

Under title 5 United States Code (U.S.C.) 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act, if the agency or component that maintains the system of records performs as its principal function activities pertaining to the enforcement of criminal laws. The function of the Office of Security and Law Enforcement's Police and Security Service is to provide for the maintenance of law and order and the protection of persons and property on VA property.

The system of records "Police and Security Records—VA (103VA07B)" was created in major part to support the criminal law related activities assigned to the Police and Security Service under the authority of 38 U.S.C. 901. These activities constitute the principal function of this staff. In addition to the principal functions pertaining to the enforcement of criminal laws, the Police and Security Service may receive and investigate complaints or information from various sources concerning the possible existence of activities constituting non-criminal violations of law, rules or regulations or substantial and specific danger to public safety.

Based upon the foregoing, VA exempts this system of records to the extent that it encompasses information pertaining to criminal law related activities from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(j)(2):

5 U.S.C. 552a(c)(3) and (4)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1), (2) and (3)
5 U.S.C. 552a(e)(4)(G), (H) and (I)
5 U.S.C. 552a(e)(5) and (8)
5 U.S.C. 552a(f)
5 U.S.C. 552a(g)

Also, VA exempts this system of records to the extent that it does not encompass information pertaining to criminal law related activities under 5 U.S.C. 552a(j)(2) from the following provisions of the Privacy Act of 1974 as permitted by 5 U.S.C. 552a(k)(2):

5 U.S.C. 552a(c) (3)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4)(G), (H) and (I)
5 U.S.C. 552a(f)

The exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Police and Security Service, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to

maintain access to sources of information and to avoid endangering these sources and Police and Security personnel.

Based on the rationale set forth in the proposed rule, we now adopt the proposed rule as a final rule without change.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule applies only to individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: May 16, 2003.

Anthony J. Principi,
Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 1 is amended as follows:

PART I—GENERAL

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 1.582 is amended by adding paragraph (d) preceding the authority citation at the end of the section, to read as follows:

§ 1.582 Exemptions.

* * * * *

(d) *Exemption of Police and Security Records.* VA provides limited access to one Security and Law Enforcement System of Records, Police and Security Records—VA (103VA07B).

(1) The investigations records and reports contained in this System of Records are exempted [pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3) and (c)(4); (d); (e)(1) through (e)(3), (e)(4)(G) through (e)(4)(I), (e)(5), and (e)(8); (f); and (g); in addition, they are exempted [pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3); (d); (e)(1), (e)(4)(G) through (e)(4)(I); and (f).

(2) These records contained in the Police and Security Records—VA (103VA076B) are exempted for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects to the existence of the investigation and reveal that they are subjects of that investigation. Providing subjects with information concerning the nature of the investigation could result in alteration or destruction of evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) The application of Privacy Act subsections (c)(4); (d); (e)(4)(G) and (e)(4)(H); (f); and (g) could interfere with investigative and enforcement proceedings, threaten the safety of individuals who have cooperated with authorities, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This could compromise the ability to conduct investigations and to identify, detect