

# **OVERVIEW OF THE PRIVACY ACT OF 1974 (Public Law 93-579, 5 USC § 552a)**

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## **INTRODUCTION**

- **PURPOSE**
- **NO SECRET FILES**
- **PERTAINS TO THE EXECUTIVE BRANCH ONLY**

# **OVERVIEW OF THE PRIVACY ACT OF 1974 (Public Law 93-579, 5 USC § 552a)**

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- **LIMITING IN SCOPE:**

**(1) U.S. CITIZENS / ALIENS ADMITTED  
FOR PERMANENT LEGAL RESIDENCE**

**(2) RECORDS MAINTAINED IN PA  
SYSTEM OF RECORDS / RECORD NORMALLY  
RETRIEVED BY NAME AND/OR OTHER PERSONAL  
IDENTIFIER**

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- **DIFFICULT TO DECIPHER AND APPLY**

- (1) **IMPRECISE LANGUAGE**

- (2) **LIMITED LEGISLATIVE HISTORY**

- (3) **OUTDATED REGULATORY GUIDELINES**

- (4) **UNPUBLISHED DISTRICT COURT DECISIONS**

- (5) **UNRESOLVED/UNEXPLORED PA ISSUES**

# **OVERVIEW OF THE PRIVACY ACT OF 1974**

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- **THE GOVERNMENT MUST:**

- (1) **INFORM INDIVIDUAL WHY INFORMATION BEING COLLECTED AND HOW IT WILL BE USED.**

- (2) **PUBLISH FEDERAL REGISTER NOTICE**

- (3) **ENSURE INFORMATION IS ACCURATE, RELEVANT, COMPLETE, AND UP-TO-DATE**

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**(4) ALLOW INDIVIDUALS ACCESS TO RECORDS ABOUT THEMSELVES.**

**(5) ALLOW INDIVIDUALS TO FIND OUT WHAT RECORDS HAVE BEEN DISCLOSED.**

**(6) PROVIDE INDIVIDUALS WITH THE OPPORTUNITY TO CORRECT INACCURACIES IN THEIR RECORDS.**

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## **IMPLEMENTATION**

- **DoD 5400.11 AND DoD 5400.11-R.**
- **SECNAVINST 5211.5D**
  - **Codified at 32 CFR Part 701**

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- **NAVY PA SYSTEMS OF RECORDS NOTICES  
POSTED ON THE INTERNET AT:**

*[privacy.navy.mil](http://privacy.navy.mil)*

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## **KINDS OF SYSTEMS RECORDS NOTICES**

- **UMBRELLA SYSTEMS**
- **EXEMPT SYSTEMS**
- **NON-EXEMPT SYSTEMS**



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### **WHAT IS A PA SYSTEMS OF RECORDS NOTICE?**

- **BLUEPRINT**
- **SPECIFICALLY ADDRESSES:**
  - (1) **System Number**
  - (2) **System Name**
  - (3) **Location of System**

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**(4) Categories of Individuals**

**(5) Categories of Records**

**(6) Authority**

**(7) Purpose**

**(8) Routine Uses**

**(9) Storage**

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**(10) Retrievability**

**(11) Safeguards**

**(12) Retention and Disposal**

**(13) System Manager and Address**

**(14) Notification Procedure**

**(15) Record Access Procedures**

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**(16) Contesting Record Procedures**

**(17) Record Source Categories**

**(18) Exemptions Claimed for the System**

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## RELEASABILITY OF RECORDS

- MOST SYSTEMS OF RECORDS ARE "NON-EXEMPT"
  - documents in file are releasable to the subject of the file in entirety.

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## **RELEASABILITY OF RECORDS**

- **"EXEMPT" SYSTEMS OF RECORDS**
  - **Processed for release under FOIA**
  - **First party requester afforded max information allowable under both PA and FOIA**

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## **RELEASABLE PRIVACY INFORMATION**

- **Gross salary**
- **Grade or rank**
- **Duty station address (unless assigned to a sensitive, routinely deployable, or overseas unit)**
- **Awards**
- **Monetary amount of awards (considered part of salary)**
- **Educational background**
- **Etc.**

**CLEARLY RELEASABLE PRIVACY INFORMATION CAN BE RELEASED OVER TELEPHONE, BY FAX MACHINE, AND/OR EMAIL WITHOUT RESTRICTIONS.**

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## **NON-RELEASABLE PRIVACY INFORMATION**

