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CITIZEN ACCESS TO RECORDS:
A GUIDE TO FEDERAL STATUTORY
REQUIREMENTS

JEROME HANUS
Analyst in American National
Government
Government Division

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Revised

SARAH COLLINS
Analyst in American National
Government
Government Division

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CITIZEN ACCESS TO RECORDS: A GUIDE TO STATUTORY REQUIREMENTS

The rapid proliferation, at the Federal level, of data banks in the 1960's and 1970's -- containing in excess of 1 1/4 billion separate records on American residents -- lent substance to the worries of many that personal information could be misused on a large scale. In response, the propriety of overextensive governmental and corporate information gathering and disclosure is being reconsidered. Congress has reflected this concern by enacting the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), which requires disclosure, with certain exemptions, of records and information held by the Federal Government. In addition, Congress passed three laws which authorize access to certain personally identifiable records held by credit corporations and by the Federal Government. These are: The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), the Family Educational Rights and Privacy Act of 1971 (20 U.S.C. 1232g) which is referred to below as the Buckley Amendment, and the Privacy Act of 1974 (5 U.S.C. 552 a). For the readers' convenience, the Civil Service Commission Rules on Personnel Records and Executive Order 11652 (which relates to classified information) are also included.

Together these laws lay the foundation for a code of fair information practices by which citizens and others can exercise a measure of control over the collection of information about themselves. The principles evolving from the legislation are those requiring records to be kept with accuracy, relevancy, and fairness. But these principles can become effective only if citizens are aware of their rights and

act on behalf of them. This report is designed to assist congressional personnel in advising constituents about their rights over information held by Government and by private credit corporations. Key provisions of each of the Acts are described below.

I. Types of Records Covered

Fair Credit (text at p. 11) - applies to any information bearing on a consumer's eligibility for credit, insurance, employment, rent, license, or government benefit. However, medical records are not included in disclosure provisions. [15 U.S.C. 1681g]

Buckley Amendment (text at p. 18) - applies to most personal records maintained by educational institutions receiving Federal funding. [20 U.S.C. 1232g (a)]

FOIA (text at p. 23) - with certain exceptions, applies to all governmental records which do not fall within one of the exemptions listed in the Act.* [5 U.S.C. 552]

Privacy Act (text at p. 27) - with certain exceptions, applies to Federal records held by Federal executive authorities, including personnel records, which are retrievable by a personal identifier such as a name or number. [5 U.S.C. 552a (a)]

* See pages 52-63 for the Executive Order on classification and declassification of information.

II. Beneficiaries of the Acts

Fair Credit - an individual consumer on whom a consumer report has been made. [15 U.S.C. 1681a (b)]

Buckley Amendment - parents or legal guardians of a student under 18 years of age, or a student 18 years or older. [20 U.S.C. 1232g (e)]

FOIA - any individual or institution. [5 U.S.C. 552]

Privacy Act - a citizen of the U.S. or an alien lawfully admitted for permanent residence. [5 U.S.C. 552a (a)]

III. Institutions Covered

Fair Credit - consumer reporting agencies and persons (including corporations) who regularly procure or cause to be prepared an investigative consumer report on any consumer for use by a third party. [15 U.S.C. 1681d]

Buckley Amendment - educational agencies or institutions which are the recipients of Federal educational funds [20 U.S.C. 1232g (a)(3)]

FOIA - all Federal agencies and departments including the U.S. Postal Service, the Postal Rate Commission, and Government corporations as well as contractors who operate an information system on behalf of a Federal agency. [5 U.S.C. 552 (e)]

Privacy Act - all Federal executive agencies and departments including the U.S. Postal Service, the Postal Rate Commission, and Government corporations as well as contractors who operate an information system on behalf of a Federal agency. The CIA, FBI, and other law enforcement agencies are permissively exempt from the disclosure requirement. [5 U.S.C. 552a (a)]

IV. Notification to the Individual

Fair Credit - a person who procures, or causes to be prepared, an investigative consumer report on a consumer, must disclose to the consumer that such a report is being made. The consumer must be notified in writing no later than three days after the date on which the report was requested; the consumer must also be notified of his right to request additional information. [15 U.S.C. 1861d]

Buckley Amendment - specifies that students and their parents must be informed of their rights under this Act. The notification must include:

- a) the types of education records, and information contained in them, maintained by the institution;
- b) the name and position of the official who has custody of the information, the names of persons who have access, and the purposes for which they have access;
- c) the policies of the institutions for reviewing and expunging those records;
- d) the procedures for obtaining access to records;
- e) the process for challenging the content of the records;
- f) the cost for reproducing records;
- g) the categories which the institution has defined as "directory information" (i.e., information which the institution will disclose publicly);
- h) notice under this Act must be in the language of the student or parent;
- i) notice must be given at least annually.

FOIA - the Act is not intended to furnish notification to specific individuals. A person seeking information from a Federal agency should consult the Federal Register and agency indexes which provide information for the public as to any matter issued, adopted, or promulgated after July 4, 1967.

[5 U.S.C. 552 (a)]

Privacy Act - each agency that maintains a system of records is required to inform each individual whom it asks to supply information, on the form which it uses to collect this information or on a separate form that can be retained by the individual, of the authority which authorizes the request for the information and whether disclosure is mandatory or voluntary; the principal purpose or purposes for which the information is intended to be used; the routine uses which may be made of the information, and the effects on him, if any, of not providing all or any part of the requested information [5 U.S.C. 552a (e)(3)]

Agencies must also publish in the Federal Register at least annually a notice of the existence and character of the system of records and any routine uses to which they are put.

[5 U.S.C. 552a (e)(4), (11)]

V. To Whom the Request is Directed

Fair Credit - to the appropriate consumer reporting agency, such as a credit bureau. [15 U.S.C. 1681d (b)]

Buckley Amendment - to the appropriate educational institution or agency. [20 U.S.C. 1232g (a)(1)(A)]

FOIA - to the officer or office specified in the appropriate agency's procedures established in the Federal Register or to the agency itself. [5 U.S.C. 552 (a)]

Privacy Act - to the officer or office specified in the appropriate agency's procedures published in the Federal Register or to the agency itself. [5 U.S.C. 552a (d)(f)]

VI. Time Period for Response to Requests to Examine Records

Fair Credit - notice that a consumer report is being prepared must be mailed to the consumer no more than three days after the date on which the report was first requested. A consumer's request for disclosure must be responded to within five days after the request was made. [15 U.S.C. 1681 (a)(b)]

Buckley Amendment - an educational agency or institution must respond to a request for access to records within forty-five days after the request has been made. With respect to "directory information," the agency or institution must allow a "reasonable" period of time, after giving public notice of the categories of information to be disclosed, for a parent or guardian to inform the institution or agency that any or all of the information designated should not be released without the parent's consent. [20 U.S.C. 1232g (a)(5)(B)]

FOIA - the Act specifies: Each agency, upon any request for records must determine within ten work-days whether to comply with the request and must immediately notify the person making the request of the determination. The agency must make a determination with respect to any appeal within twenty working days. Under usual circumstances, the agency may have a ten day extension by giving written notice to the requester. [5 U.S.C. 552(a)(6)]

Privacy Act - the Act does not prescribe a specific time for response, but Federal regulations suggest a response to the inquiry within ten working days. Upon request by an individual for amendment of a record pertaining to him, the agency must acknowledge in writing receipt of the request within ten work-days. If the request is denied, the requester may ask for review of the denial. A final determination of the request must be made within thirty work-days with a possible thirty-day extension for "good cause." [5 U.S.C. 552a (d)]

VIII. Cost of Documents

Fair Credit - no charge to the consumer for the report if he requests disclosure within thirty days after receipt of a notification from the reporting agency or notification from a debt collection agency affiliated with the agency stating that his credit rating may be or has been adversely affected. Otherwise, the agency may impose a reasonable charge for the disclosure. [15 U.S.C. 1681j]

Buckley Amendment - specific provisions concerning charges are not included.

FOIA - each agency is ordered to specify a uniform schedule of fees. The fees are to be limited to reasonable standard charges for document search and duplication and to provide for recovery of only the direct costs of such search and duplication. Documents are to be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest. [5 U.S.C. 552a (f)]

Privacy Act - an agency may charge fees for making copies of an individual's record, excluding the cost of any search for, and review of, the record. [5 U.S.C. 552a (f)]

VIII. Judicial Review

Fair Credit - a consumer may bring action in any appropriate district court of the United States to enforce liability under the Act. Actual damages may be obtained as well as reasonable attorney fees as determined by the court. [15 U.S.C. 1681p]

Buckley Amendment - no specific provision for resort to the courts. However, access would be available after exhaustion of administrative remedies. [20 U.S.C. 1232g (g)]

FOIA - a complainant may request an appropriate district court of the United States to enjoin an agency from withholding records and to order their production. In such a case, the

court shall determine the matter de novo*, and may examine the contents of such agency records in camera** to determine whether the agency properly withheld such records under any of the exemptions listed in the Act. The burden is on the agency to justify its action. The agency is required to answer the complaint within thirty days of service of the complaint unless the court directs otherwise. Proceedings and appeals take precedence on the docket over all cases and must be assigned for hearings and trial or for argument at the earliest practicable date. The court may assess against the United States reasonable attorney fees and other litigation costs. If the court finds for the complainant and issues a written finding that the circumstances surrounding the withholding raise questions as to whether agency personnel acted arbitrarily or capriciously, the Civil Service Commission must promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer who was primarily responsible for the withholding. The Commission must submit its finding and recommendations to the administrative authority of the agency concerned which shall then take the corrective action that the Commission recommends. In the event of noncompliance with the order of the court, the district court may punish the responsible employee for contempt.

[5 U.S.C. 552 (a)]

* This means the courts will take a new and independent look at the facts.
**In camera means the judge will review the records in his private chambers and not in open court.

Privacy Act - an individual may bring a civil action against the agency in an appropriate district court. In a suit in which the agency has refused to amend the individual's record in accordance with his request, the court may order the agency to do so and the court shall determine the matter de novo. The court may assess against the United States reasonable attorney fees and other litigation costs when the complainant has substantially prevailed. In a suit to enjoin the agency from withholding records, the court shall determine the matter de novo and may examine the contents of the agency records in camera to determine whether the records may be withheld under any of the exemptions of the Act. If the court determines that the agency acted willfully, the United States shall be liable for actual damages to the individual with a minimum recovery of \$1,000, and the costs of the action together with reasonable attorney fees. An agency officer or employee who knowingly or willfully maintains or discloses records prohibited under this Act shall be guilty of a misdemeanor and fined not more than \$5,000.

[5 U.S.C. 552a (g)(h)(i)]

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SUBCHAPTER III.—CREDIT REPORTING AGENCIES

§ 1681. Congressional findings and statement of purpose.

(a) The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter. (Pub. L. 90-321, title VI, § 602, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1128.)

EFFECTIVE DATE

Section 504(d) of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, § 602, Oct. 26, 1970, 84 Stat. 1136, provided that: "Title VI [enacting this subchapter] takes effect upon the expiration of one hundred and eighty days following the date of its enactment [Oct. 26, 1970]."

SHORT TITLE

Section 601 of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1127, provided that: "This title [this subchapter] may be cited as the Fair Credit Reporting Act."

§ 1681a. Definitions; rules of construction.

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 1681b of this title. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 1681m of this title.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities. (Pub. L. 90-321, title VI, § 603, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1128.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681b. Permissible purposes of consumer reports.

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(Pub. L. 90-321, title VI, § 604, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1129.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681a, 1681b, 1681f of this title.

§ 1681c. Reporting of obsolete information prohibited.

(a) Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years.

(2) Suits and judgments which, from date of entry, antedate the report by more than seven years

or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

(6) Any other adverse item of information which antedates the report by more than seven years.

(b) The provisions of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$50,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$50,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$20,000, or more.

