



9110-9B

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2019-0007]

Privacy Act of 1974; System of Records

AGENCY: Department of Homeland Security.

ACTION: Notice of modified Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) is modifying a current DHS system of records titled, “DHS/ALL-018 Grievances, Appeals, and Disciplinary Action Records System of Records,” last published October 17, 2008. The system of records is now renamed “DHS/ALL-018 Administrative Grievance Records.” This system of records allows DHS to collect, maintain, and store information for current and former DHS employees, except for employees of the Office of the Inspector General (OIG), who have submitted grievances under DHS’s Administrative Grievance System or in accordance with a negotiated grievance procedure. This system has been modified in an effort to align with other DHS and government-wide System of Records Notices (SORN) and to prevent duplication. This modified system will be included in DHS’s inventory of record systems.

DATES: Submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. This new system will be effective upon publication. New or modified routine uses 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-2019-0007 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. 20528-0655.

Instructions: All submissions received must include the agency name and docket number DHS-2019-0007. 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, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Jonathan R. Cantor, (202) 343-1717, Privacy@hq.dhs.gov, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528-0655.

SUPPLEMENTARY INFORMATION:

I. Background

The DHS Administrative Grievance Records System is a system of records relating to grievances filed by DHS employees under the Administrative Grievance System or under a negotiated grievance procedure. The system contains all documents related to each grievance in the central personnel or administrative office in DHS Headquarters or of the component, or its field offices, where the grievance originated.

This system of records will create greater consistency across the Department in the category of individuals, category of records, and routine uses of administrative grievance records. Changes to the system of records include name and scope of system of records, categories of covered individuals, categories of covered records, routine uses, and the schedule for retention and disposal. With respect to the last category, a change has been made to establish that all of the Department's grievance records are to be disposed of no less than four (4) years but less than seven (7) after the closing of a case.

DHS is modifying and reissuing a current DHS system of records titled, "DHS/ALL-018 Grievances, Appeals, and Disciplinary Action Records System of Records." The system of records is now renamed "DHS/ALL-018 Administrative Grievance Records." This system of records allows DHS to collect, maintain, and store administrative grievance information related to grievances filed by current and former DHS personnel. The records are used by the Department to resolve employee concerns about working conditions, the administration of collective bargaining agreements, employee/supervisor relations, work processes, or other similar issues.

The name and scope of this modified system of records has been changed. Further, this system of records has been modified in an effort to not duplicate other DHS and government-wide system of records. This SORN no longer covers records of disciplinary actions or appeals, which could be covered by other SORNs depending on the type of inquiry, action, or appeal (e.g., DHS/ALL-020 Department of Homeland Security Internal Affairs, OPM/GOVT-1 General Personnel Records; OPM/GOVT-3 Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers; EEOC/GOVT-1 Equal Employment

Opportunity in the Federal Government Complaint and Appeal Records; and MSPB/GOVT-1 Appeals and Case Records). As a result, the categories of individuals have been modified by removing current and former DHS personnel about whom disciplinary action has been proposed or has occurred, personnel who have filed appeals, and personnel suspected of misconduct. The categories of records have been updated to include all records relating to grievances filed by Department employees under the Administrative Grievance System or under a negotiated grievance procedure. These case files contain all documents related to each grievance, including the grievant's date of birth and contact information; statements of witnesses, reports of interviews and hearings, factfinder's and/or arbitrator's findings and recommendations, a copy of the original and final decision, related correspondence and exhibits, and other identifying information depending on the specific nature of the topic being grieved.

The routine uses for this system of records have been updated. A new routine use (B) is being added to account for disclosures to Congress; a new routine use (C) is being added for records management inspections; routine use (E) is being modified and a new routine use (F) is being added to conform to Office of Management and Budget Memorandum M-17-12; routine use (I) is being modified to account for sharing information in order to process the grievance; and a new routine use (L) is being added to provide information to officials of labor organizations. DHS is re-lettering several of the routine uses to align with these changes. DHS is also updating the record retention schedule. Records relating to grievances raised by individuals are temporary and destroyed no sooner than four years but no less than seven years after the case is closed.

