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Privacy Act of 1974; Systems of Records and Implementation; Notice and Proposed Rule

DEPARTMENT OF JUSTICE**[CPCLO Order No. 002–2016]****Privacy Act of 1974; Systems of Records**

AGENCY: Federal Bureau of Investigation, United States Department of Justice.

ACTION: Notice of a modified system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of Justice (Department or DOJ), Federal Bureau of Investigation (FBI), proposes to modify an existing FBI system of records notice titled, “Fingerprint Identification Records System (FIRS),” JUSTICE/FBI–009, last published in September 28, 1999 (64 FR 52347), and amended on January 31, 2001 (66 FR 8425), and January 25, 2007 (72 FR 3410). The Department is renaming this system of records, “The Next Generation Identification (NGI) System,” JUSTICE/FBI–009. The Department is modifying this system to add and clarify the categories of individuals and records maintained in NGI, and their associated Routine Uses, as well as updating procedures for individuals to access and contest their records. The entire notice is being republished for ease of reference.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by June 6, 2016.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530, or by facsimile at 202–307–0693. To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Roxane M. Panarella, Criminal Justice Information Services Division (CJIS), Privacy Attorney, 1000 Custer Hollow Road, Clarksburg, WV 26306.

SUPPLEMENTARY INFORMATION: This system of records is maintained by FBI’s Criminal Justice Information Services Division (CJIS). The FBI is in the process of replacing the Integrated Automated Fingerprint Identification System (IAFIS) with the NGI system.

The IAFIS had provided state-of-the-art fingerprint identification and criminal history services for many years. The NGI system continues to provide fingerprint identification and criminal history services, as well as other biometric services, such as enhanced latent fingerprint, palm print, and face recognition searching. The NGI system also allows for the retention and searching of authorized non-criminal justice fingerprints. The FBI developed NGI in response to the growing demand for IAFIS services, new and different user requirements, and advances in technology. NGI has improved the efficiency, accuracy, and availability of the IAFIS services and has added new biometric identification services for its federal, state, local, tribal, international, and national security partners. NGI was developed in increments and includes the following enhancements: (1) The replacement of the IAFIS fingerprint identification technology with a new search algorithm for improved search accuracy, faster response time, and more efficient processing; (2) a rapid search capability via mobile fingerprint devices of a subset of the NGI criminal and terrorist records; (3) an improvement in latent fingerprint search accuracy and more extensive searching of latent fingerprints against the NGI fingerprint repository; (4) the addition of palm prints as a complementary biometric to fingerprints and a biometric search capability of a national palm print system within NGI; (5) the increased retention and searching of fingerprints of non-criminal justice applicants, employees, volunteers, licensees, and others in positions of public trust; (6) a “rap back” service that provides near real-time notice of criminal events of those in positions of public trust to authorized entities; (7) the creation of the interstate photo system, which is a repository of all criminal mugshots maintained in NGI; (8) the addition of face recognition technology to permit law enforcement to search photos against the interstate photo system; (9) the creation of a searchable repository of scars, marks, and tattoos associated with criminal identities.

IAFIS had stored some biometrics (e.g., photos, palm prints) other than fingerprints but these biometrics were not searchable and, consequently, not very useful to the FBI’s criminal justice partners. NGI has added to these biometric repositories and has enhanced searching of these repositories. In addition, NGI has improved the searching of latent and non-criminal justice fingerprints. Within NGI, tenprint fingerprints (a set of prints from

all ten of a person’s fingers) continue to be necessary for the retrieval of a person’s identity history summary and confirmation of identity. The dissemination of identity history summaries, which may contain criminal history information, remains a primary purpose of NGI. Biometrics other than tenprint fingerprints do not constitute positive identification and are returned only as investigative leads to users of NGI. The authorized uses and users of IAFIS have remained the same for NGI. Access to and dissemination from the system continues to be authorized under the same laws and policies as IAFIS, including 28 U.S.C. 534, Public Law 92–544 (86 Stat. 1115) and 28 CFR 0.85(b) and (j) and part 20.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this modified system of records.

