

Department of the Interior Departmental Manual

Effective Date: 12/9/85

Series: Information Resources Management

Part 383: Public Access to Records

Chapter 7: Privacy Act - Disclosure Procedures

Originating Office: Office of Information Resources Management

This chapter has been given a new release number.* No text changes were made.

383 DM 7

7.1 **Purpose.** This chapter prescribes general procedures relating to the disclosure of information contained in a system of records subject to provisions of the Privacy Act. Disclosure provisions of the Act are not applicable to information in records systems not subject to the Act.

7.2 **Privacy Act Disclosure Restrictions.** The Privacy Act provides that records to which it applies may not be disclosed to any third party (including other Federal agencies) without the advance written consent of the person to whom the records pertain. There are, however, twelve exceptions which permit disclosures without the consent of the individual of record. These exceptions are described below. Note that a record as prescribed in 383 DM 7.7 must be maintained for all disclosures made except for those described in 7.2A and 7.2B below.

A. **Internal Disclosures.** The first exception to the basic disclosure restriction permits disclosures to officers and employees of the agency which maintains the records who have a need for the record in the performance of their duties. For purposes of the Privacy Act, the Department of the Interior is considered a single agency and this exception thus permits disclosure not only within, but also between Interior bureaus and offices.

B. **Disclosures Under the Freedom of Information Act.** The second exception to the Privacy Act's basic disclosure restrictions excepts those disclosures which are required by the Freedom of Information Act. When the Freedom of Information Act does not require disclosure, however, the Privacy Act disclosure restriction is applicable and provides a further safeguard for the privacy of individual citizens. A discussion of the relationship of the Freedom of Information Act to the Privacy Act is provided in 383 DM 7.3 below.

C. **Routine Use.** Disclosures may be made for a routine use as described and published in the notice describing the system of records. See 383 DM 5 and Appendix 3 to that chapter for a description of routine uses.

D. **Bureau of the Census.** Disclosures may be made to the Bureau of the Census

for purposes of planning or carrying out a census or survey or related activity.

E. Statistical Research/Reporting. Disclosures may be made to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

F. Preservation of Records. Disclosures may be made to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the Archivist's designee to determine whether the record has such value.

G. Civil or Criminal Law Enforcement. Disclosures may be made to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

H. Health or Safety. Disclosures may be made to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual.

I. Congressional Disclosures. Disclosures may be made to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee. However, see 383 DM 7.4 below regarding requests from individual members of Congress.

J. General Accounting Office. Disclosures may be made to the general Accounting Office for the purpose of carrying out the duties of that office.

K. Court Order. Disclosures may be made pursuant to the order of a court of competent jurisdiction. However, a subpoena issued as part of the routine discovery in a court proceeding, rather than by a judge as a specific order to produce, is not a court order permitting disclosure under this exception.

L. Debt Collection. Disclosures may be made to a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)). See 383 DM 7.5.

7.3 Relationship of the Freedom of Information Act to the Privacy Act. The Freedom of Information Act (FOIA) and the Privacy Act both deal with the disclosure of information held by the Federal Government. The FOIA generally gives the public the right to inspect their government's records, but has exemptions which permit the withholding of certain limited classes of records, including records which would cause a clearly unwarranted invasion of personal privacy if disclosed. As a general rule, the Privacy Act does not affect the public's

right of access to records available under the FOIA. The following guidance is applicable to FOIA requests that pertain to records that are subject to the provisions of the Privacy Act.

A. **Handling of FOIA Requests.** When a request is submitted under the FOIA, employees of the Department should process that request under the procedures spelled out in the Department's Freedom of Information regulations (43 CFR 2.11-2.20). For a discussion of combined FOIA and Privacy Act requests from individuals for access to their records, see 383 DM 6.11.

B. **Primacy of the FOIA.** If the records requested under the FOIA do not fall within any of the exemptions to the FOIA's disclosure requirements, the FOIA requires the disclosure of requested records, and the Privacy Act disclosure restriction is not applicable. In such cases, a written FOIA request must be in hand before making a disclosure from a Privacy Act system of records.

C. **Applicability of the Privacy Act.** If records requested in a FOIA request are determined to fall within an exemption from the FOIA's disclosure requirements, then the Privacy Act comes into play. Unless another of the exceptions to the Privacy Act's disclosure restriction applies (see 383 DM 7.2) or the subject of the records gives his or her consent, the records may not be disclosed. Note that only one or more of the nine exemptions under the FOIA may be used to withhold records in responding to a FOIA request. Since the Privacy Act is not a FOIA exemption (b) (3) statute, it cannot be used as authority for making a denial in response to a FOIA request.

