

that the Director of the Information Security Oversight Office, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency may not delegate the authority granted in this order. If an agency head without original classification authority under this order, or otherwise delegated in accordance with section 1.3(c) of the Executive Order, has an exceptional need to classify information originated by their agency, the matter shall be referred to the agency head with appropriate subject matter interest and classification authority in accordance with section 1.3(e) of the Executive Order. If the agency with appropriate subject matter interest and classification authority cannot readily be determined, the matter shall be referred to the Director of the Information Security Oversight Office.

Presidential designations ordered prior to the issuance of the Executive Order are revoked as of the date of this order. However, delegations of authority to classify information originally that were made in accordance with the provisions of section 1.4 of Executive Order 12958 of April 17, 1995 [formerly set out above], as amended, by officials designated under this order shall continue in effect, provided that the authority of such officials is delegable under this order.

This order shall be published in the Federal Register.

BARACK OBAMA.

PRIOR PRESIDENTIAL DESIGNATIONS TO CLASSIFY NATIONAL SECURITY INFORMATION WERE CONTAINED IN THE FOLLOWING:

Ex. Ord. No. 13010, §7(b), July 15, 1996, 61 F.R. 37347, as amended, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

Order of President of the United States, dated Oct. 13, 1995, 60 F.R. 53845, formerly set out as a note under this section.

Order of President of the United States, dated Feb. 27, 1996, 61 F.R. 7977, formerly set out as a note under this section.

Order of President of the United States, dated Feb. 26, 1997, 62 F.R. 9349, formerly set out as a note under this section.

Order of President of the United States, dated Dec. 10, 2001, 66 F.R. 64347, formerly set out as a note under this section.

Order of President of the United States, dated May 6, 2002, 67 F.R. 31109, formerly set out as a note under this section.

Order of President of the United States, dated Sept. 26, 2002, 67 F.R. 61465, formerly set out as a note under this section.

Order of President of the United States, dated Sept. 17, 2003, 68 F.R. 55257, formerly set out as a note under this section.

Order of President of the United States, dated Apr. 21, 2005, 70 F.R. 21609, formerly set out as a note under this section.

§ 3162. Requests by authorized investigative agencies

(a) Generally

(1) Any authorized investigative agency may request from any financial agency, financial institution, or holding company, or from any consumer reporting agency, such financial records, other financial information, and consumer reports as may be necessary in order to conduct any authorized law enforcement investigation, counterintelligence inquiry, or security determination. Any authorized investigative agency may also request records maintained by any commercial entity within the United States pertaining to travel by an employee in the executive branch of Government outside the United States.

(2) Requests may be made under this section where—

(A) the records sought pertain to a person who is or was an employee in the executive branch of Government required by the President in an Executive order or regulation, as a condition of access to classified information, to provide consent, during a background investigation and for such time as access to the information is maintained, and for a period of not more than three years thereafter, permitting access to financial records, other financial information, consumer reports, and travel records; and

(B)(i) there are reasonable grounds to believe, based on credible information, that the person is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(ii) information the employing agency deems credible indicates the person has incurred excessive indebtedness or has acquired a level of affluence which cannot be explained by other information known to the agency; or

(iii) circumstances indicate the person had the capability and opportunity to disclose classified information which is known to have been lost or compromised to a foreign power or an agent of a foreign power.

(3) Each such request—

(A) shall be accompanied by a written certification signed by the department or agency head or deputy department or agency head concerned, or by a senior official designated for this purpose by the department or agency head concerned (whose rank shall be no lower than Assistant Secretary or Assistant Director), and shall certify that—

(i) the person concerned is or was an employee within the meaning of paragraph (2)(A);

(ii) the request is being made pursuant to an authorized inquiry or investigation and is authorized under this section; and

(iii) the records or information to be reviewed are records or information which the employee has previously agreed to make available to the authorized investigative agency for review;

(B) shall contain a copy of the agreement referred to in subparagraph (A)(iii);

(C) shall identify specifically or by category the records or information to be reviewed; and

(D) shall inform the recipient of the request of the prohibition described in subsection (b).

