

maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Act, maintain an accounting in the specified form of all disclosures of records by the Department to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(j) Disclose Privacy Act or JRA records only as permitted by 5 U.S.C. 552a(b).

§ 5.35 Sanctions and penalties.

Each component will inform its employees and contractors of the Privacy Act's civil liability provisions (5 U.S.C. 552a(g)) and criminal penalty provisions (5 U.S.C. 552a(i)) as they apply to Privacy Act and JRA complaints.

§ 5.36 Other rights and services.

Nothing in this subpart will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act or JRA.

Subpart C—Disclosure of Information in Litigation

SOURCE: 68 FR 4070, Jan. 27, 2003, unless otherwise noted.

§ 5.41 Purpose and scope; definitions.

(a) This subpart C sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints or other requests or demands directed to the Department of Homeland Security (Department) or to any Department employee or former employee in connection with federal or state litigation arising out of or involving the performance of official activities of the Department; and

(2) The oral or written disclosure, in response to subpoenas, orders, or other requests or demands of federal or state judicial or quasi-judicial or administrative authority as well as state legislative authorities (collectively, "demands"), whether civil or criminal in nature, or in response to requests for

depositions, affidavits, admissions, responses to interrogatories, document production, interviews, or other litigation-related matters, including pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively, "requests"), of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired while the subject of the demand or request is or was employed by the Department, or served as Secretary of the Department, as part of the performance of that person's duties or by virtue of that person's official status.

(b) The provisions established by this subpart shall apply to all Department components that are transferred to the Department. Except to the extent a Department component has adopted separate guidance governing the subject matter of a provision of this subpart, the provisions of this subpart shall apply to each component of the Department. Departmental components may issue their own guidance under this subpart subject to the approval of the General Counsel of the Department.

(c) For purposes of this subpart, and except as the Department may otherwise determine in a particular case, the term employee includes all former Secretaries of Homeland Security and all employees of the Department of Homeland Security or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Homeland Security, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors. The procedures established within this subpart also apply to former employees of the Department where specifically noted.

(d) For purposes of this subpart, the term litigation encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards (including the Board of Appellate Review), grand juries, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This subpart

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governs, *inter alia*, responses to discovery requests, depositions, and other pre-trial, trial, or post-trial proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this subpart shall not apply to any claims against the Department by Department of Homeland Security employees (present or former), or applicants for Department employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; the Foreign Service Labor Relations Board; the Foreign Service Grievance Board; or a labor arbitrator operating under a collective bargaining agreement between the Department and a labor organization representing Department employees; or their successor agencies or entities.

(e) For purposes of this subpart, official information means all information of any kind, however stored, that is in the custody and control of the Department, relates to information in the custody and control of the Department, or was acquired by Department employees, or former employees, as part of their official duties or because of their official status within the Department while such individuals were employed by or served on behalf of the Department.

(f) Nothing in this subpart affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, Executive Order 12958 on national security information (3 CFR, 1995 Comp., p. 333), the Government in the Sunshine Act, 5 U.S.C. 552b, the Department's implementing regulations or pursuant to congressional subpoena. Nothing in this subpart permits disclosure of information by the Department, its present and former employees, or the Secretary, that is protected or prohibited by statute or other applicable law.

(g) This subpart is intended only to inform the public about Department procedures concerning the service of process and responses to demands or requests and is not intended to and does not create, and may not be relied

upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department or the United States.

(h) Nothing in this subpart affects the rules and procedures, under applicable U.S. law and international conventions, governing diplomatic and consular immunity.

(i) Nothing in this subpart affects the disclosure of official information to other federal agencies or Department of Justice attorneys in connection with litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees, or litigation in which the United States has an interest; or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations, prosecutions, or other proceedings, e.g., extradition, deportation.

§ 5.42 Service of summonses and complaints.

(a) Only the Office of the General Counsel is authorized to receive and accept on behalf of the Department summonses or complaints sought to be served upon the Department, the Secretary, or Department employees. All such documents must be sent by registered or certified mail, to the appropriate address as indicated in appendix A to this subpart. The Office of the General Counsel may also in its discretion accept service of process in person or by registered or certified mail to other addresses, as announced on the DHS website as indicated in appendix A to this subpart. The authorization for receipt shall in no way affect the requirements of service elsewhere provided in applicable rules and regulations.

(b) In the event any summons or complaint described in § 5.41(a) is delivered to an employee of the Department other than in the manner specified in this part, the recipient thereof shall decline to accept the proffered service and may notify the person attempting to make service of the Departmental regulations set forth herein.

(c) Except as otherwise provided §§ 5.42(d) and 5.43(c), the Department is not an authorized agent for service of process with respect to civil litigation