(Pub. L. 90-321, title VI, § 605, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1129.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1681e of this title.

§ 1681d. Disclosure of investigative consumer reports.

(a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or (2) the report is to be used for employment purposes for which the consumer has not specifically applied.

(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a) (1) of this section, shall make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b) of this section. (Pub. L. 90-321, title VI, § 606, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1130.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681e. Compliance procedures.

(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 1681c of this title and to limit the furnishing of consumer reports to the purposes listed under section 1681b of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 1681b of this title.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. (Pub. L. 90-321, title VI, § 607, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1130.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681f. Disclosures to governmental agencies.

Notwithstanding the provisions of section 1681b of this title, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency. (Pub. L. 90-321, title VI, § 608, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1131.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681g. Disclosures to consumers.

(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and

actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this subchapter, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3) The recipients of any consumer report on the consumer which it has furnished—

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purpose within the six-month period preceding the request.

(b) The requirements of subsection (a) of this section respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this subchapter except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date. (Pub. L. 90-321, title VI, § 609, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1131.)

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsec. (b), see Effective Date note below.

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681h, 1681j of this title.

§ 1681h. Conditions of disclosure to consumers.

(a) Times and notice.

A consumer reporting agency shall make the disclosures required under section 1681g of this title during normal business hours and on reasonable notice.

(b) Identification of consumer.

The disclosures required under section 1681g of this title shall be made to the consumer—

(1) in person if he appears in person and furnishes proper identification; or

(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) Trained personnel.

Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 1681g of this title.

(d) Persons accompanying consumer.

The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Limitation of liability.

Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or

proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, except as to false information furnished with malice or willful intent to injure such consumer. (Pub. L. 90-321, title VI, § 610, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1131.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681i Procedure in case of disputed accuracy.

(a) Dispute; reinvestigation.

If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) Statement of dispute.

If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Notification of consumer dispute in subsequent consumer reports.

Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Notification of deletion of disputed information.

Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed informa-

tion. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received. (Pub. L. 90-321, title VI, § 611, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1132.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1681j of this title.

§ 1681j. Charges for disclosures.

A consumer reporting agency shall make all disclosures pursuant to section 1681g of this title and furnish all consumer reports pursuant to section 1681i(d) of this title without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 1681m of this title or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 1681g or 1681i(d) of this title. Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 1681g of this title, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to person designated by the consumer pursuant to section 1681i(d) of this title, the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified. (Pub. L. 90-321, title VI, § 612, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1132.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681k. Public record information for employment purposes.

A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

- (1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

TITLE 15.—COMMERCE AND TRADE

§ 1681l

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

(Pub. L. 90-321, title VI, § 613, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681l. Restrictions on investigative consumer reports.

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished. (Pub. L. 90-321, title VI, § 614, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681m. Requirements on users of consumer reports.

(a) Adverse action based on reports of consumer reporting agencies.

Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(b) Adverse action based on reports of persons other than consumer reporting agencies.

Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(c) Reasonable procedures to assure compliance.

No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b) of this section. (Pub. L. 90-321, title VI, § 615, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681a, 1681h, 1681j of this title.

§ 1681n. Civil liability for willful noncompliance.

Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

- (1) any actual damages sustained by the consumer as a result of the failure;
- (2) such amount of punitive damages as the court may allow; and
- (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(Pub. L. 90-321, title VI, § 616, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1681h of this title.

§ 1681o. Civil liability for negligent noncompliance.

Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

- (1) any actual damages sustained by the consumer as a result of the failure;
- (2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(Pub. L. 90-321, title VI, § 617, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1681h of this title.

§ 1681p. Jurisdiction of courts; limitation of actions.

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the

date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. (Pub. L. 90-321, title VI, § 618, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681q. Obtaining information under false pretenses.

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than \$5,000 or imprisoned not more than one year, or both. (Pub. L. 90-321, title VI, § 619, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681r. Unauthorized disclosures by officers or employees.

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined not more than \$5,000 or imprisoned not more than one year, or both. (Pub. L. 90-321, title VI, § 620, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681s. Administrative enforcement.

(a) Federal Trade Commission; powers.

Compliance with the requirements imposed under this subchapter shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this subchapter shall constitute an unfair or deceptive act or practice in commerce in violation of section 45(a) of this title and shall be subject to enforcement by the Federal Trade Commission under section 45(b) of this title with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in

the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this subchapter and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this subchapter. Any person violating any of the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this subchapter.

(b) Other administrative bodies.

Compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

(1) section 1818 of Title 12, in the case of:

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) section 1464(d) of Title 12, section 1730 of Title 12, and sections 1426(i) and 1437 of Title 12, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts;

(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 226 of Title 7), by the Secretary of Agriculture with respect to any activities to any activities subject to that Act.

(c) Enforcement under other authority.

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law. (Pub. L.

90-321, title VI, § 621, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept 26, 1914, ch. 311, 38 Stat. 717, which is classified to section 41 et seq. of this title.

The Federal Credit Union Act, referred to in subsec. (b) (3), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified to section 1751 et seq. of Title 12, Banks and Banking.

The Acts relating to commerce, referred to in subsec. (b) (4), are classified generally to section 1 et seq. of Title 49, Transportation.

The Federal Aviation Act of 1958, referred to in subsec. (b) (5), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 737, which is classified to section 1301 et seq. of Title 49.

The Packers and Stockyards Act, 1921, referred to in subsec. (b) (6), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified to section 181 et seq. of Title 7, Agriculture.

EFFECTIVE DATE

Section effective upon the expiration of 180 days following effective Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

§ 1681t. Relation to State laws.

This subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. (Pub. L. 90-321, title VI, § 622, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1136.)

EFFECTIVE DATE

Section effective upon the expiration of 180 days following Oct. 26, 1970, see section 504(d) of Pub. L. 90-321, set out as a note under section 1681 of this title.

(20 USC 1232g)
CHAPTER 31-GENERAL PROVISIONS CONCERNING EDUCATION

§ 1232g. Family educational and privacy rights.

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions.

(1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student

or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) If the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) If the personnel of a law enforcement unit do not have access to education records under subsection (b)(1) of this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are

not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

Release of education records; parental consent requirements; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of Federally-supported education programs; record-keeping

(b) (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 1221e-3(c) of this title), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not

permit any other party to have access to such information without the written consent of the parents of the student.

Surveys or data-gathering activities; regulations

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

Students' rather than parents' permission or consent

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

Informing parents or students of rights under this section

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

Enforcement; termination of assistance

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

Office and review board; creation; functions

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Pub.L. 90-247, Title IV, § 438, as added Pub.L. 93-380, Title V, § 513 (a), Aug. 21, 1974, 88 Stat. 571, and amended Pub.L. 93-568, § 2(a), Dec. 31, 1974, 88 Stat. 1858.

FULL TEXT OF THE FREEDOM OF INFORMATION ACT, AS AMENDED IN 1974 BY PUBLIC LAW 93-502

THE FREEDOM OF INFORMATION ACT AS AMENDED IN 1974 BY PUBLIC LAW 93-502

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt

of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

* (3) was amended by P.L. 94-409, § 5(b), Sept. 13, 1976, 90 Stat. 1247, to read as follows:

"(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld:"

(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;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.



Public Law 93-579
93rd Congress, S. 3418
December 31, 1974

An Act

To amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Act of 1974".

SEC. 2. (a) The Congress finds that—

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) 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 this Act.

Sec. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

Privacy Act
of 1974.
5 USC 552a
note.
Congressional
findings.
5 USC 552a
note.

Statement of
purpose.

89 STAT. 1996
83 STAT. 1597

5 USC 552a. "§ 552a. Records maintained on individuals

"(a) DEFINITIONS.—For purposes of this section—

5 USC 552. "(1) the term 'agency' means agency as defined in section 552(e) of this title:

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence:

"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any item, collection, or grouping 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 the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph:

"(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual:

"(6) the term 'statistical record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

13 USC 8.

"(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

"(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties:

"(2) required under section 552 of this title:

"(3) for a routine use as defined in subsection (a) (7) of this section and described under subsection (e) (4) (D) of this section;

"(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13:

"(5) 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;

"(6) to the National Archives of the United States 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 Administrator of General Services or his designee to determine whether the record has such value:

"(7) 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:

"(8) 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;

"(9) 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;

"(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

"(11) pursuant to the order of a court of competent jurisdiction.

"(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

"(1) except for disclosures made under subsections (b) (1) or (b) (2) of this section, keep an accurate accounting of—

"(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

"(B) the name and address of the person or agency to whom the disclosure is made;

"(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

"(3) except for disclosures made under subsection (b) (7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

"(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

"(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

"(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

Personal review.

"(2) permit the individual to request amendment of a record pertaining to him and—

Amendment request.

"(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

"(B) promptly, either—

"(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

"(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason

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for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

Review.

"(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g) (1) (A) of this section:

Notation of dispute.

"(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

"(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

"(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

"(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

"(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

"(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

"(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

"(B) the principal purpose or purposes for which the information is intended to be used;

"(C) the routine uses which may be made of the information, as published pursuant to paragraph (4) (J) of this subsection; and

"(D) the effects on him, if any, of not providing all or any part of the requested information;

"(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

"(A) the name and location of the system;

Publication in Federal Register.

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99 STAT. 1900

"(B) the categories of individuals on whom records are maintained in the system;

"(C) the categories of records maintained in the system;

"(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

"(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;

"(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

"(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

"(I) the categories of sources of records in the system:

"(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

"(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b) (2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

"(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

"(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

"(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

"(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

"(11) at least 30 days prior to publication of information under paragraph (4) (D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

"(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

"(1) establish procedures whereby an individual can be notified

Rules of conduct.

Confidentiality of records.

Publication in Federal Register.

5 USC 553.

in response to his request if any system of records named by the individual contains a record pertaining to him:

"(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

"(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

"(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

"(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

Fees.

Publication in Federal Register.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

"(g)(1) CIVIL REMEDIES.—Whenever any agency

"(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

"(B) refuses to comply with an individual request under subsection (d)(1) of this section;

"(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

"(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

Jurisdiction.

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

Amendment of record.

"(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

Injunction.

"(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of

any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

Damages.

"(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

"(B) the costs of the action together with reasonable attorney fees as determined by the court.

"(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to the effective date of this section.

"(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

"(i) (1) CRIMINAL PENALTIES.—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 this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

"(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

"(3) 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 and fined not more than \$5,000.

"(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1) and (2), (e) (4) (A) through

5 USC 553.

(F), (e) (6), (7), (9), (10), and (11), and (i) if the system of records is—

- “(1) maintained by the Central Intelligence Agency; or
- “(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

5 USC 553.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

“(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (4) (G), (II), and (I) and (f) of this section if the system of records is—

5 USC 552.

“(1) subject to the provisions of section 552(b) (1) of this title:

“(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j) (2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

18 USC 3056.

“(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

“(4) required by statute to be maintained and used solely as statistical records;

“(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

“(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 examination process; or

"(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553 (c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

5 USC 553.

"(1) (1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

44 USC 3103.

"(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e) (4) (A) through (G) of this section) shall be published in the Federal Register.

Publication in Federal Register.

"(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e) (4) (A) through (G) and (e) (9) of this section.

"(m) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

"(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

"(o) REPORT ON NEW SYSTEMS.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such

Notice to Congress and OMB.

88 STAT. 1905

Report to Speaker of the House and President of the Senate.

5 USC 552.

5 USC prec. 500.

Privacy Protection Study Commission. Establishment. 5 USC 552a note. Membership.

Vacancies.

proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

"(p) ANNUAL REPORT.--The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

(q) EFFECT OF OTHER LAWS.--No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section."

SEC. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals."

immediately below:

"552. Public information; agency rules, opinions, orders, and proceedings."

