

PART 2015 - INFORMATION

Subpart E - Availability of Information Under the Privacy Act

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## PART 2015 - INFORMATION

### Subpart E - Availability of Information Under the Privacy Act

#### § 2015.201 Purpose.

(a) The [Privacy Act of 1974](#), as amended, allows individuals to gain access to their own personal records subject to certain exemptions, and to seek correction or amendment of records maintained by Federal Agencies that are inaccurate, incomplete, untimely, or irrelevant.

(b) The Privacy Act pertains only to information that is maintained in a "system of records" and it also safeguards confidentiality by limiting or restricting disclosure of personally identifiable information maintained by Federal Agencies, and balances the United States Government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy resulting from the collection, maintenance, use, and disclosure of personal information.

(c) The protections afforded, and the rights conferred by the Privacy Act extend only to "individuals" who are citizens of the United States and individuals lawfully admitted for permanent residence. It does not extend to nonresident individuals, foreign nationals, or organizations.

(d) All questions or concerns regarding this Instruction or any other Privacy Act matters should be referred to the RD Business Center, Enterprise Office, Records and Information Management Division, Information Management Branch by sending an email to the Freedom of Information Act (FOIA) Officer at [RD.FOIA@usda.gov](mailto:RD.FOIA@usda.gov) or by visiting [Information Management Branch - FOIA and Privacy Act](#).

#### § 2015.202 Definitions.

For purposes of this Instruction the terms below shall have the meanings set forth in 5 U.S.C. 552a(a).

**Individual.** A citizen of the United States or an alien lawfully admitted for permanent residence.

**Maintain.** Includes maintain, collect, use or disseminate.

**Record.** Any item, collection, or grouping of information about an individual that is maintained by the Agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other

identifying assigned to the individual, such as a finger or voice print, or a photograph.

**Statistical Record.** 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.

**System of Records.** A group of any records under the control of the Agency thereof 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.

#### § 2015.203 Authorities and Responsibility.

(a) **Authorities.** The statutory authorities requiring the Privacy Act are:

- (1) [5 U.S.C. § 552a](#);
- (2) [5 U.S.C. § 301](#);
- (3) [31 U.S.C. § 9701](#);
- (4) [7 C.F.R. Part 1, Subpart G § 1.110 - 1.123](#); and
- (5) [40 FR 39519](#), as amended at [62 FR 33981](#).

(b) **Responsibility.** The FOIA Officer and Government Information Specialists in the Information Management Branch are delegated authority to administer, all written requests for records under the Privacy Act on behalf of Rural Development (RD or “the Agency”).

#### § 2015.204 Times, Places, and Requirements for Identification of Individuals Making Requests.

(a) If an individual submitting a request for access under the Privacy Act has asked that the Agency authorize a personal inspection of records pertaining to him or her, and the Agency has granted that request, the requester shall present himself or herself at the time and place specified in the Agency's response or arrange another, mutually convenient, time with the appropriate Agency official.

(b) Prior to inspection of the records, the requester shall present sufficient identification (e.g., driver's license, employee identification card, social security card, credit cards) to establish that the requester is the individual to whom the records pertain. If the requester is unable to provide such identification, the requester shall complete and sign in the presence of an Agency official a signed statement asserting the requester's identity and stipulating that the requester

understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor punishable by fine up to \$5,000. No identification shall be required, however, if the records are required by [5 U.S.C. 552](#) to be released.

(c) Any individual who has requested access to records about himself or herself by personal inspection, and who wishes to have another person or persons accompany the requester during this inspection, shall submit a written statement authorizing disclosure of the record in the presence of such other person or persons.

(d) Any individual having made a personal inspection of records pertaining to the requester may request the Agency to provide the requester copies of those records or any portion of those records. Such requests shall be granted but fees may be charged.

(e) If an individual submitting a request for access under the Privacy Act wishes to be supplied with copies of the records by mail, the requester shall include with his or her request sufficient data for the Agency to verify the requester's identity. If the sensitivity of the records warrants it, the Agency may require the requester to submit a signed, notarized statement indicating that the requester is the individual to whom the records pertain and stipulating the requester understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor punishable by a fine up to \$5,000. No identification shall be required, however, if the records are required by [5 U.S.C. 552](#) to be released. If the FOIA Officer or Information Management Branch determines to grant the requested access, it may charge fees in accordance with § 1.120 before making the necessary copies. e. In the event the Agency receives a request pursuant to the Privacy Act for access to medical records (including psychological records), and it determines that their disclosure would be harmful to the individual to whom they relate, it may refuse to disclose the records directly to the requester but must transmit them to a doctor designated by that individual.

