

OWCP PROCEDURE MANUAL

Chapter 1-0400 - PRIVACY ACT

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1-0400-1 Purpose and Scope

1. Purpose and Scope. This chapter addresses the Freedom of Information Act (FOIA), which provides the public with a procedure for obtaining records from the Federal government, and the Privacy Act, which assures private citizens the right to confidentiality of certain personal information. It describes:

- a. The provisions of the Privacy Act and FOIA;
- b. The Disclosure Officer's responsibility to establish and maintain a records system that facilitates the identification of records of concern to the public under the Freedom of Information Act (FOIA) and Privacy Act and ensures timely compliance with FOIA and Privacy Act requests;
- c. The responsibility of staff and contractors to learn the system applicable in their district office, to safeguard information related to claims, and to refrain from releasing information over their own signatures; and
- d. Where to obtain answers to questions regarding Privacy Act and FOIA requests. Any issues not covered in the following discussion should be referred to the Disclosure Officer before taking action.

1-0400-2 Authority

2. Authority. The Department of Labor and the Employment Standards Administration (ESA) have defined policies for implementing the Privacy Act (5 U.S.C. 552a) and the FOIA (5 U.S.C. 552). These policies are described in the regulations at 20 C.F.R. 10.10 and 10.11 and 29 C.F.R. 70/70a, Systems of Records DOL-Government-wide I and ESA 29 [see 58 Federal Register 49548, et seq. (Thursday, September 23, 1993)]. Additional guidance is contained in DLMS Chapters 5-200 and 5-300.

1-0400-3 Overview

3. Overview. Employees in the Office of Workers' Compensation Programs' (OWCP) four programs, Federal Employees' Compensation (FEC), Black Lung (BL), Energy, and Longshore (LS), must respond to FOIA and Privacy Act requests within established time frames and provide copies of documents and other properly requested information in a timely fashion, while at the same time ensuring that personal information is not released from a case file improperly. The basic provisions of the FOIA and the Privacy Act are as follows:

- a. The FOIA. This law generally provides for public access to documents maintained by the government, and it requires the government to release those documents upon request, unless the requests or documents fall within one of nine exceptions listed in the law. The FOIA requires the publication of indexes of specified agency documents and records; provides time limitations for responding to requests; establishes a system of penalties for non-compliance with the time limitations; requires identification of persons responsible for granting or denying requests; provides for court review of denials; including classified materials; and provides for the levying of charges for searching and copying requested materials.
- b. The Privacy Act. The provisions of the Privacy Act are meant to assure the private citizen's right to confidentiality of personal information, including financial and medical history, in records filed in a system of records under the individual's own name. This law sets forth the government's responsibility to properly maintain and restrict access to these records. Workers' compensation case files constitute a system of records under the Privacy Act, which provides that:
 - (1) The claimant (i.e., the subject of the file) has the right to a copy of the file at any time, unless the file contains medical information which could be harmful if released; and
 - (2) Disclosure of the file to anyone else is generally prohibited without the express written consent of the claimant or representative. There are a number of exceptions to this rule, however, called routine uses, which permit file information to be used when necessary to carry out program responsibilities (see paragraph 4f below).

1-0400-4 Definitions

4. Definitions.

- a. Disclosure is the release of documents to the requestor or (within the context of the Privacy Act) to another party even if not requested.

- b. Disclosure Officers are individuals responsible for ensuring accountability and uniform compliance with the FOIA and Privacy Acts. Disclosure Officers include OWCP Regional Directors, Program District Directors, the Program Directors, the Deputy Assistant Secretary for Workers' Compensation, or their designees. Alternate Disclosure Officers include the Director, Division of Planning, Policy and Standards; OWCP; the program Deputy Directors, Deputy Regional Directors and program District Directors. Program or Office Heads, or Acting Program or Office Heads in the National Office, and Regional Directors or Acting Regional Directors in the field must designate in writing interim Disclosure Officers or Alternate Disclosure Officers when vacancies in positions of either principal or alternate Disclosure Officers occur.
- c. Record is any document maintained by OWCP in either hard copy or electronic form, even if it is not routinely kept in the claim jacket.
- d. Request is any written inquiry asking for a specific document, whether or not it cites the FOIA or the Privacy Act.
- e. Response is:
- (1) For the FOIA: a written acknowledgement of the request and/or a substantive determination concerning whether the documents exist and whether they will be released.
 - (2) For the Privacy Act: a written acknowledgment of the request and/or a substantive letter furnishing the information requested or denying the request.
- f. Routine Use is properly using information from the claim file without first obtaining the claimant's permission (as described in the System of Records notice in the most recent Federal Register). These routine uses include sending the record to medical providers asked by OWCP to examine or treat the claimant; nurses and rehabilitation counselors assigned by OWCP to work on the case; employing agency personnel (but only for purposes related to the claim, and not for other reasons such as personnel actions); credit bureaus; and others.

