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United States Code Annotated Currentness
 Title 5. Government Organization and Employees (Refs & Annos)
 Part I. The Agencies Generally
 Chapter 5. Administrative Procedure (Refs & Annos)
 Subchapter II. Administrative Procedure (Refs & Annos)
 → § 552a. Records maintained on individuals

(a) **Definitions.**--For purposes of this section--

- (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;
- (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;
- (8) the term “matching program”--
 - (A) means any computerized comparison of--
 - (i) two or more automated systems of records or a system of records with non-Federal records for the purpose of--
 - (I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit

programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include--

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches--

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel [FN1]

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986; or

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(9) the term “recipient agency” means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term “non-Federal agency” means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term “source agency” means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term “Federal benefit program” means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term “Federal personnel” means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals [FN2] entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(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 and Records Administration 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 Archivist of the United States or the designee of the Archivist 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 Government Accountability Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(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;

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

(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 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;
- (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;
- (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)(D) 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 upon establishment or revision a notice of the existence and character of the system of records, which notice shall include--

(A) the name and location of the system;

(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 con-

fidentiality 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;

(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; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(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 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.

The Office of the Federal Register shall biennially 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,

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.

(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.

(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--

(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 September 27, 1975.

(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 (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.

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), (H), and (I) and (f) of this section if the system of records is--

(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;

(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.

(D)(1) Archival records.--Each agency record which is accepted by the Archivist of the United States 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 Archivist of the United States 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.

(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.

(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)(1) 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.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(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) Matching agreements.--**(1)** No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying--

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to--

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall--

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if--

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and opportunity to contest findings.--(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until--

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that--

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

- (II) there is a high degree of confidence that the information provided to the recipient agency is accurate;
- (B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and
- (C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or
- (ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.
- (2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of--
- (A) the amount of any asset or income involved;
- (B) whether such individual actually has or had access to such asset or income for such individual's own use; and
- (C) the period or periods when the individual actually had such asset or income.
- (3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.
- (q) **Sanctions.--**(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.
- (2) No source agency may renew a matching agreement unless--
- (A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and
- (B) the source agency has no reason to believe that the certification is inaccurate.
- (r) **Report on new systems and matching programs.--**Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.
- (s) **Biennial report.--**The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report--
- (1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of

the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) 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.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards.--(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board--

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including--

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective. [FN3]

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that--

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is

reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counter-intelligence investigations.

(v) Office of Management and Budget responsibilities.--The Director of the Office of Management and Budget shall--

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

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

CREDIT(S)

(Added Pub.L. 93-579, § 3, Dec. 31, 1974, 88 Stat. 1897, and amended Pub.L. 94-183, § 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub.L. 97-365, § 2, Oct. 25, 1982, 96 Stat. 1749; Pub.L. 97-375, Title II, § 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub.L. 97-452, § 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub.L. 98-477, § 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub.L. 98-497, Title I, § 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub.L. 100-503, §§ 2 to 6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507 to 2514; Pub.L. 101-508, Title VII, § 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334; Pub.L. 103-66, Title XIII, § 13581(c), Aug. 10, 1993, 107 Stat. 611; Pub.L. 104-193, Title I, § 110(w), Aug. 22, 1996, 110 Stat. 2175; Pub.L. 104-226, § 1(b)(3), Oct. 2, 1996, 110 Stat. 3033; Pub.L. 104-316, Title I, § 115(g)(2)(B), Oct. 19, 1996, 110 Stat. 3835; Pub.L. 105-34, Title X, § 1026(b)(2), Aug. 5, 1997, 111 Stat. 925; Pub.L. 105-362, Title XIII, § 1301(d), Nov. 10, 1998, 112 Stat. 3293; Pub.L. 106-170, Title IV, § 402(a)(2), Dec. 17, 1999, 113 Stat. 1908; Pub.L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

[FN1] So in original. Probably should be “personnel;”.

[FN2] So in original. Probably should be “and individuals”.

[FN3] So in original. Probably should be “cost-effective”.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1974 Acts. Senate Report No. 93-1183, see 1974 U.S. Code Cong. and Adm. News, p. 6916.

1975 Acts. Senate Report No. 94-540, see 1975 U.S. Code Cong. and Adm. News, p. 2141.

1982 Acts. Senate Report Nos. 97-378 and 97-287, see 1982 U.S. Code Cong. and Adm. News, p. 3377.

House Report No. 97-804, see 1982 U.S. Code Cong. and Adm. News, p. 3435.

1983 Acts. Detailed Explanation prepared by the Office of the Law Revision Counsel, see 1982 U.S. Code Cong. and Adm. News, p. 4301.

1984 Acts. House Report No. 98-726(Parts I and II), see 1984 U.S. Code Cong. and Adm. News, p. 3741.

Senate Report No. 98-373 and House Conference Report No. 98-1124, see 1984 U.S. Code Cong. and Adm. News, p. 3865.

1988 Acts. House Report No. 100-802, see 1988 U.S. Code Cong. and Adm. News, p. 3107.

1990 Acts. House Report No. 101-881, House Conference Report No. 101-964, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 2017.

1993 Acts. House Report No. 103-111 and House Conference Report No. 103-213, see 1993 U.S. Code Cong. and Adm. News, p. 378.

1996 Acts. House Report No. 104-394, see 1996 U.S. Code Cong. and Adm. News, p. 3432.

House Report No. 104-651 and House Conference Report No. 104-725, see 1996 U.S. Code Cong. and Adm. News, p. 2183.

1997 Acts. House Report No. 105-148, Senate Report No. 105-33, House Conference Report No. 105-220, and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 678.

1999 Acts. Statement by President, see 1999 U.S. Code Cong. and Adm. News, p. 332.

References in Text

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub.L. 99-570.

Section 6103 of such Code, referred to in subsec. (a)(8)(B)(iv), is section 6103 of the Internal Revenue Code of 1986, which is classified to section 6103 of Title 26.

Sections 404, 464, and 1137 of the Social Security Act, referred to in subsec. (a)(8)(B)(iv), are classified to sections 604, 664, and 1320b-7, respectively, of Title 42.

For effective date of this section, referred to in subsecs. (k)(2), (5), (7), (l)(2), (3), and (m), see Effective Date of 1974 Acts note under this section.

Section 6 of the Privacy Act of 1974, referred to in subsec. (s)(1), is section 6 of Pub.L. 93-579, which was set out as a note under this section and was repealed by section 6(c) of Pub.L. 100-503.

For classification of the Privacy Act of 1974, referred to in subsec. (s)(4), see Short Title of 1974 Acts note under this section.

Amendments

2004 Amendments. Subsec. (b)(10). Pub.L. 108-271, § 8(b), substituted “Government Accountability Office” for “General Accounting Office”.

1999 Amendments. Subsec. (a)(8)(B)(vi) to (viii). Pub.L. 106-170, § 402(a), struck out “or” at the end of cl. (vi), inserted “or” at the end of cl. (vii), and added cl. (viii).

1998 Amendments. Subsec. (u)(6). Pub.L. 105-362, § 1301(d)(1), struck out former par. (6), which read: “The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.”

Subsec. (u)(6), (7). Pub.L. 105-362, § 1301(d)(2), redesignated former par. (7) as par. (6), and in redesignated par. (6), struck out “paragraphs (3)(D) and (6)” and inserted “paragraph (3)(D)”.

1997 Amendments. Subsec. (a)(8)(B)(v). Pub.L. 105-34, § 1026(b)(2), struck out “or” at the end of cl. (v).

Subsec. (a)(8)(B)(vi). Pub.L. 105-34, § 1026(b)(2), inserted “or” at the end of cl. (vi).

Subsec. (a)(8)(B)(vii). Pub.L. 105-34, § 1026(b)(2), added cl. (vii).

1996 Amendments. Subsec. (a)(8)(B)(iv)(III). Pub.L. 104-193, § 110(w), substituted “section 404(e), 464, or 1137 of the Social Security Act” for “section 464 or 1137 of the Social Security Act”.

Subsec. (a)(8)(B)(vii). Pub.L. 104-226, § 1(b)(3), struck out cl. (vii) which had provided that the term “matching program” did not include matches performed pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act.

Subsec. (b)(12). Pub.L. 104-316, § 115(g)(2)(B), substituted “section 3711(e)” for “section 3711(f)”.

Subsec. (m)(2). Pub.L. 104-316, § 115(g)(2)(B), substituted “section 3711(e)” for “section 3711(f)”.

1993 Amendments. Subsec. (a)(8)(B)(vii). Pub.L. 103-66, § 13581(c), added cl. (vii).

1990 Amendments. Subsec. (p)(1). Pub.L. 101-508 substituted “In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until--

“(A)(i) the agency has independently verified the information; or

“(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that--

“(I) the information is limited to identification and amount of benefits paid by the source agency under a

Federal benefit program; and

“(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

“(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

“(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

“(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual”

for

“In order to protect any individual whose records are used in matching programs, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs, until an officer or employee of such agency has independently verified such information. Such independent verification may be satisfied by verification in accordance with (A) the requirements of paragraph (2); and (B) any additional requirements governing verification under such Federal benefit program.”

Subsec. (p)(2). Pub.L. 101-508 substituted “Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of--

“(A) the amount of any asset or income involved;

“(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

“(C) the period or periods when the individual actually had such asset or income”

for

“Independent verification referred to in paragraph (1) requires independent investigation and confirmation of any information used as a basis for an adverse action against an individual including, where applicable--

“(A) the amount of the asset or income involved,

“(B) whether such individual actually has or had access to such asset or income for such individual's own use, and

“(C) the period or periods when the individual actually had such asset or income”.

Subsec. (p)(3). Pub.L. 101-508 substituted “Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.” for “No recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to any individual described in

paragraph (1), or take other adverse action against such individual as a result of information produced by a matching program, (A) unless such individual has received notice from such agency containing a statement of its findings and informing the individual of the opportunity to contest such findings, and (B) until the subsequent expiration of any notice period provided by the program's law or regulations, or 30 days, whichever is later. Such opportunity to contest may be satisfied by notice, hearing, and appeal rights governing such Federal benefit program. The exercise of any such rights shall not affect any rights available under this section”.

Subsec. (p)(4). Pub.L. 101-508 struck out par. (4) which read “Notwithstanding paragraph (3), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during the notice period required by such paragraph”.

1988 Amendments. Subsec. (a)(8) to (13). Pub.L. 100-503, § 5, added pars. (8) through (13).

Subsec. (e)(12). Pub.L. 100-503, § 3(a), added par. (12).

Subsec. (f). Pub.L. 100-503, § 7, directed that rules and agency notices be compiled and published biennially instead of annually.

Subsecs. (o) to (q). Pub.L. 100-503, § 2, added subsecs. (o) through (q). Former subsecs. (o) through (q) were redesignated as (r) through (t), respectively.

Subsec. (r). Pub.L. 100-503, § 3(b), inserted reference to matching programs in heading, and in text substituted provisions requiring each agency proposing to establish or change a system of records or matching program to provide notice to certain Congressional committees and to the Office of Management and Budget in order to evaluate effect of such proposal on privacy or other individual rights, for provisions requiring each agency to provide notice to Congress and the Office of Management and Budget of any proposal to establish or alter a system of records in order to evaluate effect of such proposal on privacy or other individual rights and its effect on principles of federalism and separation of powers.

Pub.L. 100-503, § 2(1), redesignated former subsec. (o) as (r).

Subsec. (s). Pub.L. 100-503, § 8, substituted “Biennial” for “Annual” in heading, “biennially submit” for “annually submit” in introductory provisions, “preceding 2 years” for “preceding year” in par. (1), and “such years” for “such year” in par. (2).

Pub.L. 100-503, § 2(1), redesignated former subsec. (p) as (s).

Subsec. (t). Pub.L. 100-503, § 2(1), redesignated former subsec. (q) as (t).

Subsec. (u). Pub.L. 100-503, § 4, added subsec. (u).

Subsec. (v). Pub.L. 100-503, § 6(a), added subsec. (v).

1984 Amendments. Subsec. (b)(6). Pub.L. 98-497, § 107(g)(1), substituted “and Records Administration” for “of the United States” after “National Archives” and further substituted “Archivist of the United States or the designee of the Archivist” for “Administrator of General Services or his designee”.

Subsec. (l)(1). Pub.L. 98-497, § 107(g)(2), substituted “Archivist of the United States” for “Administrator of General Services” wherever appearing.

Subsec. (q)(1). Pub.L. 98-477, § 2(c)(1), redesignated provisions designated as subsec. (q) as subsec. (q)(1).

Subsec. (q)(2). Pub.L. 98-477, § 2(c)(2), added subsec. (q)(2).

1983 Amendments. Subsec. (b)(12). Pub.L. 97-452 substituted “section 3711(f) of title 31” for “section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))”.

Subsec. (m)(2). Pub.L. 97-452 substituted “section 3711(f) of title 31” for “section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))”.

1982 Amendments. Subsec. (b)(12). Pub.L. 97-365, § 2(a), added par. (12).

Subsec. (e)(4). Pub.L. 97-375, § 201(a), substituted “upon establishment or revision” for “at least annually” after “Federal Register”.

Subsec. (m). Pub.L. 97-365, § 2(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub.L. 97-375, § 201(b), substituted provisions requiring the annual submission of a report by the President to the Speaker of the House and President pro tempore of the Senate relating to the Director of the Office of Management and Budget, individual rights of access, changes or additions to systems of records, and other necessary or useful information, for provisions which had directed the President to 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 indicated efforts to administer fully this section.

1975 Amendments. Subsec. (g)(5). Pub.L. 94-183 substituted “to September 27, 1975” for “to the effective date of this section”.

Effective and Applicability Provisions

1999 Acts. Amendment by section 402(a)(2) of Pub.L. 106-170 shall apply to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after December 1999, see section 402(a)(4) of Pub.L. 106-170, set out as a note under section 402 of Title 42.

1997 Acts. Amendment by Pub.L. 105-34 to apply to levies issued after Aug. 5, 1997, see section 1026(c) of Pub.L. 105-34, set out as a note under section 6103 of Title 26, Internal Revenue Code.

1996 Acts. Amendment of subsec. (a)(8)(B)(iv)(III) by Pub.L. 104-193 is effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub.L. 104-193, set out as a note under section 601

of this title.

Amendment by Pub.L. 104-316 effective Oct. 19, 1996, see section 101(e) of Pub.L. 104-316, set out as a note under section 130c of Title 2, The Congress.

1993 Acts. Amendment by Pub.L. 103-66 effective Jan. 1, 1994, see section 13581(d) of Pub.L. 103-66, set out as a note under section 1395y of Title 42, The Public Health and Welfare.

1990 Acts. Pub.L. 101-366, Title II, § 206(d), Aug. 15, 1990, 104 Stat. 442, provided that:

“(1) In the case of computer matching programs between the Department of Veterans Affairs and the Department of Defense in the administration of education benefits programs under chapters 30 and 32 of title 38 [section 1401 et seq. and section 1601 et seq. of Title 38, Veterans Benefits, respectively] and chapter 106 of title 10, United States Code [section 2131 et seq. of Title 10, Armed Forces], the amendments made to section 552a of title 5, United States Code, by the Computer Matching and Privacy Protection Act of 1988 [Pub.L. 100-503] (other than the amendments made by section 10(b) of that Act) [see Effective Date of 1988 Acts note under this section] shall take effect on October 1, 1990.

“(2) For purposes of this subsection, the term ‘matching program’ has the same meaning provided in section 552a(a)(8) of title 5, United States Code [subsec. (a)(8) of this section].”

1988 Acts. Section 10 of Pub.L. 100-503, as amended Pub.L. 101-56, § 2, July 19, 1989, 103 Stat. 149, provided that:

“(a) **In general.**--Except as provided in subsections (b) and (c), the amendments made by this Act [amending this section and repealing provisions set out as a note under this section] shall take effect 9 months after the date of enactment of this Act [Oct. 18, 1988].

“(b) **Exceptions.**--The amendment made by sections 3(b), 6, 7, and 8 of this Act [amending this section and repealing provisions set out as a note under this section] shall take effect upon enactment.

“(c) **Effective date delayed for existing programs.**--In the case of any matching program (as defined in section 552a(a)(8) of title 5, United States Code [subsec. (a)(8) of this section], as added by section 5 of this Act) in operation before June 1, 1989, the amendments made by this Act (other than the amendments described in subsection (b)) shall take effect January 1, 1990, if--

“(1) such matching program is identified by an agency as being in operation before June 1, 1989; and

“(2) such identification is--

“(A) submitted by the agency to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget before August 1, 1989, in a report which contains a schedule showing the dates on which the agency expects to have such matching program in compliance with the amendments made by this Act, and

“(B) published by the Office of Management and Budget in the Federal Register, before September 15, 1989.”

[Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Government Operations of the House of Representatives treated as referring to the Committee on Government Reform and Over-

sight of the House of Representatives, except that any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Government Operations of the House of Representatives treated as referring to the Committee on the Budget of the House of Representatives in the case of a provision of law relating to the establishment, extension, and enforcement of special controls over the Federal budget, see section 1(a)(6) and (c)(2) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.]

1984 Acts. Amendment by Pub.L. 98-497 effective April 1, 1985, see section 301 of Pub.L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

Amendment by Pub.L. 98-477, effective Oct. 15, 1984 and applicable with respect to any request for records, whether or not such request was made prior to Oct. 15, 1984, and applicable to all civil actions not commenced prior to February 7, 1984, see section 4 of Pub.L. 98-477, set out as a note under section 431 of Title 50, War and National Defense.

1974 Acts. Section 8 of Pub.L. 93-579 provided that: "The provisions of this Act [enacting this section and provisions set out as notes under this section] shall be effective on and after the date of enactment [Dec. 31, 1974], except that the amendments made by sections 3 and 4 [enacting this section and amending analysis preceding section 500 of this title] shall become effective 270 days following the day on which this Act is enacted."

Termination of Reporting Requirements

For termination of reporting provisions of subsec. (r) of this section, effective May 15, 2000, see Pub.L. 104-66, § 3003, as amended, set out as a note under 31 U.S.C.A. § 1113, and the 20th item on page 151 of House Document No. 103-7.