(b) Prohibition of certain disclosure

(1) Prohibition

(A) In general

If a certification is issued under subparagraph (B) and notice of the right to judicial review under subsection (c) is provided, no governmental or private entity that receives a request under subsection (a), or officer, employee, or agent thereof, shall disclose to any person that an authorized investigative agency described in subsection (a) has sought or obtained access to information under subsection (a).

(B) Certification

The requirements of subparagraph (A) shall apply if the head of an authorized investigative agency described in subsection (a), or a designee, certifies that the absence of a prohibition of disclosure under this subsection may result in—

- (i) a danger to the national security of the United States;
- (ii) interference with a criminal, counterterrorism, or counterintelligence investigation;
- (iii) interference with diplomatic relations; or
- (iv) danger to the life or physical safety of any person.

(2) Exception**(A) In general**

A governmental or private entity that receives a request under subsection (a), or officer, employee, or agent thereof, may disclose information otherwise subject to any applicable nondisclosure requirement to—

- (i) those persons to whom disclosure is necessary in order to comply with the request;
- (ii) an attorney in order to obtain legal advice or assistance regarding the request; or
- (iii) other persons as permitted by the head of the authorized investigative agency described in subsection (a) or a designee.

(B) Application

A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

(C) Notice

Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

(D) Identification of disclosure recipients

At the request of the head of an authorized investigative agency described in subsection (a), or a designee, any person making or intending to make a disclosure under clause (i) or (iii) of subparagraph (A) shall identify to the head of the authorized investigative agency or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

(c) Judicial review**(1) In general**

A request under subsection (a) or a nondisclosure requirement imposed in connection with such request under subsection (b) shall be subject to judicial review under section 3511 of title 18.

(2) Notice

A request under subsection (a) shall include notice of the availability of judicial review described in paragraph (1).

(d) Records or information; inspection or copying

(1) Notwithstanding any other provision of law (other than section 6103 of title 26), an entity receiving a request for records or information under subsection (a) shall, if the request satisfies the requirements of this section, make available such records or information within 30 days for inspection or copying, as may be appropriate, by the agency requesting such records or information.

(2) Any entity (including any officer, employee, or agent thereof) that discloses records or information for inspection or copying pursuant to this section in good faith reliance upon the certifications made by an agency pursuant to this section shall not be liable for any such disclosure to any person under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(e) Reimbursement of costs

Any agency requesting records or information under this section may, subject to the availability of appropriations, reimburse a private entity for any cost reasonably incurred by such entity in responding to such request, including the cost of identifying, reproducing, or transporting records or other data.

(f) Dissemination of records or information received

An agency receiving records or information pursuant to a request under this section may disseminate the records or information obtained pursuant to such request outside the agency only—

- (1) to the agency employing the employee who is the subject of the records or information;
- (2) to the Department of Justice for law enforcement or counterintelligence purposes; or
- (3) with respect to dissemination to an agency of the United States, if such information is clearly relevant to the authorized responsibilities of such agency.

(g) Construction of section

Nothing in this section may be construed to affect the authority of an investigative agency to obtain information pursuant to the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(July 26, 1947, ch. 343, title VIII, §802, as added Pub. L. 103-359, title VIII, §802(a), Oct. 14, 1994, 108 Stat. 3436; amended Pub. L. 109-177, title I, §116(f), Mar. 9, 2006, 120 Stat. 216; Pub. L. 109-178, §4(e), Mar. 9, 2006, 120 Stat. 281; Pub. L. 114-23, title V, §§502(e), 503(e), June 2, 2015, 129 Stat. 287, 290.)