1-0400-5 Responsibilities of Disclosure Officers

5. Responsibilities of Disclosure Officers. Disclosure Officers are responsible for the proper maintenance of all information systems under their jurisdiction as well as for final decisions concerning requests under the Acts. Both laws set forth civil and criminal sanctions for violations. If a suit contesting a refusal to disclose information under the FOIA results in a

ruling against the Government and the court finds the refusal to be "arbitrary and capricious", the Disclosure Officer or the alternate acting in that person's stead is subject to investigation by the Office of Special Counsel in accordance with 5 U.S.C. 552(a)(4)(F), and to any disciplinary action which may be recommended to DOL as a result. If a court finds them to have wrongfully and willfully disclosed material covered under the Privacy Act or to have failed to publish notice of a system of records covered by the Privacy Act they may be subject to a misdemeanor conviction and a \$5000 fine. The Disclosure Officer should ensure that:

- a. Responses are Timely. Requests for information are answered or acknowledged within time frames established by law [see paragraph 6b(1)].
- b. Responses are Accurate. Documents which must be released under the FOIA or Privacy Act are released, and Privacy Act records are not released without proper authorization.
- c. Staff are Properly Trained. The Disclosure Officer must train all staff and contractors in their responsibilities and know the procedures established in their offices to handle FOIA and Privacy Act requests.
- d. Responsibility is Delegated Properly. Where necessary, the responsibilities of the Disclosure Officer with respect to preparing responses to requests and maintaining records may be delegated. The ultimate responsibility, however, remains with the Disclosure Officer.
- e. Covered Records are Properly Managed. The Privacy Act demands extra care, through classification, secure custody, and restricted release of all records (meaning all case files) covered by the Privacy Act.
- f. Logs and Reports are Properly Kept. FOIA and Privacy Act logs and indexes must be maintained and periodic reports submitted as requested to the Deputy Assistant Secretary's office. The logs should contain detailed information concerning each request for documents, including whether it was an FOIA or Privacy Act request, the date of receipt, the date of reply, the nature of the reply (which exemption was used as the basis for any denial), and costs associated with the request. Specific responsibilities include:
 - (1) Periodic updating and publication of FOIA indexes.
 - (2) Informing the public of routine uses under the Privacy Act.
 - (3) Maintaining records of FOIA workload, Form DL 1-520, Request Under the Freedom of Information Act (Exhibit 1).

- (4) Recording the disclosure of material covered by the Privacy Act, Form ESA-67a, Privacy Act Record System Log of Disclosures (Exhibit 2).
- (5) Monitoring contractors who generate, update, or maintain records covered by the Privacy Act to prevent unauthorized disclosures.

1-0400-6 Responsibilities of Staff and Contractors

6. Responsibilities of Staff and Contractors. Claims Examiners (CEs), contact representatives and all other OWCP employees and contractors are responsible for understanding the difference between the FOIA and the Privacy Act, recognizing requests which fall within the purview of these laws, knowing the system established in their offices for processing those requests, and, most importantly, safeguarding all information about a claim.

Some common questions are:

- a. What is the difference between the laws? The FOIA and the Privacy Act are often confused by claimants and others requesting information. The applicable law can best be determined by identifying the requestor:
 - (1) If the request comes from the claimant (or designated representative) and it concerns documents from his or her case file, it is a Privacy Act request (no matter what the writer calls it);
 - (2) If the request comes from someone else [a "third party"], or if it comes from a claimant who seeks documents other than those from his or her case file, then it is an FOIA request.
- b. What do the laws require? While the FOIA generally requires release of certain documents, the Privacy Act generally prohibits the release of case files to anyone except the subject of the file. Other, more specific requirements include:
 - (1) Timely Response. Both laws require responses within certain time frames: 10 days for FOIA, and 30 days for the Privacy Act. The time runs from the date of receipt of the written request. All Privacy Act and FOIA requests must be in writing. An individual who makes a request over the telephone should be instructed to put it in writing.

