

### Subpart G—Exempt Systems of Records

#### § 6.86 General exemptions.

(a) Whenever the Director, Federal Emergency Management Agency, determines it to be necessary and proper, with respect to any system of records maintained by the Federal Emergency Management Agency, to exercise the right to promulgate rules to exempt such systems in accordance with the provisions of 5 U.S.C. 552a (j) and (k), each specific exemption, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for each exemption shall be published in the FEDERAL REGISTER as part of FEMA's Notice of Systems of Records.

(b) Exempt under 5 U.S.C. 552a(j)(2) from the requirements of 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (3), (e)(4) (G), (H), and (I), (e) (5) and (8) (f) and (g) of the Privacy Act.

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552(j)(2), shall be exempt from the provisions of 5 U.S.C. 552a listed in paragraph (b) of this section.

General Investigative Files (FEMA/IG-2)—  
Limited Access

(2) *Reasons for exemptions.* (i) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed system of records would give individuals an opportunity to learn whether they are of record either as suspects or as subjects of a criminal investigation; this would compromise the ability of the Federal Emergency Management Agency to complete investigations and identify or detect violators of laws administered by the Federal Emergency Management Agency or other Federal agencies. Individuals would be able (A) to take steps to avoid detection, (B) to inform co-conspirators of the fact that an investigation is being conducted, (C) to learn the nature of the investigation to which they are being subjected, (D) to learn the type of surveillance being

utilized, (E) to learn whether they are only suspects or identified law violators, (F) to continue to resume their illegal conduct without fear of detection upon learning that they are not in a particular system of records, and (G) to destroy evidence needed to prove the violation.

(ii) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) enable individuals to gain access to records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed system of records would compromise its ability to complete or continue criminal investigations and to detect or identify violators of laws administered by the Federal Emergency Management Agency or other Federal agencies. Permitting access to records contained in the above-listed system of records would provide individuals with significant information concerning the nature of the investigation, and this could enable them to avoid detection or apprehension in the following ways:

(A) By discovering the collection of facts which would form the basis for their arrest, (B) by enabling them to destroy evidence of criminal conduct which would form the basis for their arrest, and (C) by learning that the criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance. Granting access to ongoing or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning criminal activity to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing law enforcement officers' established investigative tools and procedures. Further, granting access to investigative files and records could disclose the identity of confidential sources and other informers and the nature of the information which they supplied, thereby endangering the life or physical safety of those sources of information by exposing them to possible reprisals for having provided information relating to

the criminal activities of those individuals who are the subjects of the investigative files and records; confidential sources and other informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied, and this would seriously impair the ability of the Federal Emergency Management Agency to carry out its mandate to enforce criminal and related laws. Additionally, providing access to records contained in the above-listed system of records could reveal the identities of undercover law enforcement personnel who compiled information regarding individual's criminal activities, thereby endangering the life or physical safety of those undercover personnel or their families by exposing them to possible reprisals.

(iii) 5 U.S.C. 552a(d) (2), (3) and (4), (e)(4)(H) and (f)(4), which are dependent upon access having been granted to records pursuant to the provisions cited in paragraph (b)(2)(ii) of this section, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Federal Emergency Management Agency believes that the reasons set forth in paragraph (b)(2)(ii) of this section are equally applicable to this paragraph and, accordingly, those reasons are hereby incorporated herein by reference.

(iv) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. The Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would impair the ability of other law enforcement agencies to make effective

use of information provided by the Federal Emergency Management Agency in connection with the investigation, detection and apprehension of violators of the criminal laws enforced by those other law enforcement agencies. Making accountings of disclosure available to violators or possible violators would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities, and this could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographic areas or by destroying or concealing evidence which would form the basis for their arrest. In addition, providing violators with accountings of disclosure would alert those individuals to the fact that the Federal Emergency Management Agency has information regarding their criminal activities and could inform those individuals of the general nature of that information; this, in turn, would afford those individuals a better opportunity to take appropriate steps to avoid detection or apprehension for violations of criminal and related laws.

(v) 5 U.S.C. 552a(c)(4) requires that an agency inform any person or other agency about any correction or notation of dispute made by the agency in accordance with 5 U.S.C. 552a(d) of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. Since this provision is dependent on an individual's having been provided an opportunity to contest (seek amendment to) records pertaining to him/her, and since the above-listed system of records is proposed to be exempt from those provisions of 5 U.S.C. 552a relating to amendments of records as indicated in paragraph (b)(2)(iii) of this section, the Federal Emergency Management Agency believes that this provision should not be applicable to the above system of records.

(vi) 5 U.S.C. 552a(e)(4)(I) requires that an agency publish a public notice listing the categories of sources for information contained in a system of records. The categories of sources of this system of records have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(vii) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term *maintain* as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the Federal Emergency Management Agency, there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Federal Emergency Management Agency; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of an investigation, and in many cases, information which initially appears to be irrelevant or unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of the Federal Emergency Management Agency. Further, not all violations of law discovered during a criminal investigation fall within the investigative jurisdiction of the Federal Emergency Management Agency; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction

over the offense to which the information relates. The Federal Emergency Management Agency should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to the attention of the Federal Emergency Management Agency through the conduct of a lawful FEMA investigation. The Federal Emergency Management Agency, therefore, believes that it is appropriate to exempt the above-listed system of records from the provisions of 5 U.S.C. 552a(e)(1).

