

may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the FOIA. Section 552(c)(2) of FOIA allows the exclusion of informant records, unless the existence of the informant has been officially confirmed.

§ 2002.21 Effect of denial of request.

Denial of a request shall terminate the authority of the Assistant Inspector General or his or her designee to release or disclose the requested record, which thereafter may not be made publicly available except with express authorization of the Inspector General, Deputy Inspector General, or Counsel to the Inspector General.

§ 2002.23 Administrative review.

(a) Review is available only from a written determination denying a request for a record and only if a written request for review is filed within 90 days after issuance of the written determination. If mailed, the requester's letter of appeal must be postmarked within 90 calendar days of the date of the letter of determination. If the letter of appeal is transmitted electronically or by a means other than the United States Postal Service, it must be received in the appropriate office by the close of business on the 90th calendar day after the date of the letter of determination. Before seeking court review of an adverse determination, a requester must exhaust their administrative remedies under this section.

(b) A review may be initiated by sending a request for review to the Office of Inspector General; Department of Housing and Urban Development; 451 Seventh Street SW, Room 8256, Washington, DC 20410 or to FOIArequests@hudoig.gov. In order to enable the OIG to comply with the time limitations set forth in § 2002.17, both the envelope containing the request for review and the letter itself should clearly indicate that the subject is a Freedom of Information Act request for review. Each request for review must contain the following:

- (1) A copy of the original request;
- (2) A copy of the written denial; and
- (3) A statement of the circumstances, reasons, or arguments advanced in sup-

port of disclosure of the original records requested.

(c) Review will be made promptly by the Deputy Inspector General, or designee, on the basis of the written record. The OIG will decide an appeal of a denial of a request to expedite processing of a FOIA request within 10 working days of receipt of the appeal. The OIG will make a determination on all other appeals within 20 working days of receipt, unless unusual circumstances require the OIG to extend the time for an additional 10 working days.

(d) The time of receipt for processing of a request is the time it is received by the Inspector General. If a request is misdirected by the requester and is received by one other than the Inspector General, the OIG official who receives the request will forward it promptly to the Inspector General and will advise the requester about the delayed time of receipt.

(e) The decision after review will be in writing, will constitute final agency action on the request, and, if the denial of the request for records is in full or in part upheld, the Inspector General will notify the person making the request of his or her right to seek judicial review under 5 U.S.C. 552(a)(4).

(f) Adverse decisions will include the name and contact information of dispute resolution services that offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation.

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.
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AUTHORITY: 5 U.S.C. 552a; 5 U.S.C. App. 3 (Inspector General Act of 1978); 42 U.S.C. 3535(d).

SOURCE: 57 FR 62142, Dec. 29, 1992, unless otherwise noted.

§ 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.

For purposes of this part:

Department means the OIG, except that in the context of §§ 16.1(d); 16.11(b) (1), (3), and (4); and 16.12(e), when those sections are incorporated by reference, the term means the Department of Housing and Urban Development.

Privacy Act Officer means an Assistant Inspector General.

Privacy Appeals Officer means the Inspector General.

[59 FR 14098, Mar. 25, 1994]

§ 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

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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.

[57 FR 62142, Dec. 29, 1992, as amended at 59 FR 14098, Mar. 25, 1994]

§ 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," "Name Indices System of the Office of Inspector General," and "AutoInvestigation 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 in paragraphs (a)(1) through (6) of this section.

(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]

[57 FR 62142, Dec. 29, 1992, as amended at 65 FR 50904, Aug. 21, 2000]

§ 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,” “Name Indices System of the Office of Inspector General,” and “AutoInvestigation 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 in paragraphs (a) (1) through (4) of this section.

(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

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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,” “Name Indices System of the Office of Inspector General,” and “Autoinvestigation 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 fall 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.

[57 FR 62142, Dec. 29, 1992, as amended at 65 FR 50904, Aug. 21, 2000]

PART 2004—SUBPOENAS AND PRODUCTION IN RESPONSE TO SUBPOENAS OR DEMANDS OF COURTS OR OTHER AUTHORITIES

Subpart A—General Requirements

Sec.

- 2004.1 Scope and purpose.
- 2004.2 Applicability.
- 2004.3 Definitions.

Subpart B—Office of Inspector General Subpoenas

- 2004.10 Service of an Office of Inspector General subpoena.

Subpart C—Requests for Testimony and Production of Documents

- 2004.20 General prohibition.
- 2004.21 Factors OIG will consider.
- 2004.22 Filing requirements for demands or requests for documents or testimony.
- 2004.23 Service of subpoenas or requests.
- 2004.24 Processing demands or requests.
- 2004.25 Final determination.
- 2004.26 Restrictions that apply to testimony.
- 2004.27 Restrictions that apply to released records.
- 2004.28 Procedure in the event of an adverse ruling.
- 2004.29 Fees.

AUTHORITY: Inspector General Act of 1978, as amended (5 U.S.C. app.) and 42 U.S.C. 3535(d).

SOURCE: 68 FR 3366, Jan. 23, 2003, unless otherwise noted.

Subpart A—General Requirements

§ 2004.1 Scope and purpose.

(a) This part sets forth the policy for service of a subpoena issued by the Office of Inspector General (OIG), and policies and procedures that you must follow when you submit a demand or request to an employee of the OIG to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) The OIG intends these provisions to:

- (1) Promote economy and efficiency in its programs and operations;
- (2) Minimize the possibility of involving OIG in controversial issues not related to OIG’s functions;
- (3) Maintain OIG’s impartiality among private litigants where OIG is not a named party; and
- (4) Protect sensitive, confidential information and the deliberative processes of OIG.

(c) In providing for these requirements, OIG does not waive the sovereign immunity of the United States.