

to which the materials relate; *Provided, however*, That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, or section 2274, 2275, or 2277 of this title, or section 783 of title 50, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18);

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being;

(3) there is reason to believe that the giving of notice pursuant to a subpoena duces tecum would result in the destruction, alteration, or concealment of such materials; or

(4) such materials have not been produced in response to a court order directing compliance with a subpoena duces tecum, and—

(A) all appellate remedies have been exhausted; or

(B) there is reason to believe that the delay in an investigation or trial occasioned by further proceedings relating to the subpoena would threaten the interests of justice.

(c) Objections to court ordered subpoenas; affidavits

In the event a search warrant is sought pursuant to paragraph (4)(B) of subsection (b) of this section, the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure.

(Pub. L. 96-440, title I, § 101, Oct. 13, 1980, 94 Stat. 1879; Pub. L. 104-208, div. A, title I, § 101(a) [title I, § 121[6]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-30.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-208, § 101(a) [title I, § 121[6(1)]], inserted “, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18” before parenthesis at end.

Subsec. (b)(1). Pub. L. 104-208, § 101(a) [title I, § 121[6(2)]], inserted “, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18” before parenthesis at end.

EFFECTIVE DATE

Pub. L. 96-440, title I, § 108, Oct. 13, 1980, 94 Stat. 1882, provided that: “The provisions of this title [enacting

this subchapter] shall become effective on January 1, 1981, except that insofar as such provisions are applicable to a State or any governmental unit other than the United States, the provisions of this title shall become effective one year from the date of enactment of this Act [Oct. 13, 1980].”

SHORT TITLE

Pub. L. 96-440, § 1, Oct. 13, 1980, 94 Stat. 1879, provided: “That this Act [enacting this chapter and provisions set out as notes under this section] may be cited as the ‘Privacy Protection Act of 1980’.”

PART B—REMEDIES, EXCEPTIONS, AND DEFINITIONS

§ 2000aa-5. Border and customs searches

This chapter shall not impair or affect the ability of a government officer or employee, pursuant to otherwise applicable law, to conduct searches and seizures at the borders of, or at international points of, entry into the United States in order to enforce the customs laws of the United States.

(Pub. L. 96-440, title I, § 105, Oct. 13, 1980, 94 Stat. 1880.)

§ 2000aa-6. Civil actions by aggrieved persons

(a) Right of action

A person aggrieved by a search for or seizure of materials in violation of this chapter shall have a civil cause of action for damages for such search or seizure—

(1) against the United States, against a State which has waived its sovereign immunity under the Constitution to a claim for damages resulting from a violation of this chapter, or against any other governmental unit, all of which shall be liable for violations of this chapter by their officers or employees while acting within the scope or under color of their office or employment; and

(2) against an officer or employee of a State who has violated this chapter while acting within the scope or under color of his office or employment, if such State has not waived its sovereign immunity as provided in paragraph (1).

(b) Good faith defense

It shall be a complete defense to a civil action brought under paragraph (2) of subsection (a) of this section that the officer or employee had a reasonable good faith belief in the lawfulness of his conduct.

(c) Official immunity

The United States, a State, or any other governmental unit liable for violations of this chapter under subsection (a)(1) of this section, may not assert as a defense to a claim arising under this chapter the immunity of the officer or employee whose violation is complained of or his reasonable good faith belief in the lawfulness of his conduct, except that such a defense may be asserted if the violation complained of is that of a judicial officer.

(d) Exclusive nature of remedy

The remedy provided by subsection (a)(1) of this section against the United States, a State, or any other governmental unit is exclusive of