

57 FR 62142

FEDERAL REGISTER

24 CFR Part 2003Implementation of the Privacy Act of 1974
[Docket No. R-92-1611; FR-3259-F-02]

RIN 2508-AA07

57 FR 62142

December 29, 1992

ACTION: Final rule.

SUMMARY: This final rule implements the requirements of the Privacy Act of 1974 in the Office of the Inspector General by creating a new part 2003 to 24 CFR chapter XII. It supplements the Department's existing Privacy Act regulations at 24 CFR part 16.

DATES: Effective date: January 28, 1993.

FOR FURTHER INFORMATION CONTACT: Philip A. Kesaris, Deputy Assistant General Counsel, Inspector General and Administrative Proceedings Division, Office of General Counsel, room 10251, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, (202) 708-2350. (This is not a toll free number.)

TEXT: SUPPLEMENTARY INFORMATION:

Background

The Inspector General Act of 1978 (5 U.S.C. App.) was enacted to create independent and objective units to perform various investigative and monitoring functions in several Executive agencies of the Federal Government, including the Department of Housing and Urban Development (HUD). This Act confers broad authority upon the Inspector General to conduct independent investigations and audits. Consistent with its statutory independence, the Inspector General of HUD has adopted separate regulations at 24 CFR chapter XII which are applicable only to the Office of Inspector General (OIG). Currently, Chapter XII concerns such OIG matters as organization, functions, and delegations of authority (part 2000), availability of information to the public (part 2002), and production in response to subpoenas or demands of courts or other authorities (part 2004). See 57 FR 2225, January 21, 1992.

On August 27, 1992 (57 FR 38804), the Department published a proposed rule to implement, at **24 CFR part 2003**, the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) in the OIG. Interested parties were given 60 days, until October 26, 1992, to comment on the proposed rule. No comments were received on the proposed rule, and the text of this final rule is the same as that of the proposed rule.

This new part 2003 to chapter XII of title 24 generally incorporates the Department's existing Privacy Act regulations (24 CFR part 16) with some modifications of a mostly technical nature.

However, §§ 2003.8 (General Exemptions) and 2003.9 (Specific Exemptions) of this rule constitute a significant revision to the OIG's exemption regulations found at 24 CFR 16.14 and 16.15. Sections 2003.8 and 2003.9 clarify the scope of the exemptions applicable to the OIG system of records entitled "Investigative Files of the Office of Inspector General" by providing reasons for exemptions from particular subsections of the Privacy Act that are more detailed than those found at 24 CFR 16.14 and 16.15. In addition, §§ 2003.8 and 2003.9 set forth the exemptions that are applicable to two new OIG systems of records, "Hotline Complaint Files of the Office of Inspector General" and "Name Indices System of the Office of Inspector General."

Other Matters

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and, therefore, are categorically excluded from the re-

quirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

Impact on Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities because there are no anti-competitive discriminatory aspects of the rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Regulatory Agenda

This rule appeared as Item 1491 in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in **24 CFR part 2003**

Privacy.

Accordingly, 24 CFR chapter XII is amended by adding a new part 2003, to read as follows:

PART 2003 -- IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

2003.1 Scope of the part and applicability of other HUD regulations.

2003.2 Definitions.

2003.3 Requests for records.

2003.4 Officials to receive requests and inquiries.

2003.5 Initial denial of access to records.

2003.6 Disclosure of a record to a person other than the individual to whom it pertains.

2003.7 Authority to make law enforcement-related requests for records maintained by other agencies.

2003.8 General Exemptions.

2003.9 Specific Exemptions.

Authority: 5 U.S.C. 552a; 5 U.S.C. App. (Inspector General Act of 1978); 42 U.S.C. 3535(d).

§ 2003.1 Scope of the part and applicability of other HUD regulations.

(a) *General.* This part contains the regulations of the Office of Inspector General ("OIG") implementing the Privacy Act of 1974 (5 U.S.C. 552a). The regulations inform the public that the Inspector General has the responsibility for carrying out the requirements of the Privacy Act and for issuing internal OIG orders and directives in connection with the Privacy Act. These regulations apply to all records that are contained in systems of records maintained by the OIG and that are retrieved by an individual's name or personal identifier.

(b) *Applicability of part 16.* In addition to these regulations, the provisions of 24 CFR part 16 apply to the OIG, except that appendix A to part 16 is not applicable. The provisions of this part shall govern in the event of any conflict with the provisions of part 16.

§ 2003.2 Definitions.

Certain terms used in 24 CFR part 16 have the following meanings for purposes of this part:

Department. The term "Department," as used in 24 CFR part 16, means the OIG for purposes of this part, except that, as used in §§ 16.1(d), 16.11(b) (1), (3), and (4) and 16.12(e), the term means the Department of Housing and Urban Development.