For termination, effective May 15, 2000, of provisions in subsec. (s) of this section, see Pub.L. 104-66, § 3003, as amended, set out as a note under 31 U.S.C.A. § 1113 and page 31 of House Document No. 103-7.

Change of Name

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by Pub.L. 104-14, § 1(a), set out as a note preceding 2 U.S.C.A. § 21. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Delegation of Functions

Functions of Director of Office of Management and Budget under this section delegated to Administrator for Office of Information and Regulatory Affairs by section 3 of Pub.L. 96-511, Dec. 11, 1980, 94 Stat. 2825, set out as a note under section 3503 of Title 44, Public Printing and Documents.

Short Title

1990 Amendments. Section 7201(a) of Pub.L. 101-508 provided that: “This section [amending this section and enacting provisions set out as notes under this section] may be cited as the ‘Computer Matching and Privacy Protection Amendments of 1990’.”

1989 Amendments. Pub.L. 101-56, § 1, July 19, 1989, 103 Stat. 149, provided that: “This Act [amending section 10 of Pub.L. 100-503, set out as a note under this section] may be cited as the ‘Computer Matching and Privacy Protection Act Amendments of 1989’.”

1988 Amendments. Section 1 of Pub.L. 100-503 provided that: “This Act [amending this section, enacting provisions set out as notes under this section and repealing provisions set out as a note under this section] may be cited as the ‘Computer Matching and Privacy Protection Act of 1988’.”

1974 Acts. Section 1 of Pub.L. 93-579 provided: “That this Act [enacting this section and provisions set out as notes under this section] may be cited as the ‘Privacy Act of 1974’.”

Privacy and Data Protection Procedures

Pub.L. 108-447, Div. H, Title V, § 522, Dec. 8, 2004, 118 Stat. 3268, relating to privacy and data protection procedures, was editorially redesignated 42 U.S.C.A. § 2000ee-2.

Classified National Security Information

For provisions relating to a response to a request for information under this section when the fact of its existence or nonexistence is itself classified or when it was originally classified by another agency, see Ex. Ord. No. 12958, § 3.7, April 17, 1995, 60 F.R. 19835, set out as a note under section 435 of Title 50.

Authorization of Appropriations to Privacy Protection Study Commission

Section 9 of Pub.L. 93-579, as amended by Pub.L. 94-394, Sept. 3, 1976, 90 Stat. 1198, authorized appropriations for the period beginning July 1, 1975, and ending on September 30, 1977.

Congressional Findings and Statement of Purpose

Section 2 of Pub.L. 93-579 provided that:

“(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 [enacting this section and provisions set out as notes under this section] 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.”

Construction of 1988 Amendments

Section 9 of Pub.L. 100-503 provided that: “Nothing in the amendments made by this Act [amending this section and repealing provisions set out as a note under this section] shall be construed to authorize--

“(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;

“(2) the direct linking of computerized systems of records maintained by Federal agencies;

“(3) the computer matching of records not otherwise authorized by law; or

“(4) the disclosure of records for computer matching except to a Federal, State, or local agency.”

Disclosure of Social Security Number

Section 7 of Pub.L. 93-579 provided that:

“(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 ac-

count number.

“(2) the [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.”

Guidelines and Regulations for Maintenance of Privacy and Protection of Records of Individuals

Section 6 of Pub.L. 93-579, which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub.L. 100-503, § 6(c), Oct. 18, 1988, 102 Stat. 2513.

Implementation Guidance for 1988 Amendments

Section 6(b) of Pub.L. 100-503 provided that: “The Director shall, pursuant to section 552a(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act [amending this section and repealing provisions set out as a note under this section] not later than 8 months after the date of enactment of this Act [Oct. 18, 1988].”

Limitation on Application of Verification Requirement

Section 7201(c) of Pub.L. 101-508 provided that: “Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code [subsec. (p)(1)(A)(ii)(II) of this section], as amended by section 2 [probably means section 7201(b)(1) of Pub.L. 101-508], shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of--

“(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

“(2) 30 days after the date of publication of guidance under section 2(b) [probably means section 7201(b)(2) of Pub.L. 101-508, set out as a note under this section].”

Privacy Protection Study Commission

Section 5 of Pub.L. 93-579, as amended by Pub.L. 95-38, June 1, 1977, 91 Stat. 179, which established the Privacy Protection Study Commission and provided that the Commission study data banks, automated data pro-

cessing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1977, pursuant to section 5(g) of Pub.L. 93-579.

Publication of Guidance Under Subsection (p)(1)(A)(ii)

Section 7201(b)(2) of Pub.L. 101-508 provided that: "Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code [subsec. (p)(1)(A)(ii) of this section], as amended by this Act."

CROSS REFERENCES

Applicability of this section to--

Department of Housing and Urban Development prevention of fraud and abuse, see 42 USCA § 3544.

Endangered Species Committee, see 16 USCA § 1536.

Foreign Relations of the United States historical series, see 22 USCA § 4355.

Internal revenue general rules, see 26 USCA § 7852.

Labor-management relations compilation and publication of data, see 5 USCA § 7133.

Lowell Historic Preservation Commission, see 16 USCA § 410cc-35.

National Driver Register information, see 49 USCA § 30305.

Office of Special Counsel for purposes of investigation of prohibited personnel practices, see 5 USCA § 1212.

Operation of Graduate School of Department of Agriculture as nonappropriated fund instrumentality, see 7 USCA § 2279b.

Postal Service, see 39 USCA § 410.

Rural development policy, see 7 USCA § 2204b.

Veterans' benefits computer matching program, see 38 USCA § 3684A.

Veterans' benefits release of information to consumer reporting agency, see 38 USCA § 5701.

Bureau of Transportation Statistics public disclosure of personal information prohibited consistent with this section, see 49 USCA § 111.

Claims of Government disclosed to consumer reporting agency if notice required by this section indicates disclosure, see 31 USCA § 3711.

Collection services subject to this section for debts relating to--

Claims of the United States Government, see 31 USCA § 3718.

Customs Service, see 19 USCA § 1631.

Coordination of Federal information policy for purposes of--

Ensuring use of information consistent with this section, see 44 USCA § 3501.

Overseeing compliance with this section by Director of the Office of Management and Budget, see 44 USCA § 3504.

Death certificate information as being exempt from requirements of this section for purposes of--

Social Security program information correction, see 42 USCA § 405.

State receiving return information, see 26 USCA § 6103.

Defense Intelligence Agency organizational and personnel information not applicable with respect to information required to be disclosed by this section, see 10 USCA § 424.

Employee benefit plan cost reimbursement relating to request for information notwithstanding this section, see 42 USCA § 1306.

Federal Family Education Loan Program participants not considered Government contractors within meaning of this section, see 20 USCA § 1080a.

Forfeiture of benefits by felons convicted of work injury compensation fraud notwithstanding this section, see 5 USCA § 8148.

Homeownership or membership in cooperative association for lower income families, mortgage refinancing information disclosed notwithstanding this section, see 12 USCA § 1715z.

Indian child protection and family violence prevention confidentiality pursuant to this section, see 25 USCA § 3205.

Medical quality assurance record confidentiality requirement not applicable to release of information pursuant to this section for purposes of--

- Armed Forces, see 10 USCA § 1102.
- Coast Guard, see 14 USCA § 645.

Missing persons personnel files and protection of privacy, see 10 USCA § 1506.

Old-age and survivors insurance benefit information on prisoners available to Social Security Commissioner notwithstanding this section, see 42 USCA § 402.

Record inspection by United States Archivist or General Services Administrator deemed record contained in system of records for purposes of this section, see 44 USCA § 2906.

“Sensitive information” defined as meaning any information which could adversely affect privacy entitlement under this section for purposes of computer standards program, see 15 USCA § 278g-3.

Social Security Administration; administrative duties of the Commissioner including data exchanges notwithstanding provisions of this section, see 42 USCA § 904.

“System of records” defined as having same meaning as in this section for purposes of claims concerning United States Government, see 31 USCA § 3701.

Treatment of prisoners, see 42 USCA § 1382.

Voluntary service by students considered employees of Department of Treasury for purposes of this section, see 5 USCA § 3111.

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The U.S. Aviation and Transportation Security Act of 2001 in conflict with the E.U. data protection laws: How much access to airline passenger data does the United States need to combat terrorism? Note, 39 New Eng. L. Rev. 431 (2005).

Will the Privacy Act of 1974 still hold up in 2004? How advancing technology has created a need for change in the “system of records” analysis. Comment, 39 Cal. W. L.Rev. 395 (2003).

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CJS Records § 78, Accounting and Notification of Disclosures.

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CJS Records § 82, Prohibited Records.

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8 ALR, Fed. 2nd Series 575, Construction and Application of Privacy Act Provision Requiring Maintenance of Agency Records, 5 U.S.C.A. § 552a(G)(1)(C).

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150 ALR, Fed. 521, What is Agency Subject to Privacy Act Provisions (5 U.S.C.A. § 552a).

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121 ALR, Fed. 291, Recoupment of Attorney Fees, Under Equal Access to Justice Act (EAJA) (28 U.S.C.A. § 2412), by Litigant Represented by Counsel to Whom No Fee is Paid by Litigant.

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86 ALR, Fed. 748, Validity, Construction, and Effect of § 202(x) of Social Security Act (42 U.S.C.A. § 402(x)), Mandating Suspension of Old-Age, Survivors, and Disability Insurance Benefits for Incarcerated...

88 ALR, Fed. 573, Construction and Application of 26 U.S.C.A. § 6673, Providing for Tax Court's Assessment of Damages Against Taxpayer in Certain Circumstances-Modern Cases.

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I. GENERALLY

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1. Constitutionality

Privacy Act section barring agencies from denying any right because of individual's refusal to disclose his social security account number was a valid exercise of Congress's powers under the "general welfare" clause, and "necessary and proper" clause. *Schwier v. Cox*, C.A.11 (Ga.) 2003, 340 F.3d 1284, on remand 412 F.Supp.2d 1266. Records  31; *United States*  22

2. Purpose

In enacting this section, Congress was concerned predominantly with the increasing use of computers and sophisticated information systems and the potential abuse of such technology. *Thomas v. U.S. Dept. of Energy*, C.A.10 (N.M.) 1983, 719 F.2d 342. Records  31

Purpose of this section is to protect individual against invasion of personal privacy. *Johnson v. Department of Treasury*, I.R.S., C.A.5 (Tex.) 1983, 700 F.2d 971.

Main purpose of this section is to forbid disclosure unless such disclosure is required by the Freedom of Information Act. *Lovell v. Alderete*, C.A.5 (Ga.) 1980, 630 F.2d 428. Records 🔑 31

Primary goal of Privacy Act is to allow individuals on whom information is being compiled and retrieved the opportunity to review the information and request that the agency correct any inaccuracies. *Fisher v. National Institutes of Health*, D.D.C.1996, 934 F.Supp. 464, affirmed 107 F.3d 922, 323 U.S.App.D.C. 289. Records 🔑 31

Purpose of Privacy Act, which governs responsibility of federal agencies and the disclosure of, access to, and content of their records concerning individuals, is to give individuals greater control over the gathering, dissemination, and inaccuracy of agency information about themselves. *Miller v. U.S.*, E.D.N.Y.1986, 630 F.Supp. 347. Records 🔑 31

The Privacy Act of 1974 [5 U.S.C.A. § 552a] serves to safeguard public interest in informational privacy by delineating duties and responsibilities of federal agencies that collect, store and disseminate personal information about individual. *Ely v. Department of Justice*, N.D.Ill.1985, 610 F.Supp. 942, affirmed 792 F.2d 142. Records 🔑 31

The Privacy Act protects citizens against improper disclosure of information about them that may be held by government agencies and was not intended to be used to shield individuals from compliance with disclosure requirements mandated by law. *U.S. v. Carter Family Trust*, N.D.Ind.1985, 602 F.Supp. 82. Records 🔑 31

Main purpose of this section is to forbid disclosure unless it is required by section 552 of this title. *DePlanche v. Califano*, W.D.Mich.1982, 549 F.Supp. 685. Records 🔑 31


Main purpose of Privacy Act is to forbid disclosure unless it is required by FOIA. *DePlanche v. Califano*, W.D.Mich.1982, 549 F.Supp. 685. Records 🔑 31



This section serves to safeguard the public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store and disseminate personal information about individuals. *Doe v. U.S. Civil Service Commission*, S.D.N.Y.1980, 483 F.Supp. 539. Records 🔑 10


3. Construction with other laws--Generally


Neither the Alternative Dispute Resolution (ADR) Act nor the Privacy Act precluded union's presence at Equal Employment Opportunity (EEO) mediation proceeding initiated by Air Force employee who was union member; neither statute prohibited union attendance at ADR proceedings, and employee did not object to union presence. *Department of Air Force, 436th Airlift Wing, Dover Air Force Base v. Federal Labor Relations Authority*, C.A.D.C.2003, 316 F.3d 280, 354 U.S.App.D.C. 315. Labor And Employment 🔑 1569


The fact that employee happened to work at the same Veterans Administration hospital where he received medical treatment and where the alleged Privacy Act violation occurred was not enough to bring the statutory claim within Federal Employee's Compensation Act (FECA), for purposes of exclusive remedy defense to employee's Privacy Act suit. *Smith v. Nicholson*, S.D.Tex.2007, 2007 WL 1456008. Workers' Compensation 🔑 2085


Procedures adopted by Department of Health and Human Services (DHHS) pursuant to Health Care Quality Improvement Act (HCQIA) for collection and dissemination of information relating to National Practitioners' Data Bank (NPDB) did not supersede protections provided under Privacy Act, and thus DHHS had to adhere to Privacy Act requirements when considering dispute to record in NPDB, even though NCQIA was promulgated after Privacy Act, where NPDB procedures provided less protection than procedures required by Privacy Act, there was no positive repugnancy between HCQIA and Privacy Act, and it was clearly intent of DHHS to adhere to Privacy Act when adopting NPDB regulations. *Doe v. Thompson*, D.D.C.2004, 332 F.Supp.2d 124. Records  31

Federal employee's claims that disciplinary action taken against her was based on notes and materials "unlawfully" maintained by supervisor in violation of the Privacy Act were not precluded by Title VII. *Velikonja v. Mueller*, D.D.C.2004, 315 F.Supp.2d 66, affirmed in part, reversed in part 466 F.3d 122, 373 U.S.App.D.C. 276. Civil Rights  1502; Records  31

District of Columbia's shield law, prohibiting compulsory disclosure of source of any news or information procured by journalist acting in official news gathering capacity, did not apply, in engineer's action in federal court against government, alleging his rights under Privacy Act were violated when government revealed information about him to news media during its investigation into suspected espionage at nuclear laboratory where engineer worked, to preclude engineer from requiring journalists to disclose their confidential news sources. *Lee v. U.S. Dept. of Justice*, D.D.C.2003, 287 F.Supp.2d 15, appeal dismissed 2003 WL 22890063, affirmed 413 F.3d 53, 367 U.S.App.D.C. 53, rehearing en banc denied 428 F.3d 299, 368 U.S.App.D.C. 220, certiorari denied 126 S.Ct. 2351, 165 L.Ed.2d 294, certiorari denied 126 S.Ct. 2372, 165 L.Ed.2d 277, certiorari denied 126 S.Ct. 2373, 165 L.Ed.2d 294. Federal Courts  1040.1



Congress intended that this section provide a more extensive judicial review over agency action that that permitted under section 701 et seq. of this title, and there is no support for suggestion that the type of review must vary depending on the reason offered by agency for denying individual's request. *Zeller v. U. S.*, E.D.N.Y.1979, 467 F.Supp. 487. Records  63

Claims in which inmate challenged, under Privacy Act, disclosure to private bank by Department of Justice (DOJ) of affidavit that DOJ obtained from inmate while he was incarcerated did not fall within scope of Prison Litigation Reform Act (PLRA), so as to require inmate's exhaustion of administrative remedies, given that claims did not relate to means by which affidavit was obtained, and that challenged disclosure, which resulted in inmate and his authorized agents being denied access to inmate's financial accounts, had no impact upon conditions of inmate's confinement. *Lee v. U.S. Department of Justice*, W.D.Pa.2006, 235 F.R.D. 274. Convicts  6




Statute requiring bankruptcy petition preparers to disclose their social security numbers on documents filed with court did not conflict with the Privacy Act, which regulates use and dissemination of certain agency records; Act's definition of agency specifically excepts courts of United States from its coverage, and Act creates exception for disclosures required by federal law. In re *Rausch*, D.Nev.1997, 213 B.R. 364, affirmed 194 F.3d 954, certiorari denied 120 S.Ct. 1244, 528 U.S. 1189, 146 L.Ed.2d 102. Bankruptcy  3030.8

4. ---- Federal question, construction with other laws


Section 1331 of Title 28 is not remedial provision and cannot be employed to supplement this section, but, rather, plaintiffs were limited to express remedies provided by this section, not including injunction, and simil-

arly, section 1361 of Title 28 did not authorize prohibitory or preventive order. *Parks v. U. S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677. Federal Courts  161; Federal Courts  192


5. ---- Administrative Procedure Act, construction with other laws


Former government employee's claims under Administrative Procedure Act (APA) alleging that government agencies failed to follow their own regulations and provide her with hearing or other opportunity to rebut allegations against her in various government reports would be dismissed in light of other statutory schemes and remedies through which employee could seek relief; employee's APA claim was, in part, simply a restatement of her Privacy Act claims and, to extent that it was not, it was claim relating to personnel action, for which Congress had provided Civil Service Reform Act. *Mittleman v. U.S. Treasury*, D.D.C.1991, 773 F.Supp. 442. Administrative Law And Procedure  229; United States  36; United States  50.3


6. ---- Central Intelligence Information Act, construction with other laws

Enactment of Central Intelligence Information Act, Pub.L. 98-477, Oct. 15, 1984, 98 Stat. 2209, which amended this section by providing that no agency should rely on any exemption in this section to withhold from an individual any record which was otherwise accessible to such individual under provisions of Freedom of Information Act, section 552 of this title, rendered moot issue of whether certain exemption of this section was a withholding statute within the third exemption of section 552(b)(3) of this title. *U.S. Dept. of Justice v. Provenzano*, U.S.N.J.1984, 105 S.Ct. 413, 469 U.S. 14, 83 L.Ed.2d 242, on remand 755 F.2d 922, on remand 762 F.2d 611. Federal Courts  13