(viii) 5 U.S.C. 552a(e)(2) requires that an agency collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would impair the ability of the Federal Emergency Management Agency to conduct investigations and to identify or detect violators of criminal or related laws for the following reasons:

(A) Most information collected about an individual under criminal investigations is obtained from third parties such as witnesses and informers, and it is usually not feasible to rely upon the subject of the investigation as a source for information regarding his/her criminal activities, (B) an attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his/her criminal activities so as to avoid apprehension, (C) in certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty, and (D) during criminal investigations it is often a matter of sound investigative procedures to obtain information from a variety of sources in order to verify information already obtained.

(ix) 5 U.S.C. 552a(e)(3) requires that an agency inform each individual whom it asks to supply information, either on the form which the agency uses

to collect the information or on a separate form which can be retained by the individual, with the following information: The authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual of not providing all or part of the requested information. The Federal Emergency Management Agency believes that the above-listed system of records should be exempted from this provision in order to avoid adverse effects on its ability to identify or detect violators of criminal or related laws. In many cases, information is obtained by confidential sources, other informers or undercover law enforcement officers under circumstances where it is necessary that the true purpose of their actions be kept secret so as to avoid alerting the subject of the investigation or his/her associates that a criminal investigation is in process. Further, if it became known that the undercover officer was assisting in a criminal investigation, that officer's life or physical safety could be endangered through reprisal, and, under such circumstances it may not be possible to continue to utilize that officer in the investigation. In many cases, individuals, for personal reasons, would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer who they believe is not involved in law enforcement activities. In addition, providing a source of information with written evidence that he was a source, as required by this provision, could increase the likelihood that the source of information would be the subject of retaliatory action by the subject of the investigation. Further, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation would result in a finding that the subject was not involved in any criminal activity.

(x) 5 U.S.C. 552a(e)(5) requires that an agency maintain all records used by

the agency in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the above-listed system of records would hinder the initial collection of any information which could not, at the moment of collection, be determined to be accurate, relevant, timely and complete. Similarly, application of this provision would seriously restrict the necessary flow of information from the Federal Emergency Management Agency to other law enforcement agencies when a FEMA investigation revealed information pertaining to a violation of law which was under investigative jurisdiction of another agency. In collecting information during the course of a criminal investigation, it is not possible or feasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information; in disseminating information to other law enforcement agencies it is often not possible to determine accuracy, relevance, timeliness or completeness prior to dissemination because the disseminating agency may not have the expertise with which to make such determinations. Further, information which may initially appear to be inaccurate, irrelevant, untimely or incomplete may, when gathered, grouped, and evaluated with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting on results obtained during criminal investigations. The Federal Emergency Management Agency believes that it is appropriate to exempt the above-listed system of records from the provisions of 5 U.S.C. 552a(e)(5).

(xi) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable effort to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The

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Federal Emergency Management Agency believes that the above-listed system of records should be exempt from this provision in order to avoid revealing investigative techniques and procedures outlined in those records and in order to prevent revelation of the existence on an on-going investigation where there is a need to keep the existence of the investigation secret.

(xii) 5 U.S.C. 552a(g) provides civil remedies to an individual for an agency's refusal to amend a record or to make a review of a request for amendment; for an agency's refusal to grant access to a record; for an agency's failure to maintain accurate, relevant, timely and complete records which are used to make a determination which is adverse to the individual; and for an agency's failure to comply with any other provision of 5 U.S.C. 552a in such a way as to have an adverse effect on an individual. The Federal Emergency Management Agency believes that the above-listed system of records should be exempted from this provision to the extent that the civil remedies provided therein may relate to provisions of 5 U.S.C. 552a from which the above-listed system of records is proposed to be exempt. Since the provisions of 5 U.S.C. 552a enumerated in paragraphs (b)(2)(i) through (xi) of this section are proposed to be inapplicable to the above-listed systems of records for the reasons stated therein, there should be no corresponding civil remedies for failure to comply with the requirements of those provisions to which the exemption is proposed to apply. Further, the Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would adversely affect its ability to conduct criminal investigations by exposing to civil court action every stage of the criminal investigative process in which information is compiled or used in order to identify, detect, or otherwise investigate persons suspected or known to be engaged in criminal conduct.

(xiii) Individuals may not have access to another agency's records, which are contained in files maintained by the Federal Emergency Management Agency, when that other agency's regulations provide that such records are

subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, FEMA will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

[45 FR 64580, Sept. 30, 1980]

### § 6.87 Specific exemptions.

(a) *Exempt under 5 U.S.C. 552a(k)(1).* The Director, Federal Emergency Management Agency has determined that certain systems of records may be exempt from the requirements of (c)(3) and (d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12356 or any subsequent Executive order and which are required to be kept secret in the interest of national defense or foreign policy. To the extent that this occurs, such records in the following systems would be exempt:

Claims (litigation) (FEMA/GC-1)—Limited Access  
FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access  
General Investigative Files (FEMA/IG-1)—Limited Access  
Security Management Information System (FEMA/SEC-1)—Limited Access

(b) *Exempt under 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).* The Federal Emergency Management Agency will not deny individuals access to information which has been used to deny them a right, privilege, or benefit to which they would otherwise be entitled.

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a(k)(2), shall be exempt from the provisions of 5 U.S.C. 552a(k)(2) listed in paragraph (b) of this section.

Claims (litigation) (FEMA/GC-1)—Limited Access  
FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access  
General Investigative Files (FEMA/IG-1)—Limited Access  
Equal Employment Opportunity Complaints of Discrimination Files (FEMA/PER-2)—Limited Access