



## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

#### Privacy Act of 1974

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security (DHS or Department) is updating and clarifying its regulations related to the procedures for receiving Freedom of Information Act (FOIA) and Privacy Act of 1974 requests.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mason Clutter, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528, (202) 343-1717, [Privacy@hq.dhs.gov](mailto:Privacy@hq.dhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

Specifically, DHS is updating Title 6, part 5, subsections 5.3(a)(2), 5.4(c), 5.21(a)(2), 5.21(a)(6), 5.22(c), and Appendix A to part 5.

#### **I. Background**

The Secretary of Homeland Security has authority under 5 U.S.C. 301, 552, and 552a, and 6 U.S.C. 112(e) to issue FOIA and Privacy Act regulations. That authority has been delegated to the Chief Privacy Officer of the Department pursuant to 6 U.S.C. 142 and DHS Del. No. 13001, Rev. 01 (June 2, 2020). The Department last updated its regulations under the FOIA and Privacy Act, 6 CFR part 5 on November 16, 2022 (87 FR 68599).

#### **II. Discussion of Final Rule**

This rule provides clarifying and procedural updates to Title 6, part 5, paragraphs 5.3(a)(2) and 5.21(a)(6), which provides instructions to requesters on how and where to make FOIA and Privacy Act (and Judicial Redress Act (JRA) if applicable) requests for DHS records. Specifically, DHS is adding a reference to Appendix A to part 5 for requesters to know when and how to submit a request to DHS component FOIA Offices. Furthermore, DHS is providing additional instructions in those sections on how the DHS Privacy Office can assist a requester if the requester does not know which component may have responsive records.

In addition, DHS is updating Title 6, part 5, paragraphs 5.3(a)(2), 5.21(a)(2), 5.21(a)(6) by replacing the URL <https://www.dhs.gov/dhs-foia-request-submission-form> with the following URL <https://www.dhs.gov/foia>. DHS is updating Appendix A to part 5 “FOIA/Privacy Act Offices of the Department of Homeland Security,” by replacing the electronic URL where individuals can submit requests by way of instructions from DHS’s FOIA website from <https://foiarequest.dhs.gov/> to <https://www.dhs.gov/foia>.

As background, the DHS Headquarters Privacy Office maintains the contract for a FOIA processing solution used by most DHS component FOIA Offices. The DHS Headquarters Privacy Office updated its FOIA processing solution in 2023 and is now utilizing new technology and software services in order to receive electronic submission via a new FOIA online portal. This solution includes several features that will lessen the administrative burden associated with FOIA and provide DHS processors access to powerful information processing tools that will make it significantly easier to locate and efficiently process records. As such, DHS has decided to change the URL in those subsections and the appendix to link to the new portal. Further, for clarity, a parenthetical “(or JRA if applicable)” was added in Section II of Appendix A to part 5 to clarify that such requests, in addition to FOIA and Privacy Act requests, may be made to those DHS components listed in that section.

In 6 CFR 5.4(c), DHS is changing the title of this paragraph to “Forwarding misdirected requests.” In addition, DHS is modifying subsection 5.4(c) to clarify when and how a misdirected request should be forwarded. A request is not a misdirected request if the receiving DHS component may maintain records responsive to any portion of the request. This is true even if the request may cover records that are maintained by a different DHS component. Under such circumstances, the receiving DHS component is under no obligation to refer the request to a different DHS component or other Federal agency responsible for maintaining other records identified in the request. If another agency should have received the request, the DHS component can, but is not required, to advise the requester to send their request to that other agency.

Finally, DHS is revising 6 CFR 5.22(c) to modify the title of paragraph 5.22(c) and modify the subsection to include and clarify that any misdirected Privacy Act or Judicial Redress Act (JRA) requests must be forwarded under the same procedures of 6 CFR 5.4(c).

