

# OIG Manual

U.S. Department of Labor  
Office of Inspector General



## Transmittal Sheet

Date: SEP 15 2003

IGD 5-300

**INFORMATION:** Procedures for Handling  
Freedom of Information Act (FOIA) and  
Privacy Act requests

This directive prescribes policies, establishes uniform procedures, and assigns responsibilities for responding to Freedom Of Information Act (FOIA) and Privacy Act requests for Office of Inspector General (OIG) records.

A handwritten signature in black ink, appearing to read "Gordon S. Heddell". The signature is written in a cursive style with a large initial "G".

**GORDON S. HEDDELL**  
Inspector General

**INSTRUCTIONS:** This directive rescinds IGD 5-300-1, Procedures For Handling Freedom Of Information, Privacy Act And Congressional Requests, dated 8/2/83.



## Inspector General Directive

Chapter: 5 - Information

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Title: PROCEDURES FOR HANDLING  
FREEDOM OF INFORMATION ACT  
AND PRIVACY ACT REQUESTS

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Number: 5-300

Date: September 5, 2003

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### 1. PURPOSE.

This directive prescribes policies, establishes uniform procedures, and assigns responsibilities for responding to Freedom Of Information Act (FOIA) and Privacy Act requests for Office of Inspector General (OIG) records. This directive rescinds IGD 5-300-1, Procedures For Handling Freedom Of Information, Privacy Act And Congressional Requests, dated 8/2/83.

### 2. SCOPE.

This directive applies to all OIG offices and employees.

### 3. BACKGROUND.

a. Freedom of Information Act (FOIA). The [Freedom of Information Act \(5 USC 552\)](#) is a disclosure statute. It requires government agencies to publish and release information about their procedures, rules, and regulations, and to make available for public inspection and copying such records as agency final opinions, statements of policy, interpretations of law, administrative staff manuals, and instructions having an effect on the public. Records requested (either by mail, electronic mail or facsimile), which are sufficiently described and identifiable, are to be made available to the public within twenty (20) working days from the receipt of the request (either electronically or hardcopy).

When appropriate, agencies may utilize various statutory exemptions to withhold records which are requested under the FOIA. See Appendix A. However, in each case the justification for withholding agency documents, or parts thereof, must be explained fully and in writing. FOIA requestors may appeal non-disclosure determinations to the Solicitor of Labor and further appeals are available in federal District Court. The FOIA is applicable to agency records which already exist or may be compiled without great difficulty or burden. Agencies do not have to create records in response to FOIA requests, nor do they have to respond to questions.

b. Privacy Act. The [Privacy Act of 1974 \(5 USC 552a\)](#) is both a disclosure and a non-disclosure statute. It applies to records which contain certain personal information about individuals, for example, information about an individual's education, financial transactions, medical history, criminal history, and employment history. The Privacy Act requires agencies to provide individuals with access to most records pertaining to themselves which are maintained under their name or personal identifier. Individuals are permitted to obtain copies of these records and to request corrections or amendments to them unless the applicable "system of records" is exempt from disclosure. For example, OIG investigatory records are exempt from disclosure under the Privacy Act. At the same time, the Privacy Act prohibits agencies from disclosing most personal information to third parties. If a third party request for Privacy Act information is made from outside the Department of Labor, disclosure must fall within a published "routine use" and must be "compatible" with the reason for the collection of the information. If a third party request for Privacy Act information is made from inside the Department of Labor, the requesting party must have an articulated "need to know" the requested information. These determinations are often made on the basis of previous administrative and judicial decisions, and individual OIG employees should not make Privacy Act disclosure determinations without consulting with the OIG Disclosure Officer or the Office of Legal Services. See Section 5, "Responsibilities," *infra*. See, also, OIG IGD 5-220-02, "Collecting and Maintaining Privacy Act Information."

c. Joint FOIA/Privacy Act Requests. A request for information received by the OIG may be identified as an FOIA request, a Privacy Act request, or as a joint FOIA/Privacy Act request. The policy of the Department of Labor, including the OIG, is to treat the request, regardless of how it is identified, so that the maximum amount of information is disclosed within the constraints of the law.

