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FEDERAL REGISTER NOTICE

OFFICE OF SPECIAL COUNSEL

Privacy Act of 1974; System of Records

AGENCY: U.S. Office of Special Counsel

ACTION: Notice of Proposed Revisions to Existing System of Records

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the U.S. Office of Special Counsel (OSC) is publishing notice of proposed revisions to its system of records entitled “OSC/GOVT-1 - OSC Complaint, Litigation, and Political Activity Files,” last published in full in the Federal Register on July 12, 2001 (66 FR 36611), and corrected on October 5, 2001 (66 FR 51095). OSC proposes to modify this system of records to make necessary revisions to include:

- Revising the title of the system to clarify that Disclosure Unit records are included;
- modifications to update statutory coverage, OSC procedures, and OSC’s administrative changes;
- revisions to some existing routine uses to clarify coverage and add necessary disclosures;
- adding new routine uses; and
- making plain language or technical revisions throughout.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments within 30 days of this notice. In accordance with 5 U.S.C. 552a(r), OSC is providing a report to OMB and the Congress.

DATES: Comments should be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The proposed revisions to the system of records will become effective without further notice on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless OSC determines otherwise based on comments received.

ADDRESSES: Written comments may be sent to Office of General Counsel, U.S. Office of Special Counsel, by mail at 1730 M Street, NW, Suite 218, Washington, D.C. 20036-4505; or by fax to (202) 653-5151.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, Associate General Counsel, U.S. Office of Special Counsel, at (202) 254-3600, or write to the address above.

SUPPLEMENTARY INFORMATION:

OSC proposes the following revisions to its Privacy Act system of records “OSC/GOVT-1 - OSC Complaint, Litigation, and Political Activity Files.”

The system name has been revised from “OSC/GOVT-1 - OSC Complaint, Litigation, and Political Activity Files” to “OSC/GOVT-1, OSC Complaint, Litigation, Political Activity, and Disclosure Files” to clarify that this system includes Disclosure Unit records. In addition, the system location and system manager address have been updated.

The categories of individuals covered have been modified to reflect current coverage. The description of categories of records in the system has been revised to more clearly describe the system’s records by including specific examples and descriptions.

The statement of authorities for maintenance of the system has been updated to add the Administrative Dispute Resolution Act of 1996 (Public Law 104-320), codified at 5 U.S.C. 571-574, and USERRA demonstration projects under Sec. 204 of the Veterans Benefits Improvement Act of 2004 (Public Law 108-454), and Sec. 105 of the Veterans Benefits Act of 2010 (Public Law 111-175), codified at 38 U.S.C. 4301 note. A purposes section has been added.

Revisions to the existing routine uses include the following:

(1) routine use “g” has been revised: to clarify that disclosures under this provision include those disclosures required under 5 U.S.C. 1213; and to clarify that disclosures may be made as part of resolving an allegation by settlement or otherwise;

(2) routine use “h” has been revised to add disclosures where necessary to obtain information relevant to an agency decision pertaining to the classification of a job;

(3) routine use “k” has been revised to clarify that all functions authorized by laws, regulations, and policies governing National Archives and Records Administration (NARA) operations and OSC records management responsibilities are included;

(4) routine use "m" has been revised to add that a disclosure may be made to the Department of Justice (DOJ) in order for OSC to request that DOJ represent an agency employee. In addition, routine uses “m” and “n” have been revised for clarification purposes;

(5) routine use “p” has been revised to clarify that disclosures under this provision include notifying an Office of Inspector General (OIG) (or comparable office) of the disposition of matters referred by such office to the OSC;

(6) routine use “r” has been revised to state that the reference to litigation under 38 U.S.C. 4324 includes “possible litigation,” and to add disclosures pertaining to a USERRA demonstration project, or to mediation by the U.S. Department of Defense, Employer Support of the Guard and Reserve.

