

Privacy Act of 1974

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7/17/00

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Why Have a Privacy Act?

- Constitutional right to privacy
- Affected by collection, maintenance, use and dissemination by Federal agencies
- Use of computers/telecommunications

Privacy Act of 1974

- Limits collection of personal information
- No *secret* Government record systems
- No *secret use* of Government records
- Right to see and correct one's own records
- *Safeguards* for the security and accuracy
- Civil and Criminal remedies

When is it a PA Records System?

- Group of records (more than one)
- Contains information about an individual
- Designed to be retrieved by name or other personal identifier

Privacy Act Record

- “any item, collection, or group of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.” 5 U.S.C. Section 552a(a)(4)

Privacy Act *covers:*

- U.S. citizen
- Resident aliens

Privacy Act *does NOT cover:*

- Non-resident aliens
- The deceased
- Organizations

Limit Collection of Information

- Relevant
- Necessary to carry out an Agency function
- SSN – only when legally authorized
- Inform individual of purpose and use of records collected: Privacy Act Notification Statement

Social Security No.

- Upon collection, must state whether:
 - Disclosure is mandatory or voluntary
 - By what statutory or other authority such number is solicited, and
 - What uses will be made of it
- May not deny any right, benefit, or privilege provided by law due to refusal to provide SSN unless the SSN is required by federal statute.

No Secret Government Records

- Publish Privacy Act System Notice in the Federal Register 40 days before collecting data
- System Notice: brief description of the type of record system and how the Government intends to manage and protect the system

Parts of a System Notice

- Number
- Name
- Security Classification
- Location
- Who It Covers
- Types of records
- Authority
- Purpose
- Routine uses
- Storage
- Record source categories
- How info retrieved
- Safeguards: Authorized users, physical and procedural safeguards
- Retention & Disposal
- System Mgr(s) address
- Notification procedure
- Record access procedure
- Contesting record procedure
- Exemptions

Notification Statement Sample

- Medical Services Application
- Name _____ SSN _____
- Date of last physical _____
- Results _____

- PRIVACY ACT NOTIFICATION STATEMENT

- Government Authorization
- Purpose of information collected
- Routine uses for info disclosure
- Is the request voluntary or mandatory
- What effect, if any, for not providing information

No Secret Use of PA Records

- With consent of individual
 - Get in writing
- Without consent of individual
 - 12 provisions
 - #3 – 12, must keep account

12 Provisions of Disclosure

- Employees with legitimate “need to know”
- Required under FOIA
- Routine use (not mandatory)
- Bureau of Census
- Statistical use (can’t identify individual)
- National Archives
- Civil or criminal law enforcement
- Compelling circumstances affecting health or safety of individual (must be justified)
- Congress (oversight capacity)
- Comptroller General (GAO activities)
- Court Order (subpoena signed by judge)
- Consumer reporting agency

Accounting of Disclosures

- When the request cites the Privacy Act, we must keep a record of:
 - Date, nature and purpose of each disclosure
 - Name and address of the person or agency to whom the disclosure is made

Right to See and Correct Data

- Subject has degree of control over information government collects on them:
 - Right to access (except for exemptions)
 - Right to amendment
 - Right to appeal denial of amendment

Safeguards

- Must collect information from individual, to greatest extent possible
- Establish appropriate administrative, technical and physical safeguards to insure secure and confidentiality

Relationship to FOIA

- FOIA Exemption 6 (Personal Privacy)
 - Parts of files may be withheld if disclosure “would constitute a clearly unwarranted invasion of personal privacy”
 - Must consider personal privacy interest of individual balanced against the public interest

Respond to Requests Under Both FOIA and PA

- Must respond under both FOIA and PA, as applicable
- May not use one to withhold disclosure of records if disclosure is required by the other

Supervisor's Notes

- They are NOT agency records when:
 - Personal property of supervisor only
 - Never shared with others (ie, not circulated)
 - Never passed to replacement supervisor
 - Memory joggers only
 - No official uses (ie not required by agency)

Supervisor's Notes

- Considered part of employee's personal record (agency record) when:
 - Used as basis for employment action
 - Otherwise treated as official Agency records

Forms Management Officer

- Advises when data collection form is governed by the PA
- Advises when form requires PA Statement
 - Coordinates with PA Coordinator on accuracy of statement
 - Special requirements for use of SSN

Criminal Remedies

- Applies to individual
- Fine up to \$5000 + court costs
 - If an officer or employee of agency knowingly releases records improperly to a person not entitled to receive
 - Willfully maintains PA system without publishing in Fed Register
 - Knowingly requests or obtains record about individual under false pretenses

Include Contract Clauses

- If contract covers Privacy Act records, must include contract clauses:
 - FAR
 - -52.224-1, Privacy Act Notification
 - -52.224-2, Privacy Act

Computer Systems/Files



Computer Data: When Is it a Record?

- If a computer system is set up to be used, or is used in practice, to retrieve information by individual identifiers (name, SSN, assigned tracking number) and the system contains personal information, the computer data is covered as a Privacy Act system of records.

Getting Help

Help with the provisions of the Privacy Act and FOIA and computer security problems can be requested of CAPT Nina Dozoretz, DIHS HQ:
(202) 353 - 9823



PA/FOIA QUIZ

- The Privacy Act was enacted in what year?

Answer: _____

- Does the PA extend to state agencies?

Answer: _____

- Does the PA cover non-resident aliens?

Answer: _____

PA/FOIA QUIZ

- Is a System Notice required if a federal agency is collecting SSN and other employee identifying information into a computer system?

Answer: _____

- Can a federal agency refuse to disclose parts of a requested file under FOIA?

Answer: _____

PA/FOIA QUIZ

- Are there criminal penalties for violating the Privacy Act?

Answer: _____

- Can you release medical information from a patient's medical record without the written consent of the patient? If so, when?

Answer: _____