

EXHIBIT 3-2

Department of Homeland Security
DHS Directives System
Instruction Number: 262-11-004
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WITHHOLDING OF PERSONNEL'S PERSONALLY IDENTIFIABLE INFORMATION FROM DISCLOSURE

I. Purpose

This Instruction, which implements the Department of Homeland Security (DHS or the Department) Directive 262-11, "Freedom of Information Act Compliance," serves as guidance on the case-by-case analysis performed regarding the application of Freedom of Information Act (FOIA) exemptions to withhold from disclosure the Personally Identifiable Information (PII) of DHS Personnel.

II. Scope

This Instruction applies throughout DHS and Components. This instruction does not apply to requests for access under the Privacy Act or any authority other than FOIA.

III. References

- A. Title 5, United States Code (U.S.C.), § 552, "Public Information; Agency Rules, Opinions, Orders, Records, and Proceedings" [The Freedom of Information Act, as amended]
- B. Title 5, U.S.C., § 552a, "Records maintained on individuals" [The Privacy Act of 1974, as amended]
- C. Title 6, Code of Federal Regulations (CFR), Part 5, "Disclosure of Records and Information"
- D. DHS Delegation 13001, "Delegation to the Chief Privacy Officer"
- E. DHS Designation 00-13002, "Designation to the Chief Privacy Officer as the Department's Chief Freedom of Information Act Officer"
- F. DHS Directive 262-11, "Freedom of Information Act Compliance"

G. DHS Instruction 262-11-001 “Freedom of Information Act Compliance on Employee Notification”

IV. Definitions

A. Agency Spokespeople: DHS employees authorized to speak to the media on behalf of the agency

B. **DHS Employee**: Officer or individual who is or was appointed in the civil service or uniformed servicemembers and engaged in the performance of a federal function under authority of law or an executive act in Headquarters and Components.

C. **DHS Contractor**: An employee or former employee of a company that has, a contract or is a subcontractor under a prime contract with DHS

D. **DHS Personnel**: Includes DHS Employees and DHS Contractors.

E. **Personally identifiable information (PII)**: Any information that permits the identity of an individual to be directly or indirectly inferred, including but not limited to any information that is linked or linkable to that individual such as current and former names, work and personal email addresses, work and home physical addresses, and work and home telephone numbers.

F. **Senior Agency Official: Includes political appointees, Department leaders, and DHS employees at the GS-15 level or higher .**

V. Responsibilities

A. **Chief FOIA Officer**:

1. Oversees Components’ implementation of this instruction and the disclosure process for withholding DHS Personnel PII.
2. Ensures Component FOIA Officers are notified of their responsibilities regarding the withholding of DHS Personnel PII as part of the disclosure process.

B. **FOIA Officers**:

1. Oversees the responsible official(s) who respond to each FOIA request that contains DHS Personnel PII and ensure that responses comply with this instruction.

VI. Content and Procedures

A. DHS routinely receives FOIA requests seeking records that may include PII related to DHS personnel.

B. FOIA Officers shall evaluate the release of DHS personnel PII on a case-by-case basis. For each such evaluation, FOIA Officers consider the factors set forth in the *Reporters' Committee* decision, which held that “information that does not directly reveal the operation or activities of the federal government falls outside the ambit of the public interest that the FOIA was enacted to serve.”¹ When processing records under FOIA, FOIA Officers consider whether the disclosure of DHS personnel PII will shed light on how DHS performs its statutory duties and whether the privacy interest of the DHS Personnel outweighs the public interest in that information.²

C. FOIA Officers shall consider the personal privacy interests of the DHS Personnel in evaluating whether to withhold DHS Personnel PII. DHS personnel have a substantial and legitimate interest in having their PII protected and withheld because they are associated with a Department that has multiple sensitive law enforcement and intelligence gathering missions.³ DHS personnel and their family members, such as their spouse and children, are vulnerable to harassment and/or violence from persons who maliciously acquire and disseminate names, duty stations, and other personal data.⁴ Given the heightened risk to DHS personnel regardless of their duties or assignments in the Department, DHS personnel have a substantial interest in their PII and the balance leans toward withholding DHS personnel PII unless disclosure would shed light on how DHS performs its statutory duties and such disclosure would outweigh the privacy interest of the DHS Employee or DHS Contractor.⁵

¹ *Dept. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 775 (1989).

² 5 U.S.C. § 552(b)(6).

³ *In Long v. OPM*, 692 F.3d 185, 192 (2d Cir. 2012), the court upheld the withholding of names of employees from sensitive agencies and those in sensitive occupations, and indicated “[i]t is not uncommon to recognize a privacy interest in a federal employee's work status, if the occupation alone could subject the employee to harassment or attack.” Further, “[r]edaction of names goes a long way toward protecting against surveillance and publicity those things that are generally treated as nobody else's business”, *Id.* at 192, “[b]ut a primary reason for the protection afforded by Exemption 6 is to protect individuals' physical safety.” *Id.* at 195.

⁴ Civilian federal employees have a legitimate interest in preserving the secrecy of matters that could conceivably subject them to annoyance or harassment in either their official or private lives. *Lesar v. Dep't of Justice*, 636 F.2d 472, 487 (D.C. Cir. 1980).

⁵ The fact that federal employees have an identifiable privacy interest in avoiding disclosures of information that could lead to annoyances or harassment, however, does not authorize a blanket exemption for the names of all government employees in all records. *Baez v. Dep't of Justice*, 647 F.2d 1328, 1339 (D.C. Cir. 1980). Nonetheless, since *Long*, courts have routinely upheld agency withholding of employee information by invoking FOIA Exemption 6. See, e.g., *Ctr. For Biological Diversity v. U.S. Army Corps of Eng'gs and U.S. Customs and Border Prot.*, 405 F.Supp.3d 127 (D.D.C 2019); *Milbrand v.*

D. Component FOIA Officers shall withhold Sensitive PII and PII, including name, grade/rank, duty address, official title, and person's pay, of DHS Personnel who are employed by Components of offices with a law enforcement⁶ or intelligence⁷ mission unless a determination is made that disclosure does not raise security or privacy concerns or if those concerns are outweighed by the public interest in that information.

E. Component FOIA Officers shall withhold DHS Personnel PII unless a determination is made that disclosure does not raise security or privacy concerns or if those concerns are outweighed by the public interest in that information. Disclosures of information that have previously been routinely released to the public by the Department may not raise security or privacy concerns, which may include the names and other limited PII of senior agency officials in certain contexts.

F. Component FOIA Officers shall withhold lists of names and other PII of DHS Personnel currently or recently assigned within a particular Component, organization or office within DHS, unless a determination is made that disclosure does not raise security or privacy concerns or if those concerns are outweighed by the public interest in that information.

G. Component FOIA Officers may release the names, official titles, organizations, and general main phone number and public or general email addresses for agency spokespersons and senior agency officials, unless a determination is made that disclosure raises security or privacy concerns and those concerns outweigh the public interest in that information.

H. Component FOIA Officers may release anonymized or aggregated information regarding salary, bonus, and location, unless a determination is made that disclosure raises security or privacy concerns and those concerns outweigh the public interest in that information. Anonymized or aggregated should not be released if, for example, the small size of the population may permit identification of PII.

I. Component FOIA Officers may release DHS Personnel PII if the person's position or duties require frequent interaction with or direct service to the public,

U.S. Dep't of Labor, No. 17-CV-13237, 2018 WL 3770053 (E.D. Mich. Aug. 9, 2018); *Vietnam Veterans of America Conn. Greater Hartford Chapter 120 v. U.S. Dep't of Homeland Security, U.S. Dep't of Vet. Affairs, and U.S. Dep't of Defense*, 8 F.Supp.3d 188, 230 (D.Conn. 2014).

⁶ Law enforcement components include the Federal Law Enforcement Training Centers, the Federal Protective Service, the Office of Inspector General, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, Transportation Security Administration, U.S. Coast Guard, and U.S. Secret Service.

⁷ Intelligence components include the Office of Intelligence and Analysis and U.S. Coast Guard.

provided a determination is made that disclosure does not raise security or privacy concerns or if those concerns are outweighed by the public interest in that information.

J. The DHS or Component FOIA Officer, or his or her designee, makes the final determination regarding which DHS Personnel PII is released under the FOIA.

K. The DHS or Component FOIA Officer, or his or her designee, ensures that FOIA response letters explaining the withholding of PII include a clear justification that demonstrates the threat to DHS Personnel privacy is real rather than speculative. Factors to discuss in the response letters include the position held by the relevant DHS Employee/DHS Contractor, the role played by that DHS Employee/DHS Contractor, the substance of the underlying agency action, and the nature of the agency record at issue.

VII. Questions

Address any questions or concerns regarding this Instructions to the DHS Privacy Office or to the relevant Component, Office, or Directorate FOIA Office.



Dena Kozanas
Chief FOIA Officer

1/15/2021

Date