

amend a record, the office will promptly:

(i) Advise the requesting individual of the specifics of the refusal and the reasons;

(ii) Inform the individual that he may request a review of the denial(s) from 'Director, Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314-1651.' The request should be brief, in writing, and enclose a copy of the denial correspondence.

(b) DSS determination to approve or deny. Determination to approve or deny and request to amend a record or portion thereof may necessitate additional investigation or inquiry be made to verify assertions of individuals requesting amendment. Coordination will be made with the Director for Investigations and the Director of the Personnel Investigations Center in such instances.

§ 321.9 Appeal of initial amendment decision.

(a) *General.* Upon receipt from any individual of an appeal to review a DSS refusal to amend a record, the Defense Security Service, Office of FOI and Privacy will assure that such appeal is handled in compliance with the Privacy Act of 1974 and DoD Directive 5400.11 and accomplish the following:

(1) Review the record, request for amendment, DSS action on the request and the denial, and direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination.

(2) Recommend to the Director whether to approve or deny the appeal.

(3) If the determination is made to amend a record, advise the individual and previous recipients (or an appropriate office) where an accounting of disclosures has been made.

(4) Where the decision has been made to deny the individual's appeal to amend a record, notify the individual:

(i) Of the denial and the reason;

(ii) Of his right to file a concise statement of reasons for disagreeing with the decision not to amend the record;

(iii) That such statement may be sent to the Defense Security Service, Office of FOI and Privacy, (GCF), 1340 Braddock Place, Alexandria, VA 22314-

1651, and that it will be disclosed to users of the disputed record;

(iv) That prior recipients of the disputed record will be provided a copy of the statement of disagreement, or if they cannot be reached (e.g., through deactivation) the personnel security element of their DoD component;

(v) And, that he may file a suit in a Federal District Court to contest DSS's decision not to amend the disputed record.

(b) *Time limit for review of appeal.* If the review of an appeal of a refusal to amend a record cannot be accomplished within 30 days, the Office of FOI and Privacy will notify the individual and advise him of the reasons, and inform him of when he may expect the review to be completed.

§ 321.10 Disclosure to other than subject.

(a) *General.* No record contained in a system of records maintained by DSS shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent or request of the individual subject of the record, except as provided in this section. Disclosures that may be made without the request or consent of the subject of the record are as follows:

(1) To those officials and employees of the Department of Defense who have a need for the record in the performance of their duties, when the use is compatible with the stated purposes for which the record is maintained.

(2) Required to be disclosed by the Freedom of Information Act.

(3) For a routine use as described in DoD Directive 5400.11.

(4) To the Census Bureau, National Archives, the U.S. Congress, the Comptroller General or General Accounting Office under the conditions specified in DoD Directive 5400.11.

(5) At the written request of the head of an agency outside DoD for a law enforcement activity as authorized by DoD Directive 5400.11.

(6) For statistical purposes, in response to a court order, or for compelling circumstances affecting the health or safety of an individual as described in DoD Directive 5400.11.

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(7) Legal guardians recognized by the Act.

(b) *Accounting of disclosures.* Except for disclosures made to members of the DoD in connection with their routine duties, and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in DSS systems.

(1) Accounting entries will normally be kept on a DSS form, which will be maintained in the record file jacket, or in a document that is part of the record.

(2) Accounting entries will record the date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(3) An accounting of disclosures made to agencies outside the DoD of records in the Defense Clearance and Investigations Index (V5-02) will be kept as prescribed by the Director of Systems, DSS.

(4) Accounting records will be maintained for at least 5 years after the last disclosure, or for the life of the record, whichever is longer.

(5) Subjects of DSS records will be given access to associated accounting records upon request, except as exempted under § 321.13.

§ 321.11 Fees.

Individuals may request copies for retention of any documents to which they are granted access in DSS records pertaining to them. Requestors will not be charged for the first copy of any records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with DoD Directive 5400.11.

§ 321.12 Penalties.

(a) An individual may bring a civil action against the DSS to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any record with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of 5 U.S.C. 552a. The court may order correction or amendment. It may assess against the United States reasonable attorney fees

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and other costs, or may enjoin the DSS from withholding the records and order the production to the complainant.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D), the United States shall be liable for the actual damages sustained, but in no case less than the sum of \$1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the DSS who fully discloses material, which he knows is prohibited from disclosure, or who willfully maintains a system of records without the notice requirements; or against any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses. These offenses shall be misdemeanors with a fine not to exceed \$5,000.

§ 321.13 Exemptions.

(a) *General.* The Director of the Defense Security Service establishes the following exemptions of records systems (or portions thereof) from the provisions of these rules, and other indicated portions of Pub. L. 93-579, in this section. They may be exercised only by the Director, Defense Security Service and the Chief of the Office of FOI and Privacy. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of a records system, and not simply because they are authorized by statute. Personal records releasable under the provisions of 5 U.S.C. 552 will not be withheld from subject individuals based on these exemptions.

(b) All systems of records maintained by DSS shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense of foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions