes to part 320 appear at 69 FR 2066, Jan. 14, 2004.

### § 320.1 Purpose and scope.

(a) This part is published pursuant to the Privacy Act of 1974, as amended (5 U.S.C. 552a), (hereinafter the ‘Privacy Act’). This part:

(1) Establishes or advises of the procedures whereby an individual can:

(i) Request notification of whether the National Geospatial-Intelligence Agency (NGA) maintains or has disclosed a record pertaining to him in any nonexempt system of records,

(ii) Request a copy or other access to such a record or to an accounting of its disclosure,

(iii) Request that the record be amended and

(iv) Appeal any initial adverse determination of any such request;

(2) Specifies those systems of records which the Director, Headquarters NGA has determined to be exempt from the procedures established by this regulation and from certain provisions of the Privacy Act. NGA policy encompasses the safeguarding of individual privacy from any misuse of NGA records and the provision of the fullest access practicable to individuals to NGA records concerning them.

### § 320.2 Definitions.

As used in this part:

(a) *Appellate authority (AA)*. A NGA employee who has been granted authority to review the decision of the Initial Denial Authority (IDA) that has been appealed by the Privacy Act requester and make the appeal determination for NGA on the release ability of the records in question.

(b) *Individual*. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not ‘individuals’.

(c) *Initial denial authority (IDA)*. A NGA employee, or designee, who has been granted authority to make an initial determination for NGA that records requested in a Privacy Act request should be withheld from disclosure or release.

(d) *Maintain*. Includes maintain, collect, use or disseminate.

(e) *Personal information*. Information about an individual that identifies, relates to or is unique to, or describes him or her; e.g., a social security number, age, military rank, civilian grade, marital status, race, or salary, home/office phone numbers, etc.

(f) *Record*. Any item, collection, or grouping of information, whatever the storage media (e.g., paper, electronic, etc.), about an individual that is maintained by NGA, including, but not limited to education, financial transactions, medical history, criminal or employment history, and that contains