

PRIVACY ACT

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Disclaimers

- This is **not** a comprehensive Privacy Act presentation—it is specific to OWCP records maintained in DOL/GOVT-1, a government-wide System of Records (SOR)
- If you need Privacy Act advice regarding records maintained by your own agency under your own SOR, or under an OPM government-wide SOR, contact your General Counsel's/Solicitor's Office

“No Disclosure Without Consent”

Structure of the Privacy Act

- **ESTABLISHES** RIGHTS (INDIVIDUALS)
- **CREATES** RESPONSIBILITIES (AGENCIES)
- **PROVIDES** OVERSIGHT MECHANISMS
- **NOT JUST ACCESS AND DISCLOSURE—RECORDS MANAGEMENT IS KEY**

PRIVACY ACT

TERM: RECORD

- **INFORMATION ABOUT AN INDIVIDUAL**
 - EDUCATION, FINANCIAL TRANSACTIONS, MEDICAL HISTORY, AND CRIMINAL AND EMPLOYMENT HISTORY
- **INDIVIDUAL IDENTIFIER**
 - NAME, IDENTIFYING NUMBER, SYMBOL, OR OTHER IDENTIFYING PARTICULAR ASSIGNED TO INDIVIDUAL, SUCH AS FINGERPRINT, VOICE PRINT, BIOMETRIC OR PHOTOGRAPH

PRIVACY ACT

TERM: ROUTINE USE

- **ALLOWS FOR THE DISCLOSURE OF A RECORD OUTSIDE OF THE AGENCY WITHOUT CONSENT (BECAUSE OF NOTIFICATION TO THE INDIVIDUAL AT THE TIME OF COLLECTION)**
- **DISCLOSURE MUST BE “FOR A PURPOSE WHICH IS COMPATIBLE WITH THE PURPOSE FOR WHICH [THE INFORMATION] WAS COLLECTED”**

No Disclosure Without Consent

PURPOSE of the PRIVACY ACT:

**BALANCE GOVERNMENT'S NEED TO
MAINTAIN INFORMATION**

WITH

**THE RIGHTS OF INDIVIDUALS
TO BE PROTECTED AGAINST THE
UNWARRANTED INVASION OF THEIR
PRIVACY**

FOUR BASIC POLICY OBJECTIVES

1. **RESTRICT** DISCLOSURE (No Disclosure Without Consent)
2. **GRANT** INDIVIDUALS INCREASED RIGHTS OF ACCESS
3. **GRANT** INDIVIDUALS **RIGHT TO SEEK AMENDMENT** OF AGENCY RECORDS
4. **ESTABLISH** A CODE OF “**FAIR INFORMATION PRACTICES**”

PRIVACY ACT SYSTEM OF RECORDS

OFFICIAL NAME: DOL/GOVT-1

Office of Workers' Compensation Programs,
Federal Employees' Compensation Act File

REMEMBER--A DISCLOSURE MAY BE WRITTEN
(MOST DISCLOSURES ARE)

BUT THERE ARE ORAL DISCLOSURES AS WELL

AND ALL DISCLOSURES
(INCLUDING DISCLOSURES FROM AQS & iFECS)
ARE COVERED BY PRIVACY ACT PRINCIPLES

PRIVACY ACT—CRIMINAL PENALTIES (INDIVIDUALS)

- 1. FEDERAL EMPLOYEE DISCLOSURE OF INFORMATION PROHIBITED FROM DISCLOSURE**
- 2. FEDERAL EMPLOYEE WILLFULLY MAINTAINS A SYSTEM OF RECORDS WITHOUT MEETING NOTICE REQUIREMENTS**
- 3. ANYONE, INCLUDING A FEDERAL EMPLOYEE, REQUESTS OR OBTAINS ANY RECORD UNDER FALSE PRETENSES**

--(all three)--MISDEMEANOR, FINE NOT > \$5,000

PRIVACY ACT

- These provisions are solely criminal, and create no private right of action against a federal employee individually
- In other words, if you violate an individual's privacy, the individual can only sue the government

BUT THE GOVERNMENT CAN PROSECUTE YOU

PRIVACY ACT—CIVIL REMEDIES

CIVIL REMEDIES—AMENDMENT, ACCESS,
ACCURACY, & OTHER DAMAGES

SUIT IS AGAINST **FEDERAL AGENCY ONLY**—
INDIVIDUAL FEDERAL EMPLOYEE IS **NOT**
ABLE TO BE SUED FOR MONEY DAMAGES
UNDER THE PRIVACY ACT

SYSTEMS OF RECORDS

WORKERS' COMPENSATION
RECORDS BELONG TO DOL,
AND DOL ONLY

ANY RECORDS THE EMPLOYING
AGENCY HAS, INCLUDING
COPIES, BELONG TO DOL

PRIVACY ACT

WHAT DOES THAT MEAN?