7. ---- Civil Service Reform Act, construction with other laws

Civil Service Reform Act (CSRA) preempted the Privacy Act claims of deputies in the United States Marshals Service (USMS) that their supervisors retaliated against them for their formal complaints by opening a disciplinary file on them that contained false information and resulted in their involuntary leave of absence from the USMS, and in their assignment to less desirable positions that lacked promotional opportunities; conduct complained of fell within CSRA's definition of "personnel action," and the CSRA included retaliation as a prohibited reason for taking a personnel action. *Orsay v. U.S. Dept. of Justice*, C.A.9 (Cal.) 2002, 289 F.3d 1125. Records  31

Privacy Act does not vest district court with jurisdiction to review personnel decisions where Civil Service Reform Act precludes such review. *Henderson v. Social Sec. Admin.*, C.A.10 (Kan.) 1990, 908 F.2d 559. Officers And Public Employees  72.41(1)

Although the Privacy Act permits an individual to correct an agency's inaccurate or incomplete record it cannot be construed so as to undermine the Civil Service Reform Act (CSRA); thus, it is neither a vehicle for securing judicial review of federal personnel decisions, nor is it a springboard for launching a collateral attack on those decisions. *Kleiman v. U.S. Dept. of Energy*, D.D.C.1990, 742 F.Supp. 697, affirmed 956 F.2d 335, 294 U.S.App.D.C. 49, rehearing denied. Records  31

7a. ---- Federal Employee's Compensation Act, construction with other laws

There was substantial question as to whether employee's injury occurred in performance of his duty as an employee at Veterans Administration hospital, and thus, employee's Privacy Act claim would be abated and admin-

istratively closed pending Secretary of Labor's determination of Federal Employee's Compensation Act (FECA) coverage; the unauthorized release of medical records occurred while employee was treated at hospital, rather than working at hospital, and this was insufficient to bring claim under FECA, but employee also alleged that he suffered injury at work from unauthorized release of his medical records, and this was sufficient to require administrative determination as to whether FECA applied. *Smith v. Nicholson*, S.D.Tex.2007, 2007 WL 1456008. Workers' Compensation ☞ 2122

8. ---- Federal Tort Claims Act, construction with other laws

Privacy Act did not limit Army's discretion to release investigative records relating to officer who committed suicide such that federal government was subject to suit under Federal Tort Claims Act (FTCA) based on release of those records; statute specifically provides that agency may not rely on any exemption in Privacy Act to withhold from an individual any record that is otherwise accessible to such individual under Freedom of Information Act (FOIA). *Crompton v. Stone*, C.A.D.C.1995, 59 F.3d 1400, 313 U.S.App.D.C. 412, certiorari denied 116 S.Ct. 1018, 516 U.S. 1147, 134 L.Ed.2d 98. United States ☞ 78(12)

Federal Privacy Act does not limit remedial rights of persons to pursue whatever remedies they may have under the Federal Tort Claims Act for violations of their interest in personal privacy. *O'Donnell v. U.S.*, C.A.3 (Pa.) 1989, 891 F.2d 1079. United States ☞ 127(1)

9. ---- Freedom of Information Act, construction with other laws

Section of Privacy Act, which excepts some material from disclosure is not withholding statute within meaning of Freedom of Information Act section which allows withholding of information sought under Freedom of Information Act if it is exempt from disclosure by statute and, therefore, information may be available under FOIA even if it is not available under Privacy Act. *Shapiro v. Drug Enforcement Admin.*, C.A.7 (Wis.) 1985, 762 F.2d 611. Records ☞ 55

This section and Freedom of Information Act, section 552 of this title, are reconcilable by reading the special remedy in this section as serving to vindicate privacy interests in a special manner while leaving standing the preexisting remedy under Freedom of Information Act, section 552 of this title, providing access to information for its own sake. *Porter v. U.S. Dept. of Justice*, C.A.3 (Pa.) 1983, 717 F.2d 787. Statutes ☞ 223.1

Individual may utilize this section or Freedom of Information Act, section 552 of this title, or both to seek access to information about himself in agency records, and is entitled to cumulative total of access rights under the two sections. *Clarkson v. I. R. S.*, C.A.11 (Ga.) 1982, 678 F.2d 1368. Records ☞ 31; Records ☞ 50

While the Privacy Act was designed to provide individual with more control over gathering, dissemination, and accuracy of agency information about themselves, the Freedom of Information Act was intended to increase public's access to governmental information. *Greentree v. U. S. Customs Service*, C.A.D.C.1982, 674 F.2d 74, 218 U.S.App.D.C. 231. Records ☞ 50

Material unavailable under the Privacy Act is not per se unavailable under the Freedom of Information Act; applicable section of Privacy Act represents congressional mandate that Privacy Act not be used as a barrier to FOIA access. *Greentree v. U. S. Customs Service*, C.A.D.C.1982, 674 F.2d 74, 218 U.S.App.D.C. 231. Records ☞ 31; Records ☞ 55

Material exempted from disclosure under provisions of this section were matters “specifically exempted from disclosure by statute,” for purposes of Freedom of Information Act, section 552, of this title. *Painter v. F.B.I.*, C.A.5 (Ga.) 1980, 615 F.2d 689. Records 🔑 55

Taxpayer, who had brought Taxpayer Bill of Rights (TBOR) action against United States, was precluded from also bringing damages actions under Administrative Procedure Act (APA), All Writs Act, Mandamus Act, Freedom of Information Act (FOIA), Privacy Act, Federal Records Act, and National Archives Act in connection with the Internal Revenue Service's (IRS) collection of taxes. *Guthery v. U.S.*, D.D.C.2007, 507 F.Supp.2d 111. Records 🔑 31

Internal Revenue Service (IRS) did not have to disclose documents, including currency and banking retrieval system (CBRS) summary information and CBRS currency transaction reports (CTRs) validly withheld under Bank Secrecy Act exception to Freedom of Information Act (FOIA), under section of Privacy Act allowing individuals access to their agency records or records pertaining to them; pursuant to explicit statutory exceptions to disclosure, IRS issued a rule exempting its system of records encompassing CTRs and other Bank Secrecy Act reports. *Berger v. I.R.S.*, D.N.J.2007, 487 F.Supp.2d 482. Records 🔑 55

Federal Deposit Insurance Corporation (FDIC) could not rely upon general exemption under Privacy Act to withhold investigative files of Office of Inspector General (OIG) regarding employee, as petitioner, that had been requested by employee, to extent that disclosure of such records was required under Freedom of Information Act (FOIA), since information could not be withheld under Privacy Act if its disclosure was required by FOIA. *Dean v. F.D.I.C.*, E.D.Ky.2005, 389 F.Supp.2d 780. Records 🔑 60

Because Jones Act plaintiff had launched a lawsuit that, among other things, sought damages arising out of his status as a merchant marine, he himself had invited scrutiny of his claim in general, and of his license application in particular, and therefore his license application, which was in possession of Coast Guard, was not exempt from disclosure under either Freedom of Information Act (FOIA) or Privacy Act on ground that disclosure of which would constitute an unwarranted invasion of privacy. *In re F & H Barge Corp.*, E.D.Va.1998, 46 F.Supp.2d 453. Records 🔑 31; Records 🔑 35

Where person files requests under both Privacy Act and Freedom of Information Act (FOIA), exemption must apply from each Act in order for material to be withheld. *Doe v. U.S. Dept. of Justice*, D.D.C.1992, 790 F.Supp. 17. Records 🔑 31; Records 🔑 54

If individual is entitled to document under both Freedom of Information Act and Privacy Act, agency must prove that document is exempt from release under both statutes in order to withhold document. *Savada v. U.S. Dept. of Defense*, D.D.C.1991, 755 F.Supp. 6. Records 🔑 31; Records 🔑 62

Any record exempt from disclosure under this section's exemption for system of records maintained by law enforcement agency is exempt from disclosure under Freedom of Information Act, section 552 this title. *Stimac v. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*, N.D.Ill.1984, 586 F.Supp. 34. Records 🔑 55

If material is exempt from disclosure because disclosure would be clearly unwarranted invasion of privacy under exemption section 552 of this title, its release is also prohibited under consent requirement of this section. *De-Planche v. Califano*, W.D.Mich.1982, 549 F.Supp. 685. Records 🔑 31

This section does not affect the balancing analysis used in determining the applicability of the exemption under section 552 of this title for personnel and medical files; if the tilt in favor of disclosure is tipped contrariwise by the interests of personal privacy, the shift in the scales occurs independently of, and without any impact from this section; however, information exempted from the mandatory disclosure provisions of section 552 under subsec. (b)(6) of such section is protected from disclosure by this section, unless that information is disclosable under rules implementing this section. *Florida Medical Ass'n, Inc. v. Department of Health, Ed. & Welfare*, M.D.Fla.1979, 479 F.Supp. 1291. Records 🔑 64

10. --- Internal Revenue Code, construction with other laws

Internal Revenue Service (IRS) employee's exclusive remedy for disclosures of his tax records was under Internal Revenue Code, and not Privacy Act. *Gardner v. U.S.*, C.A.D.C.2000, 213 F.3d 735, 341 U.S.App.D.C. 378, certiorari denied 121 S.Ct. 1099, 531 U.S. 1153, 148 L.Ed.2d 971. Internal Revenue 🔑 4482; Records 🔑 31

The Internal Revenue Code (IRC) section governing the confidentiality and disclosure of tax returns and tax return information is a more detailed statute that should preempt the more general remedies of the Privacy Act, at least where those remedies are in conflict. *Hobbs v. U.S. ex rel. Russell*, C.A.5 (Tex.) 2000, 209 F.3d 408. Records 🔑 31; Statutes 🔑 223.4

Individuals seeking "return information" from Internal Revenue Service (IRS) must do so pursuant to specific Internal Revenue Code provision governing IRS's disclosure of tax return information, rather than general provision of Privacy Act requiring federal agencies, upon request of individual, to furnish such information "pertaining" to that individual as is contained in agency's "system of records." *Lake v. Rubin*, C.A.D.C.1998, 162 F.3d 113, 333 U.S.App.D.C. 223, certiorari denied 119 S.Ct. 1465, 526 U.S. 1070, 143 L.Ed.2d 550. Internal Revenue 🔑 4482; Records 🔑 31

The 1976 Tax Reform Act provision dealing comprehensively with subject of disclosure of tax return information by Internal Revenue Service was apparently intended to override an inconsistent provision of prior statutes, including Privacy Act, and such Internal Revenue Code provision is exclusive not only as regards Freedom of Information Act but also as regards Privacy Act. *Cheek v. I.R.S.*, C.A.7 (Ill.) 1983, 703 F.2d 271. Internal Revenue 🔑 4482

Taxpayer Bill of Rights' (TBOR) exclusivity provision barred taxpayers' claims for damages under Administrative Procedure Act (APA), All Writs Act, Mandamus Act, Freedom of Information Act (FOIA), Privacy Act, Federal Records Act, and National Archives Act based on Internal Revenue Service's (IRS) allegedly unlawful collection practices. 5 U.S.C.A. §§§§ 552, 552a, *Ross v. U.S.*, D.D.C.2006, 460 F.Supp.2d 139. Internal Revenue 🔑 4915

Disclosure requirements contained in federal Privacy Act are inapplicable to summons issued in connection with investigation by Internal Revenue Service (IRS); rather, only those administrative steps required by Internal Revenue Code must be followed. *Reimer v. U.S.*, N.D.N.Y.1999, 43 F.Supp.2d 232. Internal Revenue 🔑 4504

Taxpayer, who made allegations against federal employees relating to possible existence of tax liabilities or penalties, were within Internal Revenue Code's exemption from Privacy Act. *Weiss v. Sawyer*, W.D.Okla.1997, 28 F.Supp.2d 1221. Internal Revenue 🔑 4440; Records 🔑 31

Taxpayers could not bring Privacy Act claims against the Internal Revenue Service (IRS) to obtain access to records explaining adverse tax determinations against them, in light of provision of Internal Revenue Code stating that sections of Privacy Act did not apply to determination of existence or amount of tax liability. *Maxwell v. Rubin*, D.D.C.1998, 3 F.Supp.2d 45. Internal Revenue 🔑 4482

Taxpayers were required to bring cause of action against Internal Revenue Service (IRS) for improper disclosure of return information pursuant to Internal Revenue Code provision governing civil damages for unauthorized disclosure of returns, rather than under Privacy Act. *Berridge v. Heiser*, S.D. Ohio 1997, 993 F.Supp. 1136. Internal Revenue 🔑 4482

Internal Revenue Code supersedes causes of action brought under Privacy Act if lawsuit relates directly or indirectly to determination of existence or possible existence of individual's federal tax liability. *Mallas v. Kolak*, M.D.N.C.1989, 721 F.Supp. 748, vacated in part on other grounds 993 F.2d 1111. Records 🔑 31

Information sought by taxpayers from Internal Revenue Service, consisting of documents identifying them as illegal tax protesters and copies of 1040 forms Secretary allegedly filed in their names as justification for issuing notices of deficiency, clearly related to determination by IRS of existence or possible existence of liability, or amount thereof, of taxpayers for tax, penalties, fines, forfeitures, or other offenses or enforcement under Internal Revenue Code and, therefore, district court could not exercise jurisdiction over privacy Act claim. *O'Connor v. U.S.*, D.Nev.1987, 669 F.Supp. 317, affirmed 935 F.2d 275, certiorari denied 112 S.Ct. 1196, 502 U.S. 1104, 117 L.Ed.2d 436, rehearing denied 112 S.Ct. 1709, 503 U.S. 999, 118 L.Ed.2d 416. Records 🔑 34

Privacy Act did not provide jurisdiction over action by individual seeking order compelling Internal Revenue Service to expunge all references to him as a "tax protester" from its records due to specific statutory exemption for IRS. *Dyrda v. C.I.R.*, D.Neb.1985, 633 F.Supp. 2. Records 🔑 31

Privacy Act is inapplicable in Internal Revenue Service summons enforcement proceedings. *Uhrig v. U.S.*, D.C.Md.1984, 592 F.Supp. 349. Internal Revenue 🔑 4508

Taxpayers' rights under Privacy Act were not violated by federal Internal Revenue Code provision requiring Social Security numbers for children claimed as dependents, to be entitled to dependency exemption deduction, since Privacy Act specifically did not apply to "any disclosure which is required by Federal statute." *Davis v. C.I.R.*, U.S.Tax Ct.2000, 2000 WL 924630, Unreported. Internal Revenue 🔑 3297; Records 🔑 31

11. ---- Missing Persons Act, construction with other laws

Dismissal of action brought by wife of Air Force Officer missing in action in Vietnam challenging constitutionality of status review proceeding under the Missing Persons Act, section 551 et seq. of Title 37, was without prejudice to plaintiff's right to pursue her claims under the Freedom of Information Act, section 552 of this title, and this section, since rights under those statutes were independent of the status review process and could survive its outcome. *Darr v. Carter*, C.A.8 (Ark.) 1981, 640 F.2d 163. Federal Civil Procedure 🔑 1837.1

12. ---- Veterans' Judicial Review Act, construction with other laws

Because Privacy Act section providing exception to nondisclosure of agency records when disclosures are made pursuant to order of court of competent jurisdiction is more protective of confidentiality than is veterans' statute providing exception to nondisclosure when required by process of United States court to be produced in any

pending proceeding, "court order" requirement of Privacy Act displaces "process" requirement of veterans' statute. *In re A Motion For a Standing Order*, Vet.App.1990, 1 Vet.App. 555. Records 🔑 31

13. State regulation or control

Privacy Act did not preempt common law invasion of privacy claims brought by former government employees and political appointees against First Lady and former White House staff, which alleged that defendants requested Federal Bureau of Investigation (FBI) files of plaintiffs for improper purpose of obtaining embarrassing or damaging information for partisan political purposes; plaintiffs alleged that requests for information were made by defendants as individuals acting outside scope of their employment. *Alexander v. F.B.I.*, D.D.C.1997, 971 F.Supp. 603, 150 A.L.R. Fed. 733. States 🔑 18.15; Torts 🔑 328

14. Retroactive effect

Even though provisions of this section establishing record-keeping standards, amendment procedures and civil remedies did not become effective until after the Civil Service Commission conducted its investigation of plaintiff and disseminated allegedly inaccurate report to agency that had ultimate power to employ plaintiff and even though the derogatory allegations were recorded in Commission reports before the effective date of the standards, plaintiff's claim was cognizable where plaintiff sought de novo review of the Commission denial of her subsequent request to amend the report and where plaintiff contended that the Commission continued to violate the recordkeeping standards after the standards took effect. *Doe v. U.S. Civil Service Commission*, S.D.N.Y.1980, 483 F.Supp. 539. Records 🔑 10

Any claim which plaintiff, a federal civil service employee, might have stated under this section was void inasmuch as it was not in effect at the time of the alleged wrongful acts. *Meisch v. U.S. Army*, E.D.Mo.1977, 435 F.Supp. 341, affirmed 566 F.2d 1178. Records 🔑 31

This section, which is to become effective on September 27, 1975, does not apply to conduct of government agencies, prior to January 6, 1975, in running a computer comparison of persons receiving veterans' disability pensions and persons receiving social security disability benefits, in order to locate persons who had failed to report social security benefits to the Veterans Administration as required by law. *Jaffess v. Secretary, Dept. of Health, Ed. and Welfare*, S.D.N.Y.1975, 393 F.Supp. 626. Statutes 🔑 258

