

# Rules and Regulations

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## SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

### 5 CFR Chapter LXXXIII and Part 9301

RIN 3460-AA00

#### Freedom of Information Act and Privacy Act Procedures

**AGENCY:** Special Inspector General for Afghanistan Reconstruction.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule establishes procedures for the public to obtain information from the Special Inspector General for Afghanistan Reconstruction under the Freedom of Information Act (FOIA) and the Privacy Act of 1974. These procedures will facilitate public interaction with SIGAR.

**DATES:** This interim final rule is effective March 16, 2012. Written comments may be submitted by April 16, 2012.

**ADDRESSES:** You may submit comments, identified by RIN 3460-AA00 in the subject line to Mr. Hugo Teufel, Acting General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202-3940, email: [hugo.teufel.civ@mail.mil](mailto:hugo.teufel.civ@mail.mil), phone (703) 545-5990, fax (703) 601-3804.

**FOR FURTHER INFORMATION CONTACT:** Kate Gastner, Public Information Manager, at (703) 545-5993, email: [mary.k.gastner.civ@mail.mil](mailto:mary.k.gastner.civ@mail.mil).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). In order to establish procedures to facilitate public interaction with SIGAR, the agency is issuing interim final

regulations under the FOIA and the Privacy Act.

#### II. The Interim Final Rule

This interim final rule establishes procedures for SIGAR necessary to implement the FOIA (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). The provisions of this subpart shall apply to all components of SIGAR.

The FOIA provides for the disclosure of agency records and information to the public, unless that information is exempted under delineated statutory exemptions under the FOIA. The Privacy Act serves to safeguard public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store, and disseminate personal information about individuals. The procedures established here are intended to ensure that SIGAR fully satisfies its responsibility to the public to disclose agency information while simultaneously safeguarding individual privacy.

The Privacy Act serves to balance the Government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. Agencies are required to issue regulations outlining the agency's rules and procedures for implementation of the Privacy Act and its provisions within the agency. This includes procedures on how individuals may request access to information about themselves, request amendment or correction of those records, and request an accounting of disclosures of their records by SIGAR.

#### III. Procedural Requirements

These regulations establish procedures under the FOIA and the Privacy Act to facilitate the interaction of the public with SIGAR. SIGAR's policy of disclosure follows the Presidential Memorandum of January 21, 2009, "Transparency and Openness," 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance, advising Federal agencies to apply a presumption of disclosure in FOIA decision making. This Interim Final Rule parallels the procedures currently used by other agencies to implement the FOIA and the

Privacy Act. SIGAR has determined that good cause exists to publish these regulations as an interim final rule. These rules establish procedures to facilitate SIGAR's interactions with the public and the public's right to gain access to information about SIGAR and about themselves that SIGAR maintains. The absence of Privacy Act regulations could impair the confidentiality and privacy rights of those who submit sensitive information to SIGAR as well as the ability of SIGAR to use that information to carry out its statutory mission. SIGAR has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

#### List of Subjects in 5 CFR Part 9301

Administrative practice and procedure, Freedom of information, Privacy.

#### Authority and Issuance

For the reasons set forth above, SIGAR establishes 5 CFR Chapter LXXXIII, consisting of part 9301 to read as set forth below.

#### Title 5—Administrative Personnel

### CHAPTER LXXXIII—SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

#### PART 9301—DISCLOSURE OF RECORDS AND INFORMATION

Sec.

#### Subpart A—Freedom of Information Act Procedures for Disclosure of Materials or Information

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#### Subpart A—Freedom of Information Act

**Authority:** 5 U.S.C. 552; Pub. L. No. 110–175, 121 Stat. 2524 (2007); 5 U.S.C. 301 and 552; Exec. Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Exec. Order No. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., pp. 216–200.

#### Procedures for Disclosure of Records Under the Freedom of Information Act

##### § 9301.1 In general.

This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. This subpart should be read in conjunction with the FOIA.

##### § 9301.2 Authority and functions.

Section 1229 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, established the Special Inspector General for Afghanistan Reconstruction (SIGAR). SIGAR's mission under Sections 1229 and 842 of Public Law 110–181, is to provide independent oversight of the treatment, handling, and expenditure of funds appropriated or otherwise made available for the reconstruction of Afghanistan; detect and deter fraud, waste, and abuse of U.S. funds; and promote actions to increase program economy, efficiency, and effectiveness.

##### § 9301.3 Organization.

SIGAR maintains its headquarters in Arlington, Virginia, and field offices in Kabul and elsewhere in Afghanistan.

