



Billing Code: 4410-30

DEPARTMENT OF JUSTICE

[CPCLO Order No. 004-2020]

Privacy Act of 1974; Systems of Records

AGENCY: Executive Office for Immigration Review, United States Department of Justice.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A-108, notice is hereby given that the Executive Office for Immigration Review (hereinafter EOIR), a component within the United States Department of Justice (DOJ) or (Department), proposes to update and reissue a current DOJ System of Records, entitled EOIR-003 Practitioner Complaint-Disciplinary Files. EOIR-003 will be renamed, “Attorney Discipline System.” The component proposes this update and reissuance to notify the public of the expanded functionality of this system, which now includes records of the adjudications of Attorney Discipline proceedings. This system will also adopt new and modified routine uses to better reflect the operational use of the system.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 145 N Street, NE, Suite 8W.300, Washington, DC 20530, or by facsimile at 202-307-0693 or by email at privacy.compliance@usdoj.gov. To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michelle Curry, EOIR Senior Component Official for Privacy, EOIR Office of the General Counsel, 5107 Leesburg Pike Suite 2600, Falls Church, VA 22041, or by phone at 703-305-0990, or by email at michelle.curry@usdoj.gov.

SUPPLEMENTARY INFORMATION:

To protect the public, preserve the integrity of immigration proceedings and adjudications, and maintain high professional standards among immigration practitioners, EOIR implemented the regulation, “Professional Conduct for Practitioners – Rules and Procedures,” 65 FR 39513 (June 27, 2000). EOIR modified the rule in 2008 to increase the number of grounds for discipline, improve the clarity and uniformity of the rules, and incorporate miscellaneous technical and procedural changes. *See* “Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances,” 73 FR 76914 (Dec. 18, 2008). Effective January 18, 2017, the rules were again amended to extend discipline to recognized organizations and to make minor modifications to the reinstatement process. *See* “Recognition of Organizations and Accreditation of Non-Attorney Representatives,” 81 FR 92346 (Dec. 19, 2016). The term “practitioners” applies to attorneys and representatives who are authorized to represent aliens (but not attorneys representing the government) before EOIR’s immigration court and the Board of Immigration Appeals (BIA or Board), EOIR’s appellate component. The 2017 rule amendments have resulted in revisions to the Attorney Discipline System.

The EOIR Attorney Discipline Program resides in the Office of the General Counsel (OGC). Proceedings created as a result of the Attorney Discipline Program may include paper and electronic files created by the Disciplinary Counsel, who is the program lead, attorneys supporting the program, or program staff, and paper and electronic adjudication files of the BIA, the Office of Chief Immigration Judge (OCIJ), and/or the Office of the Chief Administrative Hearing Officer (OCAHO). The new Attorney Discipline System expands the prior system by developing an electronic database that contains information to track complaints from receipt through final disposition. The system is segregated by need to know user controls and allows authorized users to track various stages of the proceedings. The system also contains templates to generate letters, notices, and decisions used in the attorney discipline process. The system can generate reports by case status and disposition.

EOIR has applied routine uses to this system. Having these routine uses permits EOIR the necessary flexibility to disclose information in ways that are compatible with the purposes for which the information was collected. Specifically, EOIR has modified the language in the routine uses in paragraphs: 1-7; 9; 11 and 12 to conform their language to the current DOJ

practice to describe the adopted uses. These modifications do not materially affect pre-existing routine uses as they are merely stylistic changes. EOIR has added a new routine use 10 to inform the public that the system and Attorney Discipline Program may be supported by contractors, grantees, experts, consultants, or students who will access the system on a need to know basis when necessary to accomplish an agency function related to this system of records. EOIR has also added new routine use 13, to address information release(s) in the event of a suspected or confirmed breach of the system, consistent with OMB guidance to federal agencies (OMB Memorandum 17-12, Preparing for and Responding to a Breach of Personally Identifiable Information (PII)). Finally, EOIR has added routine use 14 to allow release to third-party entities or individuals to the extent deemed necessary to elicit information from them or their cooperation to carry out authorized activities of EOIR.

