



4334-63-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[DS65100000, DWSN00000.000000, DP.65106, 20XD4523WS]

RIN 1090-AB13

Privacy Act Regulations; Exemption for the Physical Security Access Files System

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of a proposed rulemaking.

SUMMARY: The Department of the Interior is amending its regulations to exempt certain records in the INTERIOR/DOI-46, Physical Security Access Files, system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative law enforcement requirements.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by docket number [DOI-2018-0005] or [Regulatory Information Number (RIN) 1090-AB13], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.
- Email: DOI_Privacy@ios.doi.gov. Include docket number [DOI-2018-0005] or [RIN 1090-AB13] in the subject line of the message.

- U.S. mail or hand-delivery: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI-2018-0005] or [RIN 1090-AB13]. 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: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, DOI_Privacy@ios.doi.gov or (202) 208-1605.

SUPPLEMENTARY INFORMATION:

Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which the U.S. Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information about individuals 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 about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

An individual may request access to records containing information about him or herself, 5 U.S.C. 552a(b), (c) and (d). However, the Privacy Act authorizes Federal agencies to exempt systems of records from access by individuals under certain

circumstances, such as where the access or disclosure of such information would impede national security or law enforcement efforts. Exemptions from Privacy Act provisions must be established by regulation, 5 U.S.C. 552a(j) and (k).

The Department of the Interior (DOI), Office of Law Enforcement and Security, maintains the Physical Security Access Files system of records. This system helps DOI manage physical security operations and visitor access to DOI-controlled facilities and implement Homeland Security Presidential Directive 12 (HSPD-12), which requires Federal agencies to use a common identification credential for both logical and physical access to federally-controlled facilities and information systems. DOI employees, contractors, consultants, volunteers, Federal emergency response officials, Federal employees on detail or temporarily assigned to work in DOI facilities, visitors, and other individuals require access to agency facilities, systems or networks. DOI uses integrated identity management systems to issue credentials to verify individuals' identities, manage access controls, and ensure the security of DOI controlled facilities. This Department-wide system of records notice covers physical security program records and activities, including all DOI controlled areas where paper-based physical security logs and registers have been established, in addition to or in place of smart-card access control systems. Incident and non-incident data collected in relation to criminal and civil activity during the course of managing this system may be referred to internal and external organizations as appropriate in support of law enforcement, homeland security, and physical or personnel security, information security, and related activities. DOI last published the "HSPD-12: Physical Security Files--Interior, DOI-46" system notice in the *Federal Register* at 72 FR 11043 (March 12, 2007).

In this notice of proposed rulemaking, DOI is proposing to revise the Privacy Act regulations at 43 CFR 2.254 to reorder existing paragraphs to add new paragraphs for additional exempt systems pursuant to 5 U.S.C. 552a(k) as follows:

- Redesignate paragraphs (b)(1)-(17) as paragraphs (c)(1)-(17) and add a new paragraph (c)(19) to exempt the INTERIOR/DOI-46, Physical Security Access Files system as described in this document;
- Add a new paragraph (b) to be reserved for future exempt systems;
- Redesignate paragraphs (c)(1)-(4) as paragraphs (e)(1)-(4) and add paragraph (e)(5) to exempt the INTERIOR/DOI-46, Physical Security Access Files system as described in this document; and
- Add a new paragraph (d) for records maintained in connection with providing protective services that are exempt under 5 U.S.C. 552a(k)(3) and add a new paragraph (d)(1) to exempt the INTERIOR/DOI-46, Physical Security Access Files system as described in this document.

DOI is proposing to exempt portions of this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5) due to criminal, civil, and administrative law enforcement requirements. Under 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is investigatory material compiled for law enforcement purposes or 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. Additionally, agencies may promulgate rules to exempt records from provisions of the

Privacy Act to protect investigations or records that may contain information obtained from another agency or are maintained in connection to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. The DOI Office of Law Enforcement and Security manages physical security operations and coordinates security with other Federal agencies to protect visiting dignitaries and ensure the safety of individuals protected pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) may be necessary to preclude an individual subject's access to and amendment of personnel investigations or information connected to these activities that meet the criteria of 5 U.S.C. 552a(k)(3).

Because this system of records contains material that support activities related to investigations, criminal law enforcement, and homeland security purposes under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), the Department of the Interior proposes to exempt portions of the Physical Security Access Files system from one or more of the following provisions: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f). Where a release would not interfere with or adversely affect investigations, law enforcement or homeland security activities, including but not limited to revealing sensitive information or compromising confidential sources, the exemption may be waived on a case-by-case basis. Exemptions from these particular subsections are justified for the following reasons:

1. 5 U.S.C. 552a(c)(3). This section requires an agency to make the accounting of each disclosure of records available to the individual named in the record upon request. Release of accounting of disclosures would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation.

The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

2. 5 U.S.C. 552a(d); (e)(4)(G) and (e)(4)(H); and (f). These sections require an agency to provide notice and disclosure to individuals that a system contains records pertaining to the individual, as well as providing rights of access and amendment. Granting access to records in the Physical Security Access Files system may inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, the nature and scope of the information and evidence obtained, of the identity of confidential sources, witnesses, and law enforcement personnel, the identity of confidential sources, witnesses, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; disclose investigative techniques and procedures; and could provide information to enable the subject to avoid detection or apprehension. It may be necessary to preclude an individual subject's access to and amendment of personnel investigations or information connected to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056.

