

# **PRIVACY ACT**

**Federal Workers' Compensation  
Conference 2014**

**Department of Labor**

# **PRIVACY ACT/ SYSTEMS OF RECORDS**

- **WHAT IS THE PRIVACY ACT?**
- **WHAT INFORMATION CAN BE RELEASED ABOUT A WORKERS' COMPENSATION CASE? TO WHOM?**
- **WHAT IS A SYSTEM OF RECORDS AND HOW DOES IT FIT IN THE PICTURE?**

# “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

## RIGHTS FOR INDIVIDUALS

- NOTIFICATION (GENERAL, SPECIFIC)
- ACCESS TO RECORDS ABOUT ONESELF
- AMENDMENT OF RECORDS IN ERROR
- ABILITY TO SUE TO ENFORCE WRONGS

## AGENCY RESPONSIBILITIES

- ESTABLISH REGULATIONS
- MAINTAIN RECORDS TO CERTAIN STANDARDS
- PROTECT RECORDS FROM DISCLOSURE
- NOTIFY THE PUBLIC (general, specific)

# **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: SYSTEM OF RECORDS**

- **GROUP OF RECORDS**
- **UNDER THE CONTROL OF A FEDERAL AGENCY**
- **RETRIEVED BY INDIVIDUAL IDENTIFIER ON A REGULAR BASIS**

# 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)  
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**

# 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>