

**DEPARTMENT OF JUSTICE**

[AAG/A Order No. 222-2001]

**Privacy Act of 1974; System of Records**

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice (DOJ) proposes to establish a new system of records to be maintained by the Executive Office for United States Attorneys, Employee Assistance Program Staff.

The Department proposes this new system of records to permit the standard medical practice of retaining and recording the mental health history for employees of the United States Attorneys offices throughout the country as well as employees of the Executive Office for United States Attorneys (EOUSA) who seek assistance from the Employee Assistance Program (EAP). Records retained for these EAP clients include the rationale for the counseling, referrals made by the EAP counselor, and a record of the number of contacts made over time. This system, as identified in the attached **Federal Register** notice, permits EOUSA to maintain records on employees who use the EAP in order to ensure that the best mental health and social services practices are offered. This new system allows the EOUSA EAP staff to maintain EAP records separately from the DOJ EAP staff.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given 30 days in which to comment on the proposed new routine system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed system. Therefore, please submit any comments by 40 days from publication of this notice. The public, OMB, and the Congress are invited to submit written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530, (202) 307-1823.

As required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A new system description is set forth below.

Dated: March 5, 2001.

**Stephen R. Colgate,***Assistant Attorney General for Administration.***SYSTEM NAME:**

Employee Assistance Program (EAP) Counseling and Referral Records, Justice/USA-020.

**SYSTEM LOCATION:**

Records are maintained by the Executive Office for United States Attorneys (EOUSA) Employee Assistance Program (EAP) staff. Interested parties wishing to correspond regarding records should direct their inquiries to the EAP Administrator, Executive Office for United States Attorneys, 600 E St. NW., Room 6800, Washington, DC 20530, (202) 514-1036.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former employees of United States Attorneys Offices (USAOs) throughout the country and employees of the Executive Office for United States Attorneys (EOUSA) who have sought counseling or have been referred for counseling or treatment through the EAP. To the limited degree that counseling and referral may be provided to family members of these employees, these individuals also are covered by the system. The remainder of this notice will refer to all persons covered by the system as "EAP client(s)."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include any record, written or electronic, which may assist in referring, diagnosing, evaluating, counseling and/or follow-up with an EAP client, or resolving an EAP client's complaint or management's concerns (management consultation) regarding the EAP client's performance, attendance, or conduct problems. Included are the EAP counselor's intake, follow-up, and termination notes; pertinent psychosocial, medical, and employment histories; relevant personnel documents; medical tests or screenings, including drug and alcohol tests and information on positive drug tests generated by the staff of the Drug Free Workplace Program or treatment facilities from which the EAP client may be receiving treatment; treatment and rehabilitation plans; and records of referrals. Referrals include those to community treatment resources and social service agencies that provide financial or other assistance which may or may not be related to mental health or general medical services. Where

clinical referrals have been made, records may include relevant information related to counseling, diagnosis, prognosis, treatment, and evaluation, together with follow-up information that may be generated by the community program providing the relevant services. Other records included in the system are the written consent forms used to permit the flow of information outside the EAP. Records may also include account information, such as contractor billings and government payments, when EAP services are provided by an EAP contractor.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

42 U.S.C. 290dd *et seq.*; 42 CFR part 2; 5 U.S.C. 3301, 7361, 7362, 7901 and 7904; 44 U.S.C. 3103; Executive Order 12564; and Pub. L. 100-71, sec. 503 (July 11, 1987).

**PURPOSE:**

Records are maintained to document the work performed by the EAP on behalf of the EAP client and to allow for the tracking of the EAP client's progress and the client's participation in the EAP or community programs. These records may also be used to track compliance with Abeyance or Last Chance agreements that include treatment options, in which the EAP is an integral part of establishing and/or monitoring treatment compliance as agreed by the EAP client and management.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures permitted by the Privacy Act itself, 5 U.S.C. 552a(b), relevant information may be disclosed from this system of records without EAP client consent as follows:<sup>1</sup>

a. To contractors that may provide EAP counseling and other services related to the administrative and financial management of the EAP program to the extent that it is appropriate, relevant, and necessary to enable the contractor to perform his or her counseling, treatment, rehabilitation, and evaluation responsibilities.

b. To appropriate state or local authorities to report, where required under state law, incidents of suspected child, elder or domestic abuse or neglect.

c. To any person or entity to the extent necessary to prevent imminent

<sup>1</sup> To the extent that the release of alcohol and drug abuse records is more restricted than other records subject to the Privacy Act, EOUSA EAP staff will follow such restrictions. See 42 U.S.C. 290dd *et seq.*; 42 CFR part 2.

threat of serious bodily harm to client or others.

d. When an individual to whom a record pertains has been determined to be mentally incompetent by a physician or under legal disability, to any person who is legally responsible for the care of the individual.

e. To any person or entity to the extent necessary to meet a bona fide medical emergency.

f. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Information in this system is maintained on paper and computer discs in accordance with 42 CFR 2.16.

