

informant's usefulness in any ongoing or future investigations or protective activities and discourage members of the public from cooperating as confidential informants in any future investigations or protective activities.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative or protective efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Maintenance of Information Used in Making any Determination) because in the collection of information for law enforcement and protective purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude Secret Service agents from using their investigative and protective training, and exercising good judgment to both conduct and report on investigations or other protective activities.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, or could result in disclosure of investigative or protective techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS-2009-0048]

#### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Secret Service—004 Protection Information System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Secret Service system of records entitled the "Department of Homeland Security U.S. Secret Service—004 Protection Information System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Secret Service—004 Protection Information system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** *Effective Date:* This final rule is effective August 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Latita Payne (202-406-6370), Privacy Point of Contact, United States Secret Service, Washington, DC 20223. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77551, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of the U.S. Secret Service (Secret Service) protective functions and its criminal, civil, and administrative enforcement responsibilities. The system of records is the DHS/Secret Service—004 Protection Information system. The DHS/Secret Service—004 Protection Information system of records notice was published concurrently in the **Federal Register**, 73 FR 77733, December 19, 2008, and comments were invited on both the notice of proposed

rulemaking and system of records notice. No comments were received.

#### Public Comments

DHS received no comments on the notice of proposed rulemaking or system of records notice. DHS will implement the rulemaking as proposed.

#### List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

#### PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

**Authority:** Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph "37":

#### Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

\* \* \* \* \*

37. The DHS/Secret Service—004 Protection Information system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/Secret Service—004 Protection Information system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and the protection of the President of the United States or other individuals and locations pursuant to Sections 3056 and 3056A of Title 18. The DHS/Secret Service—004 Protection Information system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, Tribal, foreign, or international government agencies, as well as private corporate or other entities. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation or a protective inquiry to the existence of the investigation or inquiry, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or the Secret Service's protective mission. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation or inquiry, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative or inquiry process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, or protective inquiry to the existence of the investigation or inquiry, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, or inquiry to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations, law enforcement or protective activities and/or could disclose security-sensitive information that could be detrimental to homeland security or the protective mission of the Secret Service.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law or protective inquiries, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation or protective inquiry. In the interests of effective law enforcement and/or the protective mission of the Secret Service,

it is appropriate to retain all information that may aid in establishing patterns of unlawful activity, or a possible threat to an individual, location or event protected or secured by the Secret Service.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation or protective inquiry would alert the subject to the nature or existence of an investigation or inquiry, thereby interfering with the related investigation or inquiry and law enforcement or protective activities.

(e) From subsection (e)(3) (Notice to Individuals Providing Information) because providing such detailed information would impede law enforcement or protective activities in that it could compromise investigations or inquiries by: Revealing the existence of an otherwise confidential investigation or inquiry and thereby provide an opportunity for the subject of an investigation or inquiry to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative or protective efforts; reveal the identity of witnesses, thereby providing an opportunity for the subjects of the investigations or inquiries or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations or protective activities and discourage members of the public from cooperating as confidential informants in any future investigations or protective activities.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures

pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative and protective efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Maintenance of Information Used in Making any Determination) because in the collection of information for law enforcement and protective purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude Secret Service agents from using their investigative and protective training and exercising good judgment to both conduct and report on investigations or other protective activities.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative or protective techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

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