

apprehension. This would present a serious impediment to effective law enforcement since the subject could hinder or prevent the successful completion of the investigation. Further, confidential business and financial information, the identities of confidential sources of information, third party privacy information, and statutorily confidential information such as grand jury information must be protected from disclosure.

(3) From subsections (e)(4)(G) and (H), and (f) because this system is exempt from the individual access provisions of subsection (d).

[Order No. 2-86, 51 FR 884, Jan. 9, 1986]

**§ 16.89 Exemption of Civil Division Systems—limited access.**

(a) The following systems of records are exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G) and (H), (e)(5), (e)(8), and (g); in addition, the following systems of records are exempted pursuant to 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H):

(1) Civil Division Case File System, JUSTICE/CIV-001.

(2) Freedom of Information/Privacy Acts File System, JUSTICE/CIV-005.

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) Only that information which relates to the investigation, prosecution, or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy is exempted for the reasons set forth from the following subsections:

(1) *Subsection (c)(3)*. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him or her would inform that individual (and others to whom the subject might disclose the records) of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and others to avoid criminal penalties and civil remedies.

(2) *Subsections (c)(4), (e)(4) (G) and (H), and (g)*. These provisions are inapplicable to the extent that these systems of records are exempted from subsection (d).

(3) *Subsection (d)*. To the extent that information contained in these systems has been properly classified, relates to the investigation and/or prosecution of grand jury, civil fraud, and other law enforcement matters, disclosure could compromise matters which should be kept secret in the interest of national security or foreign policy; compromise confidential investigations or proceedings; hamper sensitive civil or criminal investigations; impede affirmative enforcement actions based upon alleged violations of regulations or of civil or criminal laws; reveal the identity of confidential sources; and result in unwarranted invasions of the privacy of others. 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 re-investigated.

(4) *Subsection (e)(1)*. In the course of criminal or civil investigations, cases, or matters, the Civil Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(2)*. To collect information from the subject of a criminal investigation or prosecution would present a serious impediment to law enforcement in that the subject (and others to whom the subject might be in contact) would be informed of the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) *Subsection (e)(3)*. To comply with this requirement during the course of a criminal investigation or prosecution could jeopardize the investigation by

disclosing the existence of a confidential investigation, revealing the identity of witnesses or confidential informants, or impeding the information gathering process.

(7) *Subsection (e)(5)*. In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(8) *Subsection (e)(8)*. To serve notice would give persons sufficient warning to evade law enforcement efforts.

(c) The following system of records is exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e)(1) and (e)(5); in addition, this system is also exempted pursuant to 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), and (e)(1).

Consumer Inquiry/Investigatory System, JUSTICE/CIV-006.

These exemptions apply only to the extent that information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(d) Only that information compiled for criminal or civil law enforcement purposes is exempted for the reasons set forth from the following subsections:

(1) *Subsections (c)(3)*. This system occasionally contains investigatory material based on complaints of actual or alleged criminal or civil violations. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him/her would inform that individual of the existence, nature, or scope of that investigation, and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records to

avoid criminal penalties and civil remedies.

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

(3) *Subsection (d)*. Disclosure of information relating to the investigation of complaints of alleged violation of criminal or civil law could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. 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 re-investigated.

(4) *Subsection (e)(1)*. In the course of criminal or civil investigations, cases, or matters, the Civil Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(5)*. In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(e) The following system of records is exempt pursuant to 5 U.S.C. 552a (j)(2) and (k)(2) from subsection (d):

Congressional and Citizen Correspondence File, JUSTICE/CIV-007.

This exemption applies only to the extent that information in this system is

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subject to exemption pursuant to 5 U.S.C 552a (j)(2) and (k)(2).

(f) Only that portion of the Congressional and Citizen Correspondence File maintained by the Communications Office which consists of criminal or civil investigatory information is exempted for the reasons set forth from the following subsection:

(1) *Subsection (d)*. Disclosure of investigatory information would jeopardize the integrity of the investigative process, disclose the identity of individuals who furnished information to the government under an express or implied promise that their identities would be held in confidence, and result in an unwarranted invasion of the privacy of others. 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.

[Order No. 27-88, 54 FR 113, Jan. 4, 1989]

### § 16.90 Exemption of Civil Rights Division Systems.

(a) The following system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k): Central Civil Rights Division Index File and Associated Records (JUSTICE/CRT-001). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

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

(1) *Subsection (c)(3)*. To provide the subject of a criminal, civil, or administrative matter or case under investigation with an accounting of disclosures of records concerning him or her could inform that individual of the existence, nature, or scope of an actual or potential criminal or civil violation to gain valuable information concerning the nature and scope of the investigation, to determine whether he or she is the subject of the investigation, and seriously impede law enforcement efforts by permitting the record subject and other persons to whom he or she might

disclose the records to avoid criminal penalties, civil remedies, or administrative measures.

(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 investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Disclosure of classified national security information would cause damage to the national security of the United States. In addition, these records may be subject to protective orders entered by federal courts to protect their confidentiality. Further, many of the records contained in this system are copies of documents which are the property of state agencies and were obtained under express or implied promises to strictly protect their confidentiality.

(4) *Subsection (d)(2)*. Amendment of the records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsection (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 investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2)*. To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigation.

(8) *Subsection (e)(3)*. To inform individuals as required by this subsection could reveal the existence of a criminal or civil investigation and compromise investigative efforts.