



DEPARTMENT OF JUSTICE

[OMB Number 1121-NEW]

Agency Information Collection Activities; Request for Comments; Revision of the BJS Confidentiality Pledge

AGENCY: Bureau of Justice Statistics, U.S. Department of Justice.

ACTION: Notice.

SUMMARY: The Bureau of Justice Statistics (BJS), a component of the Office of Justice Programs (OJP) in the U.S. Department of Justice (DOJ), is seeking comments on revisions to the confidentiality pledge it provides to its respondents. These revisions are required by the passage and implementation of provisions of the federal Cybersecurity Enhancement Act of 2015, which requires the Secretary of the Department of Homeland Security (DHS) to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. More details on this announcement are presented in the SUPPLEMENTARY INFORMATION section below. The revisions to the confidentiality pledge were previously published in the Federal Register on March 20, 2017, allowing for a 60 day comment period. BJS received and responded to one comment.

DATES: Comments are encouraged and will be accepted for 30 days until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Questions about this notice should be addressed to the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, ATTN: Devon Adams, 810 7th Street, NW, Washington, D.C. 20531 (email: Devon.Adams@usdoj.gov; telephone: 202-307-0765 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Allina Lee by telephone at 202-305-0765

(this is not a toll-free number); by email at Allina.Lee@usdoj.gov; or by mail or courier to the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, ATTN: Allina Lee, 810 7th Street, NW, Washington, D.C. 20531. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION:

I. Abstract

Federal statistics provide key information that the Nation uses to measure its performance and make informed choices about budgets, employment, health, investments, taxes, and a host of other significant topics. Most federal surveys are completed on a voluntary basis. Respondents, ranging from businesses to households to institutions, may choose whether or not to provide the requested information. Many of the most valuable federal statistics come from surveys that ask for highly sensitive information such as proprietary business data from companies or particularly personal information or practices from individuals. BJS protects all personally identifiable information collected under its authority under the confidentiality provisions of 42 U.S.C. § 3789g. Strong and trusted confidentiality and exclusively statistical use pledges under Title 42 U.S.C. § 3789g and similar statutes are effective and necessary in honoring the trust that businesses, individuals, and institutions, by their responses, place in statistical agencies. Under statistical confidentiality protection statutes, federal statistical agencies make statutory pledges that the information respondents provide will be seen only by statistical agency personnel or their agents and will be used only for statistical purposes. These statutes protect such statistical information from administrative, law enforcement, taxation, regulatory, or any

other non-statistical use and immunize the information submitted to statistical agencies from legal process. Moreover, many of these statutes carry monetary fines and/or criminal penalties for conviction of a knowing and willful unauthorized disclosure of covered information. Any person violating the confidentiality provisions of 42 U.S.C. § 3789g may be punished by a fine of up to \$10,000, in addition to any other penalties imposed by law.

As part of the Consolidated Appropriations Act for Fiscal Year 2016 (Pub. L. No. 114-113) signed on December 17, 2015, the Congress included the Federal Cybersecurity Enhancement Act of 2015 (codified in relevant part at 6 U.S.C. § 151). This act, among other provisions, permits and requires the Secretary of Homeland Security to provide federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. The technology currently used to provide this protection against cyber malware is known as Einstein 3A. Einstein 3A electronically searches internet traffic in and out of federal civilian agencies in real time for malware signatures.

When such a signature is found, the internet packets that contain the malware signature are shunted aside for further inspection by DHS personnel. Because it is possible that such packets entering or leaving a statistical agency's information technology system may contain a small portion of confidential statistical data, statistical agencies can no longer promise their respondents that their responses will be seen only by statistical agency personnel or their agents. However, federal statistical agencies can promise, in accordance with provisions of the Federal Cybersecurity Enhancement Act of 2015, that such monitoring can be used only to protect information and information systems from cybersecurity risks, thereby, in effect, providing stronger protection to the integrity of the respondents' submissions.

Consequently, with the passage of the Federal Cybersecurity Enhancement Act of 2015, the federal statistical community has an opportunity to welcome the further protection of its confidential data offered by DHS' Einstein 3A cybersecurity protection program. The DHS cybersecurity program's objective is to protect federal civilian information systems from malicious malware attacks. The federal statistical system's objective is to endeavor to ensure that the DHS Secretary performs those essential duties in a manner that honors the statistical agencies' statutory promises to the public to protect their confidential data. DHS and the federal statistical system have been successfully engaged in finding a way to balance both objectives and achieve these mutually reinforcing objectives.

However, pledges of confidentiality made pursuant to 42 U.S.C. § 3789g and similar statutes assure respondents that their data will be seen only by statistical agency personnel or their agents. Because it is possible that DHS personnel could see some portion of those confidential data in the course of examining the suspicious Internet packets identified by Einstein 3A sensors, statistical agencies are revising their confidentiality pledges to reflect this process change. Therefore, BJS is providing this notice to alert the public to these confidentiality pledge revisions in an efficient and coordinated fashion.

II. Method of Collection

The following is the revised statistical confidentiality pledge for applicable BJS data collections, with the new line added to address the new cybersecurity monitoring activities bolded for reference only:

“The Bureau of Justice Statistics (BJS) is authorized to conduct this data collection under 42 U.S.C. § 3732. BJS is dedicated to maintaining the confidentiality of your personally identifiable information, and will protect it to the fullest extent under federal law. BJS, BJS employees, and BJS data collection agents will use the information you provide for statistical or research

*purposes only, and will not disclose your information in identifiable form without your consent to anyone outside of the BJS project team. All personally identifiable data collected under BJS's authority are protected under the confidentiality provisions of 42 U.S.C. § 3789g, and any person who violates these provisions may be punished by a fine up to \$10,000, in addition to any other penalties imposed by law. **Further, per the Cybersecurity Enhancement Act of 2015 (codified in relevant part at 6 U.S.C. § 151), federal information systems are protected from malicious activities through cybersecurity screening of transmitted data.** For more information on the federal statutes, regulations, and other authorities that govern how BJS, BJS employees, and BJS data collection agents collect, handle, store, disseminate, and protect your information, see the BJS Data Protection Guidelines - (https://www.bjs.gov/content/pub/pdf/BJS_Data_Protection_Guidelines.pdf)."*

The following listing shows the current BJS Paperwork Reduction Act (PRA) OMB numbers and information collection titles whose confidentiality pledges will change to reflect the statutory implementation of DHS' Einstein 3A monitoring for cybersecurity protection purposes.

