

pending receipt of instructions from the General Counsel or Deputy Director, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel or Deputy Director not to produce the material or disclose the information sought, the employee upon whom the demand was made shall respectfully decline to produce the information under *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). In this case, the Supreme Court held that a government employee could not be held in contempt for following an agency regulation requiring agency approval before producing government information in response to a court order.

(d) To achieve the purposes noted in paragraphs (a)(1) through (6) of this section, the agency will consider factors such as the following in determining whether a demand should be complied with:

- (1) The Privacy Act, 5 U.S.C. 522a;
- (2) Department of Health and Human Services statute and regulations concerning drug and alcohol treatment programs found at 42 U.S.C. 290dd and 42 CFR 2.1 *et seq.*;
- (3) The Victims Rights Act, 42 U.S.C. 10606(b);
- (4) D.C. statutes and regulations;
- (5) Any other state or federal statute or regulation;
- (6) Whether disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose;
- (7) Whether disclosure is appropriate under the relevant substantive law concerning privilege;
- (8) Whether disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection; and
- (9) Whether disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.

#### **Subpart E—Exemption of Records Systems Under the Privacy Act**

##### **§ 802.28 Exemption of the Court Services and Offender Supervision Agency System—limited access.**

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(3), (4)(G)–(I), (5) and (8), (f) and (g):

- (i) Background Investigation (CSOSA–2).

(ii) Supervision Offender Case File (CSOSA–9).

(iii) Pre-Sentence Investigations (CSOSA–10).

(iv) Supervision & Management Automated Record Tracking (SMART) (CSOSA–11).

(v) Recidivism Tracking Database (CSOSA–12).

(vi) [Reserved].

(vii) Substance Abuse Treatment Database (CSOSA–15).

(viii) Screener (CSOSA–16).

(ix) Sex Offender Registry (CSOSA–18).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a.

Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA personnel are able to formulate decisions and policies with regard to offenders, to prevent disclosure of information to offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant

to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b)(1) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(e)(3), (4)(H), (5), (8) and (g):

(i) Office of Professional Responsibility Record (OPR) (CSOSA–17).

(ii) [Reserved].

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they