ANY RECORDS THE AGENCY HAS BELONG TO DOL, AND CAN ONLY BE RELEASED IN ACCORDANCE WITH DOL'S PUBLISHED ROUTINE USES, **AND WITH DOL'S INTERPRETATION**

20 C.F.R. 10.11

Who maintains custody and control of FECA records?

- All records relating to claims for benefits filed under the FECA, **including any copies of such records maintained by an employing agency**, are covered by the government-wide Privacy Act system of records entitled DOL/GOVT-1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File). This system of records is maintained by and under the control of OWCP, and, as such, **all records covered by DOL/GOVT-1 are official records of OWCP.**

SYSTEMS OF RECORDS

WHAT ARE DOL'S PUBLISHED ROUTINE USES?

In addition to the 12 universal routine uses that apply to all DOL systems of records, there are 17 of them in DOL/GOVT-1

Examples:

- **third party in a third party action**
- employing agency at time of injury to verify billing, check status of claim, consider rehire, etc.
- **potential employers for return to work consideration**

SYSTEMS OF RECORDS

- Rehab agencies for evaluation
- **Physicians for use in treatment**
- Health insurance or medical/welfare plans for clarification of billing responsibility
- **Labor union acting on behalf of the employee**
- dual benefits issues

Distinguish Between “Right of Access” Disclosures and “Routine Use” Disclosures

- Disclosure to the subject of the record (the FECA claimant), while appropriate, authorized, and required by 5 U.S.C. § 552a(d)(1) (individual’s right of access), is **not** a disclosure pursuant to a routine use
- Examples of routine use disclosures:
 - Example—routine use **e** of DOL/GOVT-1 authorizes release of FECA file information to physicians treating or examining a FECA claimant
 - Another example—routine use **o** allows release of FECA file information to a Member of Congress in response to a request for assistance to a claimant

SYSTEMS OF RECORDS

SO...WHAT DOES THIS MEAN?

Think It Through ...

WORKERS' COMP DATA CAN
BE RELEASED **ONLY** FOR THE
ROUTINE USES ESTABLISHED
BY DOL

WHEN YOU RELEASE DATA, YOU CAN
RELEASE **ONLY THAT PART OF THE
RECORD THAT IS NECESSARY TO MEET
THE ROUTINE USE**

IT IS A VIOLATION OF THE PRIVACY ACT IF
YOU GIVE **ANY** INFORMATION NOT
COVERED BY THE ROUTINE USES TO
ANYONE

WHEN IN DOUBT, **CALL OWCP**

Personally Identifiable Information (PII)

The department defines PII as information

“whose disclosure could result in harm to the individual whose name or identity is linked to that information. Examples include, but are not limited to, social security number; credit card number; bank account number; residential address; residential or personal telephone; biometric identifier (image, fingerprint, iris, etc.); date of birth; mother’s maiden name; criminal records; medical records; and financial records. The conjunction of one data element with one or more additional elements increases the level of sensitivity and/or propensity to cause harm in the event of compromise.”

DISCLOSURE

YES/NO??

- EMPLOYING AGENCY
 - OIG—YES (IF INVESTIGATING FECA FRAUD)
 - INJURY COMP—YES
 - SECURITY OFFICE—YES, with limitations
 - SUPERVISOR—YES, IF RTW, and with limitations
 - EEO INVESTIGATOR—NO (with PA WAIVER, YES)
 - PERSONNEL ACTION—NO
 - AGENCY ATTORNEY—NO (if assisting agency with FECA case itself, YES)
 - BUDGET OFFICE—YES, summary information only
 - SAFETY AND HEALTH—YES, with limitations
 - UNION REPRESENTATIVE—YES, but only if representing claimant before OWCP

“YES” DOES NOT MEAN UNQUALIFIED YES

- It is important to remember that, unless you have a Privacy Act waiver signed by the FECA claimant, **or** are responding to a first person request by the claimant,
- you **always** must confirm that the expected use of the information is compatible with the routine use, **and**
- you disclose the **least** amount of information necessary for the recipient’s anticipated use.

Privacy Act/FECA References

- Main DOL Privacy Act Systems Page
<http://www.dol.gov/sol/privacy/main.htm>
- DOL/GOVT-1 Systems Notice
<http://www.dol.gov/sol/privacy/dol-govt-1.htm>
- DOL Universal Routine Uses
<http://www.dol.gov/sol/privacy/intro.htm>
- DOL's assertion of control
<http://www.dol.gov/sol/privacy/gov-wide.htm>