Nine routine uses have been added. They are:

(1) routine use “s” to disclose records, when OSC has agreed to represent a USERRA complainant under 38 U.S.C. 4324 (a)(2)(A), from the corresponding USERRA investigative file to the relevant USERRA litigation file, and to disclose records from the relevant USERRA litigation file to the USERRA complainant;

- (2) routine use “t” to disclose information to agency contractors, experts, consultants, detailees, or non-OSC employees performing or working on a contract, service, or other activity related to the system of records, when necessary to accomplish an agency function related to the system;
- (3) routine use “u” to make lists and reports available to the public as required by 5 U.S.C. 1219;
- (4) routine use “v” to make disclosures that may be needed in the case of a data breach, pursuant to OMB Memorandum M-07-16, “Safeguarding Against and Responding to the Breach of Personally Identifiable Information;
- (5) routine use “w” for disclosures to other agencies with subject matter expertise when needed;
- (6) routine use “x” for disclosures to appropriate authorities when violations or potential violations of law or regulation are indicated, and as required under 28 U.S.C. 535 and 5 U.S.C. 1214;
- (7) routine use “y” for necessary disclosures to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency;
- (8) routine use “z” for disclosures to DOJ and the Federal Bureau of Investigation required for inclusion in the National Instant Criminal Background Check System (NICS), under the reporting requirements of the Brady Handgun Violence Prevention Act, as amended by the NICS Improvement Amendments Act of 2007; and
- (9) routine use “aa” for disclosures that may be required when processing certain FOIA or Privacy Act matters.

The description of retrievability has been modified to reflect actual practices. The description of retention periods has been updated to reflect OSC’s current record retention practice. OSC is

revising its record retention schedule in consultation with NARA. Records are maintained for the current or draft proposed retention period, whichever is longer.

The system manager contact information has been updated to reflect administrative changes within the agency.

The notification procedure has been revised to conform with the revisions to OSC's regulations implementing the Privacy Act, published October 4, 2007 (72 FR 56617). The contact information has been changed to OSC's Privacy Act Officer, rather than the system manager, to reflect current practice. The point-of-contact for contesting records has also been similarly revised. Reference to OSC's Privacy Act regulations at 5 CFR part 1830 has been included in the records access and contesting records sections for consistency.

The description of record source categories has been revised to clarify that disclosures of information filed with OSC are included.

The description of exemptions claimed for the system has been updated to reflect the revisions to OSC's regulations implementing the Privacy Act, published October 4, 2007 (72 FR 56617).

Finally, several "plain language" edits have been made throughout the notice.

The revised OSC/GOVT-1 reads:

OSC/GOVT-1

System name:

OSC/GOVT-1, OSC Complaint, Litigation, Political Activity, and Disclosure Files.

System location:

Program offices and the Document Control Branch, U.S. Office of Special Counsel (OSC), 1730 M Street, NW, Suite 218, Washington, DC 20036-4505, and records which may be located at other agencies.

Categories of individuals covered by the system:

The principal categories of individuals covered by the system are persons filing allegations of prohibited personnel practices or other prohibited activities; persons identified as engaging or participating in improper political activity; persons filing disclosures of alleged wrongdoing by federal agencies; persons requesting advisory opinions on political activity, or third party subjects of such advisory opinions; persons charged by OSC in disciplinary action complaints filed by OSC with the Merit Systems Protection Board (MSPB); persons on whose behalf OSC seeks corrective action before the MSPB; persons filing allegations of wrongdoing in Uniformed Services Employment and Reemployment Rights Act (USERRA) matters referred or transferred to OSC; plaintiffs seeking remedies or discovery against OSC in litigation or administrative claims; and persons filing requests for information or administrative appeals under the Freedom of Information Act (FOIA) or the Privacy Act.

Categories of records in the system:

The principal types of records in the system are complaints alleging prohibited personnel practices, improper political activity, or other violations of law or regulation; disclosures of information about alleged wrongdoing by federal agencies; written requests that result in formal advisory opinions on political activity; allegations of USERRA violations; litigation documents served on or filed by OSC in litigation; correspondence with persons (or their representatives) filing such complaints, disclosures, requests, or litigation; communications with other agencies, entities, or individuals referring matters to OSC for review or investigation; exhibits and other documentation received from filers and requesters, governmental entities or third parties; interview records, including notes, summaries, or transcripts; affidavits; reports or other summaries of investigation; factual and legal summaries or analyses; administrative determinations; referrals to other governmental entities for appropriate action; records created or compiled in connection with litigation by or against OSC, or pertinent to OSC operations; records relating to attempts to resolve matters as part of OSC's Alternative Dispute Resolution (ADR) Program; records of or related to OSC's FOIA and Privacy Act Program, including but not limited to, requests, appeals, and decisions; information about complaints, disclosures, requests and litigation maintained in OSC's electronic case tracking system; and other correspondence and documents created or obtained in the performance of OSC functions under 5 U.S.C. 1211–1221, 1501–1508, and 7321–7326; 5 U.S.C. 552 and 552a; 38 U.S.C. 4324, and other applicable law, regulation, or OSC memoranda of understanding.