The short response times require claims personnel to be alert for such requests, which may appear in the middle of letters regarding other issues.
 - (2) Disclosure/Protection. Information about a claim should never be released (either over the phone or by sending copies of documents) to anyone other than the claimant or the designated representative without the written consent of the

claimant, unless release is allowed under the routine use provision (e.g., sending records to a second opinion or impartial specialist). Non-case-related records are generally releasable under the FOIA, with some exceptions.

1-0400-7 Requests for Information

7. Requests for Information. Many different parties request information from a case file or other program records. Such requests fall into one of three distinct categories: Privacy Act, Routine Use, or Freedom of Information Act requests. CEs should remember that the same restrictions apply to releasing information verbally as apply to releasing a document. This means that verbal information can be given only to the claimant, someone who has been authorized by the claimant in writing, or someone who falls within the routine use provisions.

Individuals attempting to obtain information about a particular claim over the telephone should be required to identify themselves and present two of the following: the claim number; the date of injury; the claimant's date of birth; and the claimant's social security number. In any case, the information released should not exceed what the party needs to know.

a. Requests Generally Applicable to all OWCP Programs.

(1) Privacy Act Requests. Claimants or their authorized representatives may request information from the case file under the Privacy Act. These requests should be granted with the following exceptions:

- (a) Privileged medical records. Restrictions are placed on the release of potentially injurious medical reports to the claimant. For instance, if a request is made for a report which discusses terminal conditions, psychiatric illness, etc., the CE should ask the District Medical Adviser (DMA) whether releasing such information could constitute a danger to the claimant or another. If the DMA's opinion is affirmative, the requester should be informed that such information will be released to the claimant's treating physician [see 29 CFR 70a.6(d)].
- (b) Investigative Files. Most documents that originate with an investigative agency and are given to OWCP with the expectation that OWCP act on them become releasable as a part of the case file. The only exception would be for witness statements that would jeopardize the privacy of the witness.

OWCP has no authority to maintain investigative files, but some old cases may contain separate investigative files originating with the Inspector General or another investigative body. If such a file

is discovered, it should be brought to the attention of the District Director, who will return it to the originating agency.

- (c) **Records from Other Sources.** In some instances, information which OWCP obtains from other government agencies is described as the property of that agency, which prohibits release to another party without their specific approval. Such information should be returned to the source agency with an explanation that once it is used in the adjudication of a case it becomes a part of the OWCP file and is releasable to the claimant.

(2) Routine Use Requests. The following routine uses apply to and are incorporated by reference into each system of records in DOL unless otherwise indicated [DOL Privacy Act System of Record Notices, 58 FR 49548 (September 23, 1993) at 49554].

- (a) **Members of Congress.** Information from OWCP records and files may be supplied to a Member of Congress who is inquiring on behalf of a claimant. The requestor on whose behalf the inquiry is made must be the claimant, not a member of the claimant's family or another person. Otherwise, except for the chair of the oversight committee, Members of Congress have no right to obtain information protected under the Privacy Act. In replying to a Congressional inquiry concerning more than one claimant, separate responses should be prepared for each individual, so that case records do not contain information about unrelated claims.
- (b) **Agencies Investigating Potential Legal Violations.** In the event that records maintained by OWCP or any of its programs indicate a violation or potential violation of law, they may be referred to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the relevant statute, rule, regulation, or order.
- (c) **Judicial Proceedings.** Any records maintained by OWCP may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of litigation or settlement negotiations.
- (d) **Medical or Health Advisor.** An OWCP record which contains medical information may be disclosed to the medical or health advisor of any individual submitting a request for access to the

record if, in the sole judgement of the Department, disclosure could have an adverse effect upon the individual, under the provisions of 5 U.S.C. 552a(f)(3) and implementing regulations.

- (e) Department of Labor (DOL) or Other Agency Decision Processes. Relevant OWCP records may be disclosed to a Federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses. Release is appropriate when it is necessary to obtain information relevant to a DOL or other Federal agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.
- (f) Statistical Data. Permission may be granted by OWCP National Office for release of documents or information in district office files in connection with a study being conducted for a legitimate purpose by another agency of the U.S. Government or a contractor of the U.S. Government. The information must only be used as statistical data about a particular aspect of the agency's work and safeguards are required to prevent the identification of any individuals whose files are included in the study or the disclosure of personal information in the individual records.

(3) FOIA Requests.