### **III. Regulatory History**

DHS did not publish a notice of proposed rulemaking for this rule. Under Title 5 of the United States Code (U.S.C.), Section 553(b)(A), this final rule is exempt from notice and public comment rulemaking requirements because the change involves rules of agency organization, procedure, or practice. In addition, under 5 U.S.C. 553(b)(B), an agency may waive the notice and comment requirements if it finds, for good cause, that notice and comment is impracticable, unnecessary, or contrary to the public interest. DHS finds that notice and comment is unnecessary under 5 U.S.C. 553(b)(B) because the procedures for receiving FOIA and Privacy Act requests is an agency procedural update that will have no substantive effect on the public. For the same reasons, DHS finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication.

#### **IV. Regulatory Analyses**

##### *Executive Orders 12866, 13563 and 14094 —Regulatory Review*

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action.

This rule will not impose any additional costs on the public or the government. This rule provides an updated URL for requesters to submit a FOIA request and DHS is providing additional instructions how the DHS Privacy Office can assist a requester if the requester does not know which component may have responsive records. DHS believes the updates in these regulations will allow DHS to more efficiently process FOIA requests.

##### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no written statement was deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, agencies must consider the impact of their rulemakings on “small entities” (small businesses, small organizations, and local governments). The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The RFA’s regulatory flexibility analysis requirements apply only to those rules for which an agency is required to publish a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) or any other law. See 5 U.S.C. 604(a). DHS did not issue a notice of proposed rulemaking for this action. Therefore, a regulatory flexibility analysis is not required for this rule.

### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804(2). The Office of Management and Budget’s Office of Information and Regulatory Affairs has not found that this rule is likely to result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### *National Environmental Policy Act*

DHS reviews proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023-01 Rev. 01 (Directive) and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply

with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations require Federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1501.4(a); 1507.3(c)(8). Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)-(c).

As discussed above, this rule makes clarifying and procedural updates to CFR Title 6, part 5, paragraphs 5.3(a)(2), 5.4(c), 5.21(a)(6), and 5.22(a) regarding requests for DHS records and, therefore, clearly fits within categorical exclusion A3(a): “Promulgation of rules ... of a strictly administrative or procedural nature.” Instruction Manual, Appendix A, Table 1. Furthermore, this rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, this rule is categorically excluded from further NEPA review and documentation.

#### **List of Subjects in 6 CFR Part 5**

Classified Information, Courts, Freedom of information, Government employees, Privacy.

For the reasons stated in the preamble, DHS amends Chapter I, part 5 of Title 6, Code of Federal Regulations, as follows:

#### **PART 5--DISCLOSURE OF RECORDS AND INFORMATION**

1. The authority citation for part 5 continues to read as follows:

**Authority:** 6 U.S.C. 101 et seq.; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301; 6 U.S.C. 142; DHS Del. No. 13001, Rev. 01 (June 2, 2020).

Subpart A also issued under 5 U.S.C. 552.

Subpart B also issued under 5 U.S.C. 552a and 552 note.2.

2. Revise § 5.3(a)(2) to read as follows:

**§ 5.3 Requirements for making requests.**

(a) \* \* \*

(2) A requester may send their request to the Privacy Office, U.S. Department of Homeland Security, 2707 Martin Luther King Jr., Ave, SE, STOP–0655, or via the internet at <https://www.dhs.gov/foia>, or via fax to (202) 343–4011, for any of the Headquarters Offices of the Department of Homeland Security listed in Appendix A to Subpart 5. In addition, if a requester does not know which DHS component may maintain responsive records to a request, the requester may explicitly ask for assistance from the DHS Privacy Office with identifying the proper component that most likely maintains any potential responsive records. Upon a request for assistance and based on information provided in the FOIA request and by the requester, the Privacy Office will forward the request to the DHS component(s) that it determines to be most likely, as of the date of the request for information, to maintain the records that are sought. The Privacy Office will notify the requester that it is forwarding the request, including identifying the component(s) where the request has been sent, provide the FOIA Public Liaison contact information for the respective component(s), and provide administrative appeal rights in the response. If the requester does not agree with the Privacy Office’s determination regarding which components would likely have records responsive to the request, the requester must submit a timely appeal of the Privacy Office’s determination. Although these are not to be considered misdirected requests, the recipient DHS

component shall be granted the same number of days to respond as permitted by 6 CFR 5.4(c) and 5.5(a).