#### **4. POLICY.**

The policy of the OIG is to provide full and responsible disclosure of identifiable records and information consistent with such competing public interests concerning national security, proprietary rights, personal privacy, and obligations of confidentiality as recognized by 5 USC 552 and 5 USC 552(a). Departmental policy, as well as OIG policy, provides that any written request for records (via mail, facsimile or electronic mail), regardless of whether the request cites the FOIA or the Privacy Act, will be answered in accordance with the procedures found in the FOIA, the Privacy Act, and in 29 C.F.R. Part 70.

#### **5. RESPONSIBILITIES.**

The authority for releasing OIG maintained information to parties outside the OIG rests with the Inspector General. This authority has been delegated to the Assistant Inspectors General and to the OIG Disclosure Officer.

a. All OIG employees must:

1. Accept FOIA and Privacy Act requests for OIG records which are made by members of the public. It is not necessary that the requests specifically cite or refer to the FOIA or the Privacy Act. Any request for OIG records, or information which may be contained in OIG records is considered to be a formal request.
2. Forward all FOIA and Privacy Act requests, or any other requests which ask for OIG records, to:

Disclosure Officer  
U. S. DEPARTMENT OF LABOR  
OFFICE OF INSPECTOR GENERAL  
Office of Legal Services  
Room S-5506  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

For requests which ask for audit or investigative documents and do not ask for records containing any personal information about individuals, OIG employees may provide the requested records if it is clear that the requested records, in their entirety, have already been made available to the general public, for example, OIG Semiannual Reports, final audit and evaluations reports, and press releases concerning criminal investigations. Further, such requests do not need to be in writing; telephone or other oral requests are permitted in this limited circumstance.

If there are any questions or doubts as to whether a document has been previously released to the general public, in its entirety, the request should be forwarded immediately to the OIG Disclosure Officer. If the request is not in writing, the requestor should be asked to put the request in writing and send it directly to the Disclosure Officer.

b. All AIGs and Heads of OIG Regional Offices are responsible for ensuring that their offices assist the Disclosure Officer when requested by:

1. Searching their files when requested by the Disclosure Officer;
2. Identifying all records or information responsive to a FOIA or Privacy Act request;
3. Determining and reporting the status of the matter (audit or investigation) related to the request (i.e., open, closed, pending);
4. Noting any objections the release of the records or portions thereof;
5. Forwarding the records to the Disclosure Officer.

c. The OIG Disclosure Officer is responsible for:

1. Coordinating, processing, and controlling all FOIA/Privacy Act requests directed to the OIG whether received in the National office or regional or field offices;
2. Obtaining responsive records and information from appropriate OIG component offices;
3. Maintaining appropriate records concerning FOIA/Privacy Act policies, procedures, requests, responses, and related correspondence;

4. Reviewing all documents prior to their release to the requestor;
5. Consulting with the Office of Legal Services for purposes of assisting in making a release determination;
6. Preparing response letters to requesters, and preparing FOIA/Privacy Act reports of a statistical or administrative nature which may be requested by Members of Congress, by agency officials, or as required by law.

## **6. REQUESTS FROM DEPARTMENT OF LABOR PERSONNEL OR OTHER GOVERNMENT AGENCIES.**

The provisions of the FOIA do not apply to Federal agencies, including Department of Labor offices outside the OIG. However, the guidelines established in section 5, supra, should be used for requests from DOL personnel or offices, or other federal, state, or local agencies, for OIG records. When requests are made for records containing personal information, or for other non-public records, for example, audit work papers or investigative files, OIG employees should consult with the Disclosure Officer or the Office of Legal Services.

## **7. CONGRESSIONAL REQUESTS.**

See IGD 5-500, "Congressional Requests for OIG Records."

## **8. SUBPOENAS ISSUED TO OIG EMPLOYEES.**

OIG employees who receive a subpoena or other court order to provide testimony related to their official OIG duties, or to provide OIG documents, should immediately inform the Office of Legal Services. No documents or information should be provided without consulting with the Office of Legal Services. See IGD 4-740, "Subpoenas Served on OIG Employees."