- (a) Requests from an interested party for documents or records which are not covered under the Privacy Act. Requests for non-personal information or records not covered under the Privacy Act, or copies of documents such as the Procedure Manual, are treated as FOIA requests. While a few pages of the Procedure Manual may be provided to a requestor without charge, requests for the entire volume should be forwarded to the appropriate program in the National Office.
- (b) Press Releases. In instances when information disclosed under the FOIA is of general interest, ESA will cooperate with the Office of Information, Publications and Reports and the Regional Information Officers in the preparation and release of an announcement when appropriate.
- (c) Lists of Medical Providers. The Physicians' Directory System and other files of medical providers are generally not releasable to the

public under exemption 6 of the FOIA.

1-0400-8 Program-Specific Requests

8. Program-Specific Requests.

a. Routine Use Requests: FEC.

(1) Employing Agencies in General. FEC may grant requests from agencies for records pertaining to their employees, including requests from inspectors or auditors attached to the agencies, but is not required to do so. If records are to be released, CE's should ensure that the requestor is agency-authorized and require proper identification before releasing only that information directly relevant to the request. For example, if an agency needs to formulate a job offer and needs to know a claimant's medical restrictions, relevant medical reports may be released. Blanket release of records is not appropriate, except to an investigative body.

Employing agency personnel who inquire about releasing claims-related material from their files should be referred to paragraph 9-3 of Injury Compensation for Federal Employees (Publication CA-810).

Occasionally a claimant requests that his or her statement concerning events at the workplace not be shown to employing agency personnel, or to persons named in the statement. Because OWCP must establish the facts of the claim, statements concerning factors of employment must be submitted to the employing agency to verify that the incidents took place as described.

The CE should therefore advise the claimant that the material must be submitted to the official superior for comment, but that no unnecessary disclosure of the statement within the agency will be made. The CE should withhold any information not pertinent to the case, especially if it may prove damaging to the claimant.

(2) The U.S. Postal Service. The Postal Service has adopted PS Form 2573, Request for OWCP Claims Status (Exhibit 3), to obtain information needed to determine if an employee should be retained on their rolls. This form is submitted to FEC in duplicate, and the CE should complete it promptly, taking care to ensure agency authorization for the request and properly identify the requestor. The original should be mailed to the requesting postmaster and a copy placed in the case file.

(a) Item 2b of PS Form 2573 may be checked only if the DMA agrees that the claimant is permanently and totally disabled.

(b) The response to item 3 may be made only on the basis of the prognosis in a recent medical report or on the opinion of the DMA.

(c) Item 4 must be completed if either item 2c or 2d is checked. If item 2c is checked, the response to item 4 should (if possible) provide the percentage of disability and list the work limitations.

(d) If item 2d is checked, the response to item 4 should specify the member of the body involved as well as the percentage of permanent partial disability, and the date of termination of the award.

(3) Office of Retirement Programs (OPM). Requests for information from the OPM are usually made on specific forms. Response should be made to all OPM inquiries within 10 days of receipt of such requests. OPM is also charged with administering the provisions of 5 U.S.C. 8151 and has issued regulations which are covered in FECA PM 2-814. CEs should be familiar with the OPM regulations.

(4) Social Security Administration (SSA). Requests for information from this agency are made on Forms SSA-1709, Request for Workmen's Compensation Information (Exhibit 4), and Form SSA-827, Authorization to Release Medical Information to SSA (Exhibit 5). Payments made and the inclusive dates for which made may be given.

Requests for medical information must include the employee's authority to release such information (Form CA-57, Authorization for Release of Information). Copies of medical reports or OWCP-prepared medical abstracts, including copies made at OWCP expense, may be sent. If more than five photocopies are involved, the medical reports should be abstracted into a letter of reply. In all instances, a brief letter of transmittal must accompany any medical evidence furnished.

(5) Employment and Training Administration, Unemployment Insurance Services. Requests from State public employment agencies are made on Form ES-933, Request for Information Regarding Claims Filed Under the Federal Employees' Compensation Act (Exhibit 6), which are submitted to determine whether an employee is entitled to unemployment benefits under a State law. Items 1 through 10 of Section II and items 1 through 4 of Section III should be completed, and the form should be returned to the State employment agency named in the lower left corner of the reverse of the form. A copy of the form must be retained for the case record.

