

§5b.12

preamble for the final rulemaking document under which the exemption was promulgated. These final rulemaking documents were published in the FEDERAL REGISTER and may be obtained from the Department of Education by mailing a request to the following address: U.S. Department of Education, Privacy Act Officer, Office of the Chief Information Officer, Regulatory Information Management Group, Washington, DC 20202-4651.

(f) *Notification of or access to records in exempt systems of records.* (1) If a system of records is exempt under this section, an individual may nonetheless request notification of or access to a record in that system. An individual shall make requests for notification of or access to a record in an exempt system or records in accordance with the procedures of §5b.5 of this part.

(2) An individual will be granted notification of or access to a record in an exempt system but only to the extent that notification or access would not reveal the identity of a source who furnished the record to the Department under an express promise, and, prior to September 27, 1975, an implied promise, that his identity would be held in confidence if—

(i) The record is in a system of records or that portion of a system of records that is exempt under subsection (k)(2), but not under subsection (j)(2), of the Act and the individual has been, as a result of the maintenance of the record, denied a right, privilege, or benefit to which he or she would otherwise be eligible; or

(ii) The record is in a system of records that is exempt under subsection (k)(5) of the Act.

(3) If an individual is not granted notification of or access to a record in a system of records exempt under subsections (k)(2) (but not under subsection (j)(2)) and (k)(5) of the Act in accordance with this paragraph, he or she will be informed that the identity of a confidential source would be revealed if notification of or access to the record were granted to the individual.

(g) *Discretionary actions by the responsible Department official.* Unless disclosure of a record to the general public is otherwise prohibited by law, the re-

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sponsible Department official may, in his or her discretion, grant notification of or access to a record in a system of records that is exempt under this section. Discretionary notification of or access to a record in accordance with this paragraph will not be a precedent for discretionary notification of or access to a similar or related record and will not obligate the responsible Department official to exercise his or her discretion to grant notification of or access to any other record in a system of records that is exempt under this section.

[58 FR 44424, Aug. 20, 1993, as amended at 64 FR 31066, June 9, 1999; 69 FR 12246, Mar. 15, 2004; 73 FR 61355, Oct. 16, 2008]

§5b.12 Contractors.

(a) All contracts entered into on or after September 27, 1975 which require a contractor to maintain or on behalf of the Department to maintain, a system of records to accomplish a Department function must contain a provision requiring the contractor to comply with the Act and this part.

(b) All unexpired contracts entered into prior to September 27, 1975 which require the contractor to maintain or on behalf of the Department to maintain, a system of records to accomplish a Department function will be amended as soon as practicable to include a provision requiring the contractor to comply with the Act and this part. All such contracts must be so amended by July 1, 1976 unless for good cause the appeal authority identified in §5b.8 of this part authorizes the continuation of the contract without amendment beyond that date.

(c) A contractor and any employee of such contractor shall be considered employees of the Department only for the purposes of the criminal penalties of the Act, 5 U.S.C. 552a(i), and the employee standards of conduct listed in appendix A of this part where the contract contains a provision requiring the contractor to comply with the Act and this part.

(d) This section does not apply to systems of records maintained by a contractor as a result of his management discretion, e.g., the contractor's personnel records.