Certain Privacy Act exemptions apply to this system, as stated in EOIR-003 Practitioner Complaint-Disciplinary Files. These modifications to the SORN do not amend or otherwise impact those exemptions.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this notice of a modified system of records.

Dated: May 5, 2020.

Peter Winn,

Acting Chief Privacy and Civil Liberties Officer,
United States Department of Justice.

JUSTICE/EOIR-003

SYSTEM NAME AND NUMBER:

EOIR, Attorney Discipline System, EOIR-003.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

DOJ EOIR, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

SYSTEM MANAGER(S):

EOIR Chief Information Officer, Office of Information Technology (OIT), 5109 Leesburg Pike, Suite 900, Falls Church, Virginia 22041 and EOIR Attorney Discipline Counsel, EOIR OGC, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 292 of the Immigration and Nationality Act, as amended at 8 U.S.C. 1103, and 8 C.F.R. 292.3, 1292.3 *et seq.*

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to assist EOIR's Attorney Discipline Program in conducting disciplinary investigations and instituting disciplinary proceedings against immigration practitioners and recognized organizations who violate the EOIR rules of practice as set forth in 8 C.F.R. 1003.101 *et seq.* and the BIA, OCIJ and OCAHO in adjudicating the proceedings. The records are used to track and provide documentation of, among other things, complaints, disciplinary investigations, formal proceedings, and decisions in proceedings instituted by EOIR. The information may be further used to generate statistical reports and various administrative records, including docket printouts. The scope of the system of records, as proposed, is commensurate with the purpose(s) of the system because the records collected are limited to those necessary to serve the Program's overarching goal of protecting the public and the integrity of immigration proceedings by taking and tracking complaints; conducting investigations; performing adjudications, and where appropriate and consistent with the

Program's rules, publically publishing information regarding the discipline imposed as a result of the violation(s).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system includes information pertaining to attorneys and representatives practicing before the Immigration Judges and the BIA and recognized organizations, as the subjects of allegations of misconduct. Records also include information about complainants, witnesses, adjudicators, and individuals representing practitioners.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains paper and electronic case-related information for the following categories of records:

- Disciplinary complaints;
- Acknowledgment letters;
- Preliminary inquiries;
- Investigative information, witness statements, and other evidentiary information;
- Complaint dispositions;
- Formal disciplinary proceedings; and
- Notices, orders, and decisions for the BIA, OCIJ, or OCAHO.

RECORD SOURCE CATEGORIES:

Law enforcement agencies, federal and state courts, state bar licensing authorities, state bar grievance and/or disciplinary agencies, immigration practitioners or recognized organizations, inquiries and/or complaints from witnesses or members of the general public, and/or statements and information compiled during investigation of complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

- (1) In an appropriate proceeding before a court, grand jury, or an administrative or adjudicative body before which DOJ, or any DOJ component or subdivision thereof, is authorized to appear and when any of the following is a party to litigation or has an interest in litigation and such records are determined by DOJ to be arguably relevant to the proceeding; DOJ or any DOJ components thereof; any DOJ employee in his or her official capacity; any DOJ employee in his/her individual capacity where DOJ has agreed to represent the employee; or the United States where DOJ, or any DOJ component thereof, determines that litigation is likely to affect it or any of its subdivisions;
- (2) To an actual or potential party, including an immigration practitioner, or to the party's attorney of record or authorized representative for the purpose of: negotiation or discussion of matters such as settlement, conducting informal discovery proceedings involving records in this system, or to otherwise ensure fair representation;
- (3) To complainants or their representatives of record to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim;
- (4) To Federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations, including, but not limited to, state bar grievance committees and other attorney discipline authorities, for possible disbarment or other disciplinary proceedings;
- (5) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law - criminal, civil, or regulatory in nature - the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the

responsibility for investigating or prosecuting such violation or with enforcing or implementing such law;