**EXCEPT TO A FIRST PARTY, FOLLOWING INFORMATION IS NOT RELEASABLE:**

- **Dates of birth**
- **Home addresses**
- **Home telephone numbers**
- **Home e-mail addresses**
- **Net salary**
- **Performance ratings**
- **Disciplinary actions**
- **Etc.**



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## **ROUTINE USERS**

- **DEFINED BY SYSTEMS NOTICE**

- when transmitting documents to routine users that contain FOIA exempt personal privacy information, it must carry, at a minimum, a warning declaring "FOR OFFICIAL USE ONLY - PRIVACY ACT PROTECTED DATA CONTAINED HEREIN"

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## PRIVACY ACT ACCESS

- U.S. CITIZENS AND LEGALLY ADMITTED ALIENS MAY
  - (1) Submit a written request for access to their records
  - (2) Provide written authorization for representative to act on his/her behalf
  - (3) Seek records on behalf of a minor child
    - only if acting in best interest of the child

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## **AMENDING RECORDS**

- **Individuals may seek amendment of their records when the information contained in file is erroneous.**
  - **factual matters are amendable**
  - **matters of opinion are NOT amendable**

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## **PROCEDURES FOR AMENDING RECORDS**

- **MUST BE IN WRITING**
- **INCLUDE DESCRIPTION OF DATA TO BE AMENDED**
- **REASON FOR AMENDMENT**
- **TYPE OF AMENDMENT ACTION SOUGHT**
- **EVIDENCE TO SUPPORT AMENDMENT REQUEST.**

**NOTE: BURDEN OF PROOF RESTS WITH THE INDIVIDUAL.**

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- **SYSTEMS MANAGER WILL**
  - **ACKNOWLEDGE RECEIPT WITHIN 10 WORKING DAYS**
  - **RULE AND RESPOND WITHIN 30 WORKING DAYS**
  - **NOTIFY REQUESTER, IN WRITING, IF DENIED IN WHOLE OR IN PART, AND**
    - \* **AFFORD APPELLATE RIGHTS**
    - \* **OFFER OPPORTUNITY TO PLACE STATEMENT OF DISAGREEMENT IN FILE**

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## **PA APPEALS**

- **MUST BE SUBMITTED IN WRITING WITHIN 60 CALENDAR DAYS OF THE DENIAL**
- **MUST BE SUBMITTED DIRECTLY TO APPROPRIATE APPELLATE AUTHORITY**
- **SHOULD INCLUDE A COPY OF THE INITIAL DENIAL AND A STATEMENT OF REASONS FOR REVIEW**

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## CRIMINAL AND CIVIL PENALTIES

- PRIVACY ACT CARRIES CRIMINAL/CIVIL PENALTIES

- ANY OFFICER OR EMPLOYEE WHO KNOWINGLY AND WILLFULLY DISCLOSES PRIVACY ACT PROTECTED DATA TO ANY PERSON NOT ENTITLED TO RECEIVE IT CAN BE FOUND GUILTY OF A MISDEMEANOR AND FINED UP TO \$5000.00

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**- ANY OFFICER OR EMPLOYEE OF AN AGENCY WHO WILLFULLY MAINTAINS A SYSTEM OF RECORDS WITHOUT MEETING THE NOTICE REQUIREMENTS OF THE ACT CAN BE FOUND GUILTY OF A MISDEMEANOR AND FINED UP TO \$5000.000**

**- ANY PERSON WHO KNOWINGLY AND WILLFULLY REQUESTS OR OBTAINS PRIVACY ACT PROTECTED INFORMATION ABOUT AN INDIVIDUAL UNDER FALSE PRETENSES CAN BE FOUND GUILTY OF A MISDEMEANOR AND FINED UP TO \$5000.000.**



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- ADDITIONAL CIVIL PENALTIES**
  - \* PAYMENT OF REASONABLE ATTORNEY'S FEES**
  - \* REMOVAL FROM EMPLOYMENT**

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## **PRIVACY ACT STATEMENTS**

- **REQUIRED WHENEVER PERSONAL INFORMATION IS COLLECTED DIRECTLY FROM AN INDIVIDUAL.**

# **OVERVIEW OF THE PRIVACY ACT OF 1974 (Public Law 93-579, 5 USC § 552a)**

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- **A PRIVACY ACT STATEMENT MUST APPRISE THE INDIVIDUAL OF:**
  - \* **AUTHORITY**
  - \* **PURPOSE**
  - \* **ROUTINE USES**
  - \* **HOW INFORMATION TO BE USED**
  - \* **IDENTIFY WHO WILL HAVE ACCESS**
  - \* **INDICATE HOW LONG INFORMATION TO BE MAINTAINED**
  - \* **VOLUNTARY OR MANDATORY SUBMISSION (AUTHORITY MUST SUPPORT).**

