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(4) 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 because greater specificity concerning the sources of these records could compromise national security.

[Order No. 278–2002, 67 FR 51756, Aug. 9, 2002]

§ 16.106 Exemption of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)—Limited Access.

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

(1) Criminal Investigation Report System (JUSTICE/ATF–003).

(2) 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). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, ATF may waive the applicable exemption.

(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 not only of ATF, but also of the recipient agency. This would permit the record subject to take 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) because an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsections (d)(1), (e)(4)(G) and (H), (f) and (g) because these provisions concern individual access to investigative 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, including actual or potential tax 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.

(4) From subsection (d)(2) because, due to the nature of the information collected and the essential length of time it is maintained, to require ATF to amend information thought to be incorrect, irrelevant or untimely, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) 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, ATF 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.

(7) 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.

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

(9) From subsection (e)(4)(I) because 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.

(10) 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.

(11) 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), (d)(1), (2), (3) and (4), (e)(1), (e)(4)(G), (H) and (I), and (f).

(1) Internal Security Record System (JUSTICE/ATF–006).

(2) 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) and (k)(5). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, ATF may waive the applicable exemption.

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

(1) From subsection (c)(3) because to provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement 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, civil remedies, or other measures.

(2) From subsection (d)(1) because disclosure of records in the system could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Disclosure may also reveal information relating to actual or potential criminal investigations. Such breaches would restrict the free flow of information which is vital to the law enforcement process and the determination of an applicant's qualifications.

(3) From subsection (d)(2) because, due to the nature of the information collected and the essential length of time it is maintained, to require ATF to amend information thought to be incorrect, irrelevant or untimely, 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) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(5) From subsection (e)(1) because it is often impossible to determine in advance if investigative records contained in this system are accurate, relevant, timely, complete, or of some assistance to either effective law enforcement investigations, or to the determination of the qualifications and suitability of an applicant. It also is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. Information that may appear irrelevant, when combined with other apparently irrelevant information, can on occasion provide a composite picture of a subject or an applicant which assists the law enforcement process and the determination of an applicant's suitability qualifications.

(6) From subsection (e)(4)(G) and (H), and (f) because these provisions concern individual access to investigative records, compliance with which could compromise sensitive information, interfere with the overall law enforcement or qualification 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. 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.

(7) From subsection (e)(4)(I) because 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.

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

(1) Personnel Record System (JUSTICE/ATF–007).

(2) 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). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, ATF may waive the applicable exemption.

(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 the existence, nature, or scope of an actual or potential personnel action. This would permit the record subject to take measures to hamper or impede such actions.

(2) From subsections (d)(1), (e)(4)(G) and (H), and (f) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a position with ATF. Access could reveal the identity of the source of the information and constitute a breach of the promise of confidentiality on the part of ATF. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(3) From subsection (d)(2) because, due to the nature of the information collected and the essential length of time it is maintained, to require ATF to amend information thought to be incorrect, irrelevant or untimely, 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) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(5) 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 personnel-related action.

(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) ATF 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.

(6) From subsection (e)(4)(I) because 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.

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

(1) Regulatory Enforcement Record System (JUSTICE/ATF–008).

(2) Technical and Scientific Services Record System (JUSTICE/ATF–009).

(3) 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). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, ATF may waive the applicable exemption.

(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, whether civil, criminal or regulatory, not only of ATF, but also of the recipient agency. This would permit the record subject to take measures to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses or flee the area to avoid the thrust of the investigation thus seriously hampering the regulatory and law enforcement functions of ATF.

(2) From subsections (d)(1), (e)(4)(G) and (H), and (f) because these provisions concern individual access to investigative and compliance records, disclosure of which could compromise sensitive information, interfere with the overall law enforcement and regulatory process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information, including actual or potential tax 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.

(3) From subsection (d)(2) because, due to the nature of the information collected and the essential length of time it is maintained, to require ATF to amend information thought to be incorrect, irrelevant or untimely, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations and compliance actions attempting to resolve questions of accuracy, etc.

(4) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(5) 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, civil, regulatory, 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 or regulatory activity can be established.

(iii) In any investigation or compliance action ATF 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 compliance action or to an investigative activity under the jurisdiction of another agency.

(6) From subsection (e)(4)(I) because 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, regulatory, and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

[Order No. 002–2003, 68 FR 3393, Jan. 24, 2003]

§ 16.130 Exemption of Department of Justice Systems: Correspondence Management Systems for the Department of Justice (DOJ-003); Freedom of Information Act, Privacy Act and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ-004).

(a) The following Department of Justice systems of records are exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(1) Correspondence Management Systems (CMS) for the Department of Justice (DOJ), DOJ/003.

(2) Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ), DOJ/004.

(b) These systems are exempted for the reasons set forth from the following subsections:

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

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

(3) *Subsection (d)(1)*. Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) *Subsection (d)(2)*. Amendment of the records would interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsections (d)(3) and (4)*. These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1)*. It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and