- (6) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;
- (7) To the news media and the public, including disclosures pursuant to 28 C.F.R. 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;
- (8) To any federal agency or to any individual or organization for the purpose of performing audit or oversight operations of DOJ and to meet related reporting requirements;
- (9) To the National Archives and Records Administration (NARA) for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;
- (10) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records;
- (11) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;
- (12) To appropriate agencies, entities, and persons when the Department: suspects or has confirmed that there has been a breach of the system of records; has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and when the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department

efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

- (13) To another federal agency or federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in: responding to a suspected or confirmed breach or preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;
- (14) To any person or entity that EOIR has reason to believe possesses information regarding a matter within the jurisdiction of the EOIR, to the extent deemed to be necessary by EOIR in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity by EOIR.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records will be electronic and stored in secure EOIR databases. Temporary paper copies will be stored in secure locations and locked cabinets when not in use.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic records may be retrieved from the Attorney Discipline System database by authorized personnel based on need-to-know restricted access permissions using the assigned case number or by the practitioner’s name. Paper records may be retrieved by authorized personnel for mission purposes, as necessary, from secure storage locations where they are arranged by case type, disposition schedule, and case number in numerical order.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in hard-copy, paper format in secure filing cabinets. Electronic data is stored in electronic media via a configuration of government servers. Records are retained and disposed of in accordance with National Archives and Records Administration schedule DAA-0582-2017-0002.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in this system is maintained in accordance with applicable laws, rules, and policies on protecting individual privacy. Servers storing electronic data and backup tapes stored on-site are located in locked rooms with access restrictions limited to authorized agency personnel. Backup tapes stored off-site are maintained in accordance with applicable laws, rules, and policies. Internet connections are protected by multiple firewalls. Security personnel conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance, and security logs are enabled for all computers to assist in troubleshooting and forensics analysis during incident investigations. Users of individual computers can only gain access to the data by a valid user identification and authentication process. The information maintained in the system is segregated in order to prevent ex-parte communications between adjudicators and OGC Disciplinary Counsel. Paper records are also segregated, and stored in secure locations with locked cabinets accessible only to those with a need to access the information.

RECORD ACCESS PROCEDURES:

Portions of this system may be exempt from disclosure and contest pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). Any individual desiring to contest or amend information not subject to exemption must direct his/her request to the Senior Component Official for Privacy at the EOIR OGC. In all cases, requests for access to a record shall be made in writing. Written requests may be submitted by mail or in person. Written requests must be clearly marked and labeled "Privacy Access Request," and the full name and notarized signature of the individual who is the subject of the record and any other identifying number or information that may assist in locating the record must be provided in accordance with 28 C.F.R. 16.41(d), and a return address.

CONTESTING RECORD PROCEDURES:

All requests to contest or amend information maintained in the system will be directed to the Senior Component Official for Privacy at the EOIR OGC in the manner described above in the Record Access Procedures section. Requests should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

NOTIFICATION PROCEDURES:

Portions of this system may be exempt from disclosure and contest pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). Any individual desiring to contest or amend information not subject to exemption must direct his/her request to the Senior Component Official for Privacy at the EOIR OGC. In all cases, requests for access to a record must be made in writing. Written requests may be submitted by mail or in person. Written requests must be clearly marked and labeled "Privacy Access Request," and the full name and notarized signature of the individual who is the subject of the record and any other identifying number or information that may assist in locating the record must be provided in accordance with 28 C.F.R. 16.41(d), and a return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General has previously exempted certain records of this system from the access provisions of the Privacy Act (5 U.S.C. 552a(d), pursuant to 5 U.S.C. 552a(k)(1) and (k)(2)). (*See* 28 C.F.R. 16.83 (c) and (d)).

HISTORY:

EOIR-003 Practitioner Complaint-Disciplinary Files issued 64 FR 49237 (Sept. 10, 1999); 66 FR 8425 (Jan. 31, 2001); 72 FR 3410 (Jan. 25, 2007) amended to include exemptions claimed pursuant to 5 U.S.C. 552a(k)(1), and (k)(2), *See* 28 C.F.R. 16.83.

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