
40 C.F.R. § 16.12

Specific exemptions.

(a) *Exemption under 5 U.S.C. 552a(k)(2) — (1) Systems of records affected.* (i) EPA–17 Online Criminal Enforcement Activities Network (OCEAN).

(ii) EPA–21 External Compliance Case Tracking System (EXCATS).

(iii) EPA–30 Inspector General Enterprise Management System (IGEMS) Hotline Module.

(iv) EPA–40 Inspector General Enterprise Management System (IGEMS) Investigative Module.

(v) EPA–63 eDiscovery Enterprise Tool Suite.

(vi) EPA–79 NEIC Master Tracking System.

(vii) EPA–83 Personnel Security System (PSS) 2.0.

(2) *Authority.* Under 5 U.S.C. 552a(k)(2), the head of any Federal agency may by rule exempt any PA system of records within the agency from certain provisions of the Act, if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Act. However, if any individual is denied any right, privilege, or benefit that the individual would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of the material, the material must be provided, except to the extent that the disclosure would reveal the identify of a confidential source.

(3) *Qualification for exemption.* All of the affected PA systems of records contain investigatory material compiled for law enforcement purposes, material which is not within the scope of subsection (j)(2) of the Act.

(4) *Scope of exemption.* (i) EPA systems of records 17, 30, 40, 63, and 79 are exempted from the following provisions of the PA, subject to the limitations set forth in 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1), (4) (G) and (4)(H); and (f)(2) through (5). EPA system of records 21 is exempt from the following provisions of the PA, subject to limitations set forth in 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), (d), and (e)(1). EPA system of records 83 is exempt from the following provisions of the PA, subject to the limitations set forth in 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(d); (e)(1); (e)(4)(G), (4)(H) and (4)(I); and (f)(2) through (5).

(ii) An individual is “denied any right, privilege, or benefit that he or she would otherwise be entitled by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material,” only if EPA actually uses the material in denying or proposing to deny such right, privilege, or benefit.

(iii) EPA–83 Personnel Security System (PSS) 2.0 is exempted under 5 U.S.C. 552a(k)(2).

(5) *Reasons for exemption.* EPA systems of records 17, 21, 30, 40, 63, 79, and 83 are exempted from the provisions of the PA in paragraph (a)(4) of this section for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his or her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment of such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in these affected PA systems of records could inform the subject of an investigation of an actual or potential criminal violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

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