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- **NO GENERIC PRIVACY ACT STATEMENTS**

- **EACH STATEMENT FORMULATED DIRECTLY FROM  
PRIVACY ACT SYSTEMS NOTICE**

- **WHENEVER POSSIBLE, THE STATEMENT SHOULD  
BE CONTAINED ON THE DATA COLLECTION FORM**

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## **ROUTINE ACCESS AND DISCLOSURE ACCOUNTING**

### **MAJOR CONCERNS:**

- **"WHO HAS ACCESS TO MY FILE?"**
- **"FOR WHAT PURPOSE?"**

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## **TWO KINDS OF ROUTINE ACCESS**

- **WITHIN AGENCY**
  - **FOR OFFICIAL USE - NEED TO KNOW**
  - **NO DISCLOSURE ACCOUNTING IS REQUIRED**
- **ROUTINE USE DISCLOSURE**
  - **SET FORTH IN THE PA SYSTEMS NOTICE UNDER "ROUTINE USES"**
  - **REQUIRES ANNOTATION ON DISCLOSURE ACCOUNTING FORM**

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## **TWELVE CONDITIONS OF DISCLOSURE (NO WRITTEN CONSENT REQUIRED PRIOR TO DISCLOSURE)**

**(1) DISCLOSURES TO OFFICERS AND EMPLOYEES OF AGENCY THAT MAINTAINS THE RECORD AND WHO HAVE A NEED FOR THE RECORD IN THE PERFORMANCE OF THEIR DUTIES**

**(2) DISCLOSURES REQUIRED UNDER THE FOIA**

**(3) "ROUTINE USE" DISCLOSURES**

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**(4) DISCLOSURES MADE TO THE CENSUS BUREAU TO CARRY OUT CENSUS**

**(5) DISCLOSURES MADE SOLELY FOR STATISTICAL RESEARCH AND THE TRANSFERRED RECORD IS IN A FORM WHERE IDENTITIES OF INDIVIDUALS CANNOT BE DETERMINED.**

**(6) DISCLOSURES TO NARA FOR HISTORICAL PRESERVATION OR FOR EVALUATION TO DETERMINE WHETHER RECORD HAS HISTORICAL VALUE**



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**(7) DISCLOSURES TO ANOTHER AGENCY FOR A CIVIL OR CRIMINAL LAW ENFORCEMENT ACTIVITY**

**(8) DISCLOSURES TO A PERSON SHOWING COMPELLING CIRCUMSTANCES AFFECTING THE HEALTH OR SAFETY OF AN INDIVIDUAL**

**- MUST SEND NOTICE TO LAST KNOWN ADDRESS OF INDIVIDUAL WHO IS THE SUBJECT OF THE FILE**

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**(9) DISCLOSURES TO CONGRESS AS MATTER WITHIN ITS JURISDICTION (ANY COMMITTEE, JOINT COMMITTEE, OR SUBCOMMITTEE).**

**(10) DISCLOSURES TO THE COMPTROLLER GENERAL FOR DUTIES OF THE GENERAL ACCOUNTING OFFICE.**

**(11) DISCLOSURES UNDER COURT ORDER OF A COURT OF COMPETENT JURISDICTION**

**(12) DISCLOSURES TO A CONSUMER REPORTING AGENCY IAW TITLE 31, SECTION 3711(F)**

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## **PRIVACY ACT EXEMPTIONS**

- **(j)(1) - CIA ONLY**
- **(j)(2) - record is maintained by an activity whose principal function pertains to the enforcement of criminal laws**
- **(k)(1) - information is classified**
- **(k)(2) - investigatory material compiled for law enforcement purposes by an activity whose primary function does not pertain to law enforcement**

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- **(k)(3) - information maintained in connection with providing protective services to the President of the United States or other individuals pursuant to Title 18, section 3056**
- **(k)(5) - source identifying information (when afforded offer of confidentiality) contained in an investigation conducted to determine suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information**

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- **(k)(6) - testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service, the disclosure of which would compromise the objectivity or fairness of the testing or examining process**
- **(k)(7) - source identifying information (when afforded offer of confidentiality) contained in evaluation material used to determine potential for promotion in the armed services**

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## **YOUR ROLE AND RESPONSIBILITY**

