



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7092-N-17]

Privacy Act of 1974; System of Records

AGENCY: Office of General Counsel, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: Under the provisions of the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD), Office of General Counsel (OGC), is issuing a public notice of its intent to modify a system of records entitled, “eDiscovery Management System” (EDMS). This System of Records Notice (SORN) covers two systems: the eDiscovery Management System (EDMS) and Relativity. Both systems will exist simultaneously as part of the eDiscovery process. These systems are cloud and client-server based, respectively and rely on workflow management from the EDMS SharePoint instance hosted in the HUD SharePoint environment. The modification makes updates to the Categories of Individuals, Record Source Categories, and Routine Use. The updates are explained in the “**SUPPLEMENTARY INFORMATION**” section of this notice. Specific modification includes the following: changes to record source categories, and updated routine use sections.

DATES: Comments will be accepted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The proposed new routine use actions will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number by one method:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions provided on that site to submit comments electronically.

Fax: 202-619-8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; Mr. LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street, SW, Room 10139; Washington, DC 20410-0001.

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 go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: LaDonne White, 451 Seventh Street, SW, Room 10139; Washington, DC 20410-0001; telephone number 202-708-3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION: HUD, Office of General Counsel in conjunction with the eDiscovery contractor maintains the eDiscovery Management System (EDMS) and Relativity system of records. eDiscovery is the process in which attorneys overseeing court-ordered discovery or litigation may request electronically stored information (ESI), tangible data, and other evidence relevant to the case for specified individuals for litigation purposes. The eDiscovery process consists of two systems that are closely interrelated, and both are consistently used in the eDiscovery process. EDMS is the system utilized to issue and track various eDiscovery templates and allows users to submit data preservation/collection and keyword search requests, and for specific data (email, G:drive/One Drive, J:drive, C:drive, SharePoint, Teams data, etc.) to be preserved or collected in accordance with the user request. EDMS provides the Department with a method to initiate, track, preserve, collect to produce data in response to discovery requests, court-ordered discovery/litigation, Freedom of Information

Act (FOIA) requests, Officer of Inspector General (OIG) investigations, Office of Special Counsel (OSC) and Congressional Oversight Committee requests. EDMS also includes secure folders to create and store various eDiscovery templates, including Litigation Hold memoranda, eDiscovery Certifications, Closure Letters, and any other documents related to the discovery process as well as a workflow for users to submit ESI data collection requests and ESI search requests. EDMS relies on tracking and workflow management from the EDMS SharePoint instance hosted in the HUD SharePoint environment. The Relativity system is the litigation review tool portion of the eDiscovery process that allows users to review data for relevance and privilege before producing data to a court or other outside party. The two systems are closely interrelated; if a case proceeds to discovery/litigation, the data that was previously collected in a network storage location by the HUD eDiscovery contractor via the EDMS system is processed and provided to the user for review in Relativity. The user can then request an export from Relativity to produce the data for a court or other outside party in response to discovery/litigation obligations. The following are updates since the previous SORN publication:

Records Source Categories: Updated to cover all electronic record sources for internal and external systems to HUD.

Routine Use of Records: Updated to cover routine uses that are new, modified, or removed.

Routine Use 1 has not changed. Routine Use 2 has been rewritten to avoid duplicating permissible disclosures under 5 U.S.C. 552a(b)(6) and to permit disclosures to the Office of Government Information Services (OGIS), National Archives and Records Administration (NARA), in connection with OGIS's responsibilities under the Freedom of Information Act. Former Routine Use 3 has been split into two distinct routine uses and rewritten to reflect OMB guidance. Specifically, Routine Use 3 was modified to reflect OMB's guidance from May 24, 1985. The second half of former Routine Use 3 was renumbered as Routine Use 5 and modified to reflect OMB's guidance from July 9, 1975 (40 FR 28948). Former Routine Uses 4 and 6 have been removed as unnecessary for this system. Former Routine Use 5 has been renumbered to

Routine Use 4 and modified to clarify that contractors are subjected by statute to the Privacy Act's requirements. Former Routine Use 7 has been renumbered to Routine Use 6 and modified to reflect OMB's guidance from May 24, 1985. Former Routine Use 8 has been renumbered to Routine Use 7. Former Routine Use 9 has been removed and replaced by Routine Uses 8 and 9 to comply with OMB Memorandum 17-12. Routine Use 10 has been removed as unnecessary for this system. Routine Use 11 has been removed as unnecessary for this system.

SYSTEM NAME AND NUMBER: eDiscovery Management System (EDMS), HUD/OGC-01.

SECURITY CLASSIFICATION: Unclassified.

