

## Department of Justice

## § 16.74

the area to avoid inquiries or apprehension by law enforcement personnel.

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

(3) From subsection (d) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement and/or is properly classified pursuant to E.O. 12356. Individual access to these records might compromise ongoing investigations, reveal confidential sources or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation, or jeopardize national security or foreign policy interests. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information which may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the informa-

tion gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H), and (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[Order No. 34-85, 51 FR 754, Jan. 8, 1986. Redesignated by Order No. 6-86, 51 FR 15476, Apr. 24, 1986 and further redesignated and amended by Order No. 19-86, 51 FR 39373, Oct. 28, 1986]

### § 16.74 Exemption of National Security Division Systems—limited access.

(a) The following system of records is exempted from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G),(H) and (I), (5) and (8); (f); (g); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2) and (5): Foreign Intelligence and Counterintelligence Records System (JUSTICE/NSD-001). These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2), and (5).

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

(1) *Subsection (c)(3)*. To provide the target of a surveillance or collection activity with the disclosure accounting records concerning him or her would hinder authorized United States intelligence activities by informing that individual of the existence, nature, or scope of information that is properly classified pursuant to Executive Order 12958, as amended, and thereby cause damage to the national security.

(2) *Subsection (c)(4)*. This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1)*. Disclosure of foreign intelligence and counterintelligence information would interfere with collection activities, reveal the identity of confidential sources, and cause damage to the national security of the United States. To ensure unhampered and effective collection and analysis of foreign intelligence and counterintelligence information, disclosure must be precluded.

(4) *Subsection (d)(2)*. Amendment of the records would interfere with ongoing intelligence activities thereby

causing damage to the national security.

(5) *Subsections (d)(3) and (4)*. These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1)*. It is often impossible to determine in advance if intelligence records contained in this system are relevant and necessary, but, in the interests of national security, it is necessary to retain this information to aid in establishing patterns of activity and provide intelligence leads.

(7) *Subsection (e)(2)*. Although this office does not conduct investigations, the collection efforts of agencies that supply information to this office would be thwarted if the agencies were required to collect information with the subject's knowledge.

(8) *Subsection (e)(3)*. To inform individuals as required by this subsection could reveal the existence of collection activity and compromise national security. For example, a target could, once made aware that collection activity exists, alter his or her manner of engaging in intelligence or terrorist activities in order to avoid detection.

(9) *Subsections (e)(4)(G), (H) and (I), and (f)*. These subsections are inapplicable to the extent that this system is exempt from the access provisions of subsection (d).

(10) *Subsection (e)(5)*. It is often impossible to determine in advance if intelligence records contained in this system are accurate, relevant, timely and complete, but, in the interests of national security, it is necessary to retain this information to aid in establishing patterns of activity and providing intelligence leads.

(11) *Subsection (e)(8)*. Serving notice could give persons sufficient warning to evade intelligence collection and anti-terrorism efforts.

(12) *Subsections (g) and (h)*. These subsections are inapplicable to the extent that this system is exempt from other specific subsections of the Privacy Act.

[Order No. 023-2007, 72 FR 44382, Aug. 8, 2007]

**§ 16.75 Exemption of the Office of the Inspector General Systems/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), (3), (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) of 5 U.S.C. 552a:

(1) Office of the Inspector General Investigative Records (JUSTICE/OIG-001).

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 Office of the Inspector General (OIG).

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

(1) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the OIG, but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in the destruction of documentary evidence, improper influencing of witnesses, endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel, the fabrication of testimony, flight of the subject from the area, and other activities that could impede or compromise the investigation. In addition, accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

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