

Office of the Secretary of Defense

§ 323.6

(7) Develops forms used within the DLA Privacy Program. This part serves as the prescribing document for forms developed for the DLA Privacy Program.

(d) *DLA Components Heads.* The DLA Components Heads:

(1) Designate an individual as the point of contact for Privacy matters for their DLA Component and advise DGA of the name of official so designated. This individual also will serve as the Privacy Officer for the co-located tenant DLA organizations.

(2) Designate an official to serve as the initial denial authority for initial requests for access to an individual's records or amendments to records, and will advise DGA of the names of the officials so designated.

(e) *DLA Acquisition Management Directorate (J-7).* The DLA Acquisition Management Directorate (J-7) shall be responsible for:

(1) Developing the specific DLA policies and procedures to be followed when soliciting bids, awarding contracts or administering contracts that are subject to 32 CFR 310.12.

(2) Establishing an appropriate contract surveillance program to ensure contractors comply with the procedures established in accordance with 32 CFR 310.12.

§ 323.5 Access to systems of records information.

(a) Individuals who wish to gain access to records contained in a system of records about themselves will submit their request in writing to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221. Any written request must:

(1) Identify the particular "system(s) of records" to be searched;

(2) Contain the information listed under the "Notification procedure" or "Record access procedures" elements of the applicable system of records notice;

(3) Verify identity when the information sought is of a sensitive nature by submitting an unsworn declaration in accordance with 28 U.S.C. 1746 or notarized signature;

(4) Adequately explain a request for expedited processing, if applicable;

(5) State whether they agree to pay fees associated with the processing of your request; and

(6) Contain a written release authority if records are to be released to a third party. Third parties could be, but are not limited to, a law firm, a Congressman's office, a union official, or a private entity.

(b) Amendment and/or Access denials will be processed in accordance with 32 CFR 310.18 and 310.19.

(c) If an individual disagrees with the initial agency determination regarding notification, access, or amendment, he may appeal by writing to the General Counsel, Defense Logistics Agency, ATTN: DGA, Suite 1644, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221 or by emailing the appeal to hq-foia@dla.mil or by faxing the appeal to (703) 767-6091.

§ 323.6 Exemption rules.

(a) The Director, DLA or designee may claim an exemption from any provision of the Privacy Act from which an exemption is allowed.

(b) An individual is not entitled to access information that is compiled in reasonable anticipation of a civil action or proceeding. The term "civil action or proceeding" is intended to include court proceedings, preliminary judicial steps, and quasi-judicial administrative hearings or proceedings (i.e., adversarial proceedings that are subject to rules of evidence). Any information prepared in anticipation of such actions or proceedings, to include information prepared to advise DLA officials of the possible legal or other consequences of a given course of action, is protected. The exemption is similar to the attorney work-product privilege except that it applies even when the information is prepared by non-attorneys. The exemption does not apply to information compiled in anticipation of criminal actions or proceedings.

(c) Exempt Records Systems. All systems of records maintained by the Defense Logistics Agency will be exempt from the access provisions of 5 U.S.C. 552a(d) and the notification of access

procedures of 5 U.S.C. 552a(e)(4)(H) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 13526 and which is required by the 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 DLA systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

(d) System Identifier: S170.04 (Specific exemption).

(1) System name: Debarment and Suspension Files.

(2) 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). If an individual, however, 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 except 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) 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.

(iii) The specific sections of 5 U.S.C. 552a from which the system is exempt are 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

(3) Authorities: 5 U.S.C. 552a(k)(2) and (k)(5).

(4) Reasons: (i) From 5 U.S.C. 552a(c)(3), as granting access to the accounting for each disclosure, as re-

quired 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 an investigation or prosecutive interest by DLA or other agencies. This seriously could compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or making witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From 5 U.S.C. 552a(d)(1) through (4) and (f), as providing access to records of a civil investigation, and the right to contest the contents of those records and force changes to be made to the information contained therein, would seriously interfere with and thwart the orderly and unbiased conduct of an investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would: Allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claim arising from the investigation or proceeding.

(iii) From 5 U.S.C. 552a(e)(1), as 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 5 U.S.C. 552a(e)(4)(G) and (H), as there is no necessity for such publication since the system of records would be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments and corrections to the information in the system.