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3. Revise § 5.4(c) to read as follows:

**§ 5.4 Responsibility for responding to requests.**

\* \* \* \* \*

(c) *Forwarding misdirected requests.* Where a component's FOIA office determines that a request was misdirected within DHS, the receiving component's FOIA office, within 10 working days, shall route the request to the FOIA office of the proper component(s) for processing. Once the misdirected request has been forwarded and received by the appropriate DHS component, the 20-working day-time period to respond to the request commences, but in any event not later than 10 days after the request is first received by any DHS component that is designated in the DHS regulations to receive FOIA requests. A request is not a misdirected request if the receiving DHS component may maintain records responsive to any portion of the request. In other words, the receiving DHS component is not obligated to forward to other DHS components that may maintain responsive records unless those other DHS components are explicitly listed in the request.

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4. Revise § 5.21(a)(2) and (a)(6) to read as follows:

**§ 5.21 Requests for access to records.**

(a) \* \* \*

(2) An individual may make a request for access to a Department of Homeland Security record about that individual covered by a DHS-wide or component system of records notice (SORN) by writing directly to the Department component that maintains the record at the address listed in appendix A to this part or via the internet at

<https://www.dhs.gov/foia>. A description of all DHS-wide and component SORNs may be found here: <https://www.dhs.gov/system-records-notices-sorns>.

\* \* \*

(6) An individual may send a request to the Privacy Office, Mail Stop 0655, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington DC 20528–0655, or via the internet at <https://www.dhs.gov/foia>, or via fax to (202) 343–4011 for any of the Headquarters Offices of the Department of Homeland Security listed Appendix A to Subpart 5. In addition, if a requester does not know which DHS component may maintain responsive records to a request, the requester may explicitly ask for assistance from the DHS Privacy Office with identifying the proper component that most likely maintains any potential responsive records citing this section of the regulations. Upon a request for assistance and based on information provided in the FOIA request and by the requester, the Privacy Office will forward the request to the DHS component(s) that it determines to be most likely, as of the date of the request for information, to maintain the records that are sought. The Privacy Office will notify the requester that it is forwarding the request, including identifying the component(s) where the request has been sent, provide the FOIA Public Liaison contact information for the respective component(s), and provide administrative appeal rights in the response. If the requester does not agree with the Privacy Office’s determination regarding which components would likely have records responsive to the request, the requester must submit a timely appeal of the Privacy Office’s determination. For the quickest possible handling, the requester should mark both the request letter and the envelope “Privacy Act Request” or “Judicial Redress Act Request.”

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5. Revise § 5.22(c) to read as follows:

**§ 5.22 Responsibility for responding to requests for access to records.**

\* \* \* \* \*

(c) *Misdirected requests, consultations, coordination, and referrals.* All misdirected requests and consultations, coordination, and referrals for requests of records subject to the Privacy Act or JRA will follow the same process and procedures as described in § 5.4(c) and § 5.4(d), including how to handle those requests that pertain to law enforcement information, as specified in § 5.4(d)(2), and classified information, as specified in § 5.4(d)(2) and (e). Further, whenever a request is made for access to a record containing information that has been classified by or may be appropriate for classification by another component or agency under any relevant Executive order concerning the classification of records, the receiving component will refer to § 5.24 for processing.

\* \* \* \* \*

6. Revise Appendix A to Part 5 to read as follows:

**Appendix A to Part 5 – FOIA/Privacy Act Offices of the Department of Homeland Security**

I. For Headquarters Offices of the Department of Homeland Security, FOIA and Privacy Act (or JRA if applicable) requests should either be mailed to the Department's Privacy Office, Mail Stop 0655, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington D.C. 20528-0655, or submitted electronically via <https://foiarequest.dhs.gov/>. For a listing of Headquarters Offices and contact information, please see <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202-343-1743 or 866-431-0486, Fax: 202-343-4011, or Email: [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov). The Public Liaison may also be contacted using this information.