(f) Upon request from an individual for access to records pertaining to himself or herself, the Agency, subject to applicable exemptions found in § 2015.204 of this subpart, must:

- (1) inform the individual whether it has such records-
- (2) permit the individual to review the records if they exist-
- (3) permit the individual to be accompanied by a person of his/her choosing at the review.
- (4) permit the individual to obtain a copy of all or any portions of such records in a comprehensible format.

§ 2015.205 Legal basis for withholding information (exceptions from disclosure).

(a) Exemptions to the Privacy Act. The Privacy Act generally provides that any eligible person has a right of access to Federal Agency records in which that person is a subject, except to the extent that such records (or portions thereof) are protected from disclosure by one of ten exemptions. When a portion of a record is withheld from public release, the subsection of the Privacy Act law describing that exemption(s) will be found directly on top of where the withheld content has been redacted. The list below describes the type of information withheld under each subsection of the Privacy Act. The exact language can be found in the Privacy Act.

- (1) Exemption (d)(5)- Information compiled in reasonable anticipation of civil action or proceeding, self-executing exemption.
- (2) Exemption (j)(1)- Central Intelligence Agency records (information concerning polygraph records, sources and methods to gather intelligence -- including the facilities, organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency -- and documents or information provided by foreign governments).
- (3) Exemption (j)(2)- Principal function criminal law enforcement agency; records compiled during course of criminal law enforcement proceeding.
- (4) Exemption (k)(1)- Classified information under an Executive Order in the interest of national defense or foreign policy.
- (5) Exemption (k)(2)- Non-criminal law enforcement records; criminal law enforcement records compiled by non-principal function criminal law enforcement agency; coverage is less broad where individual has been denied a right, privilege, or benefit as result of information sought.
- (6) Exemption (k)(3)- Pertain to the protection of the President of the United States or other individual pursuant to Section 3056 of Title 18.
- (7) Exemption (k)(4)- Required by statute to be maintained and used solely as statistical records.
- (8) Exemption (k)(5)- Investigatory material used only to determine suitability, eligibility, or qualifications for Federal civilian employment or access to classified information when the material comes from confidential sources.
- (9) Exemption (k)(6)- Testing or examination material used to determine appointment or promotion of Federal employees when disclosure would compromise the objectivity or fairness of the process.

(10) Exemption (k)(7)- Military evaluative records (similar to (k)(5))

(b) Exceptions to Disclosure. If Agency records are exempt from disclosure under the Privacy Act, the Information Management Branch will review the records under the FOIA to give the requester the greatest possible access to records. Records *may* be exempt from disclosure by both the Privacy Act and the FOIA. Records that are not exempt from disclosure will be released to the requester. However, no information will be disclosed to a requester without the individual's written consent, unless the disclosure is pursuant to one of the 12 statutory exceptions. The following 12 exceptions allow disclosure:

- (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) When disclosure is made under the FOIA.
- (3) For an established routine use identified in the System of Records Notice (SORN) that has been published in the Federal Register.
- (4) To the Census Bureau for purpose of planning or carrying out a census or survey.
- (5) To a recipient who has provided the Agency with adequate written assurance that the record will be used solely for 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 and Records Administration (NARA) for historical preservation if the Archivist determines the record has historical value.
- (7) To another Federal Agency or to an instrumentality of any United States 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 Agency Head 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 the United States Congress or United States Senate, or to the extent of matter within its jurisdiction, any Congressional Committee or Subcommittee thereof, any joint Committee of Congress or Subcommittee of any such Joint Committee.

(10) To the United States Comptroller General, or any of his/her authorized representatives, during the performance of the duties of the United States General Accountability Office.

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

(12) To a consumer reporting agency in accordance with the Debt Collection Act.

#### § 2015.206 Request for Correction or Amendment of Records.

(a) Any individual who wishes to request correction or amendment of any record pertaining to him or her contained in a system of records maintained by an agency shall submit that request in writing in accordance with the instructions set forth in the system notice for that system of records. This request shall include:

(1) The name of the individual making the request.

(2) The name of the system of records (as set forth in the system notice to which the request relates).

(3) A description of the nature (e.g., modification, addition, or deletion) and substance of the correction or amendment requested.

(4) Any other information specified in the system notice.

(b) Any individual submitting a request pursuant to paragraph (a) of this section, shall include sufficient information in support of that request to allow the agency to which it is addressed to apply the standards set forth in [5 U.S.C. 552a\(e\)](#) (1) and (5).