#### Procedures

##### § 9301.4 Availability of records.

SIGAR's publicly accessible records are available through SIGAR's Electronic Reading Room on its Web site. SIGAR also provides records to individual requesters in response to FOIA requests. SIGAR generally withholds predecisional, deliberative documents, investigatory materials and sensitive policy documents under 5 U.S.C. 552(b).

##### § 9301.5 Accessing records without request.

Certain SIGAR records, including the agency's Quarterly Report, audit reports, testimony, oversight plans, press releases and other public issuances, are available electronically from SIGAR's homepage at <http://www.sigar.mil>. SIGAR encourages requesters to visit its Web site before making a request for records under § 9301.6.

##### § 9301.6 Requesting records.

(a) *Written requests required.* For records not available as described under § 9301.5, requesters wishing to obtain information from SIGAR should submit a written request to SIGAR's FOIA Officer. Requests should be addressed to FOIA Officer, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601–3804 or by email to [sigar.pentagon.gen-coun.mbx.foia@mail.mil](mailto:sigar.pentagon.gen-coun.mbx.foia@mail.mil).

(b) *Contents of requests.* Requests should be as specific as possible and should reasonably specify the records sought so that the records can be located with a reasonable amount of effort. The request should identify the desired record or describe it, and include information such as the date, title or name, author, recipient, and subject matter of the record, where possible. The request should also include a statement of the requester's willingness to pay fees, or request a fee waiver. The words "FOIA REQUEST" or "REQUEST FOR RECORDS" should be clearly marked on the cover letter, letter, and/or envelope.

(c) *Response to requests—(1) Processing.* The FOIA Officer shall determine within 20 days (except Saturdays, Sundays, and federal holidays) after receiving a request for records, whether it is appropriate to grant or deny the request. The 20-day period may be tolled once if the FOIA Officer requests information from the requestor or if additional time is necessary to clarify issues with the requestor regarding a fee assessment.

(i) *Request granted.* If the FOIA Officer decides to grant the request, the FOIA Officer shall promptly provide the requester written notice of the decision. The FOIA Officer shall include with the notice both the requested records and a copy of the decision. The notice shall also describe the procedure for filing an appeal.

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the

requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the information was withheld. The notice shall also describe the procedure for filing an appeal.

(2)(i) *Expedited processing.* At the time a requester submits an initial request for records the requester may ask the FOIA Officer in writing to expedite processing of the request. The request for expedited processing must be accompanied by a written statement, which shall state that it is true and correct to the best of the requester's knowledge and belief, explaining why expedited processing is warranted. The FOIA Officer shall generally grant requests for expedited processing of requests for records, and appeals of denials under paragraph (d)(2) of this section, whenever the FOIA Officer determines that:

(A) Failure to obtain the requested records on an expedited basis could reasonably pose a threat to a person's life or physical safety; or

(B) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about Government activity that is the specific subject of the FOIA request.

(ii) The FOIA Officer shall ordinarily decide within ten calendar days after receiving a request for expedited processing whether to grant it and shall notify the requester of the decision. If the FOIA Officer grants a request for expedited processing, the FOIA Officer shall process the request as soon as practicable. If the FOIA Officer denies a request for expedited processing, SIGAR shall act expeditiously on any appeal of that denial.

(3) Extension for unusual circumstances—(i) In general. If the FOIA Officer determines that unusual circumstances exist, the FOIA Officer may extend for no more than ten days (except Saturdays, Sundays and Federal holidays) the time limits described in paragraph (c)(1) of this section by providing written notice of the extension to the requester. The FOIA Officer shall include with the notice a brief statement of the reason for the extension and the date the FOIA Officer expects to make the determination.

(ii) *Additional procedures.* The FOIA Officer shall provide written notice to the requester if the FOIA Officer decides that the determination cannot be made within the time limit described in paragraph (c)(3)(i) of this section. The notice shall afford the requester an opportunity to limit the scope of the request to the extent necessary for the

FOIA Officer to process it within that time limit or an opportunity to arrange a longer period for processing the request.

(d) *Appeals*—(1) *Initiating appeals*. Requesters not satisfied with the FOIA Officer's written decision may request SIGAR's FOIA Appellate Authority to review the decision. Appeals must be delivered in writing within 60 days of the date of the decision and shall be addressed to the FOIA Appellate Authority, Office of Privacy, Records & Disclosure, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to Fax appeals to (703) 601-3804 or email to [sigar.pentagon.gencoun.mbx.foia@mail.mil](mailto:sigar.pentagon.gencoun.mbx.foia@mail.mil). An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Appellate Authority should grant the appeal.