OMB Control No.	Information Collection Title
1121-0094	Deaths in Custody Reporting Program
1121-0065	National Corrections Reporting Program

Affected Public: Survey respondents to applicable BJS information collections.

Total Respondents: Unchanged from current collection.

Frequency: Unchanged from current collection.

Total Responses: Unchanged from current collection.

Average Time per Response: Unchanged from current collection.

Estimated Total Burden Hours: Unchanged from current collection.

Estimated Total Cost: Unchanged from current collection.

BJS has also added information about the Cybersecurity Enhancement Act and Einstein 3A to the BJS Data Protection Guidelines to provide more details to interested respondents about the new cybersecurity monitoring requirements. The following text has been added to Section V.

Information System Security and Privacy Requirements:

“The Cybersecurity Enhancement Act of 2015 (codified in relevant part at 6 U.S.C. § 151) required the Department of Homeland Security (DHS) to provide cybersecurity protection for federal civilian agency information technology systems and to conduct cybersecurity screening of the Internet traffic going in and out of these systems to look for viruses, malware, and other cybersecurity threats. DHS has implemented this requirement by instituting procedures such that, if a potentially malicious malware signature were found, the Internet packets that contain the malware signature would be further inspected, pursuant to any required legal process, to identify and mitigate the cybersecurity threat. In accordance with the Act’s provisions, DHS conducts these cybersecurity screening activities solely to protect federal information and information systems from cybersecurity risks. To comply with the Act’s requirements and to increase the protection of information from cybersecurity threats, OJP facilitates, through the DOJ Trusted Internet Connection and DHS’s EINSTEIN 3A system, the inspection of all information transmitted to and from OJP systems including, but not limited to, respondent data collected and maintained by BJS.”

The Census Bureau collects data on behalf of BJS for BJS’s National Crime Victimization Survey (NCVS) and its supplements. These collections are protected under Title 13 U.S.C. Section 9. The Census Bureau issued a Federal Register notice (FRN) to revise its confidentiality pledge language to address the new cybersecurity screening requirements (new line bolded for reference only):

*“The U.S. Census Bureau is required by law to protect your information. The Census Bureau is not permitted to publicly release your responses in a way that could identify you. **Per the Federal Cybersecurity Enhancement Act of 2015, your data are protected from cybersecurity risks through screening of the systems that transmit your data.**”*

The following listing includes the BJS information collections that are administered by the Census Bureau whose confidentiality pledge will be revised.

OMB Control No.	Information Collection Title
1121-0111	NCVS
1121-0184	School Crime Supplement to the NCVS
1121-0317	Identity Theft Supplement to the NCVS
1121-0260	Police Public Contact Supplement to the NCVS
1121-0302	Supplemental Victimization Survey to the NCVS
<i>Affected Public:</i> Survey respondents to applicable BJS information collections.	

Total Respondents: Unchanged from current collection.

Frequency: Unchanged from current collection.

Total Responses: Unchanged from current collection.

Average Time per Response: Unchanged from current collection.

Estimated Total Burden Hours: Unchanged from current collection.

Estimated Total Cost: Unchanged from current collection.

The 60-day FRN submitted by the Census Bureau can be accessed at

<https://www.federalregister.gov/documents/2016/12/23/2016-30959/agency-information-collection-activities-request-for-comments-revision-of-the-confidentiality-pledge>. The Census Bureau is currently reviewing and preparing responses to the comments it received and will publish a 30-day FRN to solicit additional public comment. Comments on the Census Bureau's revised confidentiality pledge should be submitted directly to the point-of-contact listed in the notice.

III. Data

OMB Control Number: 1121-0358.

Legal Authority: 44 U.S.C. 3506(e) and 42 U.S.C. 3789g

Form Number(s): None.

IV. Request for Comments

Comments are invited on the efficacy of BJS's revised confidentiality pledge above. Comments submitted in response to this notice will become a matter of public record. BJS received one comment during the 60-day notice period. The commenter questioned why BJS chose not to specifically reference who (cybersecurity personnel, or DHS personnel) would conduct the cybersecurity screening activities authorized by the Cybersecurity Act of 2015. BJS responded with information about the process it followed to revise the confidentiality pledge, including using the results of pretesting that other statistical agencies conducted on different versions of revised language and coordinating with OJP's Office of General Counsel to ensure that the new pledge language fulfills BJS's statutory obligation to inform respondents that their data may be accessed by others for non-statistical purposes. BJS also directed the commenter to the information added to the BJS Data Protection guidelines (Section V. Information System Security and Privacy Requirements) that provides more details about the Act and the associated monitoring activities. BJS is not proposing edits to its confidentiality pledge, though it will consider conducting pretesting activities on its various respondent populations and developing more detailed guidance for staff and contractors on how to answer respondents' questions about the Act.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 17, 2017

Melody Braswell,

Department Clearance Officer for PRA,

U.S. Department of Justice.

Billing Code: 4410-18

[FR Doc. 2017-10345 Filed: 5/19/2017 8:45 am; Publication Date: 5/22/2017]