REFERENCES IN TEXT

The Right to Financial Privacy Act, referred to in subsec. (g), probably means the Right to Financial Privacy Act of 1978, which is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, as amended, and is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

The Fair Credit Reporting Act, referred to in subsec. (g), is title VI of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, as amended, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1601 of Title 15 and Tables.

CODIFICATION

Section was formerly classified to section 436 of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2015—Subsec. (b). Pub. L. 114-23, §502(e), added subsec. (b) and struck out former subsec. (b) which related to prohibition of certain disclosure.

Subsecs. (c) to (g). Pub. L. 114-23, §503(e), added subsec. (c) and redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

2006—Subsec. (b). Pub. L. 109-177 amended subsec. (b) generally. Prior to amendment, text read as follows: "Notwithstanding any other provision of law, no governmental or private entity, or officer, employee, or agent of such entity, may disclose to any person, other than those officers, employees, or agents of such entity necessary to satisfy a request made under this section, that such entity has received or satisfied a request made by an authorized investigative agency under this section."

Subsec. (b)(4). Pub. L. 109-178 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "At the request of the authorized investigative agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized investigative agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such official that the person intends to consult an attorney to obtain legal advice or legal assistance."

EFFECTIVE DATE

Section effective 180 days after Oct. 14, 1994, see section 802(c) of Pub. L. 103-359, set out as a note under section 3161 of this title.

§ 3163. Exceptions

Except as otherwise specifically provided, the provisions of this subchapter shall not apply to the President and Vice President, Members of the Congress, Justices of the Supreme Court, and Federal judges appointed by the President.

(July 26, 1947, ch. 343, title VIII, §803, as added Pub. L. 103-359, title VIII, §802(a), Oct. 14, 1994, 108 Stat. 3437.)

CODIFICATION

Section was formerly classified to section 437 of this title prior to editorial reclassification and renumbering as this section.

EFFECTIVE DATE

Section effective 180 days after Oct. 14, 1994, see section 802(c) of Pub. L. 103-359, set out as a note under section 3161 of this title.

§ 3164. Definitions

For purposes of this subchapter—

(1) the term "authorized investigative agency" means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigations of persons who are proposed for access to classified informa-

tion to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information;

(2) the term "classified information" means any information that has been determined pursuant to Executive Order No. 12356 of April 2, 1982, or successor orders, or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], to require protection against unauthorized disclosure and that is so designated;

(3) the term "consumer reporting agency" has the meaning given such term in section 1681a of title 15;

(4) the term "employee" includes any person who receives a salary or compensation of any kind from the United States Government, is a contractor of the United States Government or an employee thereof, is an unpaid consultant of the United States Government, or otherwise acts for or on behalf of the United States Government, except as otherwise determined by the President;

(5) the terms "financial agency" and "financial institution" have the meanings given to such terms in section 5312(a) of title 31 and the term "holding company" has the meaning given to such term in section 3401(6) of title 12;

(6) the terms "foreign power" and "agent of a foreign power" have the same meanings as set forth in sections¹ 1801(a) and (b), respectively, of this title;

(7) the term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, and any other possession of the United States; and

(8) the term "computer" means any electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device and any data or other information stored or contained in such device.

(July 26, 1947, ch. 343, title VIII, §804, as added Pub. L. 103-359, title VIII, §802(a), Oct. 14, 1994, 108 Stat. 3438; amended Pub. L. 106-120, title III, §305(b), Dec. 3, 1999, 113 Stat. 1611.)

REFERENCES IN TEXT

Executive Order No. 12356, referred to in par. (2), which was formerly set out as a note under section 435 (now section 3161) of this title, was revoked by Ex. Ord. No. 12958, §6.1(d), Apr. 17, 1995, 60 F.R. 19843.

The Atomic Energy Act of 1954, referred to in par. (2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

CODIFICATION

Section was formerly classified to section 438 of this title prior to editorial reclassification and renumbering as this section.

¹ So in original. Probably should be "section".