SEC. 5. (a) (1) There is established a Privacy Protection Study Commission (hereinafter referred to as the "Commission") which shall be composed of seven members as follows:

(A) three appointed by the President of the United States,

(B) two appointed by the President of the Senate, and

(C) two appointed by the Speaker of the House of Representatives.

Members of the Commission shall be chosen from among persons who, by reason of their knowledge and expertise in any of the following areas--civil rights and liberties, law, social sciences, computer technology, business, records management, and State and local government--are well qualified for service on the Commission.

(2) The members of the Commission shall elect a Chairman from among themselves.

(3) Any vacancy in the membership of the Commission, as long as there are four members in office, shall not impair the power of the Commission but shall be filled in the same manner in which the original appointment was made.

(4) A quorum of the Commission shall consist of a majority of the members, except that the Commission may establish a lower number as a quorum for the purpose of taking testimony. The Commission is authorized to establish such committees and delegate such authority to them as may be necessary to carry out its functions. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information necessary to the performance of their functions, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or a member designated by the Chairman to be acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, other persons, and the public, and, on behalf of the Commission, shall see to the faithful execution of the administrative policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(5) (A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

Budget requests.

(B) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

Legislative recommendations.

(b) The Commission shall—

(1) make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information; and

Study.

(2) recommend to the President and the Congress the extent, if any, to which the requirements and principles of section 552a of title 5, United States Code, should be applied to the information practices of those organizations by legislation, administrative action, or voluntary adoption of such requirements and principles, and report on such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

Ante, p. 1897.

(c) (1) In the course of conducting the study required under subsection (b) (1) of this section, and in its reports thereon, the Commission may research, examine, and analyze—

(A) interstate transfer of information about individuals that is undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2) (A) The Commission may include in its examination personal information activities in the following areas: medical; insurance; education; employment and personnel; credit, banking and financial institutions; credit bureaus; the commercial reporting industry; cable television and other telecommunications media; travel, hotel and entertainment reservations; and electronic check processing.

(B) The Commission shall include in its examination a study of—

(i) whether a person engaged in interstate commerce who maintains a mailing list should be required to remove an individual's name and address from such list upon request of that individual;

88 STAT. 1907

(ii) whether the Internal Revenue Service should be prohibited from transferring individually identifiable data to other agencies and to agencies of State governments;

(iii) whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of the provisions of sections 552a (g) (1) (C) or (D) of title 5, United States Code; and

Ante, p. 1897.

(iv) whether and how the standards for security and confidentiality of records required under section 552a (e) (10) of such title should be applied when a record is disclosed to a person other than an agency.

Religious or-
ganizations,
exception.

(C) The Commission may study such other personal information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not investigate information systems maintained by religious organizations.

Guidelines
for study.

(3) In conducting such study, the Commission shall—

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) examine the standards and criteria governing programs, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information; and

(D) to the maximum extent practicable, collect and utilize findings, reports, studies, hearing transcripts, and recommendations of governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission.

(d) In addition to its other functions the Commission may—

(1) request assistance of the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out its functions under this Act;

(2) upon request, assist Federal agencies in complying with the requirements of section 552a of title 5, United States Code;

(3) determine what specific categories of information, the collection of which would violate an individual's right of privacy, should be prohibited by statute from collection by Federal agencies; and

(4) upon request, prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation.

(e) (1) The Commission may, in carrying out its functions under this section, conduct such inspections, sit and act at such times and places, hold such hearings, take such testimony, require by subpoena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpoena shall be issued only upon an affirmative vote of a majority of all members of the Com-

mission. Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) (A) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Commission, upon request made by the Chairman, such information, data, reports and such other assistance as the Commission deems necessary to carry out its functions under this section. Whenever the head of any such department, agency, or instrumentality submits a report pursuant to section 552a (o) of title 5, United States Code, a copy of such report shall be transmitted to the Commission.

Reports,
transmittal
to Commission.
Ante, p. 1897.

(B) In carrying out its functions and exercising its powers under this section, the Commission may accept from any such department, agency, independent instrumentality, or other person any individually identifiable data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall assure that the information is used only for the purpose for which it is provided, and upon completion of that purpose such information shall be destroyed or returned to such department, agency, independent instrumentality, or person from which it is obtained, as appropriate.

(3) The Commission shall have the power to—

(A) appoint and fix the compensation of an executive director, and such additional staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

5 USC 5101,
5331.

(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code,

5 USC 5332
note.

The Commission may delegate any of its functions to such personnel of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(4) The Commission is authorized—

(A) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel;

Rules and
regulations.

(B) to enter into contracts or other arrangements or modifications thereof, with any government, any department, agency, or independent instrumentality of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(C) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(D) to take such other action as may be necessary to carry out its functions under this section.

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Compensation.

(f) (1) Each [the] member of the Commission who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Commission.

Per diem.

(2) A member of the Commission other than one to whom paragraph (1) applies shall receive per diem at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission.

5 USC 5332 note.

Travel expenses.

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

Report to President and Congress.

(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b) (1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist thirty days after the date on which its final report is submitted to the President and the Congress.

Penalties.

(h) (1) Any member, officer, or employee of the Commission, 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 this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

5 USC 552a note.

Sec. 6. The Office of Management and Budget shall—

(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act; and

(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies.

Ante, p. 1897.

5 USC 552a note.

Sec. 7. (a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

December 31, 1974 - 15 - Pub. Law 93-579

SEC. 8. The provisions of this Act shall be effective on and after the date of enactment, except that the amendments made by sections 3 and 4 shall become effective 270 days following the day on which this Act is enacted.

SEC. 9. There is authorized to be appropriated to carry out the provisions of section 5 of this Act for fiscal years 1975, 1976, and 1977 the sum of \$1,500,000, except that not more than \$750,000 may be expended during any such fiscal year.

Approved December 31, 1974.

88 STAT. 1910

Effective date.
5 USC 552a
note.

Appropriation.
5 USC 552a
note.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1416 accompanying H.R. 16373 (Comm. on Government Operations).

SENATE REPORT No. 93-1183 (Comm. on Government Operations).

CONGRESSIONAL RECORD, Vol. 120 (1974):

Nov. 21, considered and passed Senate.

Dec. 11, considered and passed House, amended, in lieu of H.R. 16373.

Dec. 17, Senate concurred in House amendment with amendments.

Dec. 18, House concurred in Senate amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 11, No. 1:

Jan. 1, Presidential statement.



RULES AND REGULATIONS

**Title 5—Administrative Personnel
CHAPTER I—CIVIL SERVICE COMMISSION
PART 293—PERSONNEL RECORDS AND FILES**

**PART 297—PROTECTION OF PRIVACY
IN PERSONNEL RECORDS**

The Civil Service Commission published in the FEDERAL REGISTER on May 27, 1975 (40 FR 22842) a notice of proposed rulemaking to amend 5 CFR Part 293 by adding a subpart A and by establishing a new Part 297 to implement provisions of the Privacy Act of 1974 (Pub. L. 93-579). The proposed amendment would add a new subpart A to Part 293 to establish basic policies for the establishment and maintenance of personnel systems of records, including safeguarding personal information about individuals contained in manual and automated record systems. The proposed amendment would also establish a new Part 297, subpart A, to establish procedures for protection of personal information contained in personnel records, including specific requirements regarding the collection of personal information about individuals, access to and correction and amendment of personnel records, and the disclosure of personal information about individuals from personnel records. Interested persons were given 30 days in which to submit comments and suggestions regarding the proposed amendments. All comments submitted were given due consideration.

As a result of comments received, subpart A, Part 293, and subpart A, Part 297, are revised in their entirety and are hereby adopted as set forth below.

Effective date. These rules are effective September 27, 1975.

1. In 5 CFR Part 293, Subpart A is added as follows:

Subpart A—Basic Policies on Maintenance of Personnel Records and Files	
Sec.	
293.101	Purpose.
293.102	Responsibility.
293.103	Publication of annual notices.
293.104	New uses of information.
293.105	Content of systems of personnel records.
293.106	Reports concerning changes to systems of personnel records.
293.107	Use of Social Security Account Number in personnel systems of records.
293.108	Collection of personal information from individual concerned.
293.109	Restriction on maintenance of certain records.
293.110	Rules of conduct.
293.111	Safeguarding personal information about individuals contained in manual personnel record systems.
293.112	Safeguarding data about individuals contained in automated record systems.
293.113	Accounting of the disclosures of personnel records.
293.114	Annual report.

AUTHORITY: 5 U.S.C. 552a; 3 CFR 1954-1958 Comp., p. 205.

Subpart A—Basic Policies on Maintenance of Personnel Records and Files

§ 293.101 Purpose.

(a) The purpose of this subpart is to set forth the basic policies for governing

the establishment, maintenance, and use of personnel records and files for which the Civil Service Commission is responsible in accordance with 5 U.S.C. 552a. This subpart applies to any department and independent establishment in the executive branch of the Federal Government, including a Government corporation or Government controlled corporation, except the Central Intelligence Agency and the Federal Bureau of Investigation.

(b) In this subpart:

(1) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to education, financial transactions, medical history, and criminal or employment history, when such information contains a name, or an identifying number, symbol, or other identifying particular assigned to an individual, such as a finger or voice print or photograph;

(2) "System of records" means a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual;

(3) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(4) "Personnel record" means any personal information maintained in a system of records as defined in paragraph (b) (2) of this section that is needed at all echelons of management for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals; and

(5) "Commission" means Civil Service Commission.

§ 293.102 Responsibility.

(a) Each Government agency is responsible for collecting and maintaining records associated with its personnel management program. The Commission is responsible for leadership in those areas of personnel policy and operations that must be uniform Government-wide.

(b) Specifically, the Commission is responsible for managing major Government-wide systems of personnel records as required by statute or Executive Order. For each system of personnel records the Commission:

(1) Prescribes the contents, format, or methods of keeping the records; and

(2) Requires agencies or Commission offices to maintain and retrieve the records by individual name or identifying number.

(c) In accordance with paragraphs (b) (1) and (2) of this section, the Commission is responsible for the following specific Government-wide systems of personnel records:

(1) Appeals, Grievances, and Complaints Records;

(2) Confidential Employment and Financial Interest Statements,

(3) General Personnel Records; and
(4) Personnel Investigations Records;

(5) Recruiting, Examining, and Placement Records.

(d) In addition, the Commission is responsible for systems of records on individuals that it maintains and uses entirely within the Commission. These systems of records are as follows:

(1) Defense Mobilization Emergency Cadre Records.

(2) Civil Service Retirement Records.

(3) Executive Assignment and Inventory Records.

(4) Federal Executive Development Program Records.

(5) Litigation and Political Activity (Hatch Act) Records.

(6) Motor Vehicle Operator and Accident Report Records.

(7) Pay, Leave, and Travel Records.

(8) Personnel Research Test Validation Records.

(e) Each agency is responsible for maintaining and controlling systems of personnel records, in addition to those specified in paragraph (c) of this section, that it keeps, prescribes, or controls, including:

(1) Personnel records maintained by agencies that are supplemental or related to the Government-wide systems of personnel records for which the Commission is responsible, but are not specifically required by the Commission.

(2) Personnel records maintained by agencies that are retrieved by individual name or identifying number as an agency convenience when the Commission does not require agencies to keep the records in that manner.

§ 293.103 Publication of annual notices.

(a) A notice of the existence of personnel records meeting the definition of a system of records as defined in this part shall be published annually in the format prescribed by the General Services Administration in the FEDERAL REGISTER, and shall include:

(1) The name and location of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system, including the categories of users and the purposes of such use;

(5) The policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the agency official who is responsible for the system of records;

(7) The agency procedures whereby an individual can request and receive notice as to whether the system of personnel records contains a record pertaining to him;

(8) The agency procedures whereby an individual can learn how access can be gained to any record pertaining to that

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individual in a particular system of personnel records, and the procedure for correcting or contesting its content; and

(9) The categories of sources of records in the system.

