

of the investigation and would therefore be able to avoid detection or apprehension, improperly influence witnesses, destroy evidence, or fabricate testimony.

(6) *Subsection (e)(3)*. To provide individuals supplying information with a form which includes the information required by subsection (e)(3) would constitute a serious impediment to law enforcement, i.e., it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7) *Subsections (e)(4)(G) and (H)*. These subsections are inapplicable to the extent that these systems are exempt from the access provisions of subsection (d) and the rules provisions of subsection (f).

(8) *Subsection (e)(4)(I)*. The categories of sources of the records in these systems 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 to protect the confidentiality of the sources of criminal and related law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9) *Subsection (e)(5)*. In the collection of information for criminal enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. Furthermore, the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would inhibit the ability of government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal information and related data necessary for effective law enforcement.

(10) *Subsection (e)(8)*. The individual notice requirements of subsection (e)(8)

could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11) *Subsection (f)*. Procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to the individual dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or case, pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under investigation or may become the subject of an investigation and could enable the subjects to avoid detection, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsections (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(12) *Subsection (g)*. Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

[63 FR 56741, Oct. 22, 1998, as amended at 68 FR 16399, Apr. 3, 2003]

§ 71.51 Specific exemptions pursuant to subsection (k)(2) of the Privacy Act.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(2) because they contain investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided however, that if any individual is denied any right, privilege or benefit to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the

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maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly the following systems of records are exempt from (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(I) and (f) of 5 U.S.C. 552a.

(1) DOL/GOVT-1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File), a system of records maintained by the Employment Standards Administration (ESA).

(2) DOL/OASAM-17 (Equal Employment Opportunity Complaint Files), a system of records maintained by the Office of the Assistant Secretary for Administration and Management (OASAM).

(3) DOL/OASAM-19 (Negotiated Grievance Procedure and Unfair Labor Practice Files), a system of records maintained by OASAM.

(4) DOL/OASAM-20 (Personnel Investigation Records), a system of records maintained by OASAM.

(5) DOL/OASAM-22 (Directorate of Civil Rights Discrimination Complaint Case Files), a system of records maintained by OASAM.

(6) DOL/OASAM-29 (OASAM Employee Administrative Investigation File), a system of records maintained by OASAM.

(7) DOL/BLS-7 (BLS Employee Conduct Investigation), a system of records maintained by the Bureau of Labor Statistics (BLS).

(8) DOL/ESA-2 (Office of Federal Contract Compliance Programs, Complaint Files), a system of records maintained by ESA.

(9) DOL/ESA-25 (Office of Federal Contract Compliance Programs, Management Information Systems (OFCCP/MIS)), a system of records maintained by ESA.

(10) DOL/ESA-26 (Office of Workers' Compensation Programs, Longshore and Harbor Workers' Compensation

Act Investigation Files), a system of records maintained by ESA.

(11) DOL/ESA-27 (Office of Workers' Compensation Programs, Longshore Act Claimant Representatives), a system of records maintained by ESA.

(12) DOL/ESA-28 (Office of Workers' Compensation Programs, Physicians and Health Care Providers Excluded under the Longshore Act), a system of records maintained by ESA.

(13) DOL/ESA-29 (Office of Workers' Compensation Programs, Physicians and Health Care Providers Excluded under the Federal Employees' Compensation Act), a system of records maintained by ESA.

(14) DOL/ESA-32 (ESA, Complaint and Employee Conduct Investigations), a system of records maintained by ESA.

(15) DOL/ESA-36 (ESA, Wage and Hour Division, MSPA/FLCRA Civil Money Penalty Record Files), a system of records maintained by ESA.

(16) DOL/ESA-40 (ESA, Wage and Hour Division, MSPA/FLCRA Tracer List), a system of records maintained by ESA.

(17) DOL/ESA-41 (ESA, Wage and Hour Division, MSPA/FLCRA Certificate Action Record Files), a system of records maintained by ESA.

(18) DOL/ESA-45 (Investigative Files of the Office of Labor-Management Standards), a system maintained by the Office of Labor-Management Standards.

(19) DOL/ETA-16 (Employment and Training Administration Investigatory File), a system of records maintained by the Employment and Training Administration (ETA).

(20) DOL/ETA-22 (ETA Employee Conduct Investigations), a system of records maintained by ETA.

(21) DOL/OIG-1 (General Investigative Files, and Subject Title Index, USDOL/OIG), a system of records maintained by the Office of the Inspector General (OIG).

(22) DOL/OIG-2 (Freedom of Information/Privacy Acts Records), a system of records maintained by the OIG.

(23) DOL/OIG-3 (Case Development Records), a system of records maintained by OIG.

(24) DOL/OIG-5 (Investigative Case Tracking Systems/Audit Information

Reporting Systems, USDOL/OIG), a system of records maintained by OIG.