(2) *Appeal decisions*. The Appellate Authority shall ordinarily decide the appeal within 20 days (except Saturdays, Sundays and federal holidays) from the date it receives the appeal. If the Appellate Authority denies the appeal in full or part, the Appellate Authority shall promptly notify the requester in writing of the Appellate Authority's decision and the provisions for judicial review. If the Appellate Authority grants the appeal, the FOIA Officer shall notify the requester in writing and shall make available to the requester copies of the releasable records once the requester pays any fees that SIGAR assesses under §§ 9301.8 through 9301.10.

## Costs

### § 9301.7 Definitions.

For purposes of this subpart:

(a) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(b) *Direct costs* means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

(c) *Duplicate* means to copy records to respond to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(d) *Educational institution* means a preschool, a public or private

elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly research.

(e) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(g) *Review* means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

(h) *Search for* means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

### § 9301.8 Fees in general.

SIGAR shall charge reasonable fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. SIGAR may assess charges for time spent searching for records even if SIGAR is unable to locate the records or if the records are located and determined to be exempt from disclosure. In general, SIGAR shall apply the following fee schedule, subject to §§ 9301.9 through 9301.11:

(a) *Manual searches*. Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee).

(b) *Electronic searches*. Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews*. Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the initial review of records located in response to commercial use requests.

(d) *Duplication*. Fees for copying paper records or for printing electronic

records shall be assessed at a rate of \$.10 per page. For other types of copies such as disks or audio visual tapes, SIGAR shall charge the direct cost of producing the document(s). If duplication charges are expected to exceed \$25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 9301.6(c)(1) shall be deemed to begin when the FOIA Officer receives the revised request.

(e) *Advance payments required*. (1) The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(i) The FOIA Officer estimates that the fee will exceed \$250; or

(ii) The requester has previously failed to pay a fee in a timely fashion.

(2) When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 9301.6(c)(1) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee*. SIGAR shall not charge a fee to any requester if:

(1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) SIGAR fails to comply with any time limit under the FOIA for responding to a request for records where no unusual or exceptional circumstances apply.

### § 9301.9 Fees for categories of requesters.

SIGAR shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters*. In responding to commercial use requests, SIGAR shall assess fees that recover the full direct costs of searching for, reviewing and duplicating records.

(b) *Educational institutions*. SIGAR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media*. SIGAR shall provide records to requesters in this category for the cost

of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* SIGAR shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

#### § 9301.10 Other charges.

SIGAR may apply other charges, including the following:

(a) *Special charges.* SIGAR shall recover the full cost of providing special services, such as sending records by an overnight delivery service, to the extent that SIGAR elects to provide them.

(b) *Interest charges.* SIGAR may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

#### § 9301.11 Payment and waiver.

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requestor of the applicable fees, the Officer shall inform the requestor of where to send the payment.

(b) *Waiver.* SIGAR may waive all or part of any fee provided for in §§ 9301.8 through 9301.9 when the FOIA Officer deems that disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requesters may request a waiver in their initial FOIA request letter. Requests for a fee waiver should explain how the information requested contributes to the public's understanding of the operations or activities of the government. In determining whether a fee should be waived, the FOIA Officer may consider whether:

(1) The subject matter specifically concerns identifiable operations or activities of the government;

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

#### Subpart B—Privacy Act

**Authority:** Privacy Act of 1974, Pub. L. 93–579, 88 Stat. 1896, codified at 5 U.S.C. 552a(f).

#### § 9301.12 Purpose and scope.

The purpose of this subpart is to provide certain safeguards for an individual against the invasion of his or her personal privacy by SIGAR. This subpart is promulgated pursuant to the requirements applicable to all federal agencies contained in 5 U.S.C. 552a(f).

#### § 9301.13 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by SIGAR contains a record pertaining to them should address their inquiries to the Privacy Officer, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601–3804 or by email to [sigar.pentagon.gen-coun.mbx.privacy@mail.mil](mailto:sigar.pentagon.gen-coun.mbx.privacy@mail.mil). The written inquiry should contain a specific reference to the system of records maintained by the SIGAR listed in the SIGAR Notice of Systems of Records, or it should describe the type of record in sufficient detail reasonably to identify the system of records. Notice of SIGAR systems of records subject to the Privacy Act will be published in the **Federal Register**, posted on the SIGAR public facing Web site, and copies of the notices will be available upon request to the Privacy Officer when so published. A compilation of such notices will also be made and published by the Office of the Federal Register, in accordance with 5 U.S.C. 552a(f).