- **YOU PLAY AN IMPORTANT ROLE**

**(1) Do not collect personal information without proper authorization**

**(2) Do not maintain illegal files; do not maintain or release inaccurate information.**

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**(3) Do not distribute or release personal information to individuals who do not have a need for access**

**(4) Do not send personal information over the fax or by e-mail unless properly marked**

**(5) Do not maintain records longer than permitted**

**(6) Do not destroy records before records disposal requirements are met**

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**(7) Ensure that you do not place unauthorized documents in a records system.**

**(8) Ensure that you do not commingle information about individuals in the same file**

**(9) Ensure that you mark all documents that contain privacy information as "FOR OFFICIAL USE ONLY - PRIVACY ACT PROTECTED INFORMATION CONTAINED HEREIN".**

**(10) Ensure that all message traffic, faxes, and e-mails that contain personal information are properly marked.**



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**(11) Respect privacy and remember the civil and criminal penalties associated with violating the Act**

**(12) Do not place Privacy Act / FOIA protected information on the Internet.**

**(13) Do not entertain verbal requests, unless the information is releasable under the FOIA.**

**(14) Think Privacy before you seek to establish new data collections on your computer or similar office equipment.**

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## DEFINITIONS

**ACCESS** - the review or copying of a record or parts thereof contained in a system of records by any individual.

**AGENCY** - for the purposes of disclosing records subject to the provisions of the Privacy Act between or among Department of Defense (DoD) components, DoD is considered a single agency. For all other purposes, the Department of the Navy is considered an agency within the meaning of the Privacy Act.

**CONFIDENTIAL SOURCE** - a person or organization who has furnished information to the federal government either under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before 27 Sep 75.

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**DISCLOSURE** - the transfer of any personal information from a system of records by any means of communication (ie, oral, written, electronic, mechanical, or actual review), to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent, or the subject's legal guardian.

**FEDERAL PERSONNEL** - officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve components), individuals or survivors thereof, entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

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**INDIVIDUAL** - a living citizen of the United States or alien lawfully admitted to the U.S. for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a deceased person under this instruction and the term "individual" does not embrace an individual acting in a non-personal capacity (ie, sole proprietorship or partnership).

**INDIVIDUAL ACCESS** - access to information pertaining to the individual by the individual or his/her designated agent or legal guardian.

**MAINTAIN** - includes maintain, collect, use, or disseminate.

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**MEMBER OF THE PUBLIC** - any individual or party acting in a private capacity.

**MINOR** - under this instruction, a minor is an individual under 18 years of age, who is not a member of the U.S. Navy or Marine Corps, nor married.

**OFFICIAL USE** - within the context of this instruction, this term is used when DON officials and employees have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties.

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**PERSONAL INFORMATION** - information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

**PRIVACY ACT (PA) REQUEST** - a request from an individual for notification as to the existence of, access to, or amendment of, records pertaining to that individual. These records must be maintained in a system of records and the request must indicate that it is being made under the PA to be considered a PA request.

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**RECORD** - any item, collection, or grouping of information about an individual that is maintained by a naval activity including, but not limited to, the individual's education, financial transactions, and medical, criminal, or employment history, **AND** contains the individual's name or other identifying particulars assigned to the individual, such as a finger or voice print or a photograph.

**REVIEW AUTHORITY** - an official charged with the responsibility to rule on administrative appeals of initial denials of requests for notification, access, or amendment of records. The Secretary of the Navy has delegated his review authority to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) [ASN (M&RA)], the General Counsel (OGC), and the Judge Advocate General (JAG). Additionally, the Office of Personnel Management (OPM) is the review authority for civilian official personnel folders or records contained in any other OPM record.

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**ROUTINE USE** - disclosure of a record outside the Department of Defense for a purpose that is compatible with the purpose for which the record was collected and maintained. The routine use must have been included in the notice for the system of records published in the Federal Register.

**STATISTICAL RECORD** - a record maintained only for statistical research or reporting purposes AND not used in whole or in part in making any determination about a specific individual.

**SYSTEM MANAGER** - an official who has overall responsibility for a system of records. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (ie, for local records, at the local activity).



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**SYSTEM OF RECORDS** - a group of records under the control of a Department of the Navy activity from which information is retrieved by the individual's name or some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records are posted to the Department of the Navy's Privacy Act Online Internet site at *privacy.navy.mil*.

**WORKING DAY** - all days excluding Saturday, Sunday, and legal holidays.