

Department of Justice

§ 16.85

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).

(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 directly 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]

§ 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