

Department of Justice

§ 16.82

access to this information would impede the ongoing investigation.

(4) From subsection (e)(1); because in the interest of effective law enforcement and criminal prosecution, *Giglio* records will be retained because they could later be relevant in a different case; however, this relevance cannot be determined in advance.

(5) From subsection (e)(2); because the nature of the records in this system, which are used to impeach or demonstrate bias of a witness, requires that the information be collected from others.

(6) From subsections (e)(4)(G) and (H); because this system of records is exempt from individual access pursuant to subsections (j) and (k) of the Privacy Act of 1974.

(7) From subsection (e)(5); because the information in these records is not being used to make a determination about the subject of the records. According to constitutional principles of fairness articulated by the Supreme Court in *United States v. Giglio*, the records are required to be disclosed to criminal defendants to ensure fairness of criminal proceedings.

(8) From subsection (f); because records in this system have been exempted from the access provisions of subsection (d).

(9) From subsection (g); because records in this system are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(i) Consistent with the legislative purpose of the Privacy Act of 1974, the Executive Office for United States Attorneys will grant access to nonexempt material in records which are maintained by the U.S. Attorneys. Disclosure will be governed by the Department's Privacy regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal, civil or regulatory violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever

possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 716-77, 42 FR 23506, May 9, 1977; Order No. 738-77, 42 FR 38177, July 27, 1977; Order No. 6-86, 51 FR 15476, Apr. 24, 1986; Order No. 57-91, 56 FR 58306, Nov. 19, 1991; Order No. 224-2001, 66 FR 17809, Apr. 4, 2001]

§ 16.82 Exemption of the National Drug Intelligence Center Data Base—limited access.

(a) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4)(I); (e) (5) and (8); and (g) of 5 U.S.C. 552a. In addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1) and (e)(4)(I) of 5 U.S.C. 552a:

(1) National Drug Intelligence Center Data Base (JUSTICE/NDIC-001).

(2) [Reserved]

(b) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable exemption may be waived, either partially or totally, by the National Drug Intelligence Center (NDIC). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the same reasons that the system is exempted from the provisions of subsection (d).

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsection (j)(2) of the Privacy Act.

(3) From subsection (d) because disclosure to the subject could alert the subject of an investigation pertaining

to narcotic trafficking or related activity of the fact and nature of the investigation, and/or of the investigative interest of NDIC and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking); lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life and safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Finally, access to records could result in the release of properly classified information that could compromise the national defense or foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(4) From subsection (e)(1) because, in the course of its acquisition, collation, and analysis of information, NDIC will need to retain information not immediately shown to be relevant to counterdrug law enforcement to establish patterns of activity and to assist other agencies charged with the enforcement of laws and regulations regarding drug trafficking and charged with the acquisition of intelligence related to international aspects of drug trafficking. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to law enforcement in that it would put the subject of an investigation, study or analysis on notice of the fact of such investigation, study, or analysis, there-

by permitting the subject to engage in conduct intended to frustrate the activity; because, in some circumstances, the subject of an investigation may not be required to provide to investigators certain information; and because thorough analysis and investigation may require seeking information from a number of different sources.

(6) From subsection (e)(3) (to the extent applicable) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation and reveal the identity of confidential informants and endanger their lives and safety.

(7) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than have been published in the FEDERAL REGISTER. Should the subsection be so interpreted, exemption from this provision is necessary to protect the confidentiality of the sources of criminal and other law enforcement information and to protect the privacy and physical safety of witnesses and informants. Furthermore, greater specificity concerning the sources of properly classified records could compromise national defense or foreign policy.

(8) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes does not permit advance determination whether such information is accurate or relevant, nor can such information be limited to that which is complete or apparently timely. Information of this type often requires further analysis and investigation to develop into a comprehensive whole that which is otherwise incomplete or even fragmentary. Moreover, its accuracy is continually subject to analysis and review, and, upon careful examination, seemingly irrelevant or untimely information may acquire added significance as additional information brings new details to light. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in collating and

analyzing information and would impede the development of criminal intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement by revealing investigative techniques, procedures, or evidence.

(10) From subsection (g) to the extent that the system is exempt from subsection (d).

[Order No. 78-93, 58 FR 41038, Aug. 2, 1993]

§ 16.83 Exemption of the Executive Office for Immigration Review System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Executive Office for Immigration Review's Records and Management Information System (JUSTICE/EOIR-001).

This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k) (1) and (2).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (d) because access to information which has been properly classified pursuant to an Executive Order could have an adverse effect on the national security. In addition, from subsection (d) because unauthorized access to certain investigatory material could compromise ongoing or potential investigations; reveal the identity of confidential informants; or constitute unwarranted invasions of the personal privacy of third parties.

(2) From subsection (d) (2), (3), and (4) because the record of proceeding constitutes an official record which includes transcripts of quasi-judicial administrative proceedings, investigatory materials, evidentiary materials such as exhibits, decisional memoranda, and other case-related papers. Administrative due process could not be achieved by the ex parte "correction" of such materials by the individual who is the subject thereof.

(c) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Practitioner Compliant/Disciplinary Files (JUSTICE/EOIR 003). This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by the Executive Office for Immigration Review.

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of the investigation of an actual or potential criminal, civil, or regulatory violation or the existence of that investigation; of the nature and scope of the information and evidence obtained as to the subject's activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law and regulatory enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities