



9110-9B

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2013- 0063]

Privacy Act of 1974; Department of Homeland Security/ALL – 036 Board for Correction of Military Records System of Records.

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update, reissue, and combine two legacy system of records notices titled, “Department of Transportation/Office of the Secretary of Transportation – 004 Board for Correction of Military Records (BCMR) System of Records” and “Department of Transportation/Office of the Secretary of Transportation – 059 Files of the Board for Correction of Military Records, BCMR, for the Coast Guard System of Records.” This updated system of records allows the Department of Homeland Security to collect and maintain records submitted by individuals who have filed applications for relief before the Board for Correction of Military Records (BCMR), records used by the Chair, the BCMR staff, the Board, and, in some cases, the General Counsel in determining whether to grant relief to applicants, and the final decisions or documentation of other actions taken in individual BCMR cases. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notices. This

newly updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This updated system will be effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number DHS-2013-0063 by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-343-4010.
- Mail: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

INSTRUCTIONS: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

DOCKET: For access to the docket to read background documents or comments received, please visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Jonathan R. Cantor, (202) 343-1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to update, combine, and reissue the following legacy record systems: Department of Transportation (DOT)/ Office of the Secretary of Transportation (OST) 004 Board for Correction of Military Records (BCMR) System of Records, 65 FR 19551 – (April 11, 2000); and DOT/OST 059 – Files for the Board for Correction of Military Records System, BCMR, for the Coast Guard, 65 FR 19557 (April 11, 2000) as a new Department of Homeland Security system of records notice titled, DHS/ALL – 036 Board for Correction of Military Records System of Records. This new SORN is being published by the Department of Homeland Security since the U.S. Coast Guard (USCG) was moved from the Department of Transportation to the Department of Homeland Security. Under 10 U.S.C. § 1552, the Board for Correction of Military Records (BCMR) is a board of civilians within the U.S. Department of Homeland Security, Office of the General Counsel, which has authority under 10 U.S.C. 1552, to review and correct the personnel records of current and former members of the USCG and USCG Reserve. This system of records notice allows the Department to collect and maintain records submitted and created during the BMCR process.

The BCMR is a forum that allows current and former USCG military personnel or their authorized representatives to apply for correction of their military personnel records. In order to determine whether the requested correction should be made, the BCMR receives, reviews, and stores applications, arguments, and evidence submitted by applicants and their representatives as well as copies of applicants' military and, if

applicable, medical records. The BCMR also receives, reviews, and stores advisory opinions and evidence submitted by the USCG for each case; copies of applicable investigations; and correspondence related to the applications. The BCMR retains copies of the decisions issued. The records in this system are used by the Chair's staff and members of the Board in determining whether to grant relief to applicants; by the General Counsel and his or her staff in deciding whether to approve, disapprove, or remand the decisions of the Board. The records are also used by the Coast Guard in preparing its advisory opinions to the Board concerning pending cases and in implementing the Board's orders.

This new system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/ALL – 036 Board for Correction of Military

Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/ALL – 036.

System name:

DHS/ALL – 036 Board for Correction of Military Records System of Records.

Security classification:

Unclassified, Sensitive.

System location:

Records are maintained at the DHS Headquarters in Washington, D.C.

Categories of individuals covered by the system:

Current and former members of the USCG and USCG Reserve who have filed applications for relief before the Board, or their representatives; civilian employees of DHS serving as the Chair; members of the BCMR; or the staff of the BCMR.

Categories of records in the system:

- Name, rank, and service number or social security number (SSN) of the applicant and the name of his/her representative, if any;
- Phone numbers, mailing, and email addresses of the applicant and his/her representative, if any;
- Application for Correction of Military Record (DD Form 149) and all written arguments and evidence submitted by or on behalf of the applicant;

- Docket number and type of application;
- Copies of documents maintained by the Coast Guard in the applicant's Personnel Data Record, such as performance evaluations, medal citations, written counseling, disciplinary records, discharge papers, and other military records relevant to the requested correction;
- Copies of the applicant's medical records, if applicable to the requested correction, from the Coast Guard and Department of Veterans Affairs;
- Copies of applicable investigations;
- Advisory opinions of the Coast Guard, including any attached documentary evidence or affidavits;
- Transcripts of any hearing held by the Board;
- Decisional documents of the Board and of the General Counsel acting under delegated authority to approve, disapprove, or remand the decision of the Board;
- Coast Guard requests for amendment or clarification of Board decisions and the Board's decisions in response to such requests;
- Copies of court decisions related to the application; and
- Correspondence between the Chair or staff and the applicant, the applicant's representative or congressional representative, or the Coast Guard concerning an application.

Authority for maintenance of the system:

10 U.S.C. § 1552.

Purpose(s):

The purpose of the BCMR system of records is to allow current and former USCG military personnel, or their authorized representatives, to submit applications to the BCMR for correction of their military records; to allow the Chair, members of the Board, and staff to review the records before deciding whether the requested corrections are warranted; to allow the General Counsel and his or her staff to review the records before deciding whether to approve, disapprove, or remand the Board's decisions; and to allow the Coast Guard to review the records before deciding whether to recommend that the Board grant or deny relief in each case and to implement the Board's orders. The system stores the complete record of each proceeding, including the decision issued or other final disposition made.

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

In addition to those disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS 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 DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the Department of Veterans Affairs (DVA) when the BCMR determines it has the need for an applicant's medical records possessed by the DVA. DHS requests medical records from DVA using an applicant's name and social security number.

I. To courts, magistrates, administrative tribunals, opposing counsel, parties, and witnesses, in the course of civil, or criminal, or administrative proceedings (including discovery, presentation of evidence, and settlement negotiations) when DHS determines

that use of such records is relevant and necessary to the litigation before a court or adjudicative body and any of the following is a party to or has an interest in the litigation:

1. DHS or any component thereof;
2. Any employee of DHS in his/her official capacity;
3. Any employee of DHS in his/her individual capacity when the government has agreed to represent the employee; or
4. The United States, when DHS determines that litigation is likely to affect DHS or any of its components.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Disclosure to consumer reporting agencies:

None.

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

Storage:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape,

digital media.

Retrievability:

Records may be retrieved individually by name in alphabetical sequence or by docket number.

Safeguards:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Files are kept in the Office of the General Counsel.

Retention and disposal:

Records are retained locally for three years, after which records are then sent to NARA and destroyed after 40 years.

System Manager and address:

Chair, Board for Correction of Military Records, Office the General Counsel,
Mail Stop #0485, 245 Murray Drive, S.W., Washington, DC 20518.

Notification procedure:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Chief Freedom of Information Act Officer whose contact

information can be found at <http://www.dhs.gov/foia> under “Contacts.” If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may also submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, S.W., Building 410, STOP-0655, Washington, D.C. 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov/foia> or 1-866-431-0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the Department may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Record access procedures:

See “Notification procedure” above.

Contesting record procedures:

See “Notification procedure” above.

Record source categories:

Records are obtained from the individual, his or her official military personnel file, other USCG records/reports, or the United States Department of Veterans Affairs.

Exemptions claimed for the system:

None.

Dated: September 11, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer,

Department of Homeland Security.

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