SYSTEM LOCATION: Records are maintained on servers at the National Center for Critical Information Processing and Storage (NCCIPS), 9325 Cypress Loop RD, Stennis Space Center, MS 39529 and on HUD Azure Cloud managed by HUD's Office of the Chief Information Officer (OCIO) at 451 Seventh Street, SW, Room 4160, Washington, DC 20410-0001.

SYSTEM MANAGER(S): Tenille Washburn, Assistant General Counsel, Office of General Counsel Field Management, and IT Division, HUD, 451 Seventh Street, SW, Room 10286, Washington, DC 20410-0001; Telephone number (202) 402-6536.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: 40 U.S.C. 11315 and 44 U.S.C. 3506. In addition, the federal statutes that authorize the collection and storage of ESI for other purposes including FOIA, OIG investigations, and Congressional requests include: The Freedom of Information Act. 5 U.S.C 552 for responses to the FOIA requests. The Legislative Reorganization Act of 1970 (Pub. L. 91-510) and implied in the Constitution of the United States for responses to Congressional Oversight Committee requests; and The Inspector General Act of 1978 as amended, 5 U.S.C app. (Pub. L. 95-452, sec. 1, Oct. 12, 1978, 92 Stat. 1101) (sec. 6(a)(1) authorizes OIG to have access to records and other documentation).

PURPOSE(S) OF THE SYSTEM: The purpose of the eDiscovery process and systems are in direct response to the eDiscovery legal and business requirements stated in the Federal Rules of Civil Procedure (FRCP) and case law. The eDiscovery obligations require the

preservation/collection and possible production of electronically stored information (ESI) related to any individual who may have data or other records related to “reasonably anticipated” litigation. The individuals subject to the eDiscovery requirements include employees across all HUD offices nationwide as well as contractors. The eDiscovery systems and process assist HUD to preserve, collect, and review ESI and data of any individual who is, or will be, in discovery or litigation with HUD. Relativity facilitates data analysis, review (relevance, privilege etc.), tagging, redaction, privilege log, and production of ESI and data to respond to litigation discovery requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: All persons subject to a litigation hold due to a “reasonable anticipation of litigation” as determined by HUD’s OGC based on anticipated litigation trigger dates for the various types of litigation across the Department; all persons deemed a participant of past or present litigation or anticipated litigation where HUD is involved; and specified individuals impacted by FOIA requests, discovery/litigation, OIG investigations, Congressional Oversight Committee requests and other cases in HUD.

CATEGORIES OF RECORDS IN THE SYSTEM Individual(s) name; Individual(s) work address; Individual(s) work email address; Individual(s) work phone number; HUD Submitter Office Location; Case name; Case number; Case Type (Litigation, FOIA, OIG, Congressional) Date Range for requested Electronically Stored Information (ESI) collection; and Requested Data Sources for ESI (e.g., email data, C:drive, G:drive, One Drive, J:drive, SharePoint, Teams data).

RECORD SOURCE CATEGORIES: HUD employees and contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING

CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. 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 records pertain.

2. To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

3. To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

4. To contractors, grantees, experts, consultants, and the agents thereof, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for HUD, when necessary, to accomplish an agency function related to its system of records. Disclosure is limited to only those data elements considered relevant to accomplish an agency function.

Contractors provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to HUD officers and employees.

5. To appropriate Federal, State, local, Tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws and when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

6. To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations, or in connection with criminal law proceedings; when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

7. To a grand jury agent pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court

8. To appropriate agencies, entities, and persons when (1) HUD suspects or has confirmed that there has been a breach of the system of records, (2) [the agency] has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (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 [the agency's] efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS: Electronic.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS: Individual(s) name and work email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Data and paper records subject to a litigation hold are preserved for the duration of the litigation hold. Litigation files having an unusual significance to the Department are kept for seven years after entry of order or last appeal. Other litigation files are kept for four years after entry of order or last appeal. Files kept on administrative adjudications are kept for six years after entry of order or last appeal.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS: Strict quality and access controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the data/records in EDMS is limited to those individuals who are authorized to access by appropriate security clearances and user ID/password permissions. Only assigned users with a need-to-know are allowed access, on a case-by-case basis, after going through HUD's background investigation process.

RECORD ACCESS PROCEDURES: Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street, SW Washington, DC 20410-0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES: The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES: Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th street SW, Washington, DC 20410-0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address

and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM: For those records within the system collected and maintained pursuant to the Federal Rules of Civil Procedure and/or for the purpose of civil discovery, action or proceeding, 5 U.S.C. 552a(d)(5) will apply, which states “nothing in this [Act] shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.”.

HISTORY: Docket No. FR-5613-N-06-C published on February 11, 2013 at 78 FR 9721.

LaDonne White,

Chief Privacy Officer, Office of Administration.

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