(b) All systems of personnel records that are maintained by an agency are subject to the requirement to publish an annual descriptive notice. The Commission is responsible for publishing notices describing the systems of records for which it is responsible as outlined in § 293.102. Agencies are responsible for publishing notices describing any systems of personnel records that they maintain other than those outlined in § 293.102(c).

§ 293.104 New uses of information.

(a) Whenever there is a change in the routine use of a system of personnel records published previously in accordance with § 293.103, but at least 30 days prior to the publication of the next annual notice, the responsible agency or the Commission shall publish in the FEDERAL REGISTER, in accordance with 5 U.S.C. 553, a notice of intention to establish a new routine use for the system of records. The notice shall contain the following information:

- (1) The name of the system of personnel records for which the new routine use is to be established;
- (2) The authority for the system of personnel records;
- (3) The purpose for which the record is to be maintained;
- (4) The proposed new routine use or uses;
- (5) The purpose of new routine use or uses; and
- (6) The categories of recipients for each use.

Agencies shall publish routine uses in advance for all systems of personnel records for which they are responsible. The Commission will publish such notices for systems of records for which it is responsible. Agency requests for additional routine uses for systems of personnel records for which the Commission is responsible must be sent to:

Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, 1900 E Street N.W., Washington, D.C. 20415.

§ 293.105 Content of systems of personnel records.

Agencies shall maintain in systems of personnel records only information about an individual that is relevant and necessary to accomplish the personnel administration purposes of the agency required by statute or Executive Order. Agencies shall identify the specific provision in law which authorizes them to maintain or propose to maintain information in a system of personnel records. Authority to maintain a system of personnel records does not give the agency the authority to maintain any information merely because that information may be useful, but instead permits the maintenance of information which is relevant and necessary. Agencies should test each item in a system to ensure that it is both relevant and necessary. The

Commission shall identify in Chapter 297 of the Federal Personnel Manual those statutes, Executive Orders, or other authorities which authorize agencies to maintain personal information in systems of personnel records that are required by the Commission. All other items of information recorded in systems of personnel records shall be similarly identified in an internal publication by the agency.

§ 293.106 Reports concerning changes to systems of personnel records.

(a) Agencies shall provide to Congress, the Office of Management and Budget, and for the period of its existence, the Privacy Protection Study Commission, advance notice of any proposal to establish or alter any system of personnel records. This report will be submitted in accordance with guidelines provided in the Office of Management and Budget/Circular No. A-108.

§ 293.107 Use of the Social Security Account Number in personnel systems of records.

(a) Agencies shall not deny any individual any right, benefit, or privilege provided by law or the Commission because of an individual's refusal to provide his or her Social Security Account Number.

(b) The provisions of paragraph (a) of this section shall not apply with respect to the disclosure of a Social Security Account Number to any agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute, Executive Order, or regulation adopted prior to such date to verify the identity of an individual.

(c) Agencies will assure that a written explanation is distributed to each individual when an individual is requested to disclose his or her Social Security Account Number on a personnel form or document. The written explanation shall include:

- (1) The use or uses that will be made of the Social Security Account Number;
- (2) The statute or authority under which the Social Security Account Number is solicited; and
- (3) Whether the disclosure of the Social Security Account Number is mandatory or voluntary.

§ 293.108 Collection of personal information from individual concerned.

Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under Federal personnel programs should, to the extent practicable, be collected directly from the subject individual. Agencies should use information collected from the individual, such as that provided by the individual in the application for employment, unless: (a) The nature of the information is such that it can only be obtained from a third party; (b) the cost of collecting the information directly from the individual is unreasonable when compared with the cost of collecting it from a third party; (c) there is no risk that information col-

lected from third parties, if inaccurate, could result in an adverse determination to the individual concerned; (d) the information supplied by an individual must be verified by a third party; or (e) provisions are made to verify with the subject individual information collected from a third party.

§ 293.109 Restriction on maintenance of certain records.

Personnel records describing how individuals exercise rights guaranteed by the First Amendment are prohibited unless specifically authorized by statute, or by the individual concerned, or unless pertinent to and within the scope of an authorized law enforcement activity. The exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and the press, and freedom of assembly and to petition.

§ 293.110 Rules of conduct.

It is the responsibility of the head of each agency to assure that persons involved in the design, development, operation, or maintenance of any system of personnel records are informed of all requirements to protect the privacy of the individuals who are subjects of the records. Employees should be informed of all the implications of their actions in this area, including especially:

- (a) That criminal penalties are provided under 5 U.S.C. section 552a for knowingly and willfully disclosing a record about an individual without the written consent or the written request of that individual, or unless disclosure is for one of the reasons listed under section 297.109 of this chapter; and
- (b) That the agency may be subject to civil suit due to failure to comply with the provisions of §§ 297.105, 297.108, 297.111, and 297.112 of this chapter.

§ 293.111 Safeguarding personal information about individuals contained in manual personnel record systems.

In order to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to the security or integrity of such records, each agency shall:

- (a) Establish administrative, technical, and physical controls to protect personal information about individuals contained in manual personnel records from unauthorized access or disclosure. Each agency shall designate an official assigned to a location where personnel records are stored who shall be responsible for providing protection and accountability for such records at all times and insuring that personnel records are secured in appropriate containers whenever they are not in use or under direct control of authorized persons. Personnel records may be used, held, or stored only where facilities or conditions are adequate to prevent unauthorized access. Whenever personnel records are not under the personal control of an authorized person, they must be stored in lockable metal filing cabinets or in a secured room. Alternative storage facilities may be employed, provided they furnish an

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equivalent or greater degree of physical security than the cited methods.

(b) Access to and use of personnel records shall be permitted only to persons whose official duties require such access or, pursuant to § 297.109 of this chapter, to a person to whom the personnel record pertains or to his or her designated personal representative. To the extent feasible, access to areas where personnel records are stored will be limited to only those persons whose official duties require work in such areas. Proper control of personnel records shall be maintained at all times, including an accounting of their removal from the storage area.

(c) Each agency shall assure that all persons whose official duties require access to and use of personnel records are adequately trained to protect the security and privacy of personnel records.

(d) The disposal and destruction of personnel records shall be in accordance with General Records Schedule 1 promulgated by the General Services Administration or, alternatively, with any agency records control schedules approved by the National Archives and Records Service of the General Services Administration.

§ 293.112 Safeguarding data about individuals contained in automated record systems.

(a) Each agency shall establish administrative, technical, physical, and security safeguards to prevent unauthorized disclosure, modification, or destruction of identifiable personal data in automated systems of records. These safeguards shall apply to all automated systems that contain personal data traceable to individuals, including all reports and outputs from those systems which contain identifiable personal data. The safeguards must be sufficient to (1) prevent careless, accidental, or unintentional disclosure, modification, or destruction of identifiable personal data; (2) minimize the risk that skilled technicians or knowledgeable persons could improperly obtain access to, modify, or destroy identifiable personal data; and (3) to prevent casual entry by unskilled persons who have no official reason for access to such data. Each agency shall designate an official assigned to a location where automated identifiable personal data are processed, stored, or maintained, who shall be responsible for the protection and accountability of all personal data in automated systems, including input and output documents, punched cards, and magnetic tapes, disks, or records.

(b) Identifiable personal data may be processed, stored, or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to identifiable personal data in any form. Whenever identifiable personal data, including input and output documents, punched cards, and magnetic tapes or disks are not under the personal control of an authorized person, such data must be stored in adequate locked containers or in a secured room. The date minimum requirements; how-

ever, more stringent physical security controls may be employed.

(c) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose official duties require such access. At all times and in whatever form the data might appear, effective control shall be exercised over identifiable personal data associated with automated systems.

(d) Each agency shall provide adequate training to all persons whose official duties require access to, processing, or maintenance of identifiable personal data in automated systems in order to achieve the security and privacy of personal data.

(e) The disposal of identifiable personal data is to be accomplished in such a manner as to make the data unobtainable to unauthorized personnel. Unneeded personal data stored on reusable media such as magnetic tapes must be erased prior to release of the media for other uses.

§ 293.113 Accounting of the disclosures of personnel records.

(a) Unless made pursuant to paragraphs (a) or (b) of § 297.109 of this chapter, all disclosures of records covered by this section shall be accounted for by keeping a written record of the following information: (1) Description of the record disclosed; (2) the date, nature, and purpose of each disclosure of a record to any person or to another agency; and (3) the name and address of the person to whom the disclosure is made. No accounting is necessary for information disclosed pursuant to Part 294 of this chapter.

(b) The accounting of disclosures may be recorded in any system an agency determines is sufficient for this purpose. However, the agency must be able to construct from its system a listing of all disclosures. The accounting should provide a cross-reference to the justification or basis upon which the release was made, including any written documentation required when records are released for statistical or law enforcement purposes. The agency must retain the accounting for five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(c) For purposes of this part, the system of accounting of disclosures is not a system of records under the definition in § 293.101(b) and no accounting need be maintained for disclosure of the accounting of disclosures.

§ 293.114 Annual report.

By April 30th of each year, agencies will submit to the Office of Management and Budget, with a copy to the Commission, a report covering activities under the Privacy Act of 1974 as they relate to personnel records. Agencies shall follow the instructions issued by the Office of Management and Budget for submitting the report.

2. A new 5 CFR Part 297 is added as follows:

Subpart A—Records Maintained on Individuals

Sec.
297.101 Purpose.
297.102 Definitions.
297.103 Responsibility.
297.104 Uses of information.
297.105 Standards of accuracy.
297.106 Procedures for requesting information pertaining to individual records in a system of records.
297.107 Requirements for identification of individuals making requests for access.
297.108 Access to personnel records by individuals.
297.109 Written consent for disclosure.
297.110 Notification of disclosure under compulsory legal process.
297.111 Request for correction or amendment of record.
297.112 Review of request for correction or amendment of record.
297.113 Review of initial adverse determination on correction or amendment.
297.114 Disclosure of record to person other than the individual to whom it pertains.
297.115 Fees.
297.116 Publication of rules and procedures.
297.117 Specific exemptions.

AUTHORITY: (5 U.S.C. 552a); sec. 4, E.O. 10561; 3 CFR 1954-1958 Comp., p. 205.

Subpart A—Records Maintained on Individuals

§ 297.101 Purpose.

The purpose of this part is to set forth the basic policies of the Commission on protection of individual privacy in regard to personnel records and files maintained within the Federal Government. This part applies to any department and independent establishment in the executive branch of the Federal Government, including a Government corporation or Government controlled corporation, except the Central Intelligence Agency and the Federal Bureau of Investigation.

§ 297.102 Definitions.

(a) All terms used in this subpart which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this subpart:

(1) The term "Act" means the "Privacy Act of 1974," Pub. L. 93-579.

(2) The term "Commission" means the Civil Service Commission.

(3) The term "inquiry" means either a request for general information regarding the Act and this subpart or a request by an individual that the Commission or an agency determine whether it has any record in a system of personnel records which pertains to that individual.

(4) The term "request for access" means a request by an individual or other authorized person to see a record which is in a particular system of records which pertains to that individual.

(5) The term "request for correction or amendment" means the request by an individual that the Commission or an agency change (either by correction, amendment, addition, or deletion) a particular record in a system of records which pertains to that individual.

(6) The term "review" means the request by an individual that an initial denial of a request be reviewed and reversed.

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§ 297.103 Responsibility.

(a) Each agency is responsible for protection of individual privacy in its personnel management processes and in the systems of personnel records for which it is responsible under § 293.102 of this chapter.

(b) The Commission is responsible for protection of individual privacy in its internal personnel management processes and in the systems of personnel records for which it is responsible under § 293.102 of this chapter.