15. Balancing of interests

Journalists' First Amendment interest in protecting their confidential news sources was outweighed by engineer's interest in compelling disclosure of those sources in his action against government for allegedly violating the Privacy Act by revealing information about him to journalists during its investigation into suspected espionage at nuclear laboratory where engineer worked; evidence sought by engineer was of central importance to his case against government regarding who leaked information in violation of Privacy Act, and engineer had exhausted all reasonable alternative sources of evidence before seeking to compel disclosure of journalist's sources. *Lee v. Department of Justice*, C.A.D.C.2005, 413 F.3d 53, 367 U.S.App.D.C. 53, rehearing en banc denied 428 F.3d 299, 368 U.S.App.D.C. 220, certiorari denied 126 S.Ct. 2351, 165 L.Ed.2d 294, certiorari denied 126 S.Ct. 2372, 165 L.Ed.2d 277, certiorari denied 126 S.Ct. 2373, 165 L.Ed.2d 294. Constitutional Law 🔑 2074; Witnesses 🔑 196.1

When government agency receives request for information of personal nature, pertaining to person other than

one making request, agency must reconcile conflicting duties to make available to public information in its possession and duty to safeguard privacy of individual members of public. *Brown v. Federal Bureau of Investigation*, C.A.2 (N.Y.) 1981, 658 F.2d 71. Records 🔑 64

Public interest in information regarding disciplinary actions taken against commander in Navy who was commander of ship which collided with another ship outweighed any privacy interests commander had in his personnel records and would have been releasable under Freedom of Information Act (FOIA), and thus Navy's release of information did not violate commander's rights under the Privacy Act; Navy regulations provided that disclosure of information releasable under FOIA did not violate Privacy Act. *Chang v. Department of Navy*, D.D.C.2004, 314 F.Supp.2d 35. Records 🔑 31

16. Accounting of certain disclosures--Generally

Privacy Act did not require Veterans' Administration (VA) to track disclosures of memorandum to Secretary from executive, critical of performance of Principal Deputy Assistant Secretary (PDAS), when text of memorandum was not scanned into Electronic Data Management System (EDMS), and only record in EDMS was folder identifying document as existing. *McCready v. Principi*, D.D.C.2003, 297 F.Supp.2d 178, affirmed in part, reversed in part and remanded 465 F.3d 1, 373 U.S.App.D.C. 236. Records 🔑 31

Department of Treasury's Inspector General's (IG) report pertaining to former department employee's grievance against department officials and related matters was exempt from accounting-of-disclosures provision of Privacy Act; report was part of system of records exempted from accounting-of disclosures provision. *Mittleman v. U.S. Dept. of Treasury*, D.D.C.1995, 919 F.Supp. 461, amended 929 F.Supp. 490, affirmed in part and remanded 104 F.3d 410, 322 U.S.App.D.C. 367, on remand 997 F.Supp. 1. Records 🔑 31

Inmate did not have standing to complain that Bureau of Prisons did not properly account for disclosure by inmate's case manager to his probation officer of information that inmate was sending \$125 per month from his prison commissary account to someone outside the prison where inmate did not allege that he suffered any adverse consequences. *Kimberlin v. U.S. Dept. of Justice*, N.D.Ill.1985, 605 F.Supp. 79, affirmed 788 F.2d 434, certiorari denied 106 S.Ct. 3306, 478 U.S. 1009, 92 L.Ed.2d 719. Records 🔑 31

17. ---- Individual named in record, accounting of certain disclosures

Under this section, plaintiff had a right to records kept by the government on persons requesting information about him, notwithstanding concern about possible harassment of those individuals. *Ray v. U.S. Dept. of Justice*, D.C.D.C.1982, 558 F.Supp. 226, affirmed 720 F.2d 216, 232 U.S.App.D.C. 41. Records 🔑 58

18. Access to records--Generally

Factors militated in favor of release of sealed documents filed by Department of the Treasury, in compliance with order that Department inform Court of corrective actions taken in case involving destruction of government documents and concealment of that destruction; public had bona fide interest in having conduct of government agencies and officers revealed, need for openness so as to restore public confidence was strong in light of widespread reporting of events, six Department attorneys involved had consented or indicated no objection to disclosure despite fact that their professional reputations might be affected, and Department had already agreed to need for corrective measures and so would not be prejudiced by release. *Cobell v. Norton*, D.D.C.2001, 157 F.Supp.2d 82. Records 🔑 32

Form 23-C assessment certificates were not maintained in Internal Revenue Service's (IRS) "system of records" and, thus, were not subject to disclosure under Privacy Act, where such certificates did not contain taxpayers' names or identification numbers, but simply reflected aggregate total of taxes, penalties, and interest assessed on given date at service center. *Carpenter v. I.R.S.*, S.D.Ind.1996, 938 F.Supp. 521. Records 🔑 31

The Privacy Act of 1974 [5 U.S.C.A. § 552a] limits kind of information that can be collected or disclosed by federal agencies and imposes standard of quality and diligence on maintenance of government records; individuals can gain access to agency records that pertain to them and can seek amendments to records thought to contain erroneous information. *Ely v. Department of Justice*, N.D.Ill.1985, 610 F.Supp. 942, affirmed 792 F.2d 142. Records 🔑 31

The disclosure requirements of this section are not fulfilled if citizens must pry required information from an agency by initiating a civil action and propounding specific interrogatories to determine what use the agency is going to make of their reported social security account numbers; neither does an agency cure an initial failure to disclose by supplying citations to an unrevealing passage from an agency handbook. *Doe v. Sharp*, D.C.Mass.1980, 491 F.Supp. 346. Social Security And Public Welfare 🔑 124.25

19. ---- Individual's information, access to records


Section of the Privacy Act requiring that a requester be given "access to his record or to any information pertaining to him which is contained in the system" gives parties access only to their own records, not to all information pertaining to them that happens to be contained in a system of records; for an assemblage of data to qualify as one of requester's records, it must not only contain his name or other identifying particulars but also be "about" him. *Sussman v. U.S. Marshals Service*, C.A.D.C.2007, 2007 WL 2176117. Records 🔑 31


The Internal Revenue Service did not have discretion to withhold information contained in requesting individual's record on ground that the information in file did not pertain to that individual. *Voelker v. Internal Revenue Service*, C.A.8 (Mo.) 1981, 646 F.2d 332. Internal Revenue 🔑 4482

Internal Revenue Service (IRS) performed adequate search in response to three individuals' request for information and documents under the Freedom of Information Act (FOIA) and the Privacy Act where it searched for responsive documents in the corresponding service center, three different divisions, including Examination, Criminal Investigation, and Collection, with the trust coordinator, and three individuals, performed additional searches for responsive documents, and released total of 2,415 pages to requesters. *Ledbetter v. I.R.S.*, U.S., N.D.Okla.2003, 290 F.Supp.2d 1232. Records 🔑 62


Secretary of Health and Human Services did not deny surgeon access to letters held by agency in violation of Privacy Act by failing to provide him with copies of correspondence it received about restrictions on his hospital privileges, where letters, which apparently did not identify physician by name, were not retained either in his file or elsewhere in agency's records. *Azmat v. Shalala*, W.D.Ky.2001, 186 F.Supp.2d 744. Records 🔑 31


Internal Revenue Service (IRS) complied with Freedom of Information Act (FOIA) in providing documents to requester, even though it did not identify documents by locator numbers and requester thus alleged that he had no way of finding which documents he had received; declarations detailed which requests led to documents, requester did not request that IRS write numbers on each document, IRS had no statutory duty to do so, and requester failed to show that IRS obliterated or altered documents to make them unreadable. *Trueblood v. U.S. Dept. of Treasury*, I.R.S., D.D.C.1996, 943 F.Supp. 64. Records 🔑 62


Letter received by Federal Bureau of Investigation (FBI) and United States Information Agency (USIA) was not protected from disclosure under Privacy Act on grounds that disclosure of letter would endanger its author's safety; subject of letter was party requesting its production rather than author. *Topuridze v. U.S. Information Agency*, D.D.C.1991, 772 F.Supp. 662. Records  31


Unmarried father was not entitled to disclosure of children's address by Social Security Administration under provisions prohibiting agency from relying upon exemptions under section 552 of this title to withhold from individual any record accessible under this section, notwithstanding that children's address was in administrative folder bearing father's name and retrievable only by his social security number or name, where his section defined term "record" as item of information about individual, unmarried father had not sought visitation rights and, because of questionable relationship between unmarried father and his children, children's address was neither about him or did it pertain to him. *DePlanche v. Califano*, W.D.Mich.1982, 549 F.Supp. 685. Social Security And Public Welfare  124.25

20. ---- Name of requestor, access to records


Agency report that was not retrievable under requester's name or other personal identifier was not accessible to that requester under this section, though requester alleged adverse impact from report. *Baker v. Department of Navy*, C.A.9 (Cal.) 1987, 814 F.2d 1381, certiorari denied 108 S.Ct. 450, 484 U.S. 963, 98 L.Ed.2d 390. Records  31


Employee who had filed complaint with Occupational Safety and Health Administration was not entitled to OSHA investigative files under Privacy Act [5 U.S.C.A. § 552a] where records requested were not retrievable by requestor's name. *Cuccaro v. Secretary of Labor*, C.A.3 (Pa.) 1985, 770 F.2d 355. Records  31


Former administrative law judge in charge of Albuquerque hearing office of Bureau of Hearings and Appeal of Social Security Administration was not entitled, under this section, to access to documents relating to problems and observations regarding various hearing offices including the Albuquerque office where his name was not mentioned nor referred to in any way; furthermore, former administrative law judge was not entitled to access to documents concerning problems regarding the Albuquerque office since those documents were not retrievable personally to the administrative law judge. *Wren v. Heckler*, C.A.10 (N.M.) 1984, 744 F.2d 86. Records  31


Disclosure request sent to Federal Bureau of Investigation (FBI) pursuant to Freedom of Information Act (FOIA) and Privacy Act, which did not provide requester's full name or include his place of birth, did not comply with governing regulations, and thus was not proper request. *Lee v. U.S. Department of Justice*, W.D.Pa.2006, 235 F.R.D. 274. Records  62



21. ---- Amendment of records generally, access to records


Air Force Base Office of Special Investigations (OSI) inquiry into activities of Air Force officer was exempted from provisions of Privacy Act both as Investigative Support Record, and as Criminal Record, and thus, officer did not have cause of action under Privacy Act to require Air Force to amend record containing complaint or attach statement of disagreement; report was located in system of records maintained by OSI, which was law enforcement body, and consisted of information compiled for purposes of criminal investigation and associated with identifiable individual. *Gowan v. U.S. Dept. of Air Force*, C.A.10 (N.M.) 1998, 148 F.3d 1182, certiorari denied 119 S.Ct. 593, 525 U.S. 1042, 142 L.Ed.2d 535. Records  31


Former federal employee's claim that personnel file was inaccurate in reflecting his title of "paralegal specialist," when he did work of "program analyst," was not within scope of Privacy Act; file did not inaccurately reflect employee's job title or job duties of that title, regardless of whether employee performed other duties. *Kleiman v. Department of Energy*, C.A.D.C.1992, 956 F.2d 335, 294 U.S.App.D.C. 49, rehearing denied. Records  31


Amendment remedy under Privacy Act was not applicable to agency report that was not accessible under Privacy Act, but was otherwise accessible under Freedom of Information Act, absent evidence agency failed to index report pertaining to employee under employee's name in order to circumvent Privacy Act. *Baker v. Department of Navy*, C.A.9 (Cal.) 1987, 814 F.2d 1381, certiorari denied 108 S.Ct. 450, 484 U.S. 963, 98 L.Ed.2d 390. Records  31


Privacy Act permitted modification of factual matters, not opinion matters, and thus Marine Corps officer was not entitled under Act to amend fitness reports prepared by his reporting officers, even if reporting officers' opinions had changed, where selection board had used reports to formulate promotion evaluations. *Baker v. England*, D.D.C.2005, 397 F.Supp.2d 18, affirmed 2006 WL 3836573. Records  31


Negative report concerning former Principal Deputy Assistant Secretary (PDAS) of Veterans' Administration (VA), submitted by VA's Office of Inspector General (OIG), was not record that could be expunged or modified under Privacy Act; records correction requirement applied only to records maintained as part of system of records, subject to retrieval by use of individual's name, number or other identifying particular, and OIG report did not qualify as such. *McCready v. Principi*, D.D.C.2003, 297 F.Supp.2d 178, affirmed in part, reversed in part and remanded 465 F.3d 1, 373 U.S.App.D.C. 236. Records  10; Records  22



Decision of Secretary of Health and Human Services not to edit or expunge data bank report filed under HCQIA about restrictions on surgeon's hospital privileges was not an arbitrary or capricious action, where hospital's decision qualified as "professional review action" under HCQIA, such that surgeon was not entitled to relief from action under Administrative Procedure Act. *Azmat v. Shalala*, W.D.Ky.2001, 186 F.Supp.2d 744. Health  270


Neither Bureau of Prisons nor Parole Commission was required to investigate accuracy of presentence report to be furnished to Parole Commission, as both were exempt from record-amendment requirements of Privacy Act. *Buxton v. U.S. Parole Com'n*, D.Or.1994, 844 F.Supp. 642. Pardon And Parole  55.1


The Privacy Act only permits amendment of a record when the record is part of a "system of records" in which the information "is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." *Pototsky v. Department of Navy*, D.Mass.1989, 717 F.Supp. 20. Records  10

Manner in which former Army physician's interaction with her peers was characterized in her Army records was not subject to amendment under Privacy Act; physician's affidavits described her own assessment of relationship with colleagues and state of mental health at time she was evaluated by her psychiatrist, that evidence did not discredit fact underlying Army's judgment but instead challenged Army's conclusion as to facts, and Army offered credible evidence that assessments were based on first-hand observation of physician's emotional state and incidents that physician admitted occurred. *Rodgers v. Department of Army*, N.D.Ill.1988, 676 F.Supp. 858. Records  31



Documents of Office of Workers' Compensation Programs recording denial of compensation claims reflected agency judgment, not factual or historical errors, and therefore, were not subject to amendment under Privacy Act to reflect that actions taken against employee by her supervisors at Veterans Administration were not standard disciplinary actions or to rescind hearing representative's decision to deny benefits to extent that it relied upon evidence with which employee disagreed. *Rogers v. U.S. Dept. of Labor*, N.D.Cal.1985, 607 F.Supp. 697. Records  31


Under this section, federal agency is not required to place information into its records simply because subject in question requests such action, and neither is the agency required to remove information from its records upon request. *Savarese v. U. S. Dept. of Health, Ed. and Welfare*, N.D.Ga.1979, 479 F.Supp. 304, affirmed 620 F.2d 298, certiorari denied 101 S.Ct. 858, 449 U.S. 1078, 66 L.Ed.2d 801. Records  3; Records  11


Complaint wherein plaintiff, a former army chaplain, sought damages and substitution of a fair and accurate rating in his service record for alleged violation of this section when Army failed to inform him of reason for its refusal to amend his record and of its procedures to request and obtain a review of that refusal failed to state a claim upon which relief could be granted inasmuch as plaintiff's efficiency rating as to quality of his service as an officer, was a highly subjective process that was subject to being determined by military professionals rather than by court on de novo review, and any addition to record maintained by Army with respect to quality of plaintiff's service would not have improved either accuracy or completeness of that record. *Turner v. Department of Army*, D.C.D.C.1978, 447 F.Supp. 1207, affirmed 593 F.2d 1372, 193 U.S.App.D.C. 218. Armed Services  6.3

Superior officer's change of mind about fitness reports for Marine Corps officer did not constitute a factual error that could be corrected under the Privacy Act. *Baker v. Winter*, C.A.D.C.2006, 2006 WL 3836573, Unreported. Armed Services  6.3

22. ---- Information relating to administrative remedies, access to records

Former employee could not complain of employer's failure to abide by Privacy Act requirement that it inform her of available administrative review procedures, where it never had an opportunity to fulfill that requirement because employee never complained to employer of Privacy Act violations, and failure thus did not excuse her failure to exhaust administrative remedies. *Germane v. Heckler*, C.A.7 (Wis.) 1986, 804 F.2d 366. Administrative Law And Procedure  229; Records  35

Where employee of the Small Business Administration was not told that he could appeal the SBA's denial of his request under this section for an amendment of a record pertaining to him, nor was the employee apprised of the established procedure for administrative review, the SBA's failure to comply with the mandate of this section that it inform the employee not only of its refusal to amend the record and the reason for the refusal but also of procedures established by the agency to obtain a review of such refusal, the employee's suit to prevent the assertedly unauthorized disclosure and use of a confidential file maintained by the SBA was not barred on the ground that the employee failed to exhaust his administrative remedies. *Harper v. Kobelinski*, C.A.D.C.1978, 589 F.2d 721, 191 U.S.App.D.C. 198. Records  35

Former army employee's failure to exhaust administrative remedies did not preclude action under Privacy Act where employee was never informed of existence of administrative remedies with respect to his nonmonetary claims. *Ertell v. Department of Army*, C.D.Ill.1986, 626 F.Supp. 903. Records  31

23. ---- Statement of disagreement, access to records

Privacy Act did not permit farmer to bring action against Agricultural Stabilization and Conservation Service to alter documents that accurately reflected the Service's administrative action finding that only 3.8 acres of field were eligible for inclusion in conservation reserve program, even if conclusion may have been contestable as to correct acreage; Act merely entitled farmer to place in administrative file a concise statement setting forth reasons for disagreement with refusal of agency to delete or correct its record. *Douglas v. Agricultural Stabilization and Conservation Service*, C.A.7 (Ill.) 1994, 33 F.3d 784, rehearing and suggestion for rehearing en banc denied. Records 🔑 31

24. ---- Litigation documents, access to records

Although litigation files prepared by the Office of General Counsel to defend Privacy Act action brought by former principal deputy assistant secretary (PDAS) of Veterans Affairs (VA), seeking removal or correction of Inspector General reports in personnel record critical of her performance as head of Office of Congressional Affairs (OCA), constituted a "system of records" within the meaning of the Privacy Act, PDAS did not have rights of access and correction to the Inspector General reports contained within the litigation files. *McCready v. Nicholson*, D.D.C.2007, 509 F.Supp.2d 22. Records 🔑 10

Exception to disclosure requirements of Privacy Act, for documents prepared in anticipation of civil action or proceeding, supported withholding from former Principal Deputy Assistant Secretary (PDAS) of Veterans Administration (VA), criticized in report issued by Office of General Counsel (OGC), of comments and recommendations regarding possible discipline made by OIG to Secretary of Department of Veterans' Affairs. *McCready v. Principi*, D.D.C.2003, 297 F.Supp.2d 178, affirmed in part, reversed in part and remanded 465 F.3d 1, 373 U.S.App.D.C. 236. Records 🔑 57

Defense intelligence agency and defense investigative service were entitled to withhold documents under work product exemptions to Privacy Act and Freedom of Information Act in light of evidence that counsel of litigant seeking records had repeatedly threatened agencies with both adverse publicity and litigation in retaliation for actions. *Savada v. U.S. Dept. of Defense*, D.D.C.1991, 755 F.Supp. 6. Records 🔑 31; Records 🔑 57

Letter incident report prepared by government in response to Federal Tort Claims Act (FTCA) claim was prepared in reasonable anticipation of civil suit or proceeding, and thus was exempt from access requirements of Privacy Act. *Smith v. U.S.*, C.A.5 (La.) 2005, 142 Fed.Appx. 209, 2005 WL 1767842, Unreported. Records 🔑 31

25. ---- Failure to respond, access to records



Material issue of genuine fact existed as to whether community services agency's failure to formally respond to former employee's second request for documents constituted a violation of this section, precluding summary judgment in favor of either party in former employee's suit seeking damages and attorney fees based on alleged failure to comply with this section. *Crichton v. Community Services Admin.*, S.D.N.Y.1983, 567 F.Supp. 322. Federal Civil Procedure 🔑 2509.8


26. Rules and regulations--Generally


This section also authorizes government agencies to promulgate rules to regulate the process by which individu-


als can request records. *Benavides v. U.S. Bureau of Prisons*, C.A.D.C.1993, 995 F.2d 269, 301 U.S.App.D.C. 369.