D. **Applicable FOIA Exemptions.** Although several FOIA exemptions may apply to records in Privacy Act files, the exemptions most likely to be applicable are:

(1) 5 U.S.C. 552 (b) (6) - personal and medical files and similar files the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

(2) 5 U.S.C. 552(b) (7) - investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.

E. **Freedom of Information Act Guideline Determinations.** To the extent practicable, system managers should determine which categories of records in the systems for which they are responsible are likely to be required to be disclosed under the FOIA and provide appropriate guidance to employees working with the records.

7.4 **Disclosures to Members of Congress or Their Offices.** The exception described in

383 DM 7.2I above does not extend to requests made by individual members of Congress. It was not the intent of Congress, however, to deny individuals the benefit of congressional assistance which they request. If a system of records may encounter such requests, the systems manager should arrange for the following statement to be added to the routine use part of the systems notice: A Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual. @ Such requests can also be responded to if the information would be required to be disclosed under the Freedom of Information Act; if the member of Congress requests that the response go directly to the individual to whom the record pertains; or in compelling circumstances affecting the health or safety of an individual. Furthermore, consent can be inferred for any congressional inquiry indicating that the request is being made on the basis of a written request from the individual to whom the records pertain even if the constituent's letter is not provided.

7.5 Disclosure of Debt/Claim Information.

A. The Debt Collection Act of 1982 (P.L. 97-365) provides for disclosures of information regarding overdue debts from Privacy Act systems of records to consumer reporting agencies (i.e., credit bureaus, etc.) under certain conditions. As indicated in 383 DM 7.2L above, a disclosure of debt/claim information to a consumer reporting agency is permitted without the advance written consent of the affected individual provided the criteria prescribed in 344 DM 2.3D have been met.

B. A consumer reporting agency to whom debt/claim information is disclosed is not considered a contractor under the Privacy Act. However, a bureau or office that contracts with a person or organization for debt collection services must include as a provision of the contract that the contractor shall be subject to the requirements of the Privacy Act (see 383 DM 4.6). It is not necessary to publish in the system of records notice a routine use disclosure of debt/claim information from a system of records to a contractor performing debt collection services for the bureau/office.

7.6 Procedures for Disclosures. Specific guidelines for each system of records shall be developed by each bureau to cover the application of the exceptions and for situations that require the written permission of individuals.

7.7 Disclosure Accounting Requirements. The Privacy Act requires that records be kept on all disclosures made under the exceptions described in 383 DM 7.2C through 7.2L. The records must show the date, nature, purpose and exception under which the disclosure was made, and the name and address of the person or agency to whom the disclosure was made. The records must be retained for at least five years after the disclosure for which the accounting is made or the life of the records, whichever is longer. All disclosures except those made under the law enforcement exception (383 DM 7.2G) are to be available for inspection by the individual. Corrections to records which significantly alter the nature of prior recorded disclosures are to be conveyed to any agency or individual to whom such disclosures were made.

7.8 Disclosure Accounting Procedures. Records on disclosures shall be maintained

convenient to the individual=s records, but not necessarily as part of the record unless so desired by the system manager. Since record systems are structured in a variety of ways (including manual, microfilm, and ADP), each system manager will have to address the disclosure requirements in a way appropriate to the system. A separate general disclosure statement can be used in lieu of individual notations when personal data involving large numbers of people are disclosed. For instance, one standard statement on file can cover the routine transfer of payroll data to the U.S. Treasury Department. Similarly, one statement giving the date, nature, purpose, exception, categories of individuals, numbers of individuals, and to whom disclosed will serve for statistical or other one time transfers. If the records disclosed involve 10 or fewer, or if the group was selected by individual rather than category, then a record of the disclosure must be prepared which is identifiable to each individual.

7.9 General Guideline Procedures. Appendix 1 to this chapter provides a set of guidelines dealing with disclosure situations for employees working with a system of records. The guidelines are to be supplemented with guidelines specific to each system of records.

383 DM 7
Appendix 1

GENERAL INFORMATION AND GUIDELINES FOR EMPLOYEES HANDLING DISCLOSURE SITUATIONS

The Privacy Act basically prohibits the disclosure of personal information contained in systems of records subject to the Act without the written permission of the individual to whom the record pertains. There are twelve exceptions to this prohibition as described below. Not all records systems are subject to the Act, only those from which information about an individual is retrieved by the use of the person=s name, or some other identifier such as a number, or symbol. The Department of the Interior has identified systems of records subject to the Privacy Act and has published systems notices describing them in the Federal Register.