(c) Any individual whose request under paragraph (a) of this section is denied, may appeal that denial to the head of the agency which maintains the system of records to which the request relates.

(d) If an appeal under paragraph (c) of this section is denied, the requester may bring a civil action in a United States District Court to seek review of the denial.

#### § 2015.207 Civil remedies.

The Privacy Act authorizes individuals to bring injunctive actions to enforce access and amendment rights. An individual may also sue to recover damages when adversely affected by the Agency's failure to comply with any provision of the Act or implementing regulation. By providing for these civil actions, Congress sought to ensure that individuals would have ready access to the courts.

(a) The civil actions provided for in the Act may be brought only against the Agency itself or against the Administrator in his official capacity. Civil suit may not be brought against subordinate Agency officials.

(b) The Act provides that actions seeking damages, as opposed to those seeking injunctive relief, may be filed in two situations: (1) where the Agency has failed to maintain a record relating to an individual in an accurate, relevant, timely, and complete manner, and the individual has been adversely affected by a determination made on the basis of the record relating to his or her qualifications, character, rights, opportunities, or benefit, and (2) where an individual is adversely affected by the Agency's failure to comply with any provision of the Act or any rule promulgated under the Act. Adverse effect includes not only monetary damage, but also nonpecuniary and nonphysical harm such as mental distress or embarrassment.

(c) To actually recover damages, however, the Act requires a showing that the Agency's action was intentional or willful. If such a showing is made, the court must award both (1) actual damages or \$1,000, whichever is higher, and (2) the complainant's cost of bringing the action and reasonable attorney fees. Punitive damages may not be imposed.

#### § 2015.208 Criminal penalties.

In addition to civil remedies, the Privacy Act creates three criminal offenses and classifies each of them as a misdemeanor subject to a maximum fine of \$5,000. These penalties also apply to contractors and employees of such contractors who enter into contracts with an agency of USDA and who are considered to be employees of the Agency within the meaning of [5 U.S.C. 552a\(m\)\(1\)](#). Specifically, the Act makes it unlawful:

(a) for any Agency officer or employee to knowingly and willfully disclose individually identifiable information, the disclosure of which is prohibited by the Act or rules or regulations promulgated under the Act, to any person or Agency not entitled to receive it;

(b) for any Agency officer or employee to willfully maintain a system of records without meeting the notice requirements of the Act; or

(c) for any person to knowingly and willfully request or obtain any record concerning an individual from the Agency under false pretenses.



§ 2015.209 [Fees.](#)

Copies of records pursuant to a request may be charged fees for the direct costs of producing. However, no fee is charged for searches necessary to locate records. Nor shall any fees be charged for copies or searches, when the requester sought to make a personal inspection but was provided copies instead at the discretion of the Agency.

§ 2015.210 [Conditions of Disclosure to Third Parties.](#)

No RD office shall disclose any record which is contained in a system of records it maintains, by any means of communication to any person, or to another agency outside of the United States Department of Agriculture, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless the disclosure is authorized by one or more of the Privacy Act exceptions. Records requests made by the FOIA Officer or Information Management Branch for purposes of adjudicating Privacy Act/FOIA requests must be provided in full of no redactions.

§ 2015.211 [Retention Schedule.](#)

The disposition authority for Tort Claims can be found at [GRS 4.2 - Information Access and Protection Records](#) under the National Archives and Records Administration.

§ 2015.212 - 2015.250 [Reserved]

ATTACHMENT: [Exhibits A](#)

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## Internal Directives

Sec. 1 General Requirements. Each agency that maintains a system of records subject to 5 U.S.C. 552a and the regulations of this subpart shall:

- (a) 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.
- (b) 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.
- (c) Inform everyone 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:
  - (1) 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;
  - (2) The principal purpose or purposes for which the information is intended to be used;
  - (3) The routine uses which may be made of the information, as published pursuant to paragraph (d)(4) of this section; and
  - (4) The effects on him, if any, of not providing all or part of the requested information.
- (d) Subject to the provisions of section 2 of this appendix, prepare for publication in the Federal Register at least annually a notice of the existence and character of each system it maintains, which notice shall include:
  - (1) The name and location(s) 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 uses and the purpose 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 be notified at his request if the system of records contains a record pertaining to him;

(8) 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

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

(e) 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.

(f) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to 5 U.S.C. 552a(b)(2), make reasonable efforts to assure that such records are accurate, complete, timely and relevant for agency purposes.

(g) 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.