**RETRIEVABILITY:**

Records are indexed and retrieved by identifying number or symbol, cross-indexed to EAP client names.

**SAFEGUARDS:**

Paper records and computer discs are kept in locked GSA-approved security containers, and the computer discs are password-protected. Only EOUSA EAP staff will have access to the records. Records may be reviewed by any EAP staff member as may be needed to provide EAP services. No record may be released by the EAP staff without prior approval of the EAP System Manager.

**RETENTION AND DISPOSAL:**

Records are retained for three years after the EAP client ceases contact with the counselor (in accordance with General Records Schedule No. 1, Item No. 26) unless a longer retention period is necessary because of administrative or judicial proceedings. In such cases, the records are retained for six months after the conclusion of the legal proceedings. Paper records are destroyed by shredding, which must be performed by an EAP staff member.

Computer discs are erased, degaussed, or physically destroyed by an EAP staff member.

**SYSTEM MANAGER AND ADDRESS:**

The System Manager is the EAP Administrator, Executive Office for United States Attorneys, 600 E St. NW., Room 6800, Washington, DC 20530 (202) 514-1036.

**NOTIFICATION PROCEDURE:**

Same as Record Access Procedures.

**RECORD ACCESS PROCEDURES:**

Make all requests for access in writing to the EAP System Manager identified above. Clearly mark the envelope and letter "Freedom of Information Act/Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the record, the dates during which the individual was in EAP counseling, any other information which may assist in identifying and locating the record, and a return address. Pursuant to 28 CFR 16.41(d), an original signature on a "Certification of Identity" form (DOJ-361) may be submitted in lieu of a notarized signature. This form may be obtained from the Department of Justice web site at <http://www.usdoj.gov>.

**CONTESTING RECORDS PROCEDURES:**

Direct all requests to contest or amend information to the EAP System Manager identified above. The request should follow the Record Access Procedures, listed above, and should state clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope and letter "Freedom of Information Act/Privacy Act Request."

**RECORD SOURCE CATEGORIES:**

Records are generated by EAP personnel, referral counseling and treatment programs or individuals, the EAP client who is the subject of the record, the personnel office, the EOUSA Legal Counsel's Office, and the EAP client's supervisors. In the case of drug abuse counseling, records may also be generated by the staff of the Drug-Free Workplace Program and the Medical Review Officer.

**EXEMPTIONS CLAIMED FOR THIS SYSTEM:**

None.

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**DEPARTMENT OF JUSTICE**

**Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environment Response Compensation and Liability Act**

Notice is hereby given that on February 6, 2001 a proposed partial consent decree in the action entitled *United States v. Woodward Metal Processing, Corp. et al.*, Civil Action No. 98-2736 (JWB/GDH), was lodged with the United States District Court for the District of New Jersey.

In this action, the United States sought the recovery of response costs incurred in connection with a removal action at the Woodward Metal Processing Corporation Site, located at 125 Woodward Street, Jersey City, New Jersey ("Site"), pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607. The proposed consent decree, if entered by the Court, would resolve the claim of the United States against Defendant Eugene B. Rosenberg ("Settling Defendant") and, together with other pending settlements, would resolve this action in its entirety. Under the proposed consent decree, Settling Defendant would pay the United States \$35,000 in three installments of \$25,000, \$5,000 and \$5,000 over two years, plus interest. That amount, together with the response costs already recovered by the United States in settlements with other parties would increase the United States' total recovery at the Site to approximately 86% of total response costs.

The U.S. Department of Justice will receive, for a period of thirty (30) days from the date of publication of this Notice, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should reference the following case name and number: *United States v. Woodward Metal Processing Corp., et al.*, DJ # 90-11-2-1299/1.

The proposed consent decree may be examined at the offices of EPA Region II, located at 290 Broadway, New York, New York. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. In requesting a copy, please enclose a check in the amount of \$6.75 (25 cents