(c) With respect to the Government-wide systems of personnel records for which the Commission is responsible as defined in paragraph (c), § 293.102 of this chapter, the Commission will perform directly some of the functions required by 5 U.S.C. 552a and will rely on agencies to perform other functions under Commission policy guidelines and subject to Commission review and evaluation. The division of tasks between the Commission and agencies with respect to these Government-wide personnel records systems is set forth in Chapters 293 and 297 of the Federal Personnel Manual.

§ 297.104 Uses of information.

Agencies shall ensure that individuals from whom information is collected about themselves are informed of the reasons for requesting the information, how it may be used, and what the consequences are, if any, of not providing the information. As a minimum, the individual should be given the following information in language which is explicit and easily understood and not so lengthy as to deter an individual from reading it:

(a) Cite the specific provisions of the statute or Executive Order, including a brief title or subject, which authorizes the agency to collect the personal information it is requesting. Inform the individual whether or not a response is mandatory or voluntary and the possible consequences of failing to respond.

(b) Cite the general purposes for which the information will be used by the agency which maintains it.

(c) Cite the special routine uses for which the information will be employed. This may be a summary of the information published in the public notice under § 293.103 of this chapter.

(d) Cite the effects on the individual, if any, of not providing any or all of the information requested.

§ 297.105 Standards of accuracy.

(a) To minimize the risk that an agency will make an unwarranted adverse personnel determination about an individual or disseminate inaccurate information about an individual, all personnel records which are used in making any such determination shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(b) The following criteria will be used by the Commission and agencies in establishing standards of accuracy of information maintained on individuals:

(1) The factual accuracy of the information;

(2) The sufficiency of the information to make a fair and equitable determination about an individual;

(3) The relevance and necessity of the information in terms of the purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected; and

(6) The degree of possibility that the information could unfairly result in a determination adverse to an individual.

(c) Agencies must provide, at the individual's request, an opportunity for an individual to review automated and manual personnel records that are maintained concerning the individual and that have the potential of being used in making a determination about the individual or being disclosed under routine uses outside the agency. Agencies must announce this opportunity by a notice to all employees at least annually.

§ 297.106 Procedures for requesting information pertaining to individual records in a system of records.

(a) Any individual may submit an inquiry to the Commission or to an agency. The inquiry should be made either in person or by mail addressed to the official identified in the notification procedures paragraph of the systems of records notice published in the FEDERAL REGISTER. An individual who believes the Commission or an agency maintains a record pertaining to him or her, but does not know which system of records might contain such a record, can obtain assistance from a Commission office in the area where he or she resides or from an agency personnel office. A list of area offices is included in an appendix to the notice of systems of records published in the FEDERAL REGISTER.

(b) The processing of inquiries submitted by mail will be facilitated if the words "PRIVACY ACT INQUIRY" appear in capital letters on the face of the envelope, and on the letter of inquiry.

(c) The Commission has an official form for making inquiries and requests. Copies may be obtained by contacting any of the Commission's offices listed in the appendix to the notice of systems of records or from agency personnel offices.

(d) (1) The Commission or the agency will accept an inquiry whether presented in person or by mail. If the inquiry is for general information regarding the Act and this part, the requestor is not required to submit any specific information in support of the request. If the inquiry is a request that the Commission or an agency determine whether it has, in a given system of records, a record which pertains to the individual, the following information should be submitted.

(i) Name and address of the individual making the request;

(ii) Name and address of the individual to whom the record pertains, if the

requesting individual is either the parent of a minor or the legal guardian if the individual has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction or an authorized representative of an individual as indicated in § 297.108(f) of this part;

(iii) A certified or authenticated copy of documents establishing parentage or guardianship or a notarized statement authorizing a person to request access to such records;

(iv) Name of the system of records, as published in the FEDERAL REGISTER;

(v) Such additional information as the individual knows will or believes might assist the Commission or the agency in responding to the inquiry and in verifying the individual's identity (for example, date of birth, place of birth, place of work, names of parents where applicable, dates of employment, Social Security Number, position title, etc.);

(vi) Date of inquiry; and

(vii) Individual's signature.

The Commission or agency reserves the right to require compliance with the identification procedures appearing in § 297.107 of this subpart where circumstances warrant.

(2) In compliance with 5 U.S.C. 552a (e) (3), each individual supplying the information in accordance with paragraph (d) (1) of this section hereby is informed that:

(i) 5 U.S.C. 552a authorizes solicitation of the information; disclosure is voluntary, and no penalty is attached for failure to provide the information;

(ii) The principal purpose for which the information is intended to be used is processing the inquiry under the Act;

(iii) The routine uses which may be made of the information are routine uses appearing in the notice of systems of records published in the FEDERAL REGISTER; and

(iv) The effects of not providing all or any part of the information may be to render impossible or to delay the Commission's or the agency's processing of and action on the request under the Act.

(3) If, having been made aware of the contents of paragraph (d) (2) of this section, an individual submits the information listed in paragraph (d) (1) of this section, he or she will be deemed to have made the submission on a purely voluntary and consensual basis.

(e) Any inquiry which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraphs (b) and (d) of this section will be so addressed and marked by the Commission or agency personnel and forwarded immediately to the responsible System Manager indicated in the notice of systems of records. An inquiry which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until the inquiry has been forwarded to the System Manager. In each instance when an inquiry so forwarded is received, the appropriate System Manager shall notify the individual

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that his or her inquiry was improperly addressed and the date when the inquiry was received at the proper address.

(f) The responsible System Manager will act promptly upon each inquiry received. The Commission or the agency will make every effort to respond within 10 days (excluding Saturdays, Sundays, and holidays) of the date of receipt. If a response cannot be made within 10 days, the System Manager shall send an acknowledgement during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry.

(g) An individual shall not be required to state a reason for or otherwise justify a proper inquiry under this part.

§ 297.107 Requirements for identification of individuals making requests for access.

(a) The requirements for identification of individuals seeking access to records are as follows:

(1) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in order of preference or priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport, or military or civilian identification card);

(ii) A document bearing the individual's signature (for example, medicare card, unemployment insurance book, employer identification card, national credit card and professional, craft, or union membership card); and

(iii) A document bearing neither the photograph nor the signature of the individual. Use of such a document may require the individual to provide further proof of identity. In the event the individual can provide no suitable documentation of identity, the Commission or the agency will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3). In order to avoid any unwarranted disclosure of an individual's records, the Commission or an agency reserves the right to determine the adequacy of proof of identity offered by any individual.

(2) *Not in person.* If the individual making a request does not appear in person before a Commission or an agency official or employee authorized to determine identity, the Commission or the agency may accept any available document or evidence that makes it clear that the requestor and the subject of the record are one and the same. The Commission or the agency reserves the right to require that a certificate of a notary public or equivalent official empowered to administer oaths must accompany the request. The Commission or the agency may also require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3).

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual to whom the record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (a) (1) or (2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent, guardian, or authorized representative. In the case of a parent of a minor, for proof of identity, the Commission or the agency may require a certified or authenticated copy of the minor's birth certificate. For proof of identity in the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the Commission or the agency may require a certified or authenticated copy of the court's order. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of § 297.108 are satisfied.

(b) When the provisions of this part are alleged to have the effect of impeding an individual in exercising his or her right to access, the Commission or agency will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

§ 297.108 Access to personnel records by individuals.

(a) The following procedures apply for access to personnel records by individuals:

(1) Current Federal employees should contact the System Manager indicated in the notice of systems of records in person or by mail.

(2) Former Federal employees should contact in person or by mail one of the Commission's offices, nearest to where he or she resides, indicated in the appendix to the notice of systems of records. That office will request the personnel records from the National Personnel Records Center and comply with paragraphs (b) through (h) of this section.

(3) Other individuals should contact the System Manager indicated in the notice of systems of records.

(b) Grant of access—(1) *Notification.* An individual shall be granted access to a record pertaining to him or her upon request, except where provisions of paragraph (g) (1) of this section apply. The System Manager or his designee shall notify the individual of such determination and provide the following information:

(i) The method of access, as set forth in paragraph (b) (2) of this section;

(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time the records will remain available for inspection. In no event shall the earliest date be later than 30 days from the date of notification;

(iv) The estimated date by which a copy of the record could be mailed and

the estimate of fees when appropriate and pursuant to § 297.115. In no event shall the estimated date be later than 30 days from the date of notification;

(v) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to procedures set forth in paragraph (b) of this section; and

(vi) Any additional requirements needed to grant access to a specific record.

(2) *Methods of access.* The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be made in the office specified by the System Manager granting access, during the hours specified.

(ii) Transfer of records to a Commission office or other Federal facility more convenient to the individual may be arranged, but only if the System Manager determines that a suitable facility is available, that the individual's access can be properly supervised at the facility, and that transmittal of the records to that facility will not unduly interfere with operations of the Commission or involve unreasonable costs, in terms of both money and manpower; and

(iii) Copies may be mailed at the request of the individual, subject to payment of fees, when appropriate, and pursuant to § 297.115.

(c) Special procedures shall apply to disclosure of the following records:

(1) Medical information about an applicant or employee may be disclosed by the Commission or other Government agency to the applicant or employee, or a representative designated in writing, except that medical information concerning a mental or other condition of such a nature that a prudent physician would hesitate to inform a person suffering from it of its exact nature and probable outcome may be disclosed only to a licensed physician designated in writing for that purpose by the individual to whom the information pertains or his or her designated representative.

(2) Investigative records and reports shall be disclosed to the individual to whom they pertain upon his or her request to the extent permitted by the Privacy Act of 1974, except that disclosure will not be made of such material that would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Medical information contained in investigative records and reports will be disclosed to the individual to whom it pertains unless, in the judgment of the agency, access to such information could have an adverse effect upon such individual. In such a case, the information will be made available to a licensed physician named by the requesting individual.

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(3) Medical information in retirement and insurance records may be released to the individual to whom it pertains, or to such representative as he designates in writing, except that medical information which indicates the existence of a malignancy, a mental condition, or other condition about which a prudent physician would hesitate to inform an individual suffering from such a condition about its exact nature and probable outcome, shall not be released to the individual to whom the records pertain or to any individual designated by him, other than a physician designated by the individual or his guardian in writing to receive a full report of the medical evidence in his or her file, including copies of background reports of reported behavioral irregularities or manifestations of unsatisfactory service which are ordinarily obtained in connection with an application for disability retirement, and furnished as background factual evidence to Government medical institutions, psychiatrists, or other physicians who conduct the official retirement medical examination.

(4) Examination and related material shall be disclosed only under circumstances that maintain the integrity of the competitive testing program. The test papers of a competitor may be disclosed to the competitor only during the examination except that answer sheets may be reviewed by a competitor in the office where the examination was given in the presence of a Commission employee upon request. A copy of the answer sheet will not be made available to a competitor.

(5) The Commission will disclose to the parties concerned the information contained in an appeal file established under Part 772 of this chapter, subject to the provisions for access to medical and investigative information in paragraphs (c) (1) and (2) of this section. For the purpose of this subsection, "the parties concerned" means the applicant for Government employment, Government employee, or former Government employee involved in the proceeding, his representative designated in writing, and the representatives of the agency and the Commission.

(6) The agency having custody of a discrimination complaint file established under Part 713 of this chapter, or a grievance file established under Part 771 of this chapter will disclose to the parties concerned the information contained in the file, subject to the provisions for access to medical and investigative information in paragraphs (c) (1) and (2) of this section. For purposes of this subsection, "the parties concerned" has the same meaning indicated in paragraph (c) (5) of this section.

