

# Department of Transportation

Office of the Secretary

Washington, D.C.

## ORDER

DOT 1620.5

7-1-76

SUBJECT: INVESTIGATIVE REQUIREMENTS OF THE PRIVACY ACT OF 1974

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1. PURPOSE. This Order sets forth the Department of Transportation (DOT) requirements relating to the granting of Pledges of Confidence and the conduct of interviews in Departmental investigations for which an exemption has been claimed under Subsections (k)(2), (k)(5), and (k)(7) of the Privacy Act of 1974 (5 USC 552a).
2. CANCELLATION. DOT N 1620.2, GRANTING PLEDGES OF CONFIDENCE IN CERTAIN DEPARTMENTAL INVESTIGATIONS, PRIVACY ACT OF 1974, of 9-30-75.
3. BACKGROUND.
  - a. Subsections (k)(2), (k)(5) and (k)(7) of the Privacy Act of 1974 permit certain investigatory material to be exempted from full disclosure to the individual under investigation. These Subsections permit this investigatory material to be exempted, to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express pledge of confidence, or prior to the effective date (9-27-75) of the Privacy Act under an implied pledge of confidence. The Privacy Act thus requires that in conducting investigations after 9-26-75, which fall under Subsections (k)(2), (k)(5), and (k)(7), the identity of a source can be protected only if that source was given an express pledge of confidence.
  - b. Subsection (e)(3) of the Privacy Act of 1974 is intended to assure that individuals from whom information about themselves is collected are informed of the reasons for requesting information, how it may be used, and what the consequences are, if any, of not providing the information.
4. PERSONAL CONTACTS AND WRITTEN INQUIRIES.
  - a. Personal Contact. In conducting Departmental investigations after 9-26-75, which fall under Subsections (k)(2), (k)(5), or (k)(7) of the Privacy Act, and for which an exemption has been claimed all

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Departmental personnel conducting such investigations (hereafter referred to as Departmental investigators) shall at some time during the interview inform each person interviewed and each record custodian contacted of the following:

- (1) The purpose for which the information is sought and how it will be used;
- (2) The fact that the information provided, including the source's identity, may be disclosed to the individual being investigated if that individual so requests; and
- (3) The fact that the source has the right to ask that his or her identity not be disclosed.

b. Written Inquiries. In requesting information by a written inquiry in conduct of Departmental investigations after 9-26-75, for which an exemption has been claimed under (k)(2), (k)(5), and (k)(7), the form, instructions or correspondence used, except those requesting information from law enforcement agencies and educational institutions, shall include:

- (1) The purpose for which the information is sought and how it will be used;
- (2) A notification that the information provided, including the respondent's identity, may be disclosed to the individual at his or her request; and
- (3) Space for the respondent to request a pledge of confidence that his or her identity will not be disclosed to the subject of the inquiry; or an offer to make special arrangements to obtain significant information which the respondent feels he or she cannot provide without a pledge of confidence as to identity.

5. GRANTING PLEDGES OF CONFIDENCE. If the source, after being advised of the requirements as set forth in paragraph 4a above, requests that his or her identity not be disclosed, the Departmental investigator shall grant a pledge of confidence to the source. In addition, even before advising the source being interviewed of the information in paragraph 4 a above, the Departmental investigator may, in his discretion, notify the source that he or she may have a pledge of confidence when the investigator believes that such notification is necessary to obtain information pertinent to the investigation. The Departmental investigator may not, however, ask the source to request a pledge of confidence. The fact that the source was

granted a pledge of confidence shall be noted in the investigator's report. The pledge of confidence shall apply to the source's identity and any information furnished which would reveal the identity of the source and shall require the DOT to take necessary precautions to protect the confidentiality of the source's identity.

6. SUBJECT INTERVIEWS. Whenever the subject of a (k)(2), (k)(5), or (k)(7) investigation is interviewed, the Departmental investigator conducting the interview shall at the outset of the interview inform the subject individual both orally and in writing of the following:
- a. The authority by which the information is being collected.
  - b. The principal purpose for which the information will be used.
  - c. The routine uses of the information.
  - d. The effects on him/her, if any, of not providing all or any part of the requested information.

In cases where an advisement of Constitutional Rights is required, the Departmental investigator shall inform the subject individual of the aforementioned items, excluding d., after the subject has been advised of his or her rights under the Fifth Amendment to the Constitution of the United States or Article 31b, Uniform Code of Military Justice.

7. RESPONSIBILITIES.

- a. The Assistant Secretary for Administration shall ensure Department-wide compliance with this Order.
- b. The Commandant, United States Coast Guard (USCG), shall publish regulations specifying those categories of military positions within the USCG for which pledges of confidence may be made when obtaining information on an individual's suitability for promotion. (5 USC 552a, (k)(7) applies.)
- c. Heads of operating elements shall ensure the implementation of this order.
- d. DOT personnel having an official need for access to investigatory material shall respect pledges of confidence granted by Departmental investigators and investigators of other agencies.

FOR THE SECRETARY OF TRANSPORTATION:



William S. Heffelfinger  
Assistant Secretary  
Administration