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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2009-0039]

Privacy Act of 1974; Department of Homeland Security/ALL--001
Freedom of Information Act and Privacy Act Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to update and reissue a Department of Homeland Security system of records notice titled, Department of Homeland Security/ALL--001 Freedom of Information Act and Privacy Act Records System of Records. The updated system of records consists of information that is created and used by the Department's Freedom of Information Act and Privacy Act staff to process requests as well as to manage the Freedom of Information Act and Privacy Act programs. As a result of the biennial review of this system, the Privacy Office has: Updated the system classification to include unclassified information; updated the categories of individuals and records to include individuals who are the subjects of requests, Department of Justice and other government litigators and/or DHS personnel assigned to handle such requests or appeals; revised the routine uses to conform with the needs of the Freedom of Information Act and Privacy Act program; and updated the Privacy Act exemptions for this system of records to include the addition of 5 U.S.C. 552a(k)(3) and (k)(6) of the Privacy Act. A Notice of Proposed Rulemaking is published elsewhere in the Federal Register further exempting these records from 5 U.S.C. 552a(k)(3) and (k)(6) of the Privacy Act. The initial Privacy Act exemptions published with this system of records (December 6, 2004), will remain in place until this rule is finalized with the addition of 5 U.S.C. 552a(k)(3) and (k)(6). This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before November 27, 2009. This system will be effective November 27, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS-2009-0039 by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>.
Follow the instructions for submitting comments.

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Fax: 703-483-2999.

Mail: Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer and Chief Freedom of Information Act Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) and its components and offices rely on the system of records, DHS/ALL--001 Freedom of Information Act and Privacy Act Records System of Records (69 FR 70460, December 6, 2004) for the collection and maintenance of records that concern the Department's Freedom of Information Act (FOIA) and Privacy Act (PA) records.

As part of its efforts to maintain its Privacy Act records systems, DHS is updating and reissuing a Department-wide system of records under the Privacy Act (5 U.S.C. Sec. 552a) for DHS FOIA and PA records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling FOIA and PA records. The collection and maintenance of this information will assist DHS in managing the Department's FOIA and PA records.

Consistent with DHS' information sharing mission, information stored in the DHS/ALL--001 Freedom of Information Act and Privacy Act Records System of Records may be shared within DHS, as well as with appropriate other Federal, State, local, tribal, foreign, or international government agencies. Disclosure of the information in any record of this system to officers and employees of DHS is permitted when requested by, or with the prior consent of, the individual to whom the record pertains, or when those officers and employees otherwise have a need for the record in the performance of their duties. Disclosure of most personally identifiable information contained in this system outside of DHS will only take place when requested by or with the prior consent of the individual to whom the record pertains, unless DHS determines, consistent with the routine uses set forth in this system of records notice, that the receiving component, agency or entity has a need to know the information to carry out valid national security, law enforcement, immigration, intelligence, or other functions. Certain information about FOIA requestors, including the name of the requestor and a description of the requested records is not exempt under the Freedom of Information Act and is released to outside entities who request such information in accordance with 5 U.S.C. 552a(b)(2).

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ``system of records.'' A ``system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a DHS system of records by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the Federal Register a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to their records, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ALL--001 Freedom of Information Act and Privacy Act Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

DHS/ALL--001

System name:

Department of Homeland Security Freedom of Information Act and Privacy Act Records System of Records.

Security classification:

Classified, sensitive, and unclassified.

System location:

Records are maintained at Department and Component Headquarters in Washington, DC and field locations.

Categories of individuals covered by the system:

Categories of individuals covered by this system include: Individuals who submit FOIA and/or PA requests to DHS; individuals who appeal DHS denial of their FOIA and/or PA requests; individuals whose requests, appeals, and/or records have been referred to DHS by other agencies; and, in some instances, attorneys or other persons representing individuals submitting such requests and appeals, individuals who are the subjects of such requests, Department of Justice and other government litigators and/or DHS personnel assigned to handle such requests or appeals.

Categories of records in the system:

Categories of records in this system include:

Records received, created, or compiled in processing FOIA

and PA requests or appeals, including:

[cir] Original requests and administrative appeals;

[cir] Intra or interagency memoranda, correspondence, notes and other documentation related to the processing of the FOIA and PA request;

[cir] Correspondence with the individuals or entities that submitted the requested records and copies of the requested records, including when those records might contain confidential business information or personal information.