(d) The Commission or the agency shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) The Commission or the agency reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election

would be appropriate, for example, when the record is in an automated data medium such as tape or disk, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of the Commission be made available to the individual except under the immediate supervision of the System Manager or his or her designee. Title 18 U.S.C., section 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or attempt to do any of the foregoing.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Accompanied" includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing and shall include the name of the other individual, a specific description of the record to which access is sought, the date and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the System Manager or his designee. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) Initial denial of access. (1) Grounds. Access by an individual will be denied only upon a determination by the System Manager or his designee that:

- (i) The record is subject to an exemption under § 297.117;
- (ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;
- (iii) The provisions of paragraph (c) (1) of this section pertaining to medical records are not acceptable to the individual; or
- (iv) The individual refuses to provide information necessary to process the request for access.

(2) Notification. The System Manager or his designee shall give notice of denial of access to records to the individual in writing and shall include the following information:

- (i) The System Manager's or his designee's name and title or position;
- (ii) The date of the denial;
- (iii) The reasons for the denial, including citation to appropriate sections of the Act and this subpart; and
- (iv) The individual's opportunities, if any, for further administrative consideration, including the title and address of the official responsible for such reviews.

(3) Administrative review. When an initial denial of a request is issued by the System Manager or his designee, the individual's opportunities for further consideration shall be as follows: -

- (i) As to denial under paragraph (g) (1) (i) of this section, the sole procedure for challenging the validity of the rule is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e).

Such petition shall be filed with the Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415. Within the Commission, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the Commission.

(ii) As to denial made by an agency under paragraph (g) (1) (ii), (iii), or (iv) of this section, the individual may file for review with the Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, if the information is maintained in a record under the Government-wide systems of personnel records as indicated by § 293.102(c) of this chapter. As to a denial made by an official of the Commission under paragraph (g) (1) (ii), (iii), or (iv) of this section, the individual may file for review with the Assistant Executive Director for Freedom of Information and Privacy, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, if the information is maintained in a record under the Government-wide systems of personnel records, as indicated by § 293.102(c) of this chapter, or in a system of records that is maintained and used primarily within the Commission, as indicated by § 293.102(d) of this chapter. The procedures appearing in § 297.113 shall be followed by both the individual and the Commission to the extent practicable.

(h) If a request is partially granted or partially denied, the Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, or the Assistant Executive Director for Freedom of Information and Privacy, U.S. Civil Service Commission, as appropriate, shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 297.109 Written consent for disclosure.

Generally, an agency may not disclose any personnel record to any person or to another agency without the express written consent of the individual to whom the record pertains. Written consent is not required if the disclosure is:

- (a) To officers or employees of the agency that maintains the record who have a need for the information in the official performance of their duties;
- (b) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552);
- (c) For a routine use as published in the annual notice in the FEDERAL REGISTER;
- (d) To the Bureau of the Census for purposes of carrying out activities pursuant to the provisions of Title 13;
- (e) To a recipient who has provided the agency with advance adequate 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. The advance assurance must

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be in writing and should include as a minimum:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes.

These written statements should be maintained as agency records under § 293.113 of this chapter. In addition to stripping personally identifying information from records released for statistical purposes (other than those related to disclosures under paragraph (e)), agencies shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records.

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for the evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or unit of local, State, or Federal Government for a civil or law enforcement activity on receipt of written request from the head of an agency or unit describing the law enforcement purpose for which the record is required and specifying which record is required. A record may be disclosed to a law enforcement agency at the initiative of the agency which maintains the record when criminal conduct is suspected, provided that such disclosure has been established as a routine use under § 293.103 of this chapter, and when the instance of misconduct is directly related to the purpose for which the record is maintained;

(h) To a person showing compelling circumstances affecting the health and safety of an individual (not necessarily the individual to whom the record pertains). Upon such disclosure, a notification of such disclosure must be sent to the last known address of the individual to whom the record pertains;

(i) To either House of Congress or to committee or subcommittee (joint or of either House) to the extent that the subject matter falls within their jurisdiction;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

§ 297.110 Notification of disclosure under compulsory legal process.

If a record is disclosed under a compulsory legal process under § 297.109 (g) or (k) and the issuance of the order or subpoena is made public by the court which issued it, the agency or the National Personnel Records Center will make a reasonable effort to notify the individual to whom the record pertains. A notice should be sent to the individual's last known address according to the agency's files.

§ 297.111 Request for correction or amendment of record.

(a) Any individual may submit a request for correction of or amendment to

a record that pertains to him or her to the Commission or an agency. The request should be made either in person or by mail to the System Manager or his designee indicated in the notice of systems of records.

(b) The processing of requests submitted by mail will be facilitated if the words "PRIVACY ACT REQUEST" appear in capital letters on the face of the envelope, and the letter of inquiry.

(c) Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraph (b) of this section will be so addressed and marked by Commission or agency personnel and forwarded immediately to the responsible System Manager. A request not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until the responsible System Manager receives it. In each instance when a request so forwarded is received, the System Manager or his designee shall notify the individual that his or her request was improperly addressed and the date when the request was received at the proper address.

(d) Since the request for correction or amendment normally will follow a request for access under § 297.108, the individual's identity will be established by his or her signature on the request.

(e) A request for correction or amendment should include the following:

(1) The specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line, and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which it is to be inserted or added; and

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials which substantiate the statement.

(f) The provisions of § 297.106(d) (2) and (3) apply to the information obtained under paragraph (e) of this section.

§ 297.112 Review of request for correction or amendment of record.

(a) (1) Not later than 10 days (excluding Saturdays, Sundays, and holidays) after receipt of a request to correct or amend a record, the System Manager or his designee shall send an acknowledgement providing an estimate of time within which action will be taken on the request. If a response cannot be made within 10 days due to unusual circumstances, the System Manager shall send an acknowledgement during that period providing information on the status of the request and asking for such further information as may be necessary to process the request. Unusual circumstances shall include circumstances where a search for and collection of requested records from storage, field facilities or other establishments are required, cases where a voluminous amount of data is

involved, or instances where information on other individuals must be separated or deleted from the particular record. No acknowledgement will be sent if the request can be reviewed, processed, and the individual notified of the results of review (either compliance or denial) within the 10 days. Requests filed in writing will be acknowledged in writing at the time submitted.

(2) Promptly after acknowledging receipt of a request, or after receiving such information as might have been requested, or after arriving at a decision in 10 days, the System Manager or his designee shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or a statement as to the means whereby the correction or amendment was effected in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in an electronic data bank); or

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The System Manager's or his designee's name and title or position;

(B) The date of the denial;

(C) The reasons for denial, including citation of the appropriate sections of the Act and this part; and

(D) The procedures for review of the denial as set forth in § 297.113, including the name and address of the Director, Bureau of Manpower Information Systems, or the Assistant Executive Director for Freedom of Information and Privacy, as appropriate. The term "promptly" in this paragraph means within 30 days (excluding Saturdays, Sundays, and holidays). If the System Manager or his designee cannot make the determination in 30 days, the individual will be advised in writing of the reasons therefor and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the System Manager or his designee shall notify all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it had disclosed the record of the substance of the correction or amendment. This requirement does not apply to disclosures made pursuant to paragraphs (a) or (b) of § 297.109.

(c) The following criteria are examples of those that will be considered by the System Manager or his designee in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information;

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(3) The relevance and necessity of the information in terms of the purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of possibility that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and

(8) The propriety and feasibility of complying with specific means of correction or amendment requested by the individual.

(d) The Commission or the agency will not make an effort to gather evidence for the individual, but does reserve the right to verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied upon a determination by the System Manager that:

(1) The information submitted by the individual is not accurate or relevant;

(2) The correction or amendment would violate an enacted statute or regulation; or

(3) The individual refuses to provide information which is necessary to process the request to correct or amend the record.

(f) If a request is partially granted and partially denied, the System Manager shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(g) When an agency detects erroneous data in an individual's personnel records or a third party source provides corrected information, it shall correct the record and provide all recipients of such record with the corrected information to the extent that it is relevant to the recipient's uses and deemed feasible to do so.

§ 297.113 Review of initial adverse determination on correction or amendment.

(a) When a request for correction or amendment has been denied initially under § 297.112, the individual may submit a written appeal within 30 days after the date of the initial denial.

(b) A request for review of a denial made by an agency shall be addressed to the Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, if the information is maintained in a record under the Government-wide systems of personnel records as indicated by § 293.102(c) of this chapter. A request for review of a denial made by an official of the Commission shall be addressed to the Assistant Executive Director for Freedom of Information and Privacy, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, if the informa-

tion is maintained in a record under the Government-wide systems of personnel records as indicated by § 293.102(c) of this chapter, or in a systems of records that is maintained and used primarily within the Commission as indicated by § 293.102(d) of this chapter. The processing of requests will be facilitated if the words "PRIVACY APPEAL" appear in capital letters on both the envelope and the top of the appeal papers. The request not addressed and marked as provided herein will be so marked by Commission or agency personnel when it is so identified, and will be forwarded immediately to the Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, or the Assistant Executive Director for Freedom of Information and Privacy, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, as appropriate. A request that is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time periods in this section until the Director, Bureau of Manpower Information Systems or the Assistant Executive Director for Freedom of Information and Privacy has received it. In each instance when a request so forwarded is received, the Director, Bureau of Manpower Information Systems or the Assistant Executive Director for Freedom of Information and Privacy, as appropriate, shall notify the individual that his or her request was improperly addressed and the date when the request was received at the proper address.

(c) The individual's request papers shall include the following: a copy of the original request for correction or amendment; a copy of the initial denial; and a statement of the reasons why the initial denial is believed to be in error. The request shall be signed by the individual. The record that the individual requests be corrected or amended will be supplied by the System Manager who issued the initial denial. While the foregoing normally will comprise the entire record on request, the System Manager may seek additional information necessary to assure that the final determination is fair and equitable and, in such instances, the additional information will be disclosed to the individual to the greatest extent possible and an opportunity provided for comment thereon.

(d) The Director, Bureau of Manpower Information Systems or the Assistant Executive Director for Freedom of Information and Privacy, as appropriate, shall act upon the request and issue a final determination in writing not later than 30 days (excluding Saturdays, Sundays, and holidays) from the date on which the appeal is received; provided that the Director, Bureau of Manpower Information Systems or the Assistant Executive Director for Freedom of Information and Privacy, as appropriate, may extend the 30 days upon deciding that a fair and equitable review cannot be made within that period, but

only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will be issued (estimated date should not be later than the 60th day excluding Saturdays, Sundays, and holidays after receipt of appeal unless unusual circumstances, as described in § 297.112(a)(1) are met).

(e) If a request is determined in favor of the individual, the final determination shall include the specific corrections or amendments to be made. A copy thereof shall be transmitted promptly both to the individual and to the System Manager who issued the initial denial. Upon receipt of such final determination, the System Manager promptly shall take the actions set forth in § 297.112(b).

(f) If the request is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination also shall inform the individual of the following information:

(1) The right of the individual to file a concise statement of reasons for disagreeing with the final determination. Such a statement shall be filed with the Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, or with the Assistant Executive Director for Freedom of Information and Privacy, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, as appropriate. It should identify the date of the final determination and be signed by the individual. The Director, Bureau of Manpower Information Systems or the Assistant Executive Director for Freedom of Information and Privacy, as appropriate, shall acknowledge receipt of such statement and inform the individual of the date it was received;

(2) The fact that any such disagreement statement filed by the individual will be noted in the disputed record and that a copy of the statement will be provided to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(3) The fact that the Commission will append to any such disagreement statement filed by the individual, a copy of the final determination or summary thereof which also will be provided to persons and agencies to which the disagreement statement is disclosed; and

(4) The right of the individual to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(g) In making the final determination, the Director, Bureau of Manpower Information Systems or the Assistant Executive Director for Freedom of Information and Privacy, as appropriate, shall use the criteria set forth in § 297.112(c) of this subpart and shall deny an appeal only the grounds set forth in § 297.112(e).