Authority for maintenance of the system:

5 U.S.C. 552, 552a, 571-584, 1211–1221, 1501–1508, and 7321–7326; 38 U.S.C. 4324, Sec. 204 of the Veterans Benefits Improvement Act of 2004, Pub. L. 108-454 and Sec. 105 of the Veterans' Benefits Act of 2010, Pub. L. 111-175, both codified at 38 U.S.C. 4301 note.

Purposes:

Records are maintained to: (1) document how each matter at OSC was handled; (2) provide a resource for consistency in interpretation and application of the law; and (3) allow for statistical reports and analysis of matters processed at OSC.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The following routine uses permit OSC to:

- a. Disclose the fact that an allegation of prohibited personnel practices or other prohibited activity has been filed;

- b. Disclose information to the Office of Personnel Management (OPM) pursuant to Civil Service Rule 5.4 (5 CFR 5.4), or obtain an advisory opinion concerning the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations;

- c. Disclose to the Equal Employment Opportunity Commission or any other agency or office concerned with the enforcement of the anti-discrimination laws, information concerning any allegation or complaint of discrimination based on race, color, religion, sex, national origin, age, or handicapping condition;

d. Disclose information to the MSPB or the President upon the filing or referral of a disciplinary action complaint against an employee on the basis of an OSC investigation;

e. Disclose information to an agency, the MSPB, OPM, or the President, under 5 U.S.C. 1214, the results of investigations which disclose reasonable grounds to believe a prohibited personnel practice has occurred, exists, or is to be taken;

f. Disclose information to Congress in connection with the submission of an annual report on activities of the Special Counsel;

g. Disclose information:

1. to any agency or person, regarding allegations of prohibited personnel practices or other prohibited activity, or prohibited political activity filed against an agency or any employee thereof, for the purpose of conducting an investigation; resolving an allegation before OSC by settlement or otherwise; or giving notice of the status or outcome of an investigation;
2. to an agency, Office of Inspector General, complainant (whistleblower), the President, Congressional Committees, or the National Security Advisor regarding violations of law, rule, or regulation, or other disclosures under 5 U.S.C. § 1213 for the purposes of transmitting information or reports as required under that statute; or in giving notice of the status or outcome of a review;

h. Disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning: the hiring or retention of an employee; the issuance of a security clearance; the classification of a job; the conducting of a security or suitability investigation of an individual; the letting of a contract; or the issuance of a license, grant, or other benefit;

i. Disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation, as set forth in OMB Circular No. A-19;

j. Provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office (made at the written request of that individual);

k. Furnish information to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906, or other functions authorized by laws, regulations, and policies governing NARA operations and OSC records management responsibilities;

l. Produce summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related workforce studies;

m. Disclose records to the Department of Justice (DOJ) when:

1. Any of the following entities or individuals is a party to litigation or has an interest in litigation:
 - A. The OSC;
 - B. Any employee of the OSC in his or her official capacity;
 - C. Any employee of the OSC in his or her individual capacity whom DOJ has been asked or agreed to represent; or
 - D. The United States, where the OSC determines that the OSC will be affected by the litigation; and
2. When the OSC determines that use of the records by the DOJ is relevant and necessary to the litigation and that the disclosure to DOJ of the information contained in the records is a use compatible with the purpose for which the records were collected;

n. Disclose records in a proceeding before a court or adjudicative body, before which the OSC is authorized to appear, when:

1. Any of the following entities or individuals is a party to, or has an interest in the proceedings:
 - A. The OSC;
 - B. Any employee of the OSC in his or her official capacity;
 - C. Any employee of the OSC in his or her individual capacity whom OSC has agreed to represent; or
 - D. The United States, where the OSC determines that the OSC will be affected by the proceedings; and