Types of information in the records may include:

[cir] Requesters' and their attorneys' or representatives' names, addresses, e-mail, telephone numbers, and FOIA and PA case numbers; office telephone numbers, and office routing symbols of DHS employees and contractors;

[cir] Names, telephone numbers, and addresses of the submitter of the information requested;

[cir] Unique case identifier;

[cir] Social security number;

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[cir] Alien identification number of the requester/appellant or the attorney or other individual representing the requester, or other identifier assigned to the request or appeal.

The system also contains copies of all documents relevant to appeals and lawsuits under the FOIA and PA including from Department of Justice and other government litigators.

Authority for maintenance of the system:

5 U.S.C. 301, 552 (Freedom of Information Act), 552a (Privacy Act); 44 U.S.C. 3101 (Records Management by Federal Agencies); E.O. 12958 (Classified National Security Information, as amended).

Purpose(s):

The purpose of this system is to process record requests and administrative appeals under the FOIA and PA as well as access, notification, and amendment requests and appeals under the PA. Also, for participating in litigation arising from such requests and appeals; and in assisting DHS in carrying out any other responsibilities under the FOIA or PA.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee of DHS in his/her official capacity;
3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof, is a party to the

litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign agency, including law enforcement, or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a Federal, State, territorial, tribal, local, international, or foreign agency or entity for the purpose of consulting with that agency or entity:

1. To assist in making a determination regarding access to or amendment of information, or

2. For the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

I. To a Federal agency or other Federal entity that furnished the record or information for the purpose of permitting that agency or entity to make a decision regarding access to or correction of the record or information, or to a federal agency or entity for purposes of providing guidance or advice regarding the handling of particular

requests.

J. To the Department of Justice, including the United States Attorney's Offices, or a consumer reporting agency for collection action on any delinquent debt when circumstances warrant.

K. To the Office of Management and Budget or the Department of Justice to obtain advice regarding statutory and other requirements under the Freedom of Information Act or the Privacy Act of 1974.

Disclosure to consumer reporting agencies:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

Retrievability:

Records may be retrieved by the name, unique case identifier, social security number, or alien identification number of the requester/appellant or the attorney or other individual representing the requester, or other identifier assigned to the request or appeal.

Safeguards:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know

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the information for the performance of their official duties and who have appropriate clearances or permissions.

Retention and disposal:

FOIA and PA records are retained in accordance with National Archives and Records Administration's General Records Schedule 14.

FOIA and PA records in litigation are retained for ten years after the end of the fiscal year in which judgment was made or when all appeals have been exhausted, whichever is later. This disposition is temporary and is under review and approval by the National Archives and Records Administration through pending schedule N1-563-08-33, Item 11.

If the FOIA or PA record deals with significant policy-making issues, it is a permanent record.

A FOIA or PA record may qualify as a permanent Federal Record. A permanent record is one that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives of the United States. Permanent records include all records accessioned by NARA into the National Archives of the United States and later increments of the same records, and those for which the disposition is permanent on SF 115s, Request for Records Disposition Authority, approved by NARA on or after May 14, 1973.

System Manager and address:

Mary Ellen Callahan (703-235-0780), Chief Privacy Officer and Chief Freedom of Information Act Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

For components of DHS, the System Manager can be found at <http://www.dhs.gov/foia> under ``contacts.''

Notification procedure:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under ``contacts.''. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;

- Identify which component(s) of the Department you believe may have the information about you;

- Specify when you believe the records would have been created;

- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Record access procedures:

See ``Notification procedure'' above.

Contesting record procedures:

See ``Notification procedure'' above.

Record source categories:

Records are obtained by those individuals who submit requests and administrative appeals pursuant to the FOIA and the PA; the agency records searched and identified as responsive in the process of responding to such requests and appeals; Departmental personnel

assigned to handle such requests and appeals; other agencies or entities that have referred to DHS requests concerning DHS records, or that have consulted with DHS regarding handling of particular requests; and submitters or subjects of records or information that have provided assistance to DHS in making access or amendment determinations.

Exemptions claimed for the system:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in (c)(3) and (4): (d); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Additionally, The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in (c)(3): (d), (e)(1), (e)(4)(G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), (k)(5) and (k)(6). When DHS is processing Privacy Act and/or FOIA requests, responding to appeals, or participating in FOIA or Privacy Act litigation, exempt materials from other systems of records may become part of the records in this system. To the extent that copies of exempt records from other systems of records are entered into this system, DHS hereby claims the same exemptions for those records that are claimed for the original primary systems of records from which they originated.

Dated: October 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of Homeland Security.
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