3. 5 U.S.C. 552a(e)(1). This section requires the agency to maintain information about an individual only to the extent that such information is relevant or necessary. The application of this provision could impair investigations and law enforcement, because it is not always possible to determine the relevance or necessity of specific information in

the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, an investigator may obtain information concerning the violation of laws outside the scope of the investigator's jurisdiction. In the interest of effective law enforcement, DOI investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

4. 5 U.S.C. 552a(e)(4)(I). This section requires an agency to provide public notice of the categories of sources of records in the system. The application of this section could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promise(s) of anonymity and confidentiality. This could compromise DOI's ability to conduct investigations and to identify, detect and apprehend violators.

Procedural Requirements

1. Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. DOI developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act.

DOI certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act.

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR Part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630).

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. This rule makes only minor changes to 43 CFR Part 2. A takings implication assessment is not required.

6. Federalism (E.O. 13132).

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system.

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation with Indian Tribes (E.O. 13175).

In accordance with Executive Order 13175, DOI has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes.

9. Paperwork Reduction Act.

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act (NEPA) of 1969.

This rule does not constitute a major Federal Action significantly affecting the quality for the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

11. Data Quality Act.

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

12. Effects on Energy Supply (E.O. 13211).

This rule is not a significant energy action under the definition in Executive Order 13211, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. A Statement of Energy Effects is not required.

13. Clarity of this Regulation.

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (H.R. 946), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 2: Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR part 2 as follows:

PART 2 -- FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

2. Revise § 2.254 to read as follows:

§2.254 Exemptions.

(a) *Criminal law enforcement records exempt under 5 U.S.C. 552a(j)(2).*

Pursuant to 5 U.S.C. 552a(j)(2) the following systems of records are exempted from all of the provisions of 5 U.S.C. 552a and the regulations in this subpart except paragraphs (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11) and (12), and (i) of 5 U.S.C. 552a and the portions of the regulations in this subpart implementing these paragraphs:

- (1) INTERIOR/FWS-20, Investigative Case File System.
- (2) INTERIOR/BIA-18, Law Enforcement Services System.
- (3) INTERIOR/NPS-19, Law Enforcement Statistical Reporting System.
- (4) INTERIOR/OIG-02, Investigative Records.
- (5) INTERIOR/DOI-10, Incident Management, Analysis and Reporting System.
- (6) INTERIOR/DOI-50, Insider Threat Program.
- (7) [RESERVED]
- (b) [RESERVED]
- (1) [RESERVED]
- (2) [RESERVED]

(c) *Law enforcement records exempt under 5 U.S.C. 552a(k)(2).* Pursuant to 5 U.S.C. 552a(k)(2), the following systems of records are exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

- (1) Investigative Records, Interior/Office of Inspector General—2.
- (2) Permits System, Interior/FWS-21.

(3) Criminal Case Investigation System, Interior/BLM-18.

(4) Civil Trespass Case Investigations, Interior/BLM-19.

(5) Employee Conduct Investigations, Interior/BLM-20.

(6)-(7) [RESERVED]

(8) Employee Financial Irregularities, Interior/NPS-17.

(9) Trespass Cases, Interior/Reclamation-37.

(10) Litigation, Appeal and Case Files System, Interior/Office of the Solicitor-1 to the extent that it consists of investigatory material compiled for law enforcement purposes.

(11) Endangered Species Licenses System, Interior/FWS-19.

(12) Investigative Case File, Interior/FWS-20.

(13) Timber Cutting and Trespass Claims Files, Interior/BIA-24.

(14) Debarment and Suspension Program, Interior/DOI-11.

(15) Incident Management, Analysis and Reporting System, Interior/DOI-10.

(16) Insider Threat Program, Interior/DOI-50.

(17) Indian Arts and Crafts Board, Interior/DOI-24.

(18) [RESERVED]

(19) Physical Security Files, Interior/DOI-46.

(20) [RESERVED].

(21) [RESERVED].

(d) *Records maintained in connection with providing protective services exempt under 5 U.S.C. 552a(k)(3).* Pursuant to 5 U.S.C. 552a(k)(3), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I)

and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) Physical Security Files, Interior/DOI-46.

(2) [RESERVED]

(e) *Investigatory records exempt under 5 U.S.C. 552a(k)(5)*. Pursuant to 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) [RESERVED]

(2) National Research Council Grants Program, Interior/GS-9

(3) Committee Management Files, Interior/Office of the Secretary—68.

(4) Debarment and Suspension Program, Interior/DOI-11.

(5) Physical Security Files, Interior/DOI-46.

(6) [RESERVED]

(7) [RESERVED]

(8) [RESERVED]

Teri Barnett
Departmental Privacy Officer
Department of the Interior

[FR Doc. 2020-00356 Filed: 2/7/2020 8:45 am; Publication Date: 2/10/2020]