Requests submitted on other than Form ES-933 may also be honored insofar as they

duplicate items requested on the form. Explanations of the entries for items 4, 8, 9 and 10 in Section II, as described to the State employment agencies by the Unemployment Insurance Services, are as follows:

- (a) The rate of compensation in item 4 should be given so as to allow the State agency to compute the amount in terms of a claim week that has a different beginning date from an overlapping OWCP award week. If action on a claim is pending, OWCP will return the form and will send information to the State agency as soon as a decision is made on the claim. If additional time will be required to adjudicate the claim, item 10, Remarks, should include a statement that a delay is anticipated. If no supplementary report is received from the OWCP in 90 days, the State agency will send a duplicate Form ES-933, marked "Follow-up on Pending Application" to the OWCP.
- (b) In item 8, the description of the claimant's disability will help the State agency to determine whether it is temporary partial, temporary total, permanent partial or permanent total disability.
- (c) If a State agency has made any entries of week-ending dates in item 9, OWCP will enter the actual amount of payments made for those weeks. If the State agency has made no entries in this item, OWCP will not make any entries.
- (d) In item 10, the OWCP will furnish any other pertinent information, e. g., changes in compensation rate due to hospitalization.

b. Routine Use Requests: BL. The file content, which includes claim forms, medical reports, employment records, Federal and state agency records and any other documents relative to the claimant's or dependent's age, education, work history, marital history or medical conditions, may be released to the extent necessary to meet the requestor's needs to various interested parties, including but not limited to:

- (1) Employers. Employers may receive file information after the filing of a claim related to pneumoconiosis.
- (2) Insurance Carriers and Employer Service Organizations. Any party providing the employer with workers' compensation insurance coverage and/or claims development, adjudication and payment services may receive file information.
- (3) State workers' Compensation Agencies and the Social Security Administration. These organizations may receive file information for the purpose of offset determinations.

- (4) Doctors and Medical Services Providers. These entities may receive file information for the purposes of obtaining medical evaluations.
 - (5) Labor unions (e.g., United Mine Workers of America). Labor unions, of which the claimant is a member, which exercise an interest in claims of members as a service to their members may receive file information.
- c. Routine Use Requests: LS.
- (1) Employers. Disclosure may be made to the employer at any time after the report of injury or report of the onset of the occupational illness, or the filing of a notice of injury or claim is received.
 - (2) Insurance Carrier. Disclosure may also be made to any party providing the employer with workers' compensation insurance coverage since they are a party in interest to all actions on a case.
 - (3) Rehabilitation Service Providers. Public or private rehabilitation agencies to whom the injured worker has been referred for vocational rehabilitation services may receive file information so that they may properly evaluate the injured worker's experience, physical limitations and future employment capabilities.
 - (4) Federal, State and Local Agencies. Records are made available to other Federal agencies and State and local agencies conducting similar or related investigations to verify whether prohibited dual benefits were provided.

1-0400-9 Responding to Requests for Information

9. Responding to Requests for Information. The DD in each program office will establish a procedure for responding to requests for information. CEs should familiarize themselves with this procedure and follow it. Each office should also seek to assist members of the public who have misdirected their requests out of a lack of knowledge of pertinent information systems. (Internal Longshore memoranda regarding the handling of particular Section 8(f) cases are not to be released to parties outside the Department under the FOIA, since they contain views on the evidence submitted in support of the application or any possible litigation strategy {see exemption five of the FOIA, 5 U.S.C., 552(b)(5)}. Therefore, these documents are considered privileged correspondence and kept separate from the administrative file).

- a. Determining the Appropriate Act. Case-specific information must be addressed according to the appropriate Act regardless of how it is requested. Even informational questions, although not specifically addressed in terms of either the Privacy Act or the FOIA, must be appropriately handled. Requests for information already in the public domain (for example, publications available from the GPO) may be denied on the basis that public information is not covered by either Act. The CE should make a recommendation regarding release and pass it along to the Disclosure Officer for a decision.
- b. Adjudicating the Request. The DD is the deciding official in most circumstances for district office action. As the Disclosure Officer, he or she is responsible for releasing the material over his or her signature or denying the request in writing under the Privacy Act or FOIA.
- c. Documenting the Response. The file should contain evidence that the requested documents were provided and the date on which the information was sent.
- d. Determining any Applicable Charges. If the request is granted, it must be determined whether charges apply, and if so, what they should be (see 29 C.F.R. Part 70, Subpart c).
 - (1) Under the Privacy Act, the first copy is free, but additional copies are furnished at 10 cents a page. In FEC cases, employing agencies are not charged for copies of file material concerning their employees.
 - (2) Under the FOIA, the permissible costs include 15 cents per page for photocopying and \$2.50 (clerical time) or \$5.00 (professional time) per quarter hour to search for records. The first 100 pages and two hours of search time are free.
- e. Providing Appeal Rights Where Release is Denied. Under either Act, an unfavorable decision must include in the last paragraph the following appeal rights:

Under 20 C.F.R., Subtitle A, Part 70, Section 70.49 -70.52, individuals may appeal a denial within 90 days.