## **9. EFFECTIVE DATES AND CANCELLATION**

This directive rescinds IGD 5-300-1, Procedures For Handling Freedom Of Information, Privacy Act And Congressional Requests, dated 8/2/83.

This Directive is effective immediately and will remain in effect until canceled or superseded. It requires implementation of action items, and contains information of a continuing nature.

## THE FREEDOM OF INFORMATION ACT EXEMPTIONS AND EXCLUSIONS

The Freedom of Information Act, 5 U.S.C. Section 552, as amended, generally provides that any person has a right, enforceable in court of access to federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine of exemptions or by one of three special law enforcement record exclusions.

### EXEMPTIONS

**Exemption 1** of the FOIA, 5 U.S.C. Section 552 (b)(1) protects from disclosure national security information concerning the national defense or foreign policy, provided that it has been properly classified in accordance with the substantive and procedural requirements of an executive order. (The applicable executive order currently in effect is Executive Order 12,356).

**Exemption 2** of the FOIA exempts from mandatory disclosure records "related solely to the internal personnel rules and practices of any agency." 5 U.S.C. Section 552 (b)(2).

**Exemption 3**, as amended, allows the withholding of information prohibited from disclosure by another statute only if that statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld" 5 U.S.C. Section 552 (b)(3), as amended (emphasis added).

**Exemption 4** of the FOIA protects "trade secrets and commercial or financial information obtained from a person (which is) privileged or confidential" 5 U.S.C. Section 552(b)(4).

**Exemption 5** of the FOIA protects "inter-agency or interagency memorandums or letters which would not be available by law to a party ... in litigation with the agency." 5 U.S.C. Section 552 (b)(5).



**Exemption 6** permits the government to withhold all information about individuals in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. Section 552 (b)(6). Of course, this exemption cannot be invoked to withhold from a requester, information pertaining only to himself.

**Exemption 7** of the FOIA, as amended, protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information **(A)** could reasonably be expected to interfere with enforcement proceedings; **(B)** would deprive a person of a right to a fair trial or an impartial adjudication; **(C)** could reasonably be expected to constitute an unwarranted invasion of personal privacy; **(D)** could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; **(E)** would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or **(F)** could reasonably be expected to endanger the life or physical safety of any individual" 5 U.S.C. Section 552 (b)(7), as amended.

**Exemption 8** of the FOIA covers matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions" 5 U.S.C. Section 552 (b)(8).

**Exemption 9** of the FOIA covers "geological and geophysical information and data, including maps, concerning wells." 5 U.S.C. Section 552 (b)(9).

## EXCLUSIONS

The Freedom of Information Reform Act of 1986 created an entirely new mechanism for protecting certain especially sensitive law enforcement matters under new subsection (c) of the FOIA. These three new special protection provisions, referred to as record "exclusions," now expressly authorize federal law enforcement agencies, for especially sensitive records under certain specified circumstances, to "treat the records as not subject to the requirements of (the FOIA)." 5 U.S.C. Section 552 (C)(1), (C)(2), (C)(3), as enacted.

**The first** of these provisions, to be known as the "(c)(1) exclusion," provides as follows:

Whenever a request is made which involves access to records described in subsection (b)(7)(A) and --

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section. 5 U.S.C. Section 552 (c)(1).

**The second** exclusion created by the FOIA Reform Act applies to a narrower situation, involving the threatened identification of confidential informants in criminal proceedings. The "(c)(2) exclusion" provides as follows:

Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of (the FOIA) unless the informant's status as an informant has been officially confirmed. 5 U.S.C. Section 552 (c)(2).

**The third** of these special record exclusions pertains only to certain law enforcement records that are maintained by the FBI. The new "(C)(3) exclusion" provides as follows:

Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counter intelligence, or international terrorism, and the existence of the records is classified information as provided in (Exemption 1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of (the FOIA). 5 U.S.C. Section 552(c)(3).