Privacy Act Officer. The term "Privacy Act Officer," as used in 24 CFR part 16, means the Assistant Inspectors General described in § 2000.5 of this chapter.

Privacy Appeals Officer. The term "Privacy Appeals Officer," as used in 24 CFR part 16, means the Inspector General for purposes of this part. The Secretary of HUD has delegated to the Inspector General the authority to act as the Privacy Appeals Officer for denials of requests for records maintained by the OIG.

§ 2003.3 Requests for records.

(a) A request from an individual for an OIG record about that individual which is not contained in an OIG system of records will be considered to be a Freedom of Information Act (FOIA) request and will be processed under 24 CFR part 2002.

(b) A request from an individual for an OIG record about that individual which is contained in an OIG system of records will be processed under both the Privacy Act and the FOIA in order to ensure maximum access under both statutes. This practice will be undertaken regardless of how an individual characterizes the request.

(1) The procedures for inquiries and requirements for access to records under the Privacy Act are more specifically set forth in 24 CFR part 16, except that appendix A to part 16 does not apply to the OIG.

(2) An individual will not be required to state a reason or otherwise justify his or her request for access to a record.

§ 2003.4 Officials to receive requests and inquiries.

Officials to receive requests and inquiries for access to, or correction of, records in OIG systems of records are the Privacy Act Officers described in § 2003.2 of this part. Written requests may be addressed to the appropriate Privacy Act

Officer at: Office of Inspector General, Department of Housing and Urban Development, Washington, DC 20410, or to a particular Regional Office listed in § 2000.6(d) of this chapter, for referral to the appropriate Privacy Act Officer.

§ 2003.5 Initial denial of access to records.

(a) Access by an individual to a record about that individual which is contained in an OIG system of records will be denied only upon a determination by the Privacy Act Officer that:

(1) The record was compiled in reasonable anticipation of a civil action or proceeding; or the record is subject to a Privacy Act exemption under §§ 2003.8 or 2003.9 of this part; and

(2) The record is also subject to a FOIA exemption under § 2002.21(b) of this chapter.

(b) If a request is partially denied, any portions of the responsive record that can be reasonably segregated will be provided to the individual after deletion of those portions determined to be exempt.

(c) The provisions of *24 CFR 16.6(b)* and *16.7*, concerning notification of an initial denial of access and administrative review of the initial denial, apply to the OIG, except that:

(1) The final determination of the Inspector General, as Privacy Appeals Officer for the OIG, will be in writing and will constitute final action of the Department on a request for access to a record in an OIG system of records; and

(2) If the denial of the request is in whole or in part upheld, the final determination of the Inspector General will include notice of the right to judicial review.

§ 2003.6 Disclosure of a record to a person other than the individual to whom it pertains.

(a) The OIG may disclose an individual's record to a person other than the individual to whom the record pertains in the following instances:

(1) Upon written request by the individual, including authorization under *24 CFR 16.5(e)*;

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian of the individual under *5 U.S.C. 552a(h)*; or

(4) When permitted by the provisions of *5 U.S.C. 552a(b)* (1) through (12).

(b) [Reserved].

§ 2003.7 Authority to make law enforcement-related requests for records maintained by other agencies.

(a) The Inspector General is authorized by written delegation from the Secretary of HUD and under the Inspector General Act to make written requests under *5 U.S.C. 552a(b)(7)* for transfer of records maintained by other agencies which are necessary to carry out an authorized law enforcement activity under the Inspector General Act.

(b) The Inspector General delegates the authority under paragraph (a) of this section to the following OIG officials:

(1) Deputy Inspector General;

(2) Assistant Inspector General for Audit;

(3) Assistant Inspector General for Investigation; and

(4) Assistant Inspector General for Management and Policy.

(c) The officials listed in paragraph (b) of this section may not redelegate the authority described in paragraph (a) of this section.

§ 2003.8 General exemptions.

(a) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General," and "Name Indices System of the Office of Inspector General" consist, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in these systems falls within the scope of Exemption (j)(2) of the Privacy Act, *5 U.S.C. 552a(j)(2)*, these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2), because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable directly from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3), because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

(b) [Reserved].

§ 2003.9 Specific exemptions.

(a) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General" and "Name Indices System of the Office of Inspector General" consist, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant

and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(b) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General" and "Name Indices System of the Office of Inspector General" consist in part of investigatory material compiled by the OIG for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which 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. Therefore, to the extent that information in these systems falls within the coverage of Exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are exempt from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: December 11, **1992**.

John J. Connors,

Deputy Inspector General.

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