(h) If an appeal is partially granted and partially denied, the Director, Bureau of Manpower Information Systems or the Assistant Executive Director for Freedom of Information and Privacy, as

appropriate, shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(i) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(j) The provisions of § 297.106(d) (2) and (3) apply to the information obtained under paragraphs (c) and (g) (1) of this section.

§ 297.114 Disclosure of record to person other than the individual to whom it pertains.

(a) The Commission or the agency may disclose a record pertaining to an individual to a person other than the individual only in the following instances:

(1) Upon written request by the individual, including authorization under § 297.108(f);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h);

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b);

(5) When permitted under 5 U.S.C. 552a(b) (1) through (11); and

(6) To a survivor of a deceased employee, or annuitant, or someone acting in his or her behalf.

(b) The situations referred to in paragraph (a) (4) of this section include the following:

(1) 5 U.S.C. 552a(c) (4) requires dissemination of a corrected or amended record or notation of a disagreement statement by the Commission in certain circumstances;

(2) 5 U.S.C. 552a(g) authorizes civil action by an individual and requires disclosure by the Commission to the court; and

(3) Section 5(e) (2) of the Act authorizes release of any records or information by the Commission to the Privacy Protection Study Commission upon request of the Chairman of that Commission.

(c) The System Manager or his designee shall make an accounting of each disclosure by him of any record contained in a system of records in accordance with 5 U.S.C. 552a(c) (1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b) (7), the System Manager or his designee shall make such accounting available to the individual, on request submitted in accordance with § 297.107. The System Manager or his designee shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record as required by § 297.110.

§ 297.115 Fees.

(a) The general policy of the Commission is to provide a copy or a portion of

a record free of charge to an individual upon request. However, in cases where the records are voluminous the Commission or an agency may, at its discretion, charge a fee when the cost would be in excess of five dollars (\$5).

(b) The schedule of fees for copies is prescribed in § 294.107(c) of this chapter. The fees charged must be in accordance with the provisions of paragraphs (a), (b), and (d) of this section.

(c) No fees shall be charged or collected for the following: search for and retrieval of the records; review of the records; making a copy of a record when it is a necessary part of the process of making the record available for review; copying at the initiative of the Commission or an agency without a request from the individual; and transportation of records.

(d) It is the policy of the Commission to provide an individual with one copy of each record or portion thereof corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment.

§ 297.116 Publication of rules and procedures.

(a) The Commission sets forth in this part the rules and procedures for disclosure of personnel records for which it has responsibility.

(b) Agencies shall publish similar rules and procedures consistent with those of the Commission for disclosure of personnel records for which they have responsibility.

§ 297.117 Specific exemptions.

(a) Some systems of records under the Act that are maintained by the Commission contain material subject to exemptions appearing at 5 U.S.C. 552a(k) (1), (2), (5), and (6) relating to national defense and foreign policy materials, civil law enforcement in connection with the administration of the merit system, information obtained from a source who furnished such information under a properly granted promise that the identity of the source would be held in confidence, and to testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The systems of records published in the Federal Register by the Commission which are within these exemptions are: CSC-8, CSC/GOVT-4, and CSC/GOVT-5. The Commission hereby asserts a claim to specific exemptions of such systems of records. The materials would be exempt from 5 U.S.C. 552a(c) (3), (d), (e) (1), (e) (4) (g), (h), and (i) and (f).

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Commission or an agency for the Commission, including the reasons and parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justifications for the exemptions, are as follows:

(1) *Personnel Investigations Records.* All information about an individual in

the records that meets the criteria stated in 5 U.S.C. 552a(k) (1), (2), (5), and (6) are exempt from the requirements of 5 U.S.C. 552a(c) (3) and (d) relating to access and contest and making an accounting of disclosure to the individual named in the record for the following reasons:

(i) In that personnel investigations from time to time obtain information relevant to the matter under investigation which is properly classified by another agency and which pertains to national defense and foreign policy, application of exemptions (k) (1) will be required to prevent the individual from gaining access to such information under subsection (d) of the Act;

(ii) In that personnel investigations involve civil law enforcement in connection with the administration of the merit system, the effectiveness of which would be impaired should the individual obtain access to the investigative record of the matter, the application of exemption (k) (2) may be required to prevent the individual from gaining access under subsection (d) of the Act. Also, as the access by the individual to an accounting of disclosures of the record of such an investigation may impair a law enforcement function, the application of the exemptions to subsection (c) (3) of the title will be required;

(iii) In that a personnel investigation can involve information obtained from a source who furnished such information under a properly granted promise that the identity of the source would be held in confidence the application of exemption (k) (5) will be required to honor such a promise should the individual request access to the record under subsection (d); and

(iv) In that personnel investigations in connection with the administration of the examining function of the merit system may involve the collection of test material, the application of exemption (k) (6) will be required to prevent the exposure of such material which would compromise the examining process.

(2) *Personnel Research Test Validation Records and Recruiting, Examining, and Placement Records.* All material and information about an individual that meet the criteria stated in 5 U.S.C. 552a(k) (6) are exempt from the requirements of 5 U.S.C. 552a(c) (3), (d), (e) (1), (e) (4) (g), (h), and (i); and (f) relating to access and contest, making an accounting of disclosure to the individual named in the record, maintenance of information in records, publication of specific material annually in the FEDERAL REGISTER, and provisions regarding agency rules in that portions of this system relate to testing or examination materials that are 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 examination process. The specific materials that are exempted are as follows:

- (i) Answer keys;
- (ii) Test booklets;
- (iii) Test item files;

- (iv) Rating sheets;
- (v) Rating schedules, including cred-
iting plans;
- (vi) Transmutation tables; and
- (vii) Ratings given for the purpose of
validating examinations.

UNITED STATES CIVIL SERV-
ICE COMMISSION,
[SEAL] JAMES C. SRY,
*Executive Assistant
to the Commissioners.*

[FR Doc.75-26128 Filed 9-26-75;8:45 am]

Chapter IV—Codified Presidential Documents E. O. 11652

**EXECUTIVE ORDER 11652—CLASSIFICATION AND DECLASSIFICATION
OF NATIONAL SECURITY INFORMATION AND MATERIAL (AS
AMENDED)**

SOURCE: Executive Order 11652, 37 FR 5209, Mar. 10, 1972, as amended by the following:

E.O. 11714, 38 FR 10245, Apr. 26, 1973.

The interests of the United States and its citizens are best served by making information regarding the affairs of Government readily available to the public. This concept of an informed citizenry is reflected in the Freedom of Information Act and in the current public information policies of the executive branch.

Within the Federal Government there is some official information and material which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our Nation and the safety of our people and our allies. To protect against actions hostile to the United States, of both an overt and covert nature, it is essential that such official information and material be given only limited dissemination.

This official information or material, referred to as classified information or material in this order, is expressly exempted from public disclosure by Section 552(b)(1) of Title 5, United States Code. Wrongful disclosure of such information or material is recognized in the Federal Criminal Code as providing a basis for prosecution.

To ensure that such information and material is protected, but only to the extent and for such period as is necessary, this order identifies the information to be protected, prescribes classification, downgrading, declassification and safeguarding procedures to be followed, and establishes a monitoring system to ensure its effectiveness.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, it is hereby ordered:

SECTION 1. Security Classification Categories. Official information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed "national security") shall be classified in one of three categories, namely "Top Secret," "Secret," or "Confidential," depending upon the degree of its significance to national security. No other categories shall be used to identify official information or material as requiring protection in the interest of national security, except

as otherwise expressly provided by statute. These classification categories are defined as follows:

(A) *"Top Secret."* "Top Secret" refers to that national security information or material which requires the highest degree of protection. The test for assigning "Top Secret" classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of "exceptionally grave damage" include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security. This classification shall be used with the utmost restraint.

(B) *"Secret."* "Secret" refers to that national security information or material which requires a substantial degree of protection. The test for assigning "Secret" classification shall be whether its unauthorized disclosure could reasonably be expected to cause serious damage to the national security. Examples of "serious damage" include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security. The classification "Secret" shall be sparingly used.

(C) *"Confidential."* "Confidential" refers to that national security information or material which requires protection. The test for assigning "Confidential" classification shall be whether its unauthorized disclosure could reasonably be expected to cause damage to the national security.

SEC. 2. *Authority to Classify.* The authority to originally classify information or material under this order shall be restricted solely to those offices within the executive branch which are concerned with matters of national security, and shall be limited to the minimum number absolutely required for efficient administration. Except as the context may otherwise indicate, the term "Department" as used in this order shall include agency or other governmental unit.

(A) The authority to originally classify information or material under this order as "Top Secret" shall be exercised only by such officials as the President may designate in writing and by:

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- (1) The heads of the Departments listed below;
- (2) Such of their senior principal deputies and assistants as the heads of such Departments may designate in writing; and
- (3) Such heads and senior principal deputies and assistants of major elements of such Departments, as the heads of such Departments may designate in writing.

Such offices in the Executive Office of the President as the President may designate in writing

Central Intelligence Agency
Atomic Energy Commission
Department of State
Department of the Treasury
Department of Defense
Department of the Army
Department of the Navy
Department of the Air Force
United States Arms Control and Disarmament Agency
Department of Justice
National Aeronautics and Space Administration
Agency for International Development

(B) The authority to originally classify information or material under this order as "Secret" shall be exercised only by:

- (1) Officials who have "Top Secret" classification authority;
- (2) Such subordinates as officials with "Top Secret" classification authority under (A) (1) and (2) above may designate in writing; and
- (3) The heads of the following named Departments and such senior principal deputies or assistants as they may designate in writing.

Department of Transportation
Federal Communications Commission
Export-Import Bank of the United States
Department of Commerce
United States Civil Service Commission
United States Information Agency
General Services Administration
Department of Health, Education, and Welfare
Civil Aeronautics Board
Federal Maritime Commission
Federal Power Commission
National Science Foundation
Overseas Private Investment Corporation

(C) The authority to originally classify information or material under this order as "Confidential" may be exercised by officials who have "Top Secret" or "Secret" classification authority and such officials as they may designate in writing.

(D) Any Department not referred to herein and any Department or unit established hereafter shall not have authority to originally classify information or material under this order, unless specifically authorized hereafter by an Executive order.

SEC. 3. Authority to Downgrade and Declassify. The authority to downgrade and declassify national security information or material shall be exercised as follows:

(A) Information or material may be downgraded or declassified by the official authorizing the original classification, by a successor in capacity or by a supervisory official of either.

(B) Downgrading and declassification authority may also be exercised by an official specifically authorized under regulations issued by the head of the Department listed in Sections 2(A) or (B) hereof.

(C) In the case of classified information or material officially transferred by or pursuant to statute or Executive order in conjunction with a transfer of function and not merely for storage purposes, the receiving Department shall be deemed to be the originating Department for all purposes under this order including downgrading and declassification.

(D) In the case of classified information or material not officially transferred within (C) above, but originated in a Department which has since ceased to exist, each Department in possession shall be deemed to be the originating Department for all purposes under this order. Such information or material may be downgraded and declassified by the Department in possession after consulting with any other Departments having an interest in the subject matter.

(E) Classified information or material transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded and declassified by the Archivist of the United States in accordance with this order, directives of the President issued through the National Security Council and pertinent regulations of the Departments.

(F) Classified information or material with special markings, as described in Section 8, shall be downgraded and declassified as required by law and governing regulations.

SEC. 4. Classification. Each person possessing classifying authority shall be held accountable for the propriety of the classifications attrib-

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uted to him. Both unnecessary classification and over-classification shall be avoided. Classification shall be solely on the basis of national security considerations. In no case shall information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or Department, to restrain competition or independent initiative, or to prevent for any other reason the release of information which does not require protection in the interest of national security. The following rules shall apply to classification of information under this order:

(A) *Documents in General.* Each classified document shall show on its face its classification and whether it is subject to or exempt from the General Declassification Schedule. It shall also show the office of origin, the date of preparation and classification and, to the extent practicable, be so marked as to indicate which portions are classified, at what level, and which portions are not classified in order to facilitate excerpting and other use. Material containing references to classified materials, which references do not reveal classified information, shall not be classified.