(b) At a minimum, the request should contain sufficient identifying information to allow SIGAR to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances when the requester's identification is insufficient to ensure disclosure to the individual to whom

the information pertains in view of the sensitivity of the information, SIGAR reserves the right to solicit from the person requesting access to a record additional identifying information.

(c) Ordinarily the person requesting will be informed whether the named system of records contains a record pertaining to such person within 10 days of such a request (excluding Saturdays, Sundays and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within the 10 days, the Privacy Officer will inform the person making the request the reasons for the delay and the date on which a response may be anticipated.

#### § 9301.14 Requests for access.

(a) *Requirement for written requests.* An individual desiring to gain access to a record pertaining to him or her in a system of records maintained by SIGAR must submit his or her request in writing in accordance with the procedures set forth in paragraph (b) of this section. Individuals employed by the SIGAR may make their requests on a regularly scheduled workday (Monday through Friday, excluding legal Federal holidays) between the hours of 9 a.m. and 5:30 p.m. Such requests for access by individuals employed by SIGAR need not be made in writing.

(b) *Procedures—(1) Content of the request.* The request for access to a record in a system of records shall be addressed to the Privacy Officer at the address cited above, and shall name the system of records or contain a concise description of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the person requesting access which is maintained by SIGAR in a system of records, the request will be considered under both the Privacy Act of 1974 and the Freedom of Information Act, depending on which would allow greater access to the records requested. The request should contain necessary information to verify the identity of the person requesting access (see paragraph (b)(2)(vi) of this section). In addition, such person should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.) as well as any other identifying information contained in and required

by the SIGAR Notice of Systems of Records.

(i) If the request for access follows a prior request under § 9301.1, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence or a copy of the SIGAR response to that request is attached. If the individual specifically desires a copy of the record, the request should so specify under § 9301.4.

(ii) [Reserved]

(2) *SIGAR action on request.* A request for access will ordinarily be answered within 10 days, except when the Privacy Officer determines otherwise, in which case the person making the request will be informed of the reasons for the delay and an estimated date by which the request will be answered. When the request can be answered within 10 days, it shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the systems of records maintained by SIGAR;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the person requesting access is unable to meet the specified date and time, alternative arrangements may be made with the Privacy Officer;

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the Privacy Officer has determined that it would not unduly impede the right of access of the person making the request.

(iv) The amount of fees charged, if any (see §§ 9301.6 and 9301.7). (Fees are applicable only to requests for copies);

(v) The name, title, and telephone number of the SIGAR official having operational control over the record; and

(vi) The documentation required by SIGAR to verify the identity of the person making the request. At a minimum, SIGAR verification standards include the following:

(A) *Current or former SIGAR Employees.* Current or former SIGAR employees requesting access to a record pertaining to them in a system of records maintained by SIGAR may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have his or her identity verified by visual observation. If the current or former SIGAR employee cannot be so identified by the official having operational control over the records, identification documentation

will be required. The employee's common access card, annuitant identification, driver licenses, or the "employee copy" of any official personnel document in the record are examples of acceptable identification validation.

(B) *Other than current or former SIGAR employees.* Individuals other than current or former SIGAR employees requesting access to a record pertaining to them in a system of records maintained by SIGAR must produce identification documentation of the type described in paragraph (b)(2)(vi)(A) of this section, prior to being granted access. The extent of the identification documentation required will depend on the type of record for which access is requested. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements will be specified in the system of records notices published by SIGAR pursuant to 5 U.S.C. 552a(e)(4).

(C) *Access granted by mail.* For records to be made accessible by mail, the Privacy Officer shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to a person making a request of information under the FOIA, 5 U.S.C. 552. When, in the opinion of the Privacy Officer the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(D) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to \$5,000. In addition, depending upon the sensitivity of the records to which access is sought, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate; e.g., statements of other individuals who can attest to the identity of the person making the request.

(E) *Access by the parent of a minor, or by a legal guardian.* A parent of a

minor, upon presenting suitable personal identification, may act on behalf of the minor to gain access to any record pertaining to the minor maintained by SIGAR in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of the documents authorizing the legal guardian to so act, and upon suitable personal identification of the guardian.