A disclosure occurs when personal information in a system of records is revealed to a third person. The Act provides for criminal and civil penalties for improper disclosures. Your system manager is responsible for assuring that normal disclosures associated with your system of records are in conformance with the Act. He/she is also responsible for providing you with guidance when disclosures outside your normal activity are requested. Requests for disclosures not fitting your regular activities or the guidelines provided should be referred to your system manager.

The Privacy Act permits disclosures without the written permission of the named individual under the following twelve exceptions.

1. To those officers or employees of the Department who have a need for the record in the performance of their duties.

This provision permits you to carry on your normal duties in working with and letting others IN THE DEPARTMENT work with personal files. The only restriction on disclosure here is the requirement that the employees of the Department have a legitimate need for a record in the performance of their duties.

2. Required by the Freedom of Information Act.

If the Freedom of Information Act (FOIA) is used to request access, the request must be processed in accordance with the provisions of the Freedom of Information Act and in accordance with the Department's related regulations (43 CFR 2.11-2.20). The Privacy Act does not come into play unless it is determined that the information fits within one of the nine specific exemptions listed in the FOIA and therefore disclosure is not required by the Freedom of Information Act. If disclosure is not required by the FOIA and the information is protected by the Privacy Act, the information may not be disclosed.

Note: The Privacy Act requires that records be kept on disclosures made under exemptions 3 through 12 below. The system manager should provide instructions on the information to be recorded and how it is to be filed. Department instructions published in Part 383, Chapter 7, of the Departmental Manual prescribe the types of information that must be kept regarding disclosures.

3. For a routine use.

The published system notice for the system of records you are working with lists the circumstances under which personal information in the records may be disclosed to persons or agencies outside the Department. Disclosures may be made under this exception only when a routine use statement has been published. A copy of the published notice for any records system you are maintaining or concerned with is available from your system manager or Bureau Privacy Act Officer.

4. To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity.

5. For statistical purposes.

The Privacy Act provides that personal data may be made available in statistical form. The two conditions that must be met from your standpoint are:

- a. That the request has been submitted to and approved by the system manager.
- b. That the personal data are supplied in such a form that individuals cannot be identified from the disclosed records.

6. To the National Archives.

Transfers to the National Archives shall be in conformance with the regulations on archival treatment of records. These regulations are available from your Records Officer.

7. To a government agency or instrumentality within or under the control of the U.S. for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department specifying the particular portion desired and the law enforcement activity for which the record is sought.

Requests for information for investigative purpose, if compatible with the purpose for the collection of the records, may be cited as a routine use. In these cases the information may be disclosed in accordance with the routine use statement (see the third exception above).

Investigative requests not listed under the routine use section of the system notice may be made under this exception if accompanied by a written request by the head of the requesting agency addressed to the system manager.

8. For reasons of emergency involving health or safety.

You may disclose information relevant to an emergency involving compelling circumstances affecting the health or safety of an individual. Immediately upon disclosing the information you must send a letter about the disclosure to the last known address of the individual.

9. To Congress in the performance of its duties.

You may disclose information in response to congressional requests when the requests are to meet requirements established by law (such as reports) or when made by a House of Congress or by a committee or subcommittee in carrying out its responsibilities. The inquiries of individual Congressmen do not qualify under this exception. However, disclosures may be made to individual Congressmen if any one of the following conditions is met:

a. The inquiry is made at the request of the individual to whom the record pertains, and disclosure to a Congressional office under such circumstances has been established as a routine use for the system of records (see the third exception above).

b. The information would be required to be disclosed under the Freedom of Information Act (see the second exception above).

c. The Member requests that the response go directly to the individual to whom the record pertains.

d. There are compelling circumstances affecting the health or safety of an individual (see the eighth exception above).

e. The member or his/her office indicates the inquiry is in response to a written request from the individual to whom the record pertains. The letter does not have to accompany the request by the member or his/her office.

10. To the Comptroller General or any of his/her authorized representatives in the performance of their official duties.

11. Pursuant to the order of a court of competent jurisdiction.

A subpoena issued as part of routine discovery in a court proceeding is not a court order permitting disclosure under this exception. A subpoena issued by a judge as a specific order to produce records would permit disclosure under this exception. If a record is made available to any person under a court order or as part of any compulsory legal process, and the record becomes public, reasonable efforts must be made to advise the individual to whom the record pertains of the disclosure.

12. To a consumer reporting agency.

This provision pertains only to the disclosure of information to consumer reporting agencies (i.e. credit bureaus) concerning indebtedness due the Federal Government. Before making any disclosures under this exception, certain conditions described in 383 DM 7.5 must be met.

*

12/9/85 #3453

Replaces 12/9/85 #2659