II. For the following components and offices of the Department of Homeland Security, FOIA and Privacy Act (or JRA if applicable) requests should be sent to the component's FOIA Office, unless otherwise noted below. For each component, the Public Liaison may also be contacted using the information below. The components are:

*Cybersecurity and Infrastructure Security Agency (CISA)*

All requests should be either be mailed to the Department's Privacy Office, Mail Stop 0655, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington D.C. 20528-0655, or submitted electronically by way of instructions at <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202-343-1743 or 866-431-0486, Fax: 202-343-4011, or Email: [CISAFOIA@hq.dhs.gov](mailto:CISAFOIA@hq.dhs.gov).

*U.S. Customs and Border Protection (CBP)*

All requests should be mailed to U.S. Customs and Border Protection, Office of Privacy and Diversity Office, 90 K Street, NE, Mail Stop 1181, 9<sup>th</sup> Floor, Washington DC 20002 or submitted electronically by way of instructions at <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202-325-0150 or Email: [cbpfoiapublicliaison@cbp.dhs.gov](mailto:cbpfoiapublicliaison@cbp.dhs.gov)

*Federal Emergency Management Agency (FEMA)*

All requests should be mailed to FOIA Officer, 500 C Street, S.W., Room 840, Washington, D.C. 20472, or submitted electronically by way of instructions at <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202-646-3323, Fax: 202-646-3347, or Email: [fema-foia@fema.dhs.gov](mailto:fema-foia@fema.dhs.gov).

*Federal Law Enforcement Training Center (FLETC)*

All requests should be mailed to Freedom of Information Act Officer, Building #681, Suite B187, 1131 Chapel Crossing Road, Glico, GA 31524, or submitted electronically by way of instructions at <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 912-267-3103, Fax: 912-267-3113, or Email: [fletc-foia@dhs.gov](mailto:fletc-foia@dhs.gov).

*Immigration and Customs Enforcement (ICE)*

All requests should be mailed to Freedom of Information Act Office, 500 12th Street, SW, Stop 5009, Washington, D.C. 20536-5009, or submitted electronically by way of instructions at <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 866-633-1182, Fax: 202-732-4265, or Email: [ice-foia@ice.dhs.gov](mailto:ice-foia@ice.dhs.gov).

*Office of Inspector General*

All requests should be mailed to the OIG Office of Counsel, 245 Murray Lane SW, Mail Stop – 0305, Washington, D.C. 20528-0305, or submitted electronically by way of instructions at <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202-981-6100, or Email: [foia.oig@oig.dhs.gov](mailto:foia.oig@oig.dhs.gov).

*Transportation Security Administration (TSA)*

All requests should be mailed to Freedom of Information Act Branch, 6595 Springfield Center Drive, Springfield, VA 20598 – 6020, or submitted electronically by way of instructions at <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request

electronically. Additional contact information for questions: Phone: 1-866-FOIA-TSA or 571-227-2300, Fax: 571-227-1406, or Email: [foia@tsa.dhs.gov](mailto:foia@tsa.dhs.gov).

*U.S. Citizenship and Immigration Services (USCIS)*

All requests should be mailed to National Records Center, FOIA/PA Office, P. O. Box 648010, Lee's Summit, MO. 64064-8010 or submitted electronically by way of instructions at <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 1-800-375-5283, USCIS Contact Center, or Email: [FOIAPAQuestions@uscis.dhs.gov](mailto:FOIAPAQuestions@uscis.dhs.gov).

*U.S. Coast Guard (USCG)*

All requests should be mailed to Commandant (CG-6P), 2703 Martin Luther King Jr. Ave., SE, Stop 7710, Washington, DC 20593-7710, or submitted electronically by way of instructions at <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202-475-3522, Fax: 202-372-8413, or Email: [efoia@uscg.mil](mailto:efoia@uscg.mil).

*U.S. Secret Service (USSS)*

All requests should be mailed to Freedom of Information Act and Privacy Act Branch, 245 Murray Lane, SW Building T-5, Washington, D.C. 20223, or submitted electronically by way of instructions at <https://www.dhs.gov/foia-contact-information>. To help us respond to your request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202-406-6370, Fax: 202-406-5586, or Email: [FOIA@uss.s.dhs.gov](mailto:FOIA@uss.s.dhs.gov).

Mason Clutter,  
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Department of Homeland Security.