(v) From 5 U.S.C. 552a(e)(4)(I), as to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system

notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA, nevertheless, will continue to publish such a notice in broad generic terms as is its current practice.

(e) System Identifier: S500.10 (Specific exemption).

(1) System name: Personnel Security Files.

(2) Exemption: (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, 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.

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

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

(4) Reasons: (i) From 5 U.S.C. 552a(c)(3) and (d), when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it would impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources may be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From 5 U.S.C. 552a(e)(1), as in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such informa-

tion permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(f) System Identifier: S500.20 (Specific exemption).

(1) System name: Defense Logistics Agency (DLA) Criminal Incident Reporting System (DCIRS).

(2) 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). If an individual, however, 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 except 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), (d), (e)(1), (e)(4)(G), (H), (I), and (f).

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

(4) Reasons: (i) From subsection (c)(3), as 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 prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by: Prematurely revealing its existence and nature; compromising or interfering with witnesses or making witnesses reluctant to cooperate; and leading to suppression, alteration, or destruction of evidence.

(ii) From 5 U.S.C. 552a(d) and (f), as providing access to this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and wellbeing of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information also could 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 5 U.S.C. 552a(e)(1), as 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 5 U.S.C. 552a(e)(4)(G), (H), and (I), as 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 ongoing investigation, reveal investigatory techniques, and place in jeopardy confidential informants 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).

(g) System Identifier: S500.30 (Specific exemption).

(1) System name: Incident Investigation/Police Inquiry Files.

(2) 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). If an individual, however, 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, except 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) 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.

(iii) The specific sections of 5 U.S.C. 552a from which the system is exempt are 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

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

(4) Reasons: (i) From 5 U.S.C. 552a(c)(3), because to grant access to the accounting for each disclosure 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 prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by: Prematurely revealing its existence and nature; compromising or interfering with witnesses or making witnesses reluctant to cooperate; and leading to suppression, alteration, or destruction of evidence.

(ii) From 5 U.S.C. 552a(d)(1) through (d)(4), and (f), as providing access to records of a civil or administrative investigation, and the right to contest the contents of those records and force changes to be made to the information contained therein, would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would: Provide the subject with valuable information

that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claim arising from the investigation or proceeding.

(iii) From 5 U.S.C. 552a(e)(1), as 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 5 U.S.C. 552a(e)(4)(G) and (H), as this system of records is compiled for law enforcement purposes and is exempt from the access provisions of 5 U.S.C. 552a(d) and (f).

(v) From 5 U.S.C. 552a(e)(4)(I), because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA, nevertheless, will continue to publish such a notice in broad generic terms as is its current practice.

(h) System Identifier: S500.60 (Specific exemption).

(1) System name: Defense Logistics Agency Enterprise Hotline Program Records.

(2) 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). If an individual, however, 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, except 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) 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.

(iii) The specific sections of 5 U.S.C. 552a from which the system is exempt are 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G), (H), (I), and (f).

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

(4) Reasons: (i) From subsection (c)(3), as 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 prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or making witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From 5 U.S.C. 552a(d)(1) through (4) and (f), as providing access to records of a civil or administrative investigation, and the right to contest the contents of those records and force changes to be made to the information contained therein, would interfere seriously with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow: Interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or

impossible to reach to satisfy any Government claim arising from the investigation or proceeding.

(iii) From 5 U.S.C. 552a(e)(1), as 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 5 U.S.C. 552a(e)(4)(G) and (H), as this system of records is compiled for law enforcement purposes and is exempt from the access provisions of 5 U.S.C. 552a(d) and (f).

(v) From 5 U.S.C. 552a(e)(4)(I), as to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(i) System Identifier: S510.30 (Specific/General Exemption).

(1) System name: Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records.

(2) Exemption: During the processing of a Freedom of Information Act/Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), 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 Defense Logistics Agency 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.

(3) Authority: 5 U.S.C. 552a(j)(2), (k)(1) through (7).

(4) 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.

PART 324—DFAS PRIVACY ACT PROGRAM

Subpart A—General Information

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APPENDIX A TO PART 324—DFAS REPORTING REQUIREMENTS

APPENDIX B TO PART 324—SYSTEM OF RECORDS NOTICE

AUTHORITY: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

SOURCE: 61 FR 25561, May 22, 1996, unless otherwise noted.