2. When the OSC determines that use of the records is relevant and necessary to the proceedings and that the disclosure in such proceedings is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

o. Disclose information to the MSPB to aid in the conduct of special studies by the Board under 5 U.S.C. 1204(a)(3);

p. Disclose information to an Office of Inspector General (OIG) or comparable internal inspection, audit, or oversight office of an agency for the purpose of facilitating the coordination and conduct of investigations and review of allegations within the purview of both the OSC and the agency OIG or comparable office; or in notifying an OIG (or comparable office) of the disposition of matters referred by the OIG (or comparable office) to the OSC;

q. Disclose information to the news media and the public when (1) the matter under investigation has become public knowledge, (2) the Special Counsel determines that disclosure is necessary to preserve confidence in the integrity of the OSC investigative process or is necessary to demonstrate the accountability of OSC officers, employees, or individuals covered by this system, or (3) the Special Counsel determines that there exists a legitimate public interest (e.g., to demonstrate that the law is being enforced, or to deter the commission of prohibited personnel practices, prohibited political activity, and other prohibited activity within the OSC's jurisdiction), except to the extent that the Special Counsel determines in any of these situations

that disclosure of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

r. Disclose information to the U.S. Department of Labor (DOL) about OSC's referral of a complaint alleging a violation of veterans preference requirements to DOL for further action under the Veterans' Employment Opportunities Act of 1998; disclose information to DOL or any agency or person as needed to develop relevant information about matters referred by DOL to OSC under 38 U.S.C. 4324 (USERRA); disclose information to DOL or any agency or person as needed to advise on the status or disposition of matters referred by DOL to OSC for disciplinary action under 5 U.S.C. 1215, or possible litigation under 38 U.S.C. 4324; or disclose information to DOL or any agency or person as needed to develop relevant information about, or to advise on the status or disposition of, matters investigated under a USERRA demonstration project at OSC (Sec. 204, Pub. L. 108-454; Sec. 105 Pub. L. 111-275); or disclose information to the U.S. Department of Defense, Employer Support of the Guard and Reserve (ESGR), for the purpose of having ESGR mediate USERRA complaints received by or referred to OSC;

s. To disclose records, when OSC has agreed to represent a USERRA complainant under 38 U.S.C. 4324 (a)(2)(A), from the corresponding USERRA investigative file to the relevant USERRA litigation file, and from the relevant USERRA litigation file to the USERRA complainant;

t. Disclose information to agency contractors, experts, consultants, detailees, or non-OSC employees performing or working on a contract, service, or other activity related to the system of records, when necessary to accomplish an agency function related to the system;

u. Make lists and reports available to the public pursuant to 5 U.S.C. 1219;

v. Disclose information to appropriate agencies, entities, and persons when: (1) OSC suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) OSC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by OSC or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OSC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

w. Disclose information to appropriate federal entities with subject matter expertise to the extent necessary to obtain advice on any authorities, programs, or functions associated with records in this system;

x. Disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where

OSC becomes aware of a violation or potential violation of civil or criminal law or regulation; and to OPM and the OMB pursuant to 5 U.S.C. 1214;

y. Disclose information to the Integrity Committee established under section 11(d) of the Inspector General Act of 1978, when needed because of receipt, review or referral to the Integrity Committee under section 7(b) of Public Law 110-409; or as needed for a matter referred to OSC by the Integrity Committee;

z. Disclose information to the DOJ and/or the Federal Bureau of Investigation for inclusion in the National Instant Criminal Background Check System (NICS), pursuant to the reporting requirements of the Brady Handgun Violence Prevention Act, as amended by the NICS Improvement Amendments Act of 2007; and

aa. Disclose information when consulting with, or referring a record to, another Federal entity for the purpose of making a decision on a request for information under the FOIA or the Privacy Act; or to the Office of Government Information Services established at NARA by the Open Government Act of 2007, which amended the FOIA, for the purpose of conducting mediation and otherwise resolving disputes under FOIA.

Policies and practices for storage, retrieving, accessing, retaining and disposing of records in the system:

Storage:

These records are stored in a variety of media, primarily consisting of file folders, and computer storage equipment.

Retrievability:

Files in this system of records are retrievable by the names of key individuals or agencies involved (e.g., complainants or requesters; persons on whose behalf OSC seeks corrective action; subjects identified in disciplinary proceedings, warning letters, or other determinations; legal, congressional, or other representatives or points of contact; or key witnesses), although files are generally retrieved by the name of: (a) the complainant alleging a prohibited personnel practice, or other prohibited activity; (b) the alleged subject of a complaint about prohibited political activity; (c) the person filing an allegation through the OSC whistleblower disclosure channel; (d) the name of the person filing a request for an advisory opinion on political activity, or the third party subject of such advisory opinions; (e) the name of the person on whose behalf OSC seeks corrective action, or the person against whom OSC seeks disciplinary action, in litigation before the MSPB; (f) the plaintiff in litigation or administrative claims against OSC; persons requesting discovery from OSC; and FOIA and Privacy Act requesters and appellants.

