

CHAPTER 2. INTRODUCTION TO THE PRIVACY ACT

2-1 NECESSITY. Federal agencies collect and disseminate a great deal of personal information about individuals. Records are maintained on employees of the agency, persons doing business with the agency and persons serviced by the agency. In order to safeguard the privacy of individuals from possible infringement, either willful or accidental, by other individuals or public agencies, the Congress of the United States enacted and the President signed Public Law 93-579 on December 31, 1974, entitled the "Privacy Act of 1974." The Act was amended in 1988 to incorporate the requirements for conducting computer matching programs. The Congress stated the following reasons for the necessity of such a law:

- A. The privacy of an individual is directly affected by the collection, maintenance, use and dissemination of personal information.
- B. The increasing use of computers and sophisticated information technology, which is essential to efficient operations and data handling, has greatly increased the possible harm that can occur to an individual's privacy from any collection, maintenance, use or dissemination of personal information.
- C. The opportunities for an individual to obtain employment, insurance and credit, and his right to due process under the law and other legal protections are in danger from the possible misuse of certain information systems.
- D. The right to privacy is a personal and fundamental right protected by the Constitution of the United States.
- E. In order to protect the privacy of an individual who is identified in a Federal information system, Congress must regulate the collection, maintenance, use and dissemination of this information with regard to that system.

2-2 PURPOSE. The objective of the Privacy Act is to provide safeguards for an individual against an invasion of his privacy. In order to accomplish this, the Act requires Federal agencies to follow strict rules of procedure, unless otherwise directed by the law:

- A. An individual must be permitted to determine what records pertaining to him are collected, maintained, used or disseminated by Federal agencies.
- B. An individual must be allowed to prevent records pertaining to him, that were collected for a specific purpose, to be made available for another purpose without his consent.
- C. An individual must be allowed access to information pertaining

to him in agency records and to have a copy made of all or any part of that information.

- D. An individual must be given the right to seek correction or amendment of" any agency record pertaining to him.
- E. The agency may not collect, maintain, use or disseminate any record identifying personal information unless it is for a necessary and lawful purpose.
- F. The agency must assure that any information it does collect, maintain, use or disseminate is current and accurate for its intended use, and that adequate safeguards exist to prevent misuse of that information.
- G. The agency may exempt records of information from specific requirements of the Act only when an important public policy need for the exemption has been determined by specific statutory authority.
- H. The agency will be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under the Privacy Act.

2-3 DEPARTMENTAL POLICY. The U.S. Department of Housing and Urban Development established its policies and procedures for implementing the Act by adopting Part 16, Implementation of the Privacy Act of 1974, as an amendment to Title 24 of the Code of Federal Regulations. Part 16 sets forth the following items of Departmental policy:

- A. The Department forbids the collection, maintenance, use or dissemination of secret records. For the purposes of the Privacy Act, secret records are official records containing personal information about individuals; these records are retrieved on the basis of a unique identifier (e.g., name, social security number) corresponding to the individual

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himself and have not been published in the Federal Register.

- B. The Department will ensure the protection of individual privacy by safeguarding against the unwarranted disclosure of records containing information on individuals.
- C. The Department will act promptly on any request for information about, for access to or for appeal against a decision concerning records containing information on individuals, which is made by a citizen of the United States or an alien lawfully admitted for residence into the United States, regardless of the age of the individual making the request or the reason for the request.
- D. The Department will maintain only information on individuals which is relevant and necessary to the performance of its

lawful functions.

- E. The Department is responsible for maintaining information on individuals with such accuracy, relevancy, timeliness and completeness as is reasonably necessary to assure fairness to the individual in any determinations that are made.
- F. The Department will make every effort to obtain information about an individual directly from the individual.
- G. The Department will not maintain any record describing how an individual exercises his or her rights guaranteed by the first Amendment (freedom of religion, speech and press, peaceful assemblage, and petition of grievances), unless expressly authorized by statute or by the individual.
- H. The Department will ensure an individual the right to seek the correction or amendment of any record in a system of records pertaining to him or her.
- I. The Department will review upon appeal all decisions that deny access to or corrections and amendments of records under the Act.
- J. The Department requires all organizational components to follow the same rules and procedures to assure uniformity and consistency in implementation of the Privacy Act.

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- K. With respect to requests for information, the Department will disclose the maximum amount of requested information within the constraints of legality.

2-4 YOUR RESPONSIBILITIES. As an employee of the Department you have certain responsibilities to assist the Department in safeguarding your rights and those of others. These responsibilities, for which you' are held accountable by law, are listed below:

- A. Do not disclose any record contained in a system of records by any means of communication to any person, or another agency except under the specific conditions of disclosure stated in the Act and in Departmental regulations.
- B. Do not maintain unreported files which would come under the Act. Paragraph 4-3 describes reporting requirements.
- C. Do not maintain records describing how any individual exercises his or her rights guaranteed by the, First Amendment unless expressly authorized by statute or by the individual. The First Amendment protects an individual's rights of free assembly; freedom of religion, speech and press; and to petition the Government.
- D. Privacy rules that will help you avoid the difficulties associated with Items A., B., and C., above, are the

following:

1. Safeguard the privacy of all individuals and the confidentiality of all personal information.
2. Report the existence of all personal information systems not published in the HUD Privacy Systems Notice to your Privacy Act Officer.
3. Account for all transfers of personal records outside the Department. See paragraph 3-6.
4. Limit the availability of records containing personal information to Departmental employees who need them to perform their duties.

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5. Avoid unlawful possession of or unlawful disclosure of individually identifiable information.

- E. All HUD program office Records Management Liaison Officers (RMLOs) must ensure that retention and disposition schedules are in place for records in their specific program areas covered by the Privacy Act systems of records. Existing records disposition schedules can be found in Handbooks 2225.6 REV-1, HUD Records Disposition Schedules; and 2228.2 REV-2, General Records Schedules.

2-5 Criminal Penalties. The Privacy Act provides the following penalties for unauthorized disclosure of records. All three are misdemeanors punishable by fines of \$5,000.

- A. Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by the Privacy Act or by rules or regulations of the Department, and who knowing that disclosure of the specific material is so prohibited, will fully disclose the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor.
- B. Any officer or employee of HUD who willfully maintains a system of records without meeting the notice requirements in paragraph 4-3 of this handbook shall be guilty of a misdemeanor.
- C. Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor.

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