Dated: April 21, 2016.

Erika Brown Lee,

*Chief Privacy and Civil Liberties Officer,
United States Department of Justice.*

JUSTICE/FBI–009**SYSTEM NAME:**

The Next Generation Identification (NGI) System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records described in this notice are maintained at the Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division (CJIS), Clarksburg, WV. Some or all system information may be duplicated at other locations, including at FBI facilities, for purposes of system backup, emergency preparedness, and continuity of operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals fingerprinted as a result of a criminal inquiry, a lawful detention, an arrest, incarceration, or immigration or other civil law violation;

B. Individuals fingerprinted for the purposes of employment, licensing, military service, or volunteer service;

C. Individuals fingerprinted for the purposes of security clearances, suitability determinations, or other background checks;

D. Individuals fingerprinted for the purposes of immigration benefits, alien registration and naturalization, or other governmental benefits;

E. Individuals whose fingerprints have been obtained pursuant to the FBI’s authority to identify and

investigate federal crimes and threats to the national security;

F. Individuals whose fingerprints or other biometrics have been received from foreign countries or international organizations pursuant to sharing agreements;

G. Individuals whose biometrics (*e.g.* palm prints, facial images) have been obtained as a result of a criminal inquiry, a lawful detention, an arrest, incarceration, or immigration or other civil law violation;

H. Individuals who have provided biometrics (*e.g.* palm prints, facial images) for the purposes of employment, licensing, military service, or volunteer service;

I. Individuals who have provided biometrics (*e.g.* palm prints, facial images) for the purposes of security clearances, suitability determinations, or other background checks;

J. Individuals who have provided biometrics (*e.g.* palm prints, facial images) for the purposes of immigration benefits, alien registration and naturalization, or other governmental benefits;

K. Individuals whose biometrics (*e.g.* palm prints, facial images) have been obtained pursuant to the FBI's authority to identify and investigate federal crimes and threats to the national security;

L. Individuals whose fingerprints or other biometrics have been retrieved from locations, property, or persons associated with criminal or national security investigations;

M. Missing persons, unidentified persons, or others whose fingerprints or other biometrics have been submitted in support of disaster response, humanitarian efforts, or similar purposes;

N. Individuals whose fingerprints or other biometrics have been retained at their request or consent for personal identification purposes;

O. Individuals whose biographic and/or biometric information may be retained due to their official duties associated with the processing of system records (*e.g.* system administrators, fingerprint collectors) or in their roles as authorized users of the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Criminal fingerprint images with related biographic, biometric, and criminal justice information;

B. Civil fingerprint images with related biographic, biometric, and noncriminal justice information;

C. Fingerprint images with related biographic, biometric, and event information maintained for the purposes of national security (*e.g.* known or appropriately suspected terrorists);

D. Fingerprint images with related biographic, biometric, and event information received from federal government agencies pursuant to the FBI's authority to identify and investigate federal crimes and threats to the national security;

E. Fingerprint images with related biographic, biometric, and event information received from foreign countries or international organizations pursuant to sharing agreements;

F. Identity History Summary records that contain the criminal justice information associated with criminal fingerprints (*i.e.* "rap sheets") and/or the noncriminal justice information associated with civil fingerprints;

G. A name index pertaining to all individuals whose criminal fingerprint images are maintained in the system (*i.e.* the Interstate Identification Index);

H. Biometric images (*e.g.* palm prints, facial images) maintained for criminal, civil, and/or national security purposes;

I. Latent fingerprints and palm prints and/or other latent biometric images maintained for criminal and/or national security purposes;

J. Unknown facial images and palm prints and/or other unknown biometric images maintained for criminal and/or national security purposes;

K. Fingerprint images and/or other biometric images maintained in support of disaster response, humanitarian efforts, or similar purposes;

L. Fingerprint images with related biographic, biometric, and event information maintained pursuant to an individual's request or consent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authorities for the maintenance of these records include 28 U.S.C. 534, Pub. L. 92-544 (86 Stat. 1115) and codified in 28 CFR 0.85(b) and (j) and part 20.