Safeguards:

These records are located in lockable file cabinets or in secured areas. The required use of computer password protection identification features and other system protection methods also restrict access. Access is limited to those agency personnel who have an official need for access to perform their duties.

Retention and disposal:

Case file records related to allegations of prohibited personnel practices and other prohibited activities, including allegations of improper political activity, violations of USERRA, and other matters under OSC's jurisdiction, including program litigation records and records of the ADR Unit and the Disclosure Unit, that are of extraordinary importance to the nation or OSC, are permanent records when approved by the Special Counsel. Case file records of the Disclosure Unit that result in either a referral to an agency head pursuant to 5 U.S.C. § 1213, or an informal referral to an agency's Inspector General, are retained for 10 years after the date of closure.

Other case file records related to such prohibited activities, including program litigation, and the Disclosure Unit are retained for 6 years after the date of closure. Case file records of Formal Advisory Opinions of the Hatch Act Unit are retained for 6 years after the date of closure.

Litigation case file records relating to the legal defense of OSC and its interests in matters and claims filed against the agency in courts, administrative tribunals, or other forums, including formal and informal discovery requests, and other claims or similar proceedings that are of extraordinary importance to the nation or OSC are permanent records when approved by the Special Counsel. All other such defensive litigation and claim case file records are retained for 7 years after the date of closure. Additionally, final signed settlement agreements are retained for 20 years after the date of closure. Personally identifiable information in OSC's electronic case tracking system is retained until deleted from the database 25 years after the corresponding case file is destroyed. Case file records related to OSC's FOIA and Privacy Act Program are retained in accordance with NARA's General Records Schedule 14 for Information Services Records.

Disposal of records is accomplished by shredding or by NARA-approved processes. Electronic

information is disposed of by deletion. OSC is revising its record retention schedule in consultation with NARA. Pending NARA approval of the revised records schedule, records are maintained for the current or proposed retention, whichever is longer.

System manager(s) and address:

The official responsible for records management functions associated with OSC program and administrative files, including those in the OSC/GOVT-1 system of records, is the Records Management Officer, Document Control Branch, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 218, Washington, DC 20036-4505.

Notification procedure:

Individuals who wish to inquire whether this system contains information about them should contact the Privacy Act Officer, U.S. Office of Special Counsel: (1) by mail at 1730 M Street, NW, Suite 218, Washington, DC, 20036-4505; (2) by telephone at 202-254-3600; or (3) by fax: at 202-653-5161. To assist in the process of locating and identifying records, individuals should furnish the following: name and home address; business title and address; any other known identifying information such as an agency file number or identification number; a description of the circumstances under which the records were compiled; and any other information deemed necessary by OSC to properly process the request.

Record access procedures:

Same as notification procedure, above. Requesters should also reasonably specify the record contents being sought. Rules about access are in 5 CFR part 1830.

Contesting record procedures:

Individuals who wish to contest records about them should contact OSC's Privacy Act Officer, identify any information they believe should be corrected, and furnish a statement of the basis for the requested correction along with all available supporting documents and materials. See OSC Privacy Act regulations at 5 CFR part 1830.

Record source categories:

Information in this system of records is obtained from a variety of sources, consisting of complainants or others on whose behalf allegations, disclosures of information, or requests for information, have been submitted or referred to OSC; legal, congressional, or other representatives or points of contact; other government bodies; witnesses and subjects in matters under review; principals involved in litigation matters, including parties and their representatives; and other persons or entities furnishing information pertinent to the discharge of functions for which OSC is responsible.

Exemptions claimed for the system:

OSC will claim exemptions from the provisions of the Privacy Act at subsections (c)(3) and (d) as permitted by subsection (k) for records subject to the Act that fall within the category of investigatory material described in paragraphs (2) and (5), and testing or examination material described in paragraph (6) of that subsection. The exemptions for investigatory material are necessary to prevent frustration of inquiries into allegations of prohibited personnel practices, unlawful political activity, whistleblower disclosures, USERRA violations, and other matters

under OSC's jurisdiction, and to protect identities of confidential sources of information, including in background investigations of OSC employees, contractors, and other individuals conducted by or for OSC. The exemption for testing or examination material is necessary to prevent the disclosure of information which would potentially give an individual an unfair competitive advantage or diminish the utility of established examination procedures. OSC also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request. OSC may also refuse access to any information compiled in reasonable anticipation of a civil action or proceeding.

Dated: _April 13, 2012_____

Mark Cohen

Deputy Special Counsel.

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