Further, DHS is making non-substantive changes to the text and formatting of this

SORN to align with previously published DHS SORNs.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL-018 Administrative Grievance Records may be shared with DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This modified system will be included in DHS's inventory of record systems.

Finally, DHS is issuing a final rule to remove all exemptions that previously applied to this SORN published elsewhere in this issue of the *Federal Register*. The previously issued final rule for this SORN, found at 74 FR 42576 (August 24, 2009), will no longer be in effect once that new final rule is issued.

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. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for

access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/All-018 Administrative Grievance Records System of Records.

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

SYSTEM NAME AND NUMBER:

Department of Homeland Security (DHS) ALL-018 Administrative Grievance Records System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the DHS Headquarters in Washington, D.C., and/or component offices of DHS, in both Washington, D.C., and their field offices.

SYSTEM MANAGER(S):

For Headquarters and components of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, D.C. 20528.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, and 7121; 3 CFR part 335; 5 CFR part 771; and Executive Orders (E.O.) 10988, 11491, 13837, as amended or revoked, if applicable.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to collect, maintain, and store information related to administrative grievances filed by current and former DHS personnel. The records are used by the Department to resolve employee concerns about working conditions, the administration of collective bargaining agreements, employee/supervisor relations, work processes, or other similar issues.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former DHS employees, except OIG employees, who have filed grievances in accordance with the Agency's Administrative Grievance System or pursuant to a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by current and former agency employees within all components of the Department. These records contain all documents related to the grievance, including:

- Individual's name;
- Date of birth;
- Social Security number (SSN);
- Phone numbers;
- Email addresses;
- Addresses;
- Statements of witnesses;
- Reports of interviews and hearings;
- Examiner's findings and recommendations;
- A copy of the original and final decision;

- Related correspondence and exhibits;
- Additional records of contact information for witnesses, interviewers, examiners and employee representatives of the grievant;
- Other identifying information dependent upon the specific nature of the topic being grieved and may involve the collection of personal data from the grievant or other individuals involved.

RECORD SOURCE CATEGORIES:

Records are obtained from individuals who file a grievance; the individual on whom the record is maintained; testimony of witnesses, agency officials, grievance examiners, or arbitrator; and by related correspondence from organizations or persons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. sec. 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. sec. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agencies conducting litigation or 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, only 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. sec. 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 there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; 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 breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity

(including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

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 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.

I. To any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

J. To a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to

the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

K. To the Merit Systems Protection Board, the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, or the Office of Personnel Management when requested in performance of their authorized duties.

L. To appropriate labor organizations acting in their official capacity as a representative of the grievant or affected employees under 5 U.S.C. Chapter 71, when relevant and necessary to their duties of representation concerning personnel policies, practices, and matters affecting work conditions.

M. 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, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by the names of the individuals on whom they are maintained or by other personal identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records relating to grievances filed by individuals, whether through formal or informal administrative grievance processes, are temporary and destroyed no sooner than four years but less than seven years after the case is closed. OPM has determined that agencies may decide how long (within the range of four to seven years) administrative grievance records need to be retained, but must select one fixed retention period and publish that retention period in the agency's records disposition manual. This retention period follows National Archives and Records Administration (NARA) General Records Schedule (GRS) 2.3, Item 60 (DAA-GRS-2015-0007-0017).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS has imposed strict controls 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.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of 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 Headquarters or component's FOIA Officer, whose contact

information can be found at <http://www.dhs.gov/foia> under “Contact Information.” If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, D.C. 20528-0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about the individual may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual’s request must conform to the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual’s signature must either be notarized or submitted under 28 U.S.C. sec. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual 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, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department the individual believes may have the information;
- Specify when the individual believes 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 an individual's request is seeking records pertaining to another living individual, the first individual must include a statement from the second individual certifying his/her agreement for the first individual to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered Judicial Redress Act records, see "Record Access Procedures" above.

NOTIFICATION PROCEDURES:

See "Record Access Procedures" above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

DHS/ALL-018 Grievances, Appeals, and Disciplinary Action Records, 73 FR 61882 (October 17, 2008).

Jonathan R. Cantor,
Acting Chief Privacy Officer,
Department of Homeland Security.
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