(F) *Granting access when accompanied by another individual.* When an individual requesting access to his or her record in a system of records maintained by SIGAR wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(G) *Granting access to individuals other than the subject of the record.* SIGAR will not disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, pursuant to the Privacy Act of 1974.

(H) *Denial of access for inadequate identification documentation.* If the official having operation control over the records in a system of records maintained by SIGAR determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the Privacy Officer prior to finally denying the individual access.

(vii) *Medical records.* The records in a system of records which are medical records shall be disclosed to the individual to whom they pertain in such manner and following such procedures as the Privacy Officer shall direct. When SIGAR in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, SIGAR may transmit such information to a physician named by the individual.

(viii) *Exceptions.* Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of litigation.

**§ 9301.15 Access to the accounting of disclosures from records.**

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records (including verification of identity) outlined in § 9301.14.

**§ 9301.16 Requests for copies of records.**

Rules governing requests for copies of records are the same as those for the granting of access to the records (including verification of identity) outlined in § 9301.14. (See also § 9301.19 for rules regarding fees.)

**§ 9301.17 Requests to amend records.**

(a) *Requirement for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by SIGAR must submit their request in writing in accordance with the procedures set forth herein unless this requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions. However, individuals who believe that such records are inaccurate may bring this to the attention of SIGAR.

(b) *Procedures.* (1)(i) The request to amend a record in a system of records shall be addressed to the Privacy Officer. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record in accordance with the provisions concerning access to records as set forth in this paragraph, copies of previous correspondence between the individual and SIGAR will serve in lieu of a separate description of the record.

(ii) When the individual's identity has been previously verified pursuant to § 9301.14(b)(2)(vi), further verification of identity is not required as long as the communication does not suggest that a need for verification has reappeared. If the individual's identity has not been previously verified, SIGAR may require identification validation as described in § 9301.14(b)(2)(vi). Individuals desiring assistance in the preparation of a request to amend a record should contact the Privacy Officer at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the desired proposed alternative language should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be

set forth with such particularity as to permit SIGAR to understand the basis for the request and to make an appropriate amendment to the record.

(iv) The request should also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by SIGAR of personal information merely to permit verification of records, the burden of persuading SIGAR to amend a record will be upon the individual. The individual must furnish sufficient facts or credible documentation to persuade the official in charge of the system of the inaccuracy, irrelevancy, untimeliness, or incompleteness of the record.

(2) *SIGAR action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days, excluding Saturdays, Sundays, and legal Federal holidays. In the event a decision cannot be made within this timeframe, the individual making the request will be informed within 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(i) The decision of SIGAR whether to grant in whole, or deny any part of the request to amend the record.

(ii) The reasons for the determination for any portion of the request which is denied.

(iii) The name and address of the official with whom an appeal of the denial may be lodged.

(iv) The name and address of the official designated to assist, as necessary, and upon request of, the individual making the request in the preparation of the appeal.

(v) A description of the review of the appeal within SIGAR (see § 9301.18).

(vi) A description of any other procedures which may be required of the individual in order to process the appeal.

**§ 9301.18 Request for review.**

(a) Individuals wishing to request a review of the decision by SIGAR with regard to an initial request to amend a record in accordance with the provisions of § 9301.17, should submit the request for review in writing and, to the extent possible, include the information specified in § 9301.17(a). Individuals desiring assistance in the preparation of their request for review should contact the Privacy Officer at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from SIGAR in which the request to amend was denied, and

also should state the reasons why the individual believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons, as required by § 9301.17, set forth by SIGAR in its decision denying the amendment. In order to avoid the unnecessary retention of personal information, SIGAR reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by SIGAR within 180 days of the mailing by SIGAR of its decision upon an initial request. A request for review received after the 180-day period may, at the discretion of the Privacy Officer, be treated as an initial request to amend a record.

(c) The request for review should be addressed to the Appellate Authority, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601-3804 or by email to [sigar.pentagon.gencoun.mbx.privacy@mail.mil](mailto:sigar.pentagon.gencoun.mbx.privacy@mail.mil).

(d) Final determinations on requests for reviews within SIGAR will be made by the Appellate Authority. Additional information may be requested by the Appellate Authority from the person requesting a review if necessary to make a determination.