27. ---- Procedures for disclosure, rules and regulations

Regulation promulgated by the Social Security Administration (SSA) for release of medical records to benefit applicant, under which applicant was to designate representative for receipt of such records, who was to have complete discretion as to whether records would ultimately be disclosed to applicant, did not satisfy SSA's obligation under Privacy Act to promulgate special procedures for release of records to the requesting individual. *Bavido v. Apfel*, C.A.7 (Ill.) 2000, 215 F.3d 743. Records  31; Social Security And Public Welfare  124.25


Privacy Act application filed with IRS, seeking documents pertaining to applicant's tax liability, had to include systems of records to which access was sought, their location, and business address of systems officer provided in Notice of Systems; it was not enough to provide IRS with transaction code, locator number, and date of issuance for documents. *Taylor v. U.S. Treasury Dept.*, C.A.5 (Tex.) 1997, 127 F.3d 470. Records  31

Compliance with Department of Justice regulation governing release of medical records did not satisfy Bureau of Prisons' obligations under Privacy Act to provide federal prisoners access to such information; regulation set forth procedure under which bureau would give documents to doctor designated by inmate, then enjoyed sole discretion whether to turn them over to inmate, and regulation, in effect, created another substantive exemption out of Act's mandate to promulgate procedural rules, and Congress could not have intended to permit government to insulate decision not to disclose documents from federal judicial review through some sort of legal maneuver. *Benavides v. U.S. Bureau of Prisons*, C.A.D.C.1993, 995 F.2d 269, 301 U.S.App.D.C. 369. Records  31

Regulation of the Bureau of Prisons permitting disclosure of "evaluative" or "diagnostic" medical records only to requester's physician was valid exercise of regulatory authority conferred on Bureau by the Privacy Act; legislative history indicated that disclosure only to requester's physician would be permissible if direct disclosure would have adverse effect on requester. *Cowsen-El v. U.S. Dept. of Justice*, D.D.C.1992, 826 F.Supp. 532. Records  31

Former assistant United States attorney, who was seeking to correct information in her personnel file pursuant to the Privacy Act (PA), failed to file proper PA request by failing to include all necessary identifying information required by regulations, including her name, address, and date and place of birth; thus, dismissal of her request was appropriate. *Brown v. U.S. Dept. of Justice*, C.A.11 (Ala.) 2006, 169 Fed.Appx. 537, 2006 WL 509074, Unreported, rehearing and rehearing en banc denied 179 Fed.Appx. 686, 2006 WL 1173160. Records  31

28. ---- Procedures for review, rules and regulations

For plaintiff to bring action under this section against agency in federal court, he must exhaust all administrative remedies, and in view of provision requiring agency to establish process for administrative appeals and in view of statutory right of appeal, plaintiff had not complied with requirement and failed to exhaust available administrative remedies. *Crooker v. U.S. Marshals Service*, D.C.D.C.1983, 577 F.Supp. 1217. Records  35

29. Guardians

Unmarried father, who sought disclosure of children's address from Social Security Administration under this section, could not exercise children's "consent" to disclosure as legal parent or alternatively seek release of information on behalf of children under subsec. (h) of this section governing rights of legal guardians. *DePlanche v. Califano*, W.D.Mich.1982, 549 F.Supp. 685. Social Security And Public Welfare 🔑 124.25

30. Criminal penalties

Section of the Privacy Act [5 U.S.C.A. § 552a(i)(3)], which provides that any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses is guilty of a misdemeanor, provides for criminal penalties only and generates no civil right of action. *Unt v. Aerospace Corp.*, C.A.9 (Cal.) 1985, 765 F.2d 1440. Records 🔑 31

"Willful disclosure" of information protected by Privacy Act, showing of which may support prosecution under section of Act establishing criminal penalty for its violation, requires showing that defendant knew information was protected by Privacy Act and then voluntarily and purposely disclosed information in violation of Act; gross negligence is insufficient to meet standard. *U.S. v. Trabert*, D.Colo.1997, 978 F.Supp. 1368. Records 🔑 31

Disclosure by employee at Army medical facility of list of patients who had been treated at facility, which was protected information under Records Act, did not constitute willful disclosure of protected information which would support imposition of criminal penalty under Act; employee disclosed list to physician at university hospital, whose workers already had access to some of information, defendant was not aware of any improper motive in providing list, and defendant turned over list at direction of physician at facility to whom defendant was loyal. *U.S. v. Trabert*, D.Colo.1997, 978 F.Supp. 1368. Records 🔑 31

Provision of this section that: "[a]ny 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. * * *" was solely penal provision and created no private right of action. *Lapin v. Taylor*, D.C.Hawai'i 1979, 475 F.Supp. 446. Action 🔑 3

31. Social security number disclosure--Generally

Privacy Act section generally prohibiting denial of right based on individual's refusal to disclose social security number did not prohibit Tennessee from conditioning right to vote upon disclosure of social security number, inasmuch as Tennessee fell within section's exception for state that maintained 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 identity of individual. *McKay v. Thompson*, C.A.6 (Tenn.) 2000, 226 F.3d 752, rehearing and suggestion for rehearing en banc denied, certiorari denied 121 S.Ct. 1230, 532 U.S. 906, 149 L.Ed.2d 139. Elections 🔑 106

Prospective employee could not maintain Privacy Act claim against hospital based on hospital's failure to hire employee after he refused to provide his social security number, since hospital was a private entity, not a federal agency, as required for private right of action under the Act. *Sutton v. Providence St. Joseph Medical Center*, C.A.9 (Cal.) 1999, 192 F.3d 826. Records 🔑 31

Registration form distributed to voters, soliciting disclosure of social security numbers, violated Privacy Act by stating that disclosure was mandatory, when it was in fact voluntary. *Schwier v. Cox*, N.D.Ga.2005, 412 F.Supp.2d 1266, affirmed 439 F.3d 1285. Records 🔑 31

Requirement of North Carolina Division of Motor Vehicles (DMV), that applicant disclose social security number as condition of obtaining driver's license, did not violate Privacy Act; Tax Reform Act expressly exempted state agencies from Act's provision prohibiting denial of benefit based on individual's refusal to disclose social security number, and Social Security Act expressly authorized states to require disclosure of social security numbers in overseeing driver's licenses. *North Carolina ex rel. Kasler v. Howard*, W.D.N.C.2003, 323 F.Supp.2d 675, affirmed 78 Fed.Appx. 231, 2003 WL 22351267. Records 🔑 31

Provision of Pub.L. 93-579, § 7, set out as a note under this section, prohibiting a state from penalizing an individual in any way because of his failure to reveal his social security number upon request was enacted for purpose of curtailing the expanding use of social security numbers by federal and local agencies and to eliminate the threat to individual privacy and confidentiality of information posed by common numerical identifiers. *Doyle v. Wilson*, D.C.Del.1982, 529 F.Supp. 1343. Constitutional Law 🔑 1233

In enacting various disclosure requirements found in this section, Congress intended advance notice and disclosure to the public. *Doe v. Sharp*, D.C.Mass.1980, 491 F.Supp. 346. Records 🔑 31

District court would not presume, on cross-motions for summary judgment in putative class action against the Veterans Administration (VA) by VA employees alleging that the VA violated the employees' rights under the Privacy Act by disclosing their Social Security numbers (SSN) on a VA computer system to employees who had no need for the SSNs, that any VA employee actually viewed the plaintiffs' SSNs, and thus that any disclosure occurred as required to establish violation of Privacy Act provision barring agency disclosure of certain personal records, absent any evidence that it was inevitable that a user of the VA computer system actually viewed the plaintiffs' SSNs. *Schmidt v. U.S. Dept. of Veterans Affairs*, E.D.Wis.2003, 218 F.R.D. 619, amended on reconsideration in part 222 F.R.D. 592. Federal Civil Procedure 🔑 2509.8

City employees had legitimate expectation of privacy in their social security numbers (SSNs) due to federal legislative scheme involving use of SSNs. *State ex rel. Beacon Journal Publishing Co. v. Akron, Ohio* 1994, 640 N.E.2d 164, 70 Ohio St.3d 605, 1994-Ohio-6, reconsideration denied 642 N.E.2d 388, 71 Ohio St.3d 1424. Records 🔑 55; Records 🔑 58

Social security numbers of city employees, obtained by city in its capacity as employer, are not "public records or information the disclosure of which is prohibited by federal law or regulations * * *" under statute protecting information submitted in confidence; neither the federal Privacy Act nor the Social Security Act prohibited disclosure. *American Federation of State, County, and Mun. Employees, Council 75 v. City of Albany, Or.App.*1986, 725 P.2d 381, 81 Or.App. 231. Social Security And Public Welfare 🔑 124.25

Claim by applicant for a Georgia Firearms License (GFL), seeking expungement of records containing his Social Security Number (SSN) under the Privacy Act and state law, was moot, absent any allegations in applicant's complaint that he ever provided his SSN in connection with his application for a GFL. *Camp v. Cason*, C.A.11 (Ga.) 2007, 220 Fed.Appx. 976, 2007 WL 869050, Unreported. Federal Courts 🔑 13

32. ---- Knowledge of right, social security number disclosure

Assuming this section could support a private right of action for retrospective relief against defendants in their capacities as employees of the justice of the peace court for requiring plaintiff's social security number on a voucher for refund of a motor vehicle fine, and assuming that plaintiff's refusal to disclose his social security number was a clearly established right, where defendants could not as reasonable persons have been aware of

that right and could not have recognized that any effort to compel disclosure of number or to deny plaintiff his refund violated federal law, damages against defendants were barred by doctrine of official immunity. *Doyle v. Wilson*, D.C.Del.1982, 529 F.Supp. 1343. Officers And Public Employees 🔑 114

33. ---- Disclosure required by federal statute, social security number disclosure

Regulation requiring the furnishing of social security account numbers for children who are recipients under state plan of aid to needy families with children does not violate this section regarding disclosure of social security account numbers. *Green v. Philbrook*, C.A.2 (Vt.) 1978, 576 F.2d 440. Social Security And Public Welfare 🔑 194.2

The Selective Service System's practice of requiring draft registrants to supply their social security numbers does not violate provisions of this section, particularly in view of section 453(b) of Title 50 App., enacted to provide necessary statutory authority to require submission of social security numbers by draft registrants. *Wolman v. U. S.*, D.C.D.C.1982, 542 F.Supp. 84. Armed Services 🔑 20.3; Records 🔑 31

This section was not violated by denial of Aid to Families with Dependent Children benefits because of failure to obtain and disclose social security numbers for children for whom benefits were intended. *Chambers v. Klein*, D.C.N.J.1976, 419 F.Supp. 569, affirmed 564 F.2d 89. Records 🔑 54

Privacy Act stating that government agency may not lawfully deprive any individual of legal right, benefit or privilege because of such person's refusal to disclose his or her social security number (SSN) was inapplicable to United States Trustee's motion seeking to require bankruptcy petition preparer to disgorge fee paid by him and be fined for violating Bankruptcy Code provision requiring him to place SSN on documents filed with court on behalf of debtors; Code provision was federal statute and Privacy Act did not apply to any disclosure which was required by federal statute. *In re Rausch*, Bkrcty.D.Nev.1996, 197 B.R. 109, affirmed 213 B.R. 364, affirmed 194 F.3d 954, certiorari denied 120 S.Ct. 1244, 528 U.S. 1189, 146 L.Ed.2d 102. Bankruptcy 🔑 3030.10; Records 🔑 31; Bankruptcy 🔑 3165.5


Federal regulation requiring social security numbers for children in order for them to be eligible for benefits under the aid to families with dependent children program did not violate this section. *Mullaney v. Woods*, Cal.App. 3 Dist.1979, 158 Cal.Rptr. 902, 97 Cal.App.3d 710. Social Security And Public Welfare 🔑 194.2


34. ---- Disclosure to agency maintaining system of records, social security number disclosure



State Department's use of its employee's social security number for identity verification did not violate this section, since Department used social security numbers in its system of records before January 1, 1975, and thus came within exemption to this section. *Brookens v. U. S.*, C.A.D.C.1980, 627 F.2d 494, 201 U.S.App.D.C. 35. Records 🔑 31


Employer did not violate Federal Privacy Act, by requiring employees to disclose their social security numbers, when disclosure was mandated under federal law. *McCauley v. Computer Aid Inc.*, E.D.Pa.2006, 447 F.Supp.2d 469. Records 🔑 31

State of Georgia did not maintain system of records compelling disclosure of social security numbers prior to effective date of Privacy Act, precluding application of grandfather clause exception to Act's general prohibition of any denial of rights of benefits to person refusing to disclose number; while state statute provided for voter


registration cards, including a blank for social security numbers, 54 out of 78 counties either accepted cards lacking that information outright or accepted cards and tried to find out social security numbers later. *Schwier v. Cox*, N.D.Ga.2005, 412 F.Supp.2d 1266, affirmed 439 F.3d 1285. Records  31

Plumbing licensing law provision that required master plumbers to include with application for county-wide license either their W-2 tax forms, which contained their social security numbers, or other proof of required work experience did not violate Privacy Act provision forbidding denial of privilege because of refusal to disclose social security number. *Russell v. Board of Plumbing Examiners of County of Westchester*, S.D.N.Y.1999, 74 F.Supp.2d 339, adhered to on reargument 74 F.Supp.2d 349, affirmed 1 Fed.Appx. 38, 2001 WL 15628. Records  31


Issue whether employees of the justice of the peace court could be held liable under this section and Social Security Act, section 301 et seq. of Title 42, for requiring plaintiff to disclose his social security number on a voucher for refund of a motor vehicle fine was a question which could not be determined in absence of evidence as to whether disclosure qualified as part of the administration of the state's driver's license law and as to whether disclosure was required under a long-standing practice of the state treasurer's office prior to Jan. 1, 1974 under a system of records then in existence and operating. *Doyle v. Wilson*, D.C.Del.1982, 529 F.Supp. 1343. Records  31; Social Security And Public Welfare  124.25

Even if court presumed that users of Veterans Administration (VA) computer system viewed other VA employees' Social Security numbers (SSNs) on the system so as to constitute a disclosure within meaning of Privacy Act provision barring agency disclosure of certain personal records, the disclosure did not violate the Act absent any showing that the employees viewing the records did not need to know the other employees' SSNs in the course of carrying out their duties, given evidence that users needed to access employee records as well as patient records via the computer system in case an employee needed emergency medical treatment at the VA. *Schmidt v. U.S. Dept. of Veterans Affairs*, E.D.Wis.2003, 218 F.R.D. 619, amended on reconsideration in part 222 F.R.D. 592. Records  31

35. ---- Probate rules, social security number disclosure

Federal Privacy Act is not violated by probate rules requiring decedent's social security number to be placed on petitions for administration and on caveats. *In re Amendments to Florida Probate Rules*, Fla.1992, 607 So.2d 1306. Records  31

36. ---- Notice, social security number disclosure

Disclosure statement that Secretary of Agriculture included in its final regulations for school meal programs legally satisfied Pub.L. 93-579, § 7, set out as a note under this section, by informing participants of voluntariness of disclosure of adult household members' social security account numbers, source of authority for eligibility requirement, and possible uses to which disclosed numbers may be put, despite contention that disclosure was so vague as to be totally uninformative to "target audience." *Alcaraz v. Block*, C.A.9 (Cal.) 1984, 746 F.2d 593. Records  31

Placement of master plumber's social security number (SSN) on license that was required to be displayed at place of business without first informing applicant of use of SSN violated Privacy Act provisions requiring local government agency to state uses that would be made of information solicited on license application. *Russell v. Board of Plumbing Examiners of County of Westchester*, S.D.N.Y.1999, 74 F.Supp.2d 339, adhered to on rear-

gument 74 F.Supp.2d 349, affirmed 1 Fed.Appx. 38, 2001 WL 15628. Records 🔑 31

Water company could not obtain customers' social security numbers until it complied with disclosure requirements of Privacy Act [5 U.S.C.A. § 552a note], including informing customers of voluntariness of disclosure, source of authority for it, and possible uses to which disclosed numbers might be put. Yeager v. Hackensack Water Co., D.C.N.J.1985, 615 F.Supp. 1087. Records 🔑 31