(B) *Identification of Classifying Authority.* Unless the Department involved shall have provided some other method of identifying the individual at the highest level that authorized classification in each case, material classified under this order shall indicate on its face the identity of the highest authority authorizing the classification. Where the individual who signs or otherwise authenticates a document or item has also authorized the classification, no further annotation as to his identity is required.

(C) *Information or Material Furnished by a Foreign Government or International Organization.* Classified information or material furnished to the United States by a foreign government or international organization shall either retain its original classification or be assigned a United States classification. In either case, the classification shall assure a degree of protection equivalent to that required by the government or international organization which furnished the information or material.

(D) *Classification Responsibilities.* A holder of classified information or material shall observe and respect the classification assigned by the originator. If a holder believes that there is unnecessary classification, that the assigned classification is improper, or that the document is subject to declassification under this order, he shall so inform the originator who shall thereupon re-examine the classification.

SEC. 5. Declassification and Downgrading. Classified information and material, unless declassified earlier by the original classifying authority,

shall be declassified and downgraded in accordance with the following rules:

(A) *General Declassification Schedule.* (1) "Top Secret." Information or material originally classified "Top Secret" shall become automatically downgraded to "Secret" at the end of the second full calendar year following the year in which it was originated, downgraded to "Confidential" at the end of the fourth full calendar year following the year in which it was originated, and declassified at the end of the tenth full calendar year following the year in which it was originated.

(2) "Secret." Information and material originally classified "Secret" shall become automatically downgraded to "Confidential" at the end of the second full calendar year following the year in which it was originated, and declassified at the end of the eighth full calendar year following the year in which it was originated.

(3) "Confidential." Information and material originally classified "Confidential" shall become automatically declassified at the end of the sixth full calendar year following the year in which it was originated.

(B) *Exemptions from General Declassification Schedule.* Certain classified information or material may warrant some degree of protection for a period exceeding that provided in the General Declassification Schedule. An official authorized to originally classify information or material "Top Secret" may exempt from the General Declassification Schedule any level of classified information or material originated by him or under his supervision if it falls within one of the categories described below. In each case such official shall specify in writing on the material the exemption category being claimed and, unless impossible, a date or event for automatic declassification. The use of the exemption authority shall be kept to the absolute minimum consistent with national security requirements and shall be restricted to the following categories:

(1) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence.

(2) Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods.

(3) Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security.

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(4) Classified information or material the disclosure of which would place a person in immediate jeopardy.

(C) *Mandatory Review of Exempted Material.* All classified information and material originated after the effective date of this order which is exempted under (B) above from the General Declassification Schedule shall be subject to a classification review by the originating Department at any time after the expiration of ten years from the date of origin provided:

- (1) A Department or member of the public requests a review;
- (2) The request describes the record with sufficient particularity to enable the Department to identify it; and
- (3) The record can be obtained with only a reasonable amount of effort.

Information or material which no longer qualifies for exemption under (B) above shall be declassified. Information or material continuing to qualify under (B) shall be so marked and, unless impossible, a date for automatic declassification shall be set.

(D) *Applicability of the General Declassification Schedule to Previously Classified Material.* Information or material classified before the effective date of this order and which is assigned to Group 4 under Executive Order No. 10501, as amended by Executive Order No. 10964, shall be subject to the General Declassification Schedule. All other information or material classified before the effective date of this order, whether or not assigned to Groups 1, 2, or 3 of Executive Order No. 10501, as amended, shall be excluded from the General Declassification Schedule. However, at any time after the expiration of ten years from the date of origin it shall be subject to a mandatory classification review and disposition under the same conditions and criteria that apply to classified information and material created after the effective date of this order as set forth in (B) and (C) above.

(E) *Declassification of Classified Information or Material After Thirty Years.* All classified information or material which is thirty years old or more, whether originating before or after the effective date of this order, shall be declassified under the following conditions:

- (1) All information and material classified after the effective date of this order shall, whether or not declassification has been requested, become automatically declassified at the end of thirty full calendar years after the date of its original classification except for such specifically identified information or material which the head of the originating Department personally determines in writing at that time to require continued protection because such continued protection is essential to

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the national security or disclosure would place a person in immediate jeopardy. In such case, the head of the Department shall also specify the period of continued classification.

(2) All information and material classified before the effective date of this order and more than thirty years old shall be systematically reviewed for declassification by the Archivist of the United States by the end of the thirtieth full calendar year following the year in which it was originated. In his review, the Archivist will separate and keep protected only such information or material as is specifically identified by the head of the Department in accordance with (E)(1) above. In such case, the head of the Department shall also specify the period of continued classification.

(F) Departments Which Do Not Have Authority For Original Classification. The provisions of this section relating to the declassification of national security information or material shall apply to Departments which, under the terms of this order, do not have current authority to originally classify information or material, but which formerly had such authority under previous Executive orders.

SEC. 6. Policy Directives on Access, Marking, Safekeeping, Accountability, Transmission, Disposition and Destruction of Classified Information and Material. The President acting through the National Security Council shall issue directives which shall be binding on all Departments to protect classified information from loss or compromise. Such directives shall conform to the following policies:

(A) No person shall be given access to classified information or material unless such person has been determined to be trustworthy and unless access to such information is necessary for the performance of his duties.

(B) All classified information and material shall be appropriately and conspicuously marked to put all persons on clear notice of its classified contents.

(C) Classified information and material shall be used, possessed, and stored only under conditions which will prevent access by unauthorized persons or dissemination to unauthorized persons.

(D) All classified information and material disseminated outside the executive branch under Executive Order No. 10865 or otherwise shall be properly protected.

(E) Appropriate accountability records for classified information shall be established and maintained and such information and material shall be protected adequately during all transmissions.

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(F) Classified information and material no longer needed in current working files or for reference or record purposes shall be destroyed or disposed of in accordance with the records disposal provisions contained in Chapter 33 of Title 44 of the United States Code and other applicable statutes.

(G) Classified information or material shall be reviewed on a systematic basis for the purpose of accomplishing downgrading, declassification, transfer, retirement and destruction at the earliest practicable date.

Sec. 7. Implementation and Review Responsibilities. (A) The National Security Council shall monitor the implementation of this order. To assist the National Security Council, an Interagency Classification Review Committee shall be established, composed of a Chairman designated by the President, the Archivist of the United States, and representatives of the Departments of State, Defense and Justice, the Atomic Energy Commission, the Central Intelligence Agency and the National Security Council Staff. Representatives of other Departments in the executive branch may be invited to meet with the Committee on matters of particular interest to those Departments. This Committee shall meet regularly and on a continuing basis shall review and take action to ensure compliance with this order, and in particular:

(1) The Committee shall oversee Department actions to ensure compliance with the provisions of this order and implementing directives issued by the President through the National Security Council.

(2) The Committee shall, subject to procedures to be established by it, receive, consider and take action on suggestions and complaints from persons within or without the government with respect to the administration of this order, and in consultation with the affected Department or Departments assure that appropriate action is taken on such suggestions and complaints.

(3) Upon request of the Committee Chairman, any Department shall furnish to the Committee any particular information or material needed by the Committee in carrying out its functions.

Sec. 7 (A) as amended by E.O. 11714, 38 FR 10245, Apr. 26, 1973

(B) To promote the basic purposes of this order, the head of each Department originating or handling classified information or material shall:

(1) Prior to the effective date of this order submit to the Interagency Classification Review Committee for approval a copy of the regulations it proposes to adopt pursuant to this order.

(2) Designate a senior member of his staff who shall ensure effective compliance with and implementation of this order and shall also chair a Departmental committee which shall have authority to act on all suggestions and complaints with respect to the Department's administration of this order.

(3) Undertake an initial program to familiarize the employees of his Department with the provisions of this order. He shall also establish and maintain active training and orientation programs for employees concerned with classified information or material. Such programs shall include, as a minimum, the briefing of new employees and periodic reorientation during employment to impress upon each individual his responsibility for exercising vigilance and care in complying with the provisions of this order. Additionally, upon termination of employment or contemplated temporary separation for a sixty-day period or more, employees shall be debriefed and each reminded of the provisions of the Criminal Code and other applicable provisions of law relating to penalties for unauthorized disclosure.

(C) The Attorney General, upon request of the head of a Department, his duly designated representative, or the Chairman of the above described Committee, shall personally or through authorized representatives of the Department of Justice render an interpretation of this order with respect to any question arising in the course of its administration.

SEC. 8. *Material Covered by the Atomic Energy Act.* Nothing in this order shall supersede any requirements made by or under the Atomic Energy Act of August 30, 1954, as amended. "Restricted Data," and material designated as "Formerly Restricted Data," shall be handled, protected, classified, downgraded and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and the regulations of the Atomic Energy Commission.

SEC. 9. *Special Departmental Arrangements.* The originating Department or other appropriate authority may impose, in conformity with the provisions of this order, special requirements with respect to access, distribution and protection of classified information and material, including those which presently relate to communications intelligence, intelligence sources and methods and cryptography.

SEC. 10. *Exceptional Cases.* In an exceptional case when a person or Department not authorized to classify information originates information which is believed to require classification, such person or Department shall protect that information in the manner prescribed

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by this order. Such persons or Department shall transmit the information forthwith, under appropriate safeguards, to the Department having primary interest in the subject matter with a request that a determination be made as to classification.

SEC. 11. *Declassification of Presidential Papers.* The Archivist of the United States shall have authority to review and declassify information and material which has been classified by a President, his White House Staff or special committee or commission appointed by him and which the Archivist has in his custody at any archival depository, including a Presidential Library. Such declassification shall only be undertaken in accord with: (i) the terms of the donor's deed of gift, (ii) consultations with the Departments having a primary subject-matter interest, and (iii) the provisions of Section 5.

SEC. 12. *Historical Research and Access by Former Government Officials.* The requirement in Section 6(A) that access to classified information or material be granted only as is necessary for the performance of one's duties shall not apply to persons outside the executive branch who are engaged in historical research projects or who have previously occupied policy-making positions to which they were appointed by the President; *Provided*, however, that in each case the head of the originating Department shall:

(i) determine that access is clearly consistent with the interests of national security; and

(ii) take appropriate steps to assure that classified information or material is not published or otherwise compromised.

Access granted a person by reason of his having previously occupied a policy-making position shall be limited to those papers which the former official originated, reviewed, signed or received while in public office.

SEC. 13. *Administrative and Judicial Action.* (A) Any officer or employee of the United States who unnecessarily classifies or overclassifies information or material shall be notified that his actions are in violation of the terms of this order or of a directive of the President issued through the National Security Council. Repeated abuse of the classification process shall be grounds for an administrative reprimand. In any case where the Departmental committee or the Interagency Classification Review Committee finds that unnecessary classification or overclassification has occurred, it shall make a report to the head of the Department concerned in order that corrective steps may be taken.

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(B) The head of each Department is directed to take prompt and stringent administrative action against any officer or employee of the United States, at any level of employment, determined to have been responsible for any release or disclosure of national security information or material in a manner not authorized by or under this order or a directive of the President issued through the National Security Council. Where a violation of criminal statutes may be involved, Departments will refer any such case promptly to the Department of Justice.

SEC. 14. *Revocation of Executive Order No. 10501.* Executive Order No. 10501 of November 5, 1953, as amended by Executive Orders No. 10816 of May 8, 1959, No. 10901 of January 11, 1961, No. 10964 of September 20, 1961, No. 10985 of January 15, 1962, No. 11097 of March 6, 1963 and by Section 1(a) of No. 11382 of November 28, 1967, is superseded as of the effective date of this order.

SEC. 15. *Effective date.* This order shall become effective on June 1, 1972.

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