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SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

5 CFR Part 9301

Freedom of Information Act and Privacy Act Procedures

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Interim final rule.

SUMMARY: Notice is hereby given that the Special Inspector General for Afghanistan Reconstruction (SIGAR) proposes to amend its Privacy Act regulation exempting portions of an existing system of records from certain provisions of the Privacy Act of 1974, as amended. Certain portions of the Investigations Records, SIGAR-08, system of records contain criminal investigation records, investigatory material for law enforcement purposes, confidential source information and are proposed to be exempted under the Privacy Act.

DATES: This interim final rule is effective [insert date of publication in the Federal Register]. Written comments may be submitted by [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Any persons interested in commenting on the proposed exemptions to SIGAR's system of records may do so by writing to Adam Weaver, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202-3934. Comments will be made available for inspection up written request. SIGAR will make such comments available for public inspection in the Office of Privacy, Records, and Disclosure, 9th Floor, 1550 Crystal Drive, Arlington, VA 22202, on official business days between the hours of 9 a.m. and 5 p.m. Eastern time. You can make an appointment to inspect comments by telephoning (703) 545-6000. All comments, including attachments and other supporting materials, received are part of

the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Shamelle Tarver, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202-3934, (703) 545-6046.

SUPPLEMENTARY INFORMATION: On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), which created SIGAR. The Freedom of Information Act (FOIA), the Privacy Act of 1974, as amended (5 U.S.C. 522a) (PA), and certain portions of the Ethics in Government Act and Executive Order 12958, as amended, provide for access by the public to records of executive branch agencies, subject to certain restrictions and exemptions. In order to establish procedures to facilitate public interaction with SIGAR, 5 CFR part 9301 sets forth the SIGAR's regulations implementing the access provisions of those statutes and the Executive Order. The modification to the system, Investigations Records, SIGAR-08, will support the vetting of directors, officers, or other employees of organizations who apply for U.S. Government contracts, grants, cooperative agreements, or other funding. The information collected from these organizations and individuals is specifically used to conduct screening to ensure that U.S. Government funds are not used to provide support to entities or individuals deemed to be a risk to U.S. national security interests. The records may contain criminal investigation records, investigatory material for law enforcement purposes, and confidential source information. SIGAR proposes to amend 5 CFR part 9301 to exempt portions of the Investigations Records system of records from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G), (H), and (I), (e)(5) and (8), (f), (g), and (h) of

the Privacy Act of 1974, as amended (5 U.S.C. 552a), pursuant to 5 U.S.C. 552a (j)(2) and from subsections (c)(3),(d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5).

II. The Interim Final Rule

This interim final rule establishes exemptions to SIGAR's existing regulations implementing the provisions of the FOIA (5 U.S.C. 552) and the PA. The provisions of this subpart shall apply to all components of SIGAR. The FOIA provides for the disclosure of agency records and information to the public, unless that information is exempted under delineated statutory exemptions under the FOIA. The Privacy Act serves to safeguard public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store, and disseminate personal information about individuals. The procedures established here are intended to ensure that SIGAR fully satisfies its responsibility to the public to disclose agency information while simultaneously safeguarding individual privacy.

The Privacy Act serves to balance the Government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. Agencies are required to issue regulations outlining the agency's rules and procedures for implementation of the Privacy Act and its provisions within the agency. This includes procedures on how individuals may request access to information about themselves, request amendment or correction of those records, and request an accounting of disclosures of their records by SIGAR.

Procedural Requirements

This Interim Final rule amends SIGAR's implementing the FOIA and the Privacy Act to facilitate the interaction of the public with SIGAR. SIGAR's policy of disclosure follows the Presidential Memorandum of January 21, 2009, "Transparency and Openness," 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance, advising Federal agencies to apply a presumption of disclosure in FOIA decision making. This Interim Final Rule parallels the procedures currently used by other agencies to implement the FOIA and the Privacy Act. SIGAR has determined that good cause exists to publish this amendment to its FOIA and Privacy Act regulations as an interim final rule. This amendment clarifies exemptions regarding the public's access to information about SIGAR and about themselves maintained by SIGAR. The absence of well-defined exemptions to the Privacy Act regulations could impair the confidentiality and privacy rights of those who submit sensitive information to SIGAR as well as the ability of SIGAR to use that information to carry out its statutory mission. SIGAR has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Finally, notice of proposed rulemaking is not required, because the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Dated: June 6, 2014.

John F. Sopko,
Inspector General.

List of Subjects in 5 CFR Part 9301

Administrative practice and procedure, Freedom of information, Privacy.

Authority and Issuance

For the reasons set forth above, SIGAR amends 5 CFR part 9301 as follows:

PART 9301—[AMENDED]

1. The authority citation for part 9301 continues to read as follows:

Authority: 5 U.S.C. 552; Pub. L. No. 110- 175, 121 Stat. 2524 (2007); 5 U.S.C. 301 and 552; Exec. Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Exec. Order No. 13392, 70 FR 75373-75377, 3 CFR, 2006 Comp., pp. 216-200.

2. Section 9301.20 is added to read as follows:

§ 9301.20 Exemptions.

Systems of records maintained by SIGAR are authorized to be exempted from certain provisions of the Privacy Act under the general and specific exemptions set forth in the Act. In utilizing these exemptions, SIGAR is exempting only those portions of systems that are necessary for the proper functioning of SIGAR and that are consistent with the Privacy Act. Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, *e.g.*, public source materials, the applicable exemption may be waived, either partially or totally, by SIGAR, in the sole discretion of SIGAR, as appropriate.

(a) *General exemptions.* (1) Individuals may not have access to records maintained by SIGAR that were provided by another agency that has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j)(1). If such exempt records are the subject of

an access request, SIGAR will advise the requester of their existence and of the name and address of the source agency, unless that information is itself exempt from disclosure.

(2) The systems of records maintained by the Investigations Directorate (SIGAR–08), are subject to general exemption under 5 U.S.C. 552a(j)(2). All records contained in record system SIGAR-08, Investigations Records, are exempt from all provisions of the Privacy Act except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent to which they meet the criteria of section (j)(2). These exemptions are necessary to ensure the effectiveness of the investigative, judicial, and protective processes. These exemptions are necessary to ensure the proper functions of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with the enforcement of criminal laws, to avoid the disclosure of investigative techniques, to avoid the endangering of the life and safety of any individual, to avoid premature disclosure of the knowledge of potential criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

(3) The systems of records maintained by the Investigations Directorate (SIGAR–08) are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) pursuant to the provisions of 5 U.S.C. 552a(k)(1), (2), and (5). These exemptions are necessary to protect material required to be kept secret in the interest of national defense and foreign policy; to prevent individuals that are the subject of investigation from frustrating the investigatory process; to ensure the proper functioning and integrity of law enforcement activities; to prevent disclosure of investigative techniques; to maintain the confidence of foreign governments in the integrity of the procedures under which privileged or confidential information may be provided;

to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel; and to ensure the proper functioning of the investigatory process, to ensure effective determination of suitability, eligibility, and qualification for employment and to protect the confidentiality of sources of information.

(b) [Reserved]

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