(h) Make reasonable efforts to serve notice on an individual when any record on such an individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(i) 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.

(j) Establish appropriate administrative, technical and physical safeguards to ensure 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.

Sec. 2 Amendment of routine use for an existing system of records, or establishment of a new system of records.

(a) Any agency which intends to add a routine use, or amend an existing one, in a system of records it maintains, shall, in accordance with 5 U.S.C. 552a(e)(II), insure that 30 days advance notice of such action is given by publication in the Federal Register and an opportunity provided for interested persons to submit written data, views or arguments to the agency.

(b) Any agency which intends to establish a new system of records, or to alter any existing system of records, shall insure that adequate advance notice is provided to Congress and the Office of Management and Budget to permit an evaluation of the probable or potential effect of such action 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. Such notice is required for any new system of records and for any alteration in an existing one which will:

- (1) Increase the number or types of individuals on whom records are maintained;
- (2) Expand the type or amount of information maintained;
- (3) Increase the number or categories of agencies or other persons who may have access to those records;
- (4) Alter the manner in which the records are organized so as to change the nature or scope of those records (e.g., the combining of two or more existing systems);
- (5) Modify the way the system operates at its location(s) in such a manner as to alter the procedures under which individuals can exercise their rights under this subpart; or
- (6) Change the equipment configuration on which the system is operated so as to create the potential for greater access (e.g., adding a telecommunications capability).

Sec. 3 Accounting of Certain Disclosures. Each agency, with respect to each system of records under its control, shall:

(a) Except for disclosures made under 5 U.S.C. 552a(b)(1) and (2), keep an accurate account of:

- (1) The date, nature, and purpose of each disclosure of a record to any person or agency outside the Department; and

(2) The name and address of the person or agency to whom the disclosure is made.

(b) Retain the accounting made under paragraph (a) of this section for the longer of a period of five years after the date of the disclosure for which the accounting is made or the life of the record disclosed;

(c) Except for disclosures made under 5 U.S.C. 552a(b)(7), make the accounting above available to the individual named in the record at his request.

**Sec. 4 Government Contractors.** When an agency within the Department 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 subpart to be applied to such system. For purposes of 5 U.S.C. 552a(i) any such contractor or any employee of such contractor, if such contract is agreed to on or after September 27, 1975, shall be to be an employee of an agency and therefore subject to the criminal penalties set forth in that section.

**Sec. 5 Mailing Lists.** No agency within the Department shall sell or rent any individual's name and address unless such action is specifically authorized by law. This section shall not be construed to require, or to authorize, the withholding of names and addresses whose disclosure is required by 5 U.S.C. 552.

**Sec. 6 Social Security Account Numbers.**

(a) No agency shall deny or permit any State or local government with whom it is involved in a cooperative venture 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.

(b) The provisions of paragraph (a) of this section shall not apply with respect to:

(1) Any disclosure required by Federal statute; or

(2) Any disclosure to any agency relating to a system of records it maintained prior to January 1, 1975, if such disclosure was required under statute or regulation adopted prior to that date, to verify the identity of an individual.

(c) Any agency in the Department which requests an individual to disclose his social security account number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited and what uses will be made of it. The agency also ensure that this information is provided by a State or local government with whom it is involved in a cooperative agreement.

Sec. 7 Annual Report. Each agency in the Department shall submit to the Office of the General Counsel prior to March 30 of each year (beginning March 30, 1976) a report containing the following information related to implementation of 5 U.S.C. 552a:

- (a) A summary of major accomplishments;
- (b) A summary of major plans for activities in the upcoming year;
- (c) A list of the systems which were exempted during the year from any of the operative provisions of this subpart pursuant to 5 U.S.C. 552a(j) and (k), whether or not the exemption was affected during that year, the number of instances with respect to each system exempted in which the exemption was invoked to deny access, and the reasons for invoking the exemption;
- (d) A summary of changes to the total inventory of personal data systems subject to this subpart including reasons for major changes; and
- (e) A general description of operational experiences including estimates of the number of individuals (in relation to the total number of records in the system):
  - (1) Requesting information on the existence of records pertaining to them;
  - (2) Refusing to provide information;
  - (3) Requesting access to their records;
  - (4) Appealing initial refusals to amend records; and
  - (5) Seeking redress through the courts.

Sec. 8 Effect of 5 U.S.C. 552. No agency in the Department shall rely on any exemption in 5 U.S.C. 552 to withhold from an individual any records which is otherwise accessible to such individual under the provisions of 5 U.S.C. 552a and this subpart.

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