The practice of requiring disclosure of social security numbers, for purpose of securing a refund of a motor vehicle fine, cannot be validated under either this section or the Social Security Act, Section 301 et seq. of Title 42, unless it is incident to the administration of a state driver's license or motor vehicle registration law or is required under a statute or regulation adopted prior to January 1, 1975 under a system of records then in existence and operative, and unless refund applicants are provided with information such as whether disclosure is mandatory or voluntary, by which statute or other authority such number is solicited, and what uses will be made of it. Doyle v. Wilson, D.C.Del.1982, 529 F.Supp. 1343. Records 🔑 31; Social Security And Public Welfare 🔑 124.25

The Massachusetts Department of Public Welfare and the Department of Health, Education and Welfare [now Department of Health and Human Services] breached their duties under this section to inform applicants for assistance of the uses to be made of their social security numbers insofar as the Departments routinely required applicants for and recipients of aid to families with dependent children to obtain and report the social security numbers of children and took no steps to inform the applicants of uses to be made of the numbers. Doe v. Sharp, D.C.Mass.1980, 491 F.Supp. 346. Social Security And Public Welfare 🔑 124.25

Disclosure given to recipients of aid to families with dependent children in connection with request for social security numbers was not meaningful; to comply with this section governing request by governmental agencies for social security numbers, such disclosure must inform recipients that social security numbers will be used to verify employment information in application form with Social Security Administration and that if information on application form was not accurate, recipient might be subject to prosecution for fraud. Greater Cleveland Welfare Rights Organization v. Bauer, N.D.Ohio 1978, 462 F.Supp. 1313. Social Security And Public Welfare 🔑 194.16(1)

Use of social security numbers is allowed for administration of general public assistance; however, notice is still required to welfare recipients of uses to be made of applicants' social security numbers by welfare department. State v. Hughes, Ohio App.1981, 442 N.E.2d 786, 2 Ohio App.3d 443, 2 O.B.R. 538. Social Security And Public Welfare 🔑 124.25

37. Scope of request

Army reserve officer's Privacy Act complaint did not seek correction of factual or historical errors, but instead impermissibly challenged Army's decisions; officer sought to correct a record because insufficient rating time made officer evaluation report improper, challenged procedure used to revoke his security clearance, and challenged substance of decision made in his Temporary Disability Retired List (TDRL) examination. Bernard v. U.S. Dept. of Defense, D.D.C.2005, 362 F.Supp.2d 272. Records 🔑 31

Request under this section did not carry with it a prospective obligation to turn over any relevant materials that were in existence after date of the request. Crichton v. Community Services Admin., S.D.N.Y.1983, 567 F.Supp. 322. Records 🔑 31

Executive Office for United States Attorneys (EOUSA) could ask requester to narrow his disclosure requests under Freedom of Information Act (FOIA) and Privacy Act by designating three districts for initial search, then, after fees were paid for those searches, designating three more districts, and repeating such process until all districts were searched, given number of offices that requester asked to be searched. *Lee v. U.S. Department of Justice*, W.D.Pa.2006, 235 F.R.D. 274. Records 🔑 62

Discovery request in Privacy Act case which sought all communications that supervisor had with anyone, irrespective of the relation, if any, between that communication and a record protected by the Privacy Act, was overbroad. *Krieger v. Fadely*, D.D.C.2001, 199 F.R.D. 10. Federal Civil Procedure 🔑 1272.1

38. Sovereign immunity

Privacy Act waiver of sovereign immunity, when agency fails to properly maintain records regarding individual, applied only to records maintained as part of system of records, subject to retrieval by use of individual's name, number or other identifying particular. *McCready v. Principi*, D.D.C.2003, 297 F.Supp.2d 178, affirmed in part, reversed in part and remanded 465 F.3d 1, 373 U.S.App.D.C. 236. Records 🔑 54

Alien's action against United States under Privacy Act seeking order directing Immigration and Naturalization Service (INS) and Federal Bureau of Investigation (FBI) to correct their records to expunge reference to vacated state conviction and enjoining INS from initiating action against alien based on conviction was not barred by sovereign immunity, even though alien also sought attorney fees and costs. *Schaeuble v. Reno*, D.N.J.2000, 87 F.Supp.2d 383. United States 🔑 125(26)

39. Moot cases


Claim that naval officer was entitled to have special selection board (SSB) convened was rendered "moot" by district court's determination that Department of the Navy did not violate Privacy Act or Administrative Procedure Act (APA) by maintaining original fitness report for officer in officer's naval record, rather than replacing it with more favorable amended report, in that SSB would have nothing new or different to consider. *Mueller v. England*, D.D.C.2005, 404 F.Supp.2d 51. Armed Services 🔑 6.3

Prisoner's claim for relief under Privacy Act, based on Bureau of Prison's (BOP) failure to transfer him and provide him access to programs, was rendered moot by his transfer to a less secure facility, where he was provided access to mechanic training program. *Doyon v. U.S. Dept. of Justice*, D.D.C.2004, 304 F.Supp.2d 32, appeal dismissed 2004 WL 2185923. Prisons 🔑 13.5(1)


In suit brought for failure to honor Privacy Act access request, plaintiffs were ordered full access to documents requested to extent practicable, and therefore claims for further injunctive relief were moot, despite storage of records in non-orderly fashion, in which they could not be accessed by employee name or number. *Biondo v. Department of Navy*, D.S.C.1995, 928 F.Supp. 626, affirmed 86 F.3d 1148. Records 🔑 31

Claims by applicant for a Georgia Firearms License (GFL), seeking a declaratory judgment that the GFL application form violated the Privacy Act, an injunction prohibiting state officials from requiring a GFL applicant's Social Security Number (SSN), and an injunction requiring defendants to conform the GFL application form to the Privacy Act, were not moot, even if Georgia Department of Public Safety revised GFL form, where applicant's complaint made substantive claims and requested additional meaningful relief beyond his request that officials process his current GFL application without his SSN, applicant had a concrete, legally cognizable interest

in the GFL application process, and, since he had to continually renew his license and fill out the GFL application form, there was a sufficient imminence of future harm. *Camp v. Cason*, C.A.11 (Ga.) 2007, 220 Fed.Appx. 976, 2007 WL 869050, Unreported.

Pro se prisoner's complaint under Freedom of Information Act (FOIA), and Privacy Act, attempting to procure information relating to temporary discontinuance of his Social Security Title II benefits, was properly dismissed as moot for lack of case or controversy, where Social Security Administration (SSA) had already turned over all requested documents to prisoner, acknowledged its error, and remitted underpayments to prisoner. *Bloom v. Social Sec. Admin.*, C.A.10 (Kan.) 2003, 72 Fed.Appx. 733, 2003 WL 21513214, Unreported. Federal Courts  13

40. Ripeness

Arrestees' allegations of past injury, i.e., that Federal Bureau of Investigation (FBI) had violated the Constitution and the Privacy Act by collecting, maintaining, using, and disseminating records describing each arrestee's exercise of rights guaranteed by First Amendment, and arrestees' allegation of future injury based on arrestees' speculation that such records continued to exist, did not satisfy Article III "case or controversy" requirement for justiciability in federal court of claim for declaratory or injunctive relief. *Bolger v. District of Columbia*, D.D.C.2007, 510 F.Supp.2d 86. Declaratory Judgment  203

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61. Agency, definitions--Generally

Amended definition of “agency” contained in section 552 of this title also applies to this section. *Ehm v. National R.R. Passenger Corp.*, C.A.5 (Tex.) 1984, 732 F.2d 1250, certiorari denied 105 S.Ct. 387, 469 U.S. 982, 83 L.Ed.2d 322. Records 🔑 31

62. ---- Number of agencies, agency, definitions

Department of the Air Force is a single agency for purposes of Privacy Act [5 U.S.C.A. § 552a] because it is a military department, although it is subdivided into separate entities. *Marcotte v. Secretary of Defense*, D.C.Kan.1985, 618 F.Supp. 756. Records 🔑 31

63. ---- Individual officers or employees, agency, definitions


Since naval investigative service special agent, who released to a county sheriff the home address and phone number of a civilian employee of the naval air rework facility of the Pensacola Naval Air Station, was not an “agency,” he was subject to dismissal as a defendant in the civilian employee's suit for violation of the Privacy Act, which provides that no “agency” shall disclose any record except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. *Doe v. Naval Air Station, Pensacola, Fla.*, C.A.11 (Fla.) 1985, 768 F.2d 1229. Records 🔑 31


In view of fact that term “agency” in this section providing rules concerning what information a federal agency may keep about employees, circumstances and procedures under which that information may be released, and safeguards required in order to insure that all information is accurate does not encompass individual government officials such as United States attorneys, assistant United States attorney's suit under such statute against United States attorney would be dismissed for failure to state a claim upon which relief could be granted. *Windsor v. The Tennessean*, C.A.6 (Tenn.) 1983, 719 F.2d 155, rehearing denied 726 F.2d 277, certiorari denied 105 S.Ct. 105, 469 U.S. 826, 83 L.Ed.2d 50. Records 🔑 31

Private individuals were not proper parties defendant to private civil action under this section, which authorizes suit against agency only. *Parks v. U. S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677. Civil Rights 🔑 1391



Individual officers or employees of an agency are not “agencies” which may be sued under Privacy Act. *Williams v. McCausland*, S.D.N.Y.1992, 791 F.Supp. 992. Records 🔑 31


Individuals are not proper defendants in Privacy Act suit, which permits only agency to be sued. *Stephens v.*


Tennessee Valley Authority, E.D.Tenn.1990, 754 F.Supp. 579. Records  31


Term “agency,” as used in this section, does not include individual officers or employees of an agency, and an action may not be brought against them under this section. *Gonzalez v. Leonard*, D.C.Conn.1980, 497 F.Supp. 1058. Torts  336



64. ---- State agencies, agency, definitions

Federal regulations, which are promulgated to assure that federal funds are spent for purposes intended, do not convert acts of local and state governmental bodies into federal governmental acts and thus federal regulations applicable to Medicaid program did not subject state agencies to provisions of this section and section 552 of this title in connection with cost information furnished by providers under Medi-Cal program. *St. Michael's Convalescent Hospital v. State of Cal.*, C.A.9 (Cal.) 1981, 643 F.2d 1369. Records  31; Records  51

Privacy Act of 1974 does not apply to state agencies or bodies and thus did not provide basis for relief to deputy sheriff whose personnel file was released by sheriff pursuant to a subpoena. *Shields v. Shetler*, D.Colo.1988, 682 F.Supp. 1172, rehearing denied 120 F.R.D. 123. Records  35


Privacy Act action could not be brought against individual officers or employees of state agency. *B.J.R.L. v. State of Utah*, D.Utah 1987, 655 F.Supp. 692. Records  31

Blind individual, in suit against New Jersey Commission for Blind and Visually Impaired and its executive director, alleging that they unlawfully denied him rehabilitative services and benefits to which he was entitled under the Rehabilitation Act of 1973, section 720 et seq. of Title 29, was not entitled to amend his complaint to state an additional claim for violation of this section, because the Act governs federal agencies only. *Ryans v. New Jersey Com'n For The Blind and Visually Impaired*, D.C.N.J.1982, 542 F.Supp. 841. Records  31


Allegations by patient at state hospital that psychiatrist and psychologist refused him permission to see his mental health records failed to state claim under § 1983 for violation of federal constitutional or statutory right; patient had no constitutional right to see his own medical records, and Freedom of Information Act (FOIA) and Privacy Act applied only to federal, not state, agencies. *Collins v. Khoury*, N.D.Cal.2002, 2002 WL 1941150, Unreported. Mental Health  21; Records  51

65. ---- Amtrak, agency, definitions

Amtrak is not a “agency” within the meaning of the Privacy Act. *U.S. v. Jackson*, C.A.10 (N.M.) 2004, 381 F.3d 984, certiorari denied 125 S.Ct. 1724, 544 U.S. 963, 161 L.Ed.2d 605. Records  31

Amtrak was not subject to this section by virtue of extended definition of “agency” to include government controlled corporations. *Ehm v. National R.R. Passenger Corp.*, C.A.5 (Tex.) 1984, 732 F.2d 1250, certiorari denied 105 S.Ct. 387, 469 U.S. 982, 83 L.Ed.2d 322. Records  31

66. ---- Colleges or universities, agency, definitions

State university was not an “agency” as defined by Privacy Act and, thus, university had discretion whether to voluntarily abide by its terms or not; although there were many aspects of university's operations which touched and/or intersected with the state overall effect was an independent institution divorced from direct, let alone day-to-day, control. *Krebs v. Rutgers*, D.N.J.1992, 797 F.Supp. 1246. Colleges And Universities  9.40; Records

🔑 31

67. ---- Copyright Office, agency, definitions

The Copyright Office is in the legislative branch, and is not an “agency” within the coverage of this section, and thus, personnel records of the employees in the Office are not subject to this section. 1980 (Counsel-Inf.Op.) 4B Op.O.L.C. 608.

68. ---- Courts, agency, definitions

As a unit of the court, Probation Office was not subject to requirements of the Freedom of Information Act (FOIA) and Privacy Act, for purposes of prison inmate's action alleging that he was wrongfully denied certain records and that willfully and knowingly inaccurate records about him were being kept. *DeMartino v. F.B.I.*, D.D.C.2007, 511 F.Supp.2d 146. Records 🔑 51

Bankruptcy court is not “agency” for purposes of determining applicability of the Federal Privacy Act. In re *Adair*, Bkrtcy.N.D.Ga.1997, 212 B.R. 171. Records 🔑 31

69. ---- Grand juries, agency, definitions

Grand jury is not “agency” as that term is used in Privacy Act, and grand jury materials are not “agency records” within scope of Act. *Standley v. Department of Justice*, C.A.9 (Ariz.) 1987, 835 F.2d 216. Records 🔑 31

70. ---- Hospitals, agency, definitions

Release of medical records of federal employee's wife and son would not violate Privacy Act as hospitals were not “agencies” of federal government within meaning of Act and Act expressly authorizes disclosure of information pursuant to order of court of competent jurisdiction. *Gilbreath v. Guadalupe Hosp. Foundation Inc.*, C.A.5 (Tex.) 1993, 5 F.3d 785. Records 🔑 31

Although hospital and medical school were recipients of federal research grants and subject to federal supervision, they were not subject to such federal control as to make them federal entities subject to they section. *Dennie v. University of Pittsburgh School of Medicine*, D.C.Virgin Islands 1984, 589 F.Supp. 348, affirmed 770 F.2d 1068, certiorari denied 106 S.Ct. 144, 474 U.S. 849, 88 L.Ed.2d 119. Records 🔑 31

71. ---- Military departments, agency, definitions

Department of the Navy, of which the Pensacola Naval Air Station is a subagency or instrumentality, is a “military department” within the Privacy Act's definition of the term “agency.” *Doe v. Naval Air Station, Pensacola, Fla.*, C.A.11 (Fla.) 1985, 768 F.2d 1229. Records 🔑 31

The United States Department of Defense is an “agency” within meaning of this section. *Olberding v. U.S. Dept. of Defense, Dept. of the Army*, S.D.Iowa 1982, 564 F.Supp. 907, affirmed 709 F.2d 621. Records 🔑 31

72. ---- National banks, agency, definitions

National bank was not an “agency” of the federal government within meaning of this section so as to make unlawful disclosure of bank documents to Federal Bureau of Investigation or Postal inspectors. *U. S. v. Miller*, C.A.10 (Colo.) 1981, 643 F.2d 713. Records 🔑 31

Bank's release of information concerning debtor to another bank did not violate federal Privacy Act, since bank was neither "agency" within meaning of Act nor "debt collector" within meaning of Fair Debt Collection Practices Act. *Baldwin v. First Nat. Bank of Black Hills*, S.D.1985, 362 N.W.2d 85. *Banks And Banking* 151

73. ---- Not-for-profit corporations, agency, definitions

Private not-for-profit corporation engaged in business with the United States government was not an agency of the government within definition of the Privacy Act [5 U.S.C.A. § 552a], nor did mere fact that it received funding and was regulated to some extent by federal government bring it within the reaches of the Act. *Unt v. Aerospace Corp.*, C.A.9 (Cal.) 1985, 765 F.2d 1440. *Records* 31

74. ---- Production credit associations, agency, definitions

Production credit association was not an "agency" bounded by constraints of the Privacy Act [5 U.S.C.A. § 552a]. *U.S. v. Haynes*, M.D.Tenn.1985, 620 F.Supp. 474. *Records* 31

75. ---- White House Office, agency, definitions

Those components of Executive Office of the President (EOP) whose sole function is to advise and assist the President were not "agencies" for purposes of the Privacy Act. *Dale v. Executive Office of President*, D.D.C.2001, 164 F.Supp.2d 22. *Records* 31

White House Office, a unit within Executive Office of the President (EOP), was not "agency" subject to terms of Privacy Act; Privacy Act adopted by reference definition of "agency" in Freedom of Information Act (FOIA), FOIA had been consistently and clearly interpreted to exclude White House Office, and Congress was aware of interpretations of FOIA excluding White House Office when it enacted Privacy Act. *Sculimbrene v. Reno*, D.D.C.2001, 158 F.Supp.2d 26. *Records* 31

White House Office was not "agency" subject to Privacy Act; Privacy Act expressly incorporated Freedom of Information Act's (FOIA) definition of agency, and White House Office was not agency under FOIA. *Broadrick v. Executive Office of President*, D.D.C.2001, 139 F.Supp.2d 55, affirmed 38 Fed.Appx. 20, 2002 WL 1359497. *Records* 31

Office of the President was not subject to Privacy Act; Office of the President was not an "agency" within meaning of Freedom of Information Act (FOIA), and therefore was not an agency within meaning of Privacy Act, which adopted FOIA's definition of agency. *Falwell v. Executive Office of the President*, W.D.Va.2000, 113 F.Supp.2d 967, motion denied 2001 WL 1114031. *Records* 31

Executive Office of the President (EOP) is not an "agency" subject to the Privacy Act. *Tripp v. Executive Office of the President*, D.D.C.2001, 200 F.R.D. 140, appeal dismissed 2001 WL 1488614. *Records* 31