The appeal must state in writing the grounds for appeal, including any supporting statements or arguments. The appeal must be addressed to the Solicitor of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. To expedite processing, the envelope should be marked "FOIA [or Privacy Act] Appeal."

1-0400-10 Reviewing Case Files

10. Reviewing Case Files. Safeguards under the Privacy Act must be preserved during any review of a file.

a. On-Site. During reviews of files, claims personnel may be asked to discuss the contents of the files. Any decisions to disclose information from case files should be made in accordance with paragraph 7 above.

(1) Proper identification. The person seeking review must provide two forms of ID, one with a picture. The person must be entitled to review the material (i.e., the subject of the file, the subject's parent or guardian if the person is a minor or has been declared incompetent, the subject's representative, or one with appropriate authorization, or employing agency or agency personnel for appropriate reasons, or a law enforcement agency for official business).

(2) Proper security. A reviewer should always be observed by an OWCP employee.

b. Off-Site. The case file may, where requested, be referred to a conveniently located office of another agency within the Department of Labor. The case should be removed from the district office, however, only if such action will not interfere with the adjudication of the case or disrupt the work of the office to which it is being sent for review.

The appropriate RD should be contacted for the name and address of the office best located for the review. Preliminary arrangements should then be made by telephone with a responsible official in that office. The file will then be sent by registered mail to the attention of the appropriate official, accompanied by a letter indicating the name of the reviewer and requesting that:

- (1) Signed authorization be obtained before disclosure of the record;
- (2) A responsible employee be present throughout the review to prevent loss, misplacement, removal or alteration of any of the contents; and
- (3) The file be returned by registered mail, together with a memorandum to include the name(s) of the reviewer(s) and the length of time they studied the file.

The reviewer will be sent a letter identifying the office to which the file is being sent and the name and phone number of the official to contact for an appointment.

1-0400-11 Copying Case Files

11. Copying Case Files. If any party authorized to have access to personal information under the Privacy Act requests a copy of a file, the first copy is made available to the requester at no charge. In addition, no charges are assessed for the time spent searching for the record pursuant to a Privacy Act request. Copies must be made in the office, by either the authorized requester or his or her representative or by program staff. Employees of private copying services are not permitted access to records collected and maintained in Privacy Act systems.

1-0400-12 Subpoenas

12. Subpoenas. Sometimes subpoenas are served on individuals by name and require the appearance of the named individual as custodian of the case file. Usually the individual subpoenaed will be the District Director, but it may be the Assistant District Director, a CE, or any other person who might have access to the case file. Anyone receiving or being served a subpoena should refer it to the Assistant District Director or other appropriate official for immediate transmission to the Office of the Solicitor (in Washington, to the Special Assistant to the Deputy Assistant Secretary) for guidance in releasing the information requested. Subpoenas for individuals (including CEs) are invalid unless served on the Office of the Solicitor.

Rehabilitation counselors and field nurses may not release OWCP records, including test results and reports, in response to a subpoena. A contractor who is subpoenaed to appear must respond to the subpoena, but should explain that their agreement with OWCP subjects them to the provisions of the Privacy Act. As such, they cannot release any information relating to a Privacy Act system of records, such as OWCP case files (including rehabilitation files) without the express permission of the subject of the file or under the other exceptions provided by the Privacy Act.

1-0400-13 Using the Internet to Send Information Covered by the Privacy Act

13. Using the Internet to Send Information Covered by the Privacy Act. This paragraph

addresses e-mail messages sent to parties outside of OWCP, such as employing agencies and physicians offices.

- a. Before sending information protected by the Privacy Act to an outside party, the sender should ask the potential recipient to verify that his or her e-mail messages are protected by a personal password and that they cannot routinely be accessed by anyone else.
- b. The message should not contain the name of the person who is the subject of the file (i.e., the claimant). It should refer only to the case file number, EIN number, or other such identifier.
- c. Paragraph 7 above outlines the identifiers to be requested before information is provided to a telephone caller. The sender should ensure that no more than one of these identifiers (SSN, DOB) is used in addition to the case file number or EIN number.
- d. E-mail should be used to transmit only time-sensitive information. For example, emergency medical treatment, QCM and return-to-work issues, and other matters which require quick decisions, are more properly the subject of e-mail messages than debarments and counselor/nurse performance files.
- e. The information sent should be confined to that which is necessary to convey the message.