PURPOSE(S):

The purposes for maintaining the NGI System include identification and criminal history information functions in order to perform non-criminal justice background checks, to enforce criminal laws, to further national security, and to assist with humanitarian efforts. The NGI system maintains and disseminates relevant records to local, state, tribal, federal, foreign, and international criminal justice agencies, as well as non-criminal justice agencies and other entities where authorized by federal statute, state statute pursuant to Pub. L. 92-544, Presidential executive order or regulation of the Attorney General of the United States. In addition, identification assistance is provided in disasters and for other humanitarian purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), relevant information contained in this system of records may be disclosed as a routine use, under 5 U.S.C. 552a(b)(3), in accordance with blanket routine uses established for FBI record systems. See Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI-BRU, published at 66 FR 33558 (June 22, 2001) and amended at 70 FR 7513 (February 14, 2005) and 72 FR 3410 (January 25, 2007). In addition, as routine uses specific to this system, the FBI may disclose relevant system records to the following persons or entities and under the circumstance or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected.

Identification and criminal history records may be disclosed as follows:

A. To local, state, tribal, or federal law enforcement or criminal justice agencies (to include the police, prosecution, penal, probation, parole, and the judiciary) or other authorized federal agencies where such disclosure: (a) May assist the recipient in the performance of its law enforcement, criminal justice, or national security functions, to include the screening of employees or applicants for employment (b) may assist the FBI in performing a law enforcement or national security function (c) may promote, assist, or otherwise serve the mutual efforts of the law enforcement, criminal justice, and national security communities, such as site security screening of visitors to criminal justice facilities and military installations; or (d) may serve a compatible civil law enforcement purpose;

B. To state or local agencies for the purpose of background investigations of applicants for noncriminal justice employment or licensing purposes, or other entities, if authorized by a federal statute (*e.g.* The National Child Protection Act of 1993, Volunteers for Children Act, Adam Walsh Child Protection and Safety Act of 2006) or a state statute pursuant to Pub. L. 92-544. Examples include: Those caring for or in contact with vulnerable populations (children, the elderly, the disabled); nursing and home healthcare professionals; non-profit volunteers; foster/adoptive parents; private security officers; providers of medical services/supplies; employees of federal chartered/insured banking institutions; mortgage loan originators; pari-mutuel

wagering/racing licensees; and firearms or explosives permits/licenses;

C. To authorized police departments of railroads and of private colleges and universities performing the administration of criminal justice;

D. To officials of tribal agencies for the purpose of Indian child care, Indian gaming, or pursuant to a Pub. L. 92-544 state statute;

E. To officials of civil or criminal courts for use in domestic violence or stalking cases;

F. To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies;

G. To private contractors for the purpose of providing services for the administration of criminal justice pursuant to a specific agreement (which must incorporate a Security Addendum approved by the Attorney General of the United States) with a criminal justice agency or a noncriminal justice governmental agency performing criminal justice dispatching functions or data processing/information services for criminal justice agencies;

H. To private contractors pursuant to specific outsourcing agreements with noncriminal justice agencies to provide noncriminal justice administrative functions such as electronic fingerprint submission and response; tracking missing dispositions; and archival, storage, or destruction of criminal history record information;

I. To authorized foreign governments or international agencies where such disclosure: (a) May assist the recipient in the performance of its law enforcement, criminal justice, or national security functions (b) may assist the FBI in performing a law enforcement or national security function (c) may promote, assist, or otherwise serve the mutual efforts of the international community or (d) may serve a compatible civil law enforcement purpose;

J. To the Department of Defense, Department of State, Department of Transportation, Office of Personnel Management, Central Intelligence Agency, or other statutorily authorized federal agency for the purpose of determining the eligibility of a person for access to classified information or assignment to or retention in sensitive national security positions, the Armed Forces, or positions of public trust or other critical or sensitive positions, or other suitability determinations;

K. To federal agencies for use in background investigations of present and prospective federal employees and contractors;