76. ---- Miscellaneous agencies, agency, definitions

The Smithsonian Institution was not an agency subject to the Privacy Act; Smithsonian was not government controlled corporation or establishment of Executive Branch, and although Smithsonian received substantial federal funds, any public authority it exercised, including limited police powers, was entirely ancillary to its cultural and educational mission. *Dong v. Smithsonian Inst.*, C.A.D.C.1997, 125 F.3d 877, 326 U.S.App.D.C. 350, rehearing denied, certiorari denied 118 S.Ct. 2311, 524 U.S. 922, 141 L.Ed.2d 169. *Records* 51

Reprimand letter, which was written by Government contractor's director of federal laboratory, did not represent determination of National Cancer Institute and, therefore, was not subject to Privacy Act statute, which requires each agency to maintain records used by agency in making any determination about individual. *Reuber v. U.S.*, C.A.D.C.1987, 829 F.2d 133, 264 U.S.App.D.C. 348. Records 🔑 31

National Gallery of Art was not "agency" subject to Privacy Act; Gallery was not government controlled corporation or establishment of Executive Branch, and although Gallery received substantial federal funds, any public authority it exercised, including limited police powers, was entirely ancillary to its cultural and educational mission. *Dodge v. Trustees of Nat. Gallery of Art*, D.D.C.2004, 326 F.Supp.2d 1. Records 🔑 31

77. Individual, definitions

Health care providers who were reimbursed by state through Medi-Cal program in California for services performed, and who were corporations or sole proprietorships, were not "individuals" and thus lacked standing to raise claim concerning release of cost information to requesting public under this section which only applies to records of individuals. *St. Michael's Convalescent Hospital v. State of Cal.*, C.A.9 (Cal.) 1981, 643 F.2d 1369. Records 🔑 35

Union of certain federal employees had no standing to sue, under this section, either on its own behalf or in representative capacity. *Parks v. U. S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677. Civil Rights 🔑 1332(5)

Company, seeking to forestall disclosure by the Department of Justice and the Securities and Exchange Commission of details of certain "questionable foreign payments," lacked standing to litigate any claims which its employees might have under this section. *Dresser Industries, Inc. v. U. S.*, C.A.5 (Tex.) 1979, 596 F.2d 1231, rehearing denied 601 F.2d 586, certiorari denied 100 S.Ct. 731, 444 U.S. 1044, 62 L.Ed.2d 730. Records 🔑 35


Plaintiff corporation was not an "individual" within meaning of this section, which creates federal claims, for relief for enumerated violations of this section's substantive provisions, refers throughout only to actions brought by an "individual," and defines individual as citizen of the United States or alien lawfully admitted for permanent residence, and thus such corporation lacked standing in action seeking to enjoin government from releasing investigative reports prepared by the National Institutes of Health. *Cell Associates, Inc. v. National Institutes of Health, Dept. of Health, Ed. and Welfare*, C.A.9 (Cal.) 1978, 579 F.2d 1155. Records 🔑 67

Privacy Act did not apply to release of information regarding deceased Army officer and, at least incidentally, his widow, as officer was dead, and as records released were contained with systems of records retrievable in name of deceased officer or by some identifying number, symbol or other identifying particular assigned to officer alone. *Crumpton v. U.S.*, D.D.C.1994, 843 F.Supp. 751, affirmed 59 F.3d 1400, 313 U.S.App.D.C. 412, certiorari denied 116 S.Ct. 1018, 516 U.S. 1147, 134 L.Ed.2d 98. Records 🔑 31


Corporation was not an individual protected by this section. *U.S. v. Haynes*, M.D.Tenn.1985, 620 F.Supp. 474. Records 🔑 31


Physicians who would be identified if Secretary of Health, Education and Welfare were to release in an individually identifying manner information concerning annual reimbursements to medicare providers had standing, as individuals, to challenge that disclosure under this section even though the materials related to their commercial interests. *Florida Medical Ass'n, Inc. v. Department of Health, Ed. & Welfare*, M.D.Fla.1979, 479 F.Supp.


1291. Records  35


This section does not grant protection to corporations; complaint in which corporation alleged that employees of the Securities Exchange Commission had violated this section did not state a claim upon which relief could be granted. *OKC Corp. v. Williams*, N.D.Tex.1978, 461 F.Supp. 540. Records  35

78. Records, definitions--Generally


For Privacy Act purposes, "record" includes as little as one descriptive item about an individual. *Williams v. Department of Veterans Affairs*, C.A.4 (Va.) 1997, 104 F.3d 670. Records  31

For purposes of Privacy Act's protection from disclosure, although qualifying "record" could consist of single piece of information, it could also consist of collection or grouping of pieces of information, so information could still be included within protected "record" if one piece of information were linked with identifying particular or was itself identifying particular and maintained within system of records. *Quinn v. Stone*, C.A.3 (Pa.) 1992, 978 F.2d 126, 121 A.L.R. Fed. 745, rehearing denied. Records  31


Matter disclosed by Central Intelligence Agency (CIA), that agency had discharged two contract employees for communicating with the media, was not a "record" pertaining to recently terminated contract employee and thus its disclosure did not give rise to Privacy Act liability, even if in context of other information available to the intelligence community, "decoding" of the alleged disclosure might have been possible to identify employee as one of those who had been terminated. *Leighton v. C.I.A.*, D.D.C.2006, 412 F.Supp.2d 30. Records  31


Term "record" as used in Privacy Act encompasses a broad array of information that can be maintained on "individuals" under various filing systems. *Shermco Industries, Inc. v. Secretary of U.S. Air Force*, N.D.Tex.1978, 452 F.Supp. 306, reversed on other grounds 613 F.2d 1314. Records  58


79. ---- Requester's records, definitions


Identities of Federal Bureau of Investigation (FBI) agents and personnel were not "about" requester and, thus, did not constitute requester's "record", so as to fall within scope of disclosure under the Privacy Act. *Haddon v. Freeh*, D.D.C.1998, 31 F.Supp.2d 16. Records  31


80. ---- Personal nature of information, records, definitions


Alleged disclosure of prescription list by supervisory personnel of Indian Health System (IHS) to Indian tribal council that subsequently passed resolution for removal of IHS employees from position for suspected prescription drug abuse did not violate the Privacy Act, even though prescription list contained information retrieved from system of records maintained by IHS; there was no evidence that IHS disclosed confidential information that related to employees because list only contained patient numbers, and council members were unable to obtain identities of persons whose prescription information they allegedly received. *Buckles v. Indian Health Service/Belcourt Service Unit*, D.N.D.2004, 310 F.Supp.2d 1060. Records  31


Information contained in list of patients who had been treated at Army medical center, which included name and address of each patient and name of treating physician, was "individually identifiable information" within meaning of Privacy Act, so that disclosure of information could potentially support criminal prosecution under Act. *U.S. v. Trabert*, D.Colo.1997, 978 F.Supp. 1368. Records  31


Database files maintained by National Institute of Health (NIH), indicating that data supporting conclusions in specified medical research articles was to be reanalyzed in light of scientific misconduct, were not “about” any of the authors listed, and thus could not qualify as “records” for purposes of one author’s action under the Privacy Act; fact that readers might have inferred the annotations were placed on the articles because one of the authors had been found guilty of scientific misconduct did not transform those articles into records within meaning of Act. *Fisher v. National Institutes of Health*, D.D.C.1996, 934 F.Supp. 464, affirmed 107 F.3d 922, 323 U.S.App.D.C. 289. Records  31


National Institute of Health (NIH) database files, indicating that data supporting specified medical research papers was to be reanalyzed in light of specific misconduct, were not “about” the author by virtue of fact they contained author’s name and address, and thus did not qualify on that basis as “records” within meaning of Privacy Act. *Fisher v. National Institutes of Health*, D.D.C.1996, 934 F.Supp. 464, affirmed 107 F.3d 922, 323 U.S.App.D.C. 289. Records  31

Information about individual agent retrieved from National Labor Relations Board’s (NLRB) computer system, which was created to track and monitor unfair labor practice and representation cases handled by NLRB, was not a “record” subject to Privacy Act as information was not “personal” information about agent and did not contain evaluations of job performance, even if information might be useful to supervisors in reviewing agent’s work. *Tobey v. N.L.R.B.*, D.D.C.1992, 807 F.Supp. 798, affirmed 40 F.3d 469, 309 U.S.App.D.C. 213. Records  31

Information that an unidentified doctor supported or failed to support an employee’s disability retirement application is an item of “information about an individual” which is covered by the Privacy Act. *Brooks v. Veterans Admin.*, D.Kan.1991, 773 F.Supp. 1483. Records  31

Statement in attorney’s affidavit submitted to Board of Professional Responsibility of Supreme Court of Tennessee in which affiant allegedly falsely represented that certain person’s name was not mentioned during proffer of proof by witness at United States Attorney’s office in which plaintiff was an assistant United States attorney was not personal information about plaintiff’s private affairs and was not “record” protected by the Privacy Act. *Windsor v. A Federal Executive Agency*, M.D.Tenn.1983, 614 F.Supp. 1255, affirmed 767 F.2d 923. Records  31


Under this section, distinction is not recognized between entrepreneurial and personal information. *Metadure Corp. v. U. S.*, S.D.N.Y.1980, 490 F.Supp. 1368. Records  31

Release of financial report by the Defense Finance and Accounting Service (DEFAS) to investigators was not a Privacy Act violation warranting suppression, because the information in question did not fall within Act’s definition of a “system of records”; spreadsheet in report listing travel payments and automated miscellaneous vouchers were not records “about” the accused since spreadsheet did not contain accused’s name or any identifying particular, and vouchers contained only the number of accused’s account at the Navy Federal Credit Union. *U.S. v. Negroncruz*, 63 M.J. 701 (N.M.Ct.Crim.App. 2005), review denied 63 M.J. 470. Military Justice  1044


81. ---- Addresses of employees, records, definitions


Addresses of agency employees sought by collective bargaining representative of the employees were “records” covered by broad terms of Privacy Act, and their disclosure would thus be prohibited by law unless Freedom of

Information Act (FOIA) required release. *U.S. Dept. of Defense v. Federal Labor Relations Authority*, U.S.1994, 114 S.Ct. 1006, 510 U.S. 487, 127 L.Ed.2d 325. Records  31


Privacy Act's protection from disclosure for "record" would not be limited to information directly reflecting characteristic or quality of individual so as to exclude protection for individual's out-of-date home address on hunting roster or time card showing hours worked on particular day. *Quinn v. Stone*, C.A.3 (Pa.) 1992, 978 F.2d 126, 121 A.L.R. Fed. 745, rehearing denied. Records  31


82. ---- Application records, definitions


Application records which were solicited by the United States Civil Service Commission in connection with application for position of administrative law judge, which applicant sought to amend, and which comprised "information about an individual that is maintained by an agency, including * * * his * * * employment history," fell within definition of "record." *White v. U. S. Civil Service Commission*, C.A.D.C.1978, 589 F.2d 713, 191 U.S.App.D.C. 190, certiorari denied 100 S.Ct. 58, 444 U.S. 830, 62 L.Ed.2d 39. Records  58

Social Security benefits application was a "record" for purposes of the Privacy Act. *Stokes v. Commissioner, Social Sec. Admin.*, D.Me.2003, 292 F.Supp.2d 178. Records  31

83. ---- Evaluations, records, definitions

Both original fitness report and supplemental report prepared by naval officer's reporting senior, which contained appraisal of officer's relative performance in a variety of categories during the covered period, as well as his recommendation regarding promotion, were judgments, for Privacy Act purposes. *Mueller v. Winter*, C.A.D.C.2007, 485 F.3d 1191. Records  31


Attorney alleged in complaint that Justice Department disclosed "record," as required to state claim under Privacy Act, when he stated that, through acts and omissions of attorney's former supervisor at Department within scope of her employment, Department wrongfully disclosed to unauthorized persons records concerning attorney subject to protection under Act, and that supervisor precipitated attorney's firing by private law firm after he left Department by "secretly" calling senior partner in firm and telling him that attorney's performance at Department had been deficient. *Krieger v. Fadely*, C.A.D.C.2000, 211 F.3d 134, 341 U.S.App.D.C. 163, on remand 199 F.R.D. 10. Records  31


Where applicant for government employment sought access to negative evaluations which resulted in rejection of his application, his request for disclosure under this section was for a "record" despite fact that he was willing to be satisfied with mere designation of agencies from which unfavorable evaluations came. *Mervin v. Bonfanti*, D.C.D.C.1976, 410 F.Supp. 1205. Records  60


84. ---- Letters, records, definitions


Letter written by member of watchdog organization to Drug Enforcement Agency (DEA) regarding drug trafficking in member's area was not contained within DEA's "system of records" under Privacy Act, and thus Act did not apply to limit DEA's disclosure of letter; DEA agent who received letter put it in his desk drawer with other assorted, unrelated documents excluded from the agency's formal files, and was not entered into a record-keeping system such that it could be retrieved by individual's name or other identifying symbol. *Bechhoefer v. U.S. Dept. of Justice*, C.A.2 (N.Y.) 2002, 312 F.3d 563, certiorari denied 123 S.Ct. 2621, 539 U.S. 944, 156


L.Ed.2d 630. Records  31


Letter written from member of land use groups to Drug Enforcement Agency (DEA) agent regarding alleged drug trafficking in the area was a “record” within meaning of Privacy Act; letter contained officer's name and several pieces of personal information about him, including his address, his telephone number, and his employment. *Bechhoefer v. U.S. Dept. of Justice D.E.A., C.A.2 (N.Y.) 2000, 209 F.3d 57, on remand 179 F.Supp.2d 93.* Records  31


Draft letters from psychiatrist to veteran and draft Report of Contact (ROC) were “records” for purposes of Privacy Act, as they contained information about veteran and his name or identifying number, and did more than merely apply to him. *Williams v. Department of Veterans Affairs, C.A.4 (Va.) 1997, 104 F.3d 670.* Records  31

Letter to government agency by employee of not-for-profit corporation engaged in business with the government was not a “record” afforded protection within meaning of the Privacy Act [5 U.S.C.A. § 552a(a)(4)], and thus letter's disclosure was not in violation of the statute, as the letter was not about employee but was about his employer, reflecting directly on performance by employer of its contract with the government, and only indirectly on any quality or characteristic possessed by employee. *Unt v. Aerospace Corp., C.A.9 (Cal.) 1985, 765 F.2d 1440.* Records  31

That letters sent by Federal Aviation Administration official, informing persons who allegedly had no official need for the information that an internal agency investigation indicated that plaintiff employee had improperly obtained access to files of Administration inspectors, were not themselves agency records did not, as a matter of law, bar claim by employee that actions of Administration officials violated this section's disclosure provisions. *Bartel v. F.A.A., C.A.D.C.1984, 725 F.2d 1403, 233 U.S.App.D.C. 297, on remand 617 F.Supp. 190.* Records  60

Letters to bank and to attorneys representing individual surety issuer and underwriter, related to Army's investigation of alleged surety fraud, were “about” the issuer and underwriter and, thus, were “records” under the Privacy Act; letters referenced surety and underwriter by name and divulged information that described their involvement in allegedly criminal or other unsavory activity. *Scarborough v. Harvey, D.D.C.2007, 2007 WL 1721962.* Records  31

Letters to bank and to attorneys representing individual surety issuer and underwriter, indicating that surety and underwriter were under investigation for alleged surety fraud and that each had prior convictions, were “about” the issuer and underwriter and, thus, were “records” under the Privacy Act, despite the fact that convictions described in letters were public information; letters referenced surety and underwriter by name and divulged information that described their alleged involvement in criminal or other unsavory activity. *Scarborough v. Harvey, D.D.C.2007, 2007 WL 1470694.* Records  31

Letters of Internal Revenue Service which, although headed by case captions bearing plaintiff's name, said nothing about nature of plaintiff's case, the status of his case, or even whether plaintiff's tax affairs were still of concern to government, considered in themselves provided no significant information whatsoever about plaintiff and thus were not within purview of this section. *Harper v. U.S., D.C.S.C.1976, 423 F.Supp. 192.* Torts  351

85. ---- Memoranda, records, definitions

Supervisors' memorandum reflecting employee's failure to follow chain of command in submitting memoranda and employee's relationship with management was a "record" within meaning of this section. *Boyd v. Secretary of the Navy*, C.A.11 (Fla.) 1983, 709 F.2d 684, certiorari denied 104 S.Ct. 709, 464 U.S. 1043, 79 L.Ed.2d 173. Records 🔑 31

86. ---- Private notes, records, definitions

Supervisor's private notes generally are not subject to requirements of Privacy Act, but can become subject to the Act if agency uses them to make decisions that concern person's employment status. *Johnston v. Horne*, C.A.9 (Wash.) 1989, 875 F.2d 1415. Records 🔑 31

Once private notes are used by agency to make decision concerning individual's employment status, notes become subject to provisions of Privacy Act. *Bowyer v. U.S. Dept. of Air Force*, C.A.7 (Ind.) 1986, 804 F.2d 428. Records 🔑 31

This section does not prohibit agency supervisor's taking and keeping private notes which may serve as valuable memory refreshers when supervisor is called upon periodically to evaluate employee's job performance and work attitude. *Chapman v. National Aeronautics and Space Admin.*, C.A.5 (Tex.) 1982, 682 F.2d 526. Records 🔑 31

Former financial manager for Navy submarine acquisition project was not entitled to release from Navy of "personal notes" made about him by co-workers for sole purpose of refreshing the writer's memory, which were maintained at co-workers' homes, in miscellaneous private files at work, or chronological logs or diaries, which were never circulated, and which were never under Navy control and could have been discarded at will in the writer's sole discretion, despite financial manager's assertion that the notes were utilized by his superiors in effecting his "de facto demotion." *Kalmin v. Department of Navy*, D.C.D.C.1985, 605 F.Supp. 1492. Records 🔑 54


Employee's securing, without authority, computer access to private notes that his supervisor intended to recommend that his superior include in supervisor's performance appraisal did not violate the Privacy Act, since private notes did not constitute a "record" within meaning of the Act, even though notes were in agency's data base and could be retrieved by personal identifier. *Thornhill v. Department of Army*, M.S.P.B.1991, 50 M.S.P.R. 480. Merit Systems Protection 🔑 161