(25) DOL/MSHA-10 (Discrimination Investigations), a system of records maintained by the Mine Safety and Health Administration (MSHA).

(26) DOL/MSHA-19 (Employee Conduct Investigations), a system of records maintained by MSHA.

(27) DOL/MSHA-20 (Civil/Criminal Investigations), a system of records maintained by MSHA.

(28) DOL/OSHA-1 (Discrimination Complaint File), a system of records maintained by the Occupational Safety and Health Administration (OSHA).

(29) DOL/OSHA-12 (Employee Conduct Investigations), a system of records maintained by OSHA.

(30) DOL/EBSA-2 (Office of Enforcement Index Cards and Investigation Files), a system of records maintained by the Employee Benefits Security Administration (EBSA).

(31) DOL/EBSA-7 (EBSA Employee Conduct Investigations), a system of records maintained by EBSA.

(32) DOL/SOL-8 (Special Litigation Files), a system of records maintained by the Office of the Solicitor (SOL).

(33) DOL/SOL-9 (Freedom of Information Act and Privacy Act Appeals Files), a system of records maintained by SOL.

(34) DOL/SOL-11 (Division of Civil Rights Defensive Litigation Files), a system of records maintained by SOL.

(35) DOL/SOL-12 (Third-party Recovery Files), a system of records maintained by SOL.

(36) DOL/SOL-13 (SOL Employee Conduct Investigations), a system of records maintained by SOL.

(37) DOL/SOL-15 (Solicitor's Office Litigation Files), a system of records maintained by SOL.

(38) DOL/VETS-1 (Veterans' Reemployment Complaint File—VETS-1), a system of records maintained by the Veterans' Employment and Training Service (VETS).

(39) DOL/VETS-2 (Veterans' Preference Complaint File), a system of records maintained by VETS.

(b) This exemption applies to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(c) The systems of records listed under paragraphs (a)(1) through (a)(39) of this section are exempted for the reasons set forth in paragraphs (c) (1) through (6) of this section, from the following subsections of 5 U.S.C. 552a:

(1) *Subsection (c)(3)*. The release of the disclosure accounting, for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would enable the subject of an investigation of an actual or potential civil case to determine whether he or she is the subject of investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, and to determine the identity of witnesses or informants. Such access to investigative information would, accordingly, present a serious impediment to law enforcement. In addition, disclosure of the accounting would constitute notice to the individual of the existence of a record even though such notice requirement under subsection (f)(1) is specifically exempted for this system of records.

(2) *Subsections (d)(1), (d)(2), (d)(3), and (d)(4)*. Access to the records contained in these systems would inform the subject of an actual or potential civil investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, and of the identity of witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(3) *Subsection (e)(1)*. The notices for these systems of records published in the FEDERAL REGISTER set forth the basic statutory or related authority for maintenance of these systems. However, in the course of civil and related law enforcement investigations, cases

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and matters, the agency will occasionally obtain information concerning actual or potential violations of law that are not strictly or technically within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific case. In the interests of effective law enforcement, it is necessary to retain some or all of such information in this system of records since it can aid in establishing patterns of compliance and can provide valuable leads for Federal and other law enforcement agencies. Moreover, it is difficult to know during the course of an investigation what is relevant and necessary. In this connection, facts or evidence may not seem relevant at first, but later in the investigation, their relevance is borne out.

(4) *Subsections (e)(4) (G) and (H)*. Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act, these subsections are inapplicable to the extent that these systems of records are exempted from subsections (f) and (d).

(5) *Subsection (e)(4)(I)*. The categories of sources of the records in these systems 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 civil law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(6) *Subsection (f)*. Procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to the individual dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or case, pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may

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become the subject of an investigation and could enable the subjects to avoid detection, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since an exemption is being claimed for subsection (d) of the Act (Access to Records), the rules required pursuant to subsections (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

[63 FR 56741, Oct. 22, 1998, as amended at 68 FR 16399, Apr. 3, 2003]

§71.52 Specific exemptions pursuant to subsection (k)(5) of the Privacy Act.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(5) because they contain investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, these systems of records are exempt from (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(I) and (f) of 5 U.S.C. 552a.

(1) DOL/OASAM-20 (Personnel Investigation Records), a system of records maintained by the Office of the Assistant Secretary for Administration and Management (OASAM).

(2) DOL/OIG-1 (General Investigative Files, and Subject Title Index, USDOL/OIG), a system of records maintained by the Office of the Inspector General (OIG).

(3) DOL/OIG-2 (Freedom of Information/Privacy Acts Records), a system of records maintained by the OIG.

(4) DOL/OIG-3 (Case Development Records), a system of records maintained by the OIG.

(5) DOL/OIG-5 (Investigative Case Tracking Systems/Audit Information Reporting Systems, USDOL/OIG), a