L. To federal agencies for any official duty required by their agency rules, regulations, Executive Order, or statute;

M. To regulatory agencies authorized by federal statute (e.g. the Securities and Exchange Commission, the Nuclear Regulatory Commission, the Commodity Futures Trading Commission);

N. To the Department of State for the purpose of determining the eligibility of visa applicants;

O. To the Department of Health and Human Services and Department of Agriculture for the purpose of conducting security risk assessments of individuals handling biological agents or toxins;

P. To the Department of Homeland Security and its components for use in background investigations of individuals with access to secure areas of airports, aircraft, ports, and vessels; commercial drivers of hazardous materials; applicants for aircraft training; those responsible for screening airport passengers and property; those with security functions related to baggage and cargo; and other statutorily authorized populations;

Q. To the National Center for Missing and Exploited Children when acting within its statutory duty to support law enforcement agencies and to governmental social service agencies when acting within their duties to investigate or respond to reports of child abuse, neglect, or exploitation or other legally mandated duties;

R. To public housing authorities for the purpose of conducting background checks of applicants for, or tenants of, public housing and to Indian Tribes or Tribally Designated Housing Entities for the purpose of conducting background checks of adult applicants for employment or housing;

S. To authorized local, state, and federal agencies for the purposes of emergency child placement or emergency disaster response;

T. To authorized local, state, tribal, federal, foreign, or international agencies for humanitarian purposes;

U. To a designated point of contact at a criminal justice agency for the purpose of background checks under the National Instant Criminal Background Check System (NICS);

V. To local, state, or federal law enforcement agencies for the investigation of and issuance of firearms and explosives permits;

W. To government employees, contractors, grantees, experts, consultant, students, or others for research conducted or training performed in accordance with statutory and regulatory requirements, including

Parts 22 and 46 of Title 28 of the Code of Federal Regulations;

X. To an individual seeking a copy of his/her own criminal history record information pursuant to 28 CFR 16.30-16.34 for the purposes of review and correction;

Y. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

Z. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in paper and/or electronic format.

RETRIEVABILITY:

Records in this system are typically retrieved by fingerprints, biometrics, individual name, and other identifying data, including unique identifying numbers assigned by the FBI or other government agencies. Positive identification is effected only by comparison of fingerprint impressions submitted for search against the fingerprints maintained within the system. Another means of retrieval is through name indices which contain

names of the individuals, their birth data, other physical descriptors, and unique identifying numbers, if such have been assigned.

SAFEGUARDS:

All records are maintained in a secure government facility with access limited to only authorized personnel or authorized and escorted visitors. Disclosure of information from the system is made only to authorized recipients upon authentication and verification of the right to access the system by such persons and agencies. The physical security and maintenance of information within the system is provided by FBI rules, regulations, and procedures.

RETENTION AND DISPOSAL:

Records in this system will be retained and disposed of in accordance with the records schedule approved by the National Archives and Records Administration. In general, fingerprints and associated biometric and biographic information will be destroyed when the subjects attain 110 years of age or 7

years after notification of death with biometric confirmation. Criminal history records and transaction logs are to be permanently retained.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Criminal Justice Information Services Division, Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, WV 26306.

NOTIFICATION PROCEDURE:

Because this system contains information related to the government's law enforcement and national security programs, records in this system have been exempted from subsections (d), (e)(4)(G), (e)(4)(H), and (e)(4)(I) pursuant to subsections (j)(2), (k)(2), and (k)(5) of the Privacy Act.

RECORD ACCESS PROCEDURES:

Because this system contains information related to the government's law enforcement and national security programs, this system of records has been exempted from subsections (d) and (e)(4)(H) pursuant to subsections (j)(2), (k)(2), and (k)(5) of the Privacy Act. However, procedures are set forth at 28

CFR 16.30–16.34 and 20.24 for an individual to obtain a copy of his/her identification record maintained in NGI to review or to obtain a change, correction, or updating of the record.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Federal, state, local, tribal, foreign, and international agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (4)(G) (H) and (I), (5) and (8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Attorney General has exempted this system from (c)(3), (d), (e)(1), and (e)(4)(G) and (H), pursuant to (k)(2) and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register**.

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