



October 19, 2016

United States Department of Justice  
ATTN: Privacy Analyst, Office of Privacy and Civil Liberties  
National Place Building  
1331 Pennsylvania Ave. NW, Suite 1000  
Washington, DC 20530

**Re: The Federal Bureau of Investigation's proposal to exempt the FBI Insider Threat Program Records from certain provisions of the Privacy Act (CPCLO Order No. 008-2016)**

Submitted by: OpenTheGovernment.org with 10 endorsing organizations

OpenTheGovernment.org joins other privacy and transparency organizations in opposing the FBI proposal to exempt its new system of records – the FBI Insider Threat Program Records (ITPR) - from parts of the Privacy Act. We are concerned that further secrecy and weakening of privacy protections for this program will contribute to a chilling effect on legitimate whistleblowers.

On September 19, 2016, the FBI published a System of Records Notice for the new ITPR system, as well as a Notice of Proposed Rulemaking to exempt the ITPR from certain provisions of the Privacy Act. We recognize that the ITPR will contain classified and other sensitive material, and we appreciate the FBI's willingness to waive an exemption "where compliance would not appear to interfere with or adversely affect the purpose of this system to detect, deter, and/or mitigate insider threats to national security or the FBI in its sole discretion." Still, we oppose removing several key protections of the Privacy Act, specifically provisions that allow people to: (1) find out if they are in the ITPR database; (2) request the FBI promptly fix errors and inaccurate information in their files; and (3) obtain information (so long as it would not impede law enforcement) about whether their information is being shared with other parts of the government.

The proposal would exempt the ITPR from the part of the law that allows citizens to enforce *any* Privacy Act violation (5 U.S.C. § 552a(g)) – *even violations of requirements from which the FBI is not exempt*. It would also exempt the ITPR from subsection (e)(5) of the Privacy Act, which requires the FBI to maintain records with "accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual." The FBI justifies this exemption by claiming the requirement could "impede investigative progress," and that it would be impossible to vouch for the compliance of other domestic or foreign government or private entities with this provision. However, the "reasonably necessary" aspect of subsection (e)(5) already allows considerable flexibility, and the consequences of decisions made using the ITPR have the potential to be so serious for the individual in question that it is troubling that the FBI would consider using information it has not determined to be fully accurate.

Although we are not submitting comments on the related System of Records Notice<sup>1</sup>, we object strongly to the fact that comments may only be submitted by mail or fax; there is no opportunity for electronic public comment on that Notice.

We have previously joined a coalition of transparency, privacy, and civil liberties organizations in raising concerns<sup>2</sup> about the Insider Threat Program. The program is in need of greater transparency and stronger protections for legitimate whistleblowers, and attempts to weaken what protections already exist are a serious concern.

If you have any questions or would like to discuss this issue further, please contact Patrice McDermott, Executive Director of OpenTheGovernment.org at 202-332-6736 or [pmcdermott@openthegovernment.org](mailto:pmcdermott@openthegovernment.org).

Endorsed by:

American-Arab Anti-Discrimination Committee  
American Library Association  
Bill of Rights Defense Committee/Defending Dissent  
Constitutional Alliance  
Demand Progress  
Government Accountability Project  
National Coalition Against Censorship  
National Security Counselors  
OpenTheGovernment.org  
Project on Government Oversight  
Restore the Fourth

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<sup>1</sup> CPCLO Order No. 008-2016

<sup>2</sup> Coalition Letter to Inspector General of the Intelligence Community on Insider Threat Program:  
[http://www.pogoarchives.org/m/wi/insider\\_threat\\_ltr\\_icig\\_mccullough\\_20160106.pdf](http://www.pogoarchives.org/m/wi/insider_threat_ltr_icig_mccullough_20160106.pdf)