(e) The Appellate Authority will inform the person making the request in writing of the decision on the request for review within 30 days (excluding Saturdays, Sundays and legal Federal holidays) from the date of receipt by SIGAR of the individual's request for review, unless the Appellate Authority extends the 30-day period for good cause. The extension and the reasons therefore will be sent by SIGAR to the individual within the initial 30-day period. Included in the notice of a decision being reviewed, if the decision does not grant in full the request for review, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with SIGAR setting forth the individual's reasons for his disagreement with the decision upon the request for review. The SIGAR Privacy Officer has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the

information in dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, setting forth its reasons for not making the requested changes, if SIGAR chooses to file such a statement. A copy of the individual's statement, and if it chooses, SIGAR's statement, will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

#### § 9301.19 Schedule of fees.

(a) *Prohibitions against charging fees.* Individuals will not be charged for:

(1) The search and review of the record;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access; or

(3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(b) *Waiver.* The Privacy Officer may, at no charge, provide copies of a record if it is determined that the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* Fees will be charged as provided below except as provided in paragraphs (a) and (b) of this section.

(1) Duplication of records. Records will be duplicated at a rate of \$.10 per page for copying of 4 pages or more. There is no charge for copying fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than \$25, the person making the request shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed \$25, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the person requesting to consult with the Privacy Officer in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of individuals making the request.

(3) Fees must be paid in full prior to issuance of requested copies. In the event the person requesting is in arrears for previous requests copies will not be provided for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Privacy

Officer, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202.

(5) A receipt for fees paid will be given upon request.

Dated: March 12, 2012.

**Steven J Trent,**

*Acting Inspector General, Special Inspector General for Afghanistan Reconstruction.*

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## SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

### 5 Part 9302

**RIN 3460-AA02**

#### Requests for Testimony or the Production of Records in a Court or Other Proceedings in Which the United States Is Not a Party

**AGENCY:** Special Inspector General for Afghanistan Reconstruction.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule establishes procedures for the public to obtain the production or disclosure of information and documents of Special Inspector General for Afghanistan Reconstruction (SIGAR) in connection with legal proceedings in which neither the United States nor the SIGAR is a party. It sets forth the procedures used when determining whether SIGAR employees will be permitted to testify or provide records relating to their official duties when they are subpoenaed or otherwise requested to testify. The rule also specifies the criteria that SIGAR officials are to use when deciding whether to allow an employee to testify or provide records.

**DATES:** This interim final rule is effective March 16, 2012. Written comments may be submitted by April 16, 2012.

**ADDRESSES:** Submit written comments to Hugo Teufel, Acting General Counsel, email: [hugo.teufel.civ@mail.mil](mailto:hugo.teufel.civ@mail.mil), Special Inspector General for Afghanistan Reconstruction, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Hugo Teufel, Acting General Counsel, at (703) 703-545-5990, email: [hugo.teufel.civ@mail.mil](mailto:hugo.teufel.civ@mail.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), which created the Special Inspector General for

Afghanistan Reconstruction (SIGAR). Under 5 U.S.C. 301, heads of Executive or military departments may prescribe regulations governing the conduct of its employees and the custody, use, and preservation of the department's records, papers, and property. Many departments and agencies have promulgated such regulations to provide procedures for the disclosure of official records and information.

Generally, these are termed *Touhy* regulations, after the Supreme Court's decision in *United States ex rel. Touhy v. Regan*, 340 U.S. 462 (1951). In that case, the Supreme Court held that an agency employee could not be held in contempt for refusing to disclose agency records or information when following instructions of his or her supervisor regarding the disclosure that were issued pursuant to agency regulations. As such, an agency's *Touhy* regulations are the instructions agency employees are to follow when those employees receive requests or demands to testify or otherwise disclose agency records or information.

SIGAR's proposed *Touhy* regulations provide generally that employees of SIGAR may not disclose documents or information in response to a demand or order of a court or any other authority without first being authorized by the agency to do so. The purpose of these regulations is to conserve valuable agency resources, protect SIGAR employees from becoming enmeshed in litigation, and to protect sensitive Government information and decision making processes within the confines of the law. In order to establish procedures to facilitate public interaction with SIGAR, SIGAR is issuing proposed and interim final regulations.

##### II. The Interim Final Rule

This interim final rule establishes procedures governing the disclosure of information and records in connection with court litigation and certain other types of proceedings.

##### III. Procedural Requirements

This interim final rule is generally similar to the *Touhy* procedures concerning the disclosure of information in litigation that have been adopted by other agencies. Further, this rule relates to agency management and personnel. Accordingly, SIGAR has determined that notice and public procedure thereon are impracticable, unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). For the same reasons, SIGAR has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C.