87. ---- Remarks or opinions, records, definitions


Even if Federal Deposit Insurance Corporation liquidator made disparaging remarks about debtor's business judgment, such remarks would not constitute a violation of this section since the statements would not be "records" but only opinions. *Federal Deposit Ins. Corp. v. Dye*, C.A.5 (Ga.) 1981, 642 F.2d 833. Torts 🔑 351

Commanding officer of Naval enlisted man did not violate Privacy Act prohibition against disclosure of any record contained in system of records maintained by government by falsely stating that enlisted man had been separated from Navy on less than honorable terms, with a reduction in pay, when in fact he had received a general honorable discharge and had not been reduced in pay; false information did not constitute "record" within contemplation of Act. *Balbinot v. U.S.*, C.D.Ill.1994, 872 F.Supp. 546. Records 🔑 31


88. ---- Reports, records, definitions

Criminal Alert Notice (CAN) issued by Army Criminal Investigation Division (CID) and allegedly disseminated to individuals and organizations within and outside of the government, in connection with Army investigation into issuance of possibly fraudulent surety bonds to the United States government by various individuals and entities including plaintiffs, who were individual surety, underwriter, and purported guarantor of bonds, was "about" plaintiffs and, thus, was a "record" under the Privacy Act, regardless of whether information disclosed was entrepreneurial rather than personal in nature. *Scarborough v. Harvey*, D.D.C.2007, 2007 WL 1721962. Records  31


Criminal Alert Notice (CAN) issued by Army Criminal Investigation Division (CID) and allegedly disseminated to individuals and organizations within and outside of the government, warning of possible fraudulent activity by an individual surety and underwriter, was "about" the surety and underwriter and, thus, was a "record" under the Privacy Act, regardless of whether information disclosed was entrepreneurial rather than personal in nature; CAN implicated surety and underwriter by name in connection with an investigation into issuance of potentially fraudulent surety bonds, and described in detail business actions undertaken by surety and underwriter in connection with several individuals also under investigation. *Scarborough v. Harvey*, D.D.C.2007, 2007 WL 1470694. Records  31

Copy of psychiatrist's written report placed in the Department of Psychiatry and Neurology clinical files at an army medical center under plaintiff's name constituted a "record" within meaning of this section. *Olberding v. U.S. Dept. of Defense, Dept. of the Army*, S.D.Iowa 1982, 564 F.Supp. 907, affirmed 709 F.2d 621. Records  31


89. ---- Time sheets, records, definitions


Daily time sheet or sign-in/sign-out sheet used by government employees at space center to record their daily work hours as well as time they arrived at work or departed for lunch was not a "record" within Privacy Act and, hence, was not protected from disclosure or from practice of being left in open view. *American Federation of Government Emp. v. National Aeronautics and Space Administration*, S.D.Tex.1980, 482 F.Supp. 281. Records  31

90. ---- Videotapes, records, definitions


As long as videotape contained means of identifying individual by picture or voice, it fell within definition of "record" under this section barring maintenance of record of exercise of individual's First amendment rights. *Albright v. U. S.*, C.A.D.C.1980, 631 F.2d 915, 203 U.S.App.D.C. 333, on remand 558 F.Supp. 260. Records  13


91. ---- Miscellaneous records, definitions


Union grievance papers, specifically, Step 1 grievances, were no part of a record maintained by the United States Postal Service (USPS) and, therefore, disclosure of such records could not give rise to Privacy Act claim against the USPS. *Corey v. McNamara*, D.Nev.2006, 409 F.Supp.2d 1225. Records  31


Printouts of emails between supervisors for United States Postal Service regarding employee constituted "records," for purposes of Privacy Act, where emails identified employee by name and contained information about prospective investigation premised on intimation of fraud on his part. *Rivera v. Potter*, D.Puerto Rico 2005, 400 F.Supp.2d 404. Records  31

92. System of records, definitions--Generally


Agency should not be viewed as maintaining a "system of records" for Privacy Act purposes where information about individuals is only being gathered as administrative adjunct to a grant making program which focuses on businesses and where agency has presented evidence that it has no practice of retrieving information keyed to individuals. *Henke v. U.S. Dept. of Commerce*, C.A.D.C.1996, 83 F.3d 1453, 317 U.S.App.D.C. 405, on remand 1996 WL 684469. Records  31


Scientific misconduct investigatory files maintained by Office of Research Integrity (ORI) did not constitute a "system of records" within meaning of Privacy Act, so as to make nonconsensual public disclosures of information from those files pertaining to particular physician a violation of Act; there was no evidence that the files concerning scientific misconduct investigation of that physician were retrieved by his name at time of alleged disclosures, as required for such files to constitute a "system of records" within meaning of Act. *Fisher v. National Institutes of Health*, D.D.C.1996, 934 F.Supp. 464, affirmed 107 F.3d 922, 323 U.S.App.D.C. 289. Records  31

It is method of retrieval of records, rather than its substantive content, that controls determination of whether record is "maintained in a system of records" for purposes of Privacy Act. *Shannon v. General Elec. Co.*, N.D.N.Y.1993, 812 F.Supp. 308. Records  31


Where Department of Health, Education and Welfare official's "program file" relating to regional activities of Public Health Service in general and the official's "reading file" containing correspondence were not keyed for retrieval by name or name-related identifiers, information concerning former Public Health Service officer taken from such files was not in "system of records," for purposes of this section, and thus neither the Department nor the official were liable for disclosure of any record contained in "system of records" without prior written consent of individual to whom the record pertains. *Savarese v. U. S. Dept. of Health, Ed. and Welfare*, N.D.Ga.1979, 479 F.Supp. 304, affirmed 620 F.2d 298, certiorari denied 101 S.Ct. 858, 449 U.S. 1078, 66 L.Ed.2d 801. Records  30


93. ---- Indexing or retrieval of information, system of records, definitions


Documents generated by special undercover investigators assigned to special investigative project at Veterans Administration Medical Center were not indexed under any name, and were not therefore part of any "system of records" within meaning of Privacy Act, and thus, denial of access to documents did not violate Privacy Act. *Manuel v. Veterans Admin. Hosp.*, C.A.6 (Mich.) 1988, 857 F.2d 1112, certiorari denied 109 S.Ct. 1317, 489 U.S. 1055, 103 L.Ed.2d 586. Records  31


Supervisors' memorandum of meeting with employee was not in a system of records of government facility, and thus was not accessible by employee under this section, where memorandum was not keyed to employee's name or identifying number, which would subject it to purpose behind this section of protecting information from being gathered through computers or other sophisticated technological equipment, memorandum was kept within random type file and could be retrieved only by searching through file, and memorandum was not used in making any decisions concerning employee's employment status. *Boyd v. Secretary of the Navy*, C.A.11 (Fla.) 1983, 709 F.2d 684, certiorari denied 104 S.Ct. 709, 464 U.S. 1043, 79 L.Ed.2d 173. Records  31


Copies of audit reports prepared by the Inspector General (IG) concerning the activities of the Deputy Assistant Secretary (PDAS) for the Office of Congressional Affairs (OCA) in the Department of Veterans Affairs (VA),


which were retained in a safe in the Executive Secretariat office as extra copies, were not maintained in a "system of records" covered by the Privacy Act; records were just loose materials in the safe, and there was no agency practice of retrieving files from the safe. *McCready v. Nicholson*, D.D.C.2007, 509 F.Supp.2d 22. Records  31


Printouts of emails between supervisors for United States Postal Service containing information about prospective fraud investigation of employee were not part of any "system of records," and thus their disclosure to other postal workers did not violate Privacy Act, absent evidence indicating that emails were kept in any sort of filing system where they would be retrievable under employee's name, or that emails regarding individual employees were included in those employees' personnel files or other any other files specific to those employees. *Rivera v. Potter*, D.Puerto Rico 2005, 400 F.Supp.2d 404. Records  31

Fact that underlying documents, from which informational paper regarding ship accident involving commander in Navy was compiled, were within system of records containing commander's official military personnel file made disclosure of informational paper within meaning of Privacy Act, even though informational paper itself was not retrieved from a system of records. *Chang v. Department of Navy*, D.D.C.2004, 314 F.Supp.2d 35. Records  31


Federal employee did not show violation of Privacy Act arising when one of her supervisors allegedly ordered her to cancel all pending medical appointments and another supervisor placed her on administrative leave following surgery, absent evidence tending to show that supervisors must have culled "record" from "system of records." *Sullivan-Obst v. Powell*, D.D.C.2004, 300 F.Supp.2d 85. Records  31

Statements could not violate Privacy Act where information allegedly disclosed was not actually retrieved from system of records. *Abernethy v. I.R.S.*, N.D.Ga.1995, 909 F.Supp. 1562, affirmed 108 F.3d 343, rehearing and suggestion for rehearing en banc denied 116 F.3d 494. Records  31


Publication of letter containing reasons for public employee's discharge did not violate Privacy Act where, in system of records of Department of Education, letter was not retrievable by employee's name or personal identifier. *McGregor v. Greer*, D.D.C.1990, 748 F.Supp. 881. Records  58

Bank's former director and legal counsel was not entitled to disclosure of records under this section where information at issue was retrieved from Federal Deposit Insurance Corporation file bearing the bank's name by rummaging through such file and connecting dates and examiners' names given by the requester, decision to search in file of the particular bank was result of local examiner's personal recollection, and where there was no indication that the information was retrieved from a system of records keyed to requester's name or other personal identifier or that the information consisted of records contemplated by provision of this section which prohibits agencies from collecting records describing how an individual exercises his U.S.C.A. Const. Amend. rights. *Fagot v. Federal Deposit Ins. Corp.*, D.C.Puerto Rico 1984, 584 F.Supp. 1168. Records  31


94. ---- Background checks, system of records, definitions

Investigative background checks performed by Federal Bureau of Investigation (FBI) are a system of records governed by the Privacy Act. *Doe v. U.S. Dept. of Justice*, D.D.C.1992, 790 F.Supp. 17. Records  31


95. ---- CHIPS, system of records, definitions

National Labor Relations Board (NLRB) Case Handling Information Processing System (CHIPS) was not “system of records,” under Privacy Act notice of the existence and character of which had to be published in The Federal Register, as its files contained no information “about” individuals, but rather, contained information “about” NLRB cases. *Tobey v. N.L.R.B.*, C.A.D.C.1994, 40 F.3d 469, 309 U.S.App.D.C. 213. Records  31


96. ---- Clinical files, system of records, definitions


The Department of Psychiatry and Neurology clinical files at an army medical center constituted a “system of records” within meaning of this section. *Olberding v. U.S. Dept. of Defense, Dept. of the Army*, S.D.Iowa 1982, 564 F.Supp. 907, affirmed 709 F.2d 621. Records  31


97. ---- Website, system of records, definitions

Inspector General's internet website for Department of Veterans Affairs (VA) was not a “system of records” within the meaning of Privacy Act; the Inspector General's Office maintained and retrieved reports by the title of the report or the report number and did not retrieve records from its website by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual, even though the public could do so. *McCready v. Nicholson*, C.A.D.C.2006, 465 F.3d 1, 373 U.S.App.D.C. 236. Records  31


98. ---- Miscellaneous records, system of records, definitions


Agency's final response letter and summary report of investigation were not “records” contained within a “system of records” within meaning of the Privacy Act, where letter and report referred to individuals only by duty titles which were not “identifying particulars” because they did not pertain to one and only one individual. *Pierce v. Department of U.S. Air Force*, C.A.5 (Miss.) 2007, 512 F.3d 184. Records  31


Internal Revenue Service's computer database, known as “Automated Labor Employee Relations Tracking System” or “ALERTS” was not “system of records” and thus Privacy Act did not require that its name be published in the Federal Register; ALERTS contained limited subset of information authorized in two systems that were described in the Federal Register, the “Appeals, Grievance, and Complaint System” and the “General Personnel and Payroll System” and records abstracted from those two described systems and stored in ALERTS were not used for any purposes other than purposes, published in the Federal Register, for which those records were intended, and abstracted records could not be accessed via ALERTS by anyone not identified in the Federal Register as an authorized user of same records contained in two described systems. *Pippinger v. Rubin*, C.A.10 (Wyo.) 1997, 129 F.3d 519. Records  31


Further factual development on nature of Department of Veterans Affairs' (DVA's) system of records and storage and retrieval capabilities was required before court could determine whether draft letters from psychiatrist to patient and draft Report of Contact (ROC) were contained within a “system of records” for purposes of Privacy Act; veteran's claim that his records were retrieved by his name and personal identifier number were quite colorable. *Williams v. Department of Veterans Affairs*, C.A.4 (Va.) 1997, 104 F.3d 670. Records  31


Department of Commerce's advanced technology program (ATP) which gave technology grants to businesses did not maintain a “system of records” keyed to individuals listed in the contact person fields of its data bases and thus, ATP did not maintain a “system of records,” within meaning of the Privacy Act, with respect to company president who was listed as the contact person with respect to company's applications; ATP's purpose in re-

questing name of technical contact was essentially administrative and was not necessary for conduct of ATP's operations and there was no evidence that names of contact persons were used regularly or even frequently to obtain information about those persons. *Henke v. U.S. Dept. of Commerce*, C.A.D.C.1996, 83 F.3d 1453, 317 U.S.App.D.C. 405, on remand 1996 WL 684469. Records  31

In action by class of union officers and officials for alleged violations of this section with respect to transfer of certain records from Department of Labor to Justice Department and subsequent subpoena of these records by grand jury, no rights of plaintiffs were infringed when trial court conducted in camera inspection of records in question and determined that they were not kept within "system of records," with result that they were not protected by this section. *Hanley v. U. S. Dept. of Justice*, C.A.6 (Ohio) 1980, 623 F.2d 1138. Records  66

Report of investigation (ROI) maintained by the Army was not a record contained within a "system of records," as required to be subject to the Privacy Act section providing for a civil action when an agency makes a determination not to amend an individual's record in accordance with his request, or fails to make a review in conformity with the governing statutory provision; ROIs were maintained in an automated case management system that assigned a log number to each report, and they were not retrieved by name, Social Security number, or any other personal identifier. *Lee v. Geren*, D.D.C.2007, 2007 WL 935592. Records  31

Copies of audit reports prepared by the Inspector General (IG) concerning the activities of the Deputy Assistant Secretary (PDAS) for the Office of Congressional Affairs (OCA) in the Department of Veterans Affairs (VA), which were found in a folder in three boxes of papers left by the former director of employee relations, were not maintained in a "system of records" covered by the Privacy Act; file was contained within the reference and convenience papers used by the former director in working on the PDAS case, and there would have been no way to find the reports without knowing that the former director had worked on the case. *McCready v. Nicholson*, D.D.C.2007, 509 F.Supp.2d 22. Records  31

Federal employee failed to establish that information allegedly disclosed by employer regarding her mental health, contained in report related to internal investigation of supervisor, was contained in a record within a system of records, as required to support her claim alleging violation of the Privacy Act; investigation and report was about supervisor, not employee, and employee provided no evidence indicating that report could be retrieved using her name or identifying label. *Logan v. Department of Veterans Affairs*, D.D.C.2004, 357 F.Supp.2d 149. Records  31

III. CONDITIONS OF DISCLOSURE

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121. Consent of individual, conditions of disclosure--Generally

Veteran consented to release of information by Veterans Administration to congressmen when he solicited their assistance in dealing with the VA and he was thus estopped from objecting to the VA's release of the informa-

tion as violative of the Privacy Act. *Pellerin v. Veterans Admin. of U.S. Government*, C.A.11 (Fla.) 1986, 790 F.2d 1553. Records 🔑 31

Social Security claims representative's statement to benefits applicant, while the representative visited the applicant in his hospital room in the presence of a third party, that included reference to applicant's HIV status, was not a disclosure for which the Privacy Act required written consent, even though the third party overheard the statement, where applicant had affirmatively authorized the third party's presence during the representative's benefits interview of him. *Stokes v. Commissioner, Social Sec. Admin.*, D.Me.2003, 292 F.Supp.2d 178. Records 🔑 31

Applicant for federal firearms license did not consent to disclosure by the Bureau of Alcohol, Tobacco, and Firearms (ATF) to his condominium association that applicant had applied for federal license to sell firearms from his condominium residence, as would provide exception to Privacy Act's general prohibition against disclosure of federal agency records, where scope of consent on application was limited in that it only allowed ATF to examine and obtain copies of various records pertaining to applicant, and consent did not permit any prohibited disclosure. *Fattahi v. Bureau of Alcohol, Tobacco & Firearms*, E.D.Va.2002, 186 F.Supp.2d 656, reconsideration denied 195 F.Supp.2d 745, affirmed 328 F.3d 176. Records 🔑 31

Absent congressman's consent, this section precluded Federal Bureau of Investigation from granting plaintiff access to personnel file concerning the congressman whom plaintiff alleged was "pressured" into taking a public position supportive of government's conclusion in investigation of plaintiff's involvement in death of noted civil rights leader. *Ray v. U.S. Dept. of Justice*, D.C.D.C.1982, 558 F.Supp. 226, affirmed 720 F.2d 216, 232 U.S.App.D.C. 41. Records 🔑 58

Consent was required to compel disclosure by Social Security Administration of children's address to children's unmarried father, notwithstanding that, under Social Security Administration record-keeping system, information was in father's folder and retrievable by his social security number. *DePlanche v. Califano*, W.D.Mich.1982, 549 F.Supp. 685. Social Security And Public Welfare 🔑 124.25

Fact that job applicant did not actually know that military psychiatric records would be released, or that he could have withheld his consent to such release, was not dispositive of issue on nature of consent required for release of individual's psychiatric information under this section. *Doe v. General Services Admin.*, D.C.Md.1982, 544 F.Supp. 530. Records 🔑 31

Under this section, any disclosure of information covered by this section is prohibited unless authorized by prior written consent of individual whose information is disclosed or unless authorized by one or more of the specific exceptions. *Jackson v. Veterans Administration*, N.D.Ill.1980, 503 F.Supp. 653. Records 🔑 31

Absent written consent of individual, any disclosure of information covered by this section is prohibited, unless authorized