

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 513****[BOP-1015-P]****RIN 1120-AA06****Release of Information****AGENCY:** Bureau of Prisons, Justice.**ACTION:** Proposed rule and withdrawal of prior proposed rule.

SUMMARY: In this document, the Bureau of Prisons ("Bureau") is withdrawing a prior proposed rule and publishing a new proposed rule on release of information. The rule is intended to consolidate procedures for the release of requested records in the possession of the Bureau. The rule has been developed to help ensure the Bureau is in compliance with the statutory requirements of the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), and to supplement Department of Justice regulations implementing those statutes (28 CFR part 16).

DATES: Comments must be submitted by August 20, 1996.

ADDRESSES: Send comments to the Office of General Counsel, Bureau of Prisons, Room 754, 320 First Street, NW., Washington, D. C. 20534. Comments received by the closing date will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Roy M. Nanovic, Office of General Counsel, Bureau of Prisons, Telephone (202) 514-6655.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(p), notice is given that the Bureau of Prisons intends to publish in the Federal Register its proposed rule on Release of Information. A proposed rule on this subject was published in the Federal Register on March 17, 1989 (at 54 FR 11326). That proposed rule is withdrawn and comments received in response to that rulemaking will not be considered when finalizing this new proposed rule.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 754, 320 First Street, NW., Washington, D.C. 20534. Comments received during the comment period will be considered before final action is taken. The proposed rule may be changed in light

of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of Executive Order 12866 and accordingly, this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director of the Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 513

Archives and records, Freedom of information, Prisoners, Privacy.

Kathleen M. Hawk,

Director, Bureau of Prisons.

In consideration of the foregoing, it is proposed to amend 28 CFR, Chapter V, Subchapter A as follows:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION**PART 513—ACCESS TO RECORDS**

1. The authority citation for 28 CFR part 513 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 13 U.S.C. Ch. 1 *et seq.*; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 31 U.S.C. 3711(f); 5 CFR part 297; 28 CFR 0.95-0.99 and parts 16 and 301.

2. Subpart D, consisting of §§ 513.30 through 513.68, is added to read as follows:

Subpart D—Release of Information**General Provisions and Procedures**

Sec.

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Subpart D—Release of Information**General Provisions and Procedures****§ 513.30 Purpose and scope.**

This subpart establishes procedures for the release of requested records in possession of the Federal Bureau of Prisons ("Bureau"). It is intended to implement provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and to supplement Department of Justice (DOJ) regulations concerning the production or disclosure of records or information, 28 CFR part 16.

§ 513.31 Limitations.

(a) *Social Security Numbers.* As of September 27, 1975, Social Security Numbers may not be used in their entirety as a method of identification for any Bureau record system, unless such use is authorized by statute or by regulation adopted prior to January 1, 1975.

(b) *Employee records.* Access and amendment of employee personnel records under the Privacy Act are governed by Office of Personnel Management regulations published in 5 CFR part 297 and by Department of Justice regulations published in 28 CFR part 16.

§ 513.32 Guidelines for disclosure.

The Bureau provides for the disclosure of agency information pursuant to applicable laws, e.g. the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a).

§ 513.33 Production of records in court.

Bureau records are often sought by subpoena, court order, or other court demand, in connection with court proceedings. The Attorney General has directed that these records may not be produced in court without the approval of the Attorney General or his or her

designee. The guidelines are set forth in 28 CFR part 16, subpart B.

§ 513.34 Protection of individual privacy—disclosure of records to third parties.

(a) Information that concerns an individual and is contained in a system of records maintained by the Bureau shall not be disclosed to any person, or to another agency except under the provisions of the Privacy Act, 5 U.S.C. 552a, or the Freedom of Information Act, 5 U.S.C. 552.

(b) Lists of Bureau inmates shall not be disclosed.

§ 513.35 Accounting/nonaccounting of disclosures to third parties.

Accounting/nonaccounting of disclosures to third parties shall be made in accordance with Department of Justice regulations contained in 28 CFR 16.52.

§ 513.36 Government contractors.

(a) No Bureau component may contract for the operation of a record system by or on behalf of the Bureau without the express written approval of the Director or the Director's designee.

(b) Any contract which is approved shall contain the standard contract requirements promulgated by the General Services Administration (GSA) to ensure compliance with the requirements imposed by the Privacy Act. The contracting component shall have the responsibility to ensure that the contractor complies with the contract requirements relating to privacy.

Inmate Requests to Institution for Information

§ 513.40 Inmate access to Inmate Central File.

Inmates are encouraged to use the simple access procedures described in this section to review disclosable records maintained in his or her Inmate Central File, rather than the FOIA procedures described in §§ 513.60 through 513.68. Disclosable records in the Inmate Central File include, but are not limited to, documents relating to the inmate's sentence, detainer, participation in Bureau programs such as the Inmate Financial Responsibility Program, classification data, parole information, mail, visits, property, conduct, work, release processing, and general correspondence. This information is available without filing a FOIA request. If any information is withheld from the inmate, staff will provide the inmate with a general description of that information and also will notify the inmate that he or she may file a formal FOIA request.

(a) *Inmate review of his or her Inmate Central File.* An inmate may at any time request to review all disclosable portions of his or her Inmate Central File by submitting a request to a staff member designated by the Warden. Staff are to acknowledge the request and schedule the inmate, as promptly as is practical, for a review of the file at a time which will not disrupt institution operations.

(b) *Procedures for inmate review of his or her Inmate Central File.* (1) Prior to the inmate's review of the file, staff are to remove the Inmate Privacy Folder which contains documents withheld from disclosure pursuant to § 513.32.

(2) During the file review, the inmate is to be under direct and constant supervision by staff. The staff member monitoring the review shall enter the date of the inmate's file review on the Inmate Activity Record and initial the entry. Staff shall also ask the inmate to initial the entry, and if the inmate refuses to do so, shall enter a notation to that effect.

(3) Staff shall advise the inmate if there are documents withheld from disclosure and, if so, shall advise the inmate of the inmate's right under the provisions of § 513.61 to make a FOIA request for the withheld documents.

§ 513.41 Inmate access to Inmate Central File in connection with parole hearings.

A parole-eligible inmate (an inmate who is currently serving a sentence for an offense committed prior to November 1, 1987) may review disclosable portions of the Inmate Central File prior to the inmate's parole hearing, under the general procedures set forth in § 513.40. In addition, the following guidelines apply:

(a) A parole-eligible inmate may request to review his or her Inmate Central File by submitting the appropriate Parole Commission form. This form shall ordinarily be available to each eligible inmate within five work days after a list of eligible inmates is prepared.

(b) Bureau staff ordinarily shall schedule an eligible inmate for a requested Inmate Central File review within seven work days of the request after the inmate has been scheduled for a parole hearing. A reasonable extension of time is permitted for documents which have been provided (prior to the inmate's request) to originating agencies for clearance, or which are otherwise not available at the institution.

(c) A report received from another agency which is determined to be nondisclosable (see § 513.40 (b)) will be summarized by that agency, in accordance with Parole Commission

regulations. Bureau staff shall place the summary in the appropriate disclosable section of the Inmate Central File. The original report (or portion which is summarized in another document) will be placed in the portion of the Inmate Privacy File for Joint Use by the Bureau and the Parole Commission.

(d) Bureau documents which are determined to be nondisclosable to the inmate will be summarized for the inmate's use. A copy of the summary will be placed in the disclosable section of the Inmate Central File. The document from which the summary is taken will be placed in the Joint Use Section of the Inmate Privacy Folder. Nondisclosable documents not summarized for the inmate's use are not available to the Parole Commission and are placed in a nondisclosable section of the Inmate Central File.

(e) When no response regarding disclosure has been received from an originating agency in time for inmate review prior to the parole hearing, Bureau staff are to inform the Parole Commission Hearing Examiner.

§ 513.42 Inmate access to medical records.

(a) Except for the limitations of paragraphs (c) and (d) of this section, an inmate may review records from his or her medical file (including dental records) by submitting a request to a staff member designated by the Warden.

(b) Laboratory Reports which contain only scientific testing results and which contain no staff evaluation or opinion (such as Standard Form 514A, Urinalysis) are ordinarily disclosable. Lab results of HIV testing may be reviewed by the inmate. However, an inmate may not retain a copy of his or her test results while the inmate is confined in a Bureau facility or a Community Corrections Center. A copy of an inmate's HIV test results may be forwarded to a third party outside the institution and chosen by the inmate, provided that the inmate gives written authorization for the disclosure.

(c) Medical records containing subjective evaluations and opinions of medical staff relating to the inmate's care and treatment will be provided to the inmate only after the staff review required by paragraph (d) of this section. These records include, but are not limited to, outpatient notes, consultation reports, narrative summaries or reports by a specialist, operative reports by the physician, summaries by specialists as the result of laboratory analysis, or in-patient progress reports.

(d) Prior to release to the inmate, records described in paragraph (c) of

this section shall be reviewed by staff to determine if the release of this information would present a harm to either the inmate or other individuals. Any records determined not to present a harm will be released to the inmate at the conclusion of the review by staff. If any records are determined by staff not to be releasable based upon the presence of harm, the inmate will be so advised in writing and provided the address of the agency component to which the inmate may address a formal request for the withheld records. An accounting of any medical records will be maintained in the inmate's medical file.

§ 513.43 Fees for copies of Inmate Central File and medical records.

Within a reasonable time after a request, Bureau staff are to provide an inmate personal copies of requested disclosable documents maintained in the Inmate Central File and Medical Record. Fees for the copies are to be calculated in accordance with 28 CFR 16.10.

Privacy Act Requests for Information

§ 513.50 Privacy Act requests by inmates.

Because inmate records are exempt from disclosure under the Privacy Act, (see 28 CFR 16.97) inmate requests for records under the Privacy Act will be processed in accordance with the FOIA. See §§ 513.61 through 513.68.

Freedom of Information Act Requests for Information

§ 513.60 Freedom of Information Act requests.

Requests for any Bureau record (including Program Statements and Operations Memoranda) ordinarily shall be processed pursuant to the Freedom of Information Act, 5 U.S.C. 552. Such a request must be made in writing and addressed to the Director, Federal Bureau of Prisons, 320 First Street, NW., Washington, D.C. 20534. The requester shall clearly mark on the face of the letter and the envelope "FREEDOM OF INFORMATION REQUEST," and shall clearly describe the records sought. See §§ 513.61 through 513.63 for additional requirements.

§ 513.61 Freedom of Information Act requests by inmates.

(a) Inmates are encouraged to use the simple access procedures described in § 513.40 to review disclosable records

maintained in his or her Inmate Central File.

(b) An inmate may make a request for access to documents in his or her Inmate Central File or Medical File (including documents which have been withheld from disclosure during the inmate's review of his or her Inmate Central File pursuant to § 513.40) and/or other documents concerning the inmate which are not contained in the Inmate Central File or Medical File. Staff shall process such a request pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) The inmate requester shall clearly mark on the face of the letter and on the envelope "FREEDOM OF INFORMATION ACT REQUEST", and shall clearly describe the records sought, including the approximate dates covered by the record. An inmate making such a request must provide his or her full name, current address, date and place of birth. In addition, if the inmate requests documents to be sent to a third party, the inmate must provide with the request an example of his or her signature, which must be verified and dated within three (3) months of the date of the request.

§ 513.62 Freedom of Information Act requests by former inmates.

Former federal inmates may request copies of their Bureau records by writing to the Director, Federal Bureau of Prisons, 320 First Street, NW., Washington, D.C. 20534. Such requests shall be processed pursuant to the provisions of the Freedom of Information Act. The request must be clearly marked on the face of the letter and on the envelope "FREEDOM OF INFORMATION ACT REQUEST", and must describe the record sought, including the approximate dates covered by the record. A former inmate making such a request must provide his or her full name, current address, date and place of birth. In addition, the requester must provide with the request an example of his or her signature, which must be either notarized or sworn under penalty of perjury, and dated within three (3) months of the date of the request.

§ 513.63 Freedom of Information requests on behalf of an inmate or former inmate.

A request for records concerning an inmate or former inmate made by an authorized representative of that inmate

or former inmate will be treated as in § 513.61, on receipt of the inmate's or former inmate's written authorization. This authorization must be dated within three (3) months of the date of the request letter. Identification data, as listed in 28 CFR 16.41, must be provided.

§ 513.64 Acknowledgement of Freedom of Information Act requests.

(a) All requests for records under the Freedom of Information Act received by the FOI/PA Administrator, Office of General Counsel, will be reviewed and may be forwarded to the appropriate Regional Office for proper handling. Requests for records located at a Bureau facility other than the Central Office or Regional Office may be referred to the appropriate staff at that facility for proper handling.

(b) The requester shall be notified of the status of his or her request by the office with final responsibility for processing the request.

§ 513.65 Review of documents for Freedom of Information Act requests.

If a document is deemed to contain information exempt from disclosure, any reasonably segregable portion of the record shall be provided to the requester after deletion of the exempt portions. If documents, or portions of documents, in an Inmate Central File have been determined to be nondisclosable by institution staff but are later released by Regional or Central Office staff pursuant to a request under this section, appropriate instructions will be given to the institution to move those documents, or portions, from the Inmate Privacy Folder into the disclosable section of the Inmate Central File.

§ 513.66 Denials and appeals of Freedom of Information Act requests.

If a request made pursuant to the Freedom of Information Act is denied in whole or in part, a denial letter must be issued and signed by the Director or his or her designee, and shall state the basis for denial under § 513.32. The requester who has been denied such access shall be advised that he or she may appeal that decision to the Office of Information and Privacy, U.S. Department of Justice, Suite 570, Flag Building, Washington, D.C. 20530. Both the envelope and the letter of appeal itself should be clearly marked: "Freedom of Information Act Appeal."

§ 513.67 Fees for Freedom of Information Act requests.

Fees for copies of records disclosed under the FOIA, including fees for a requester's own records, may be charged in accordance with Department of

Justice regulations contained in 28 CFR 16.10.

§ 513.68 Time limits for responses to Freedom of Information Act requests.

Consistent with sound administrative practice and the provisions of 28 CFR

16.1, the Bureau strives to comply with the time limits set forth in the Freedom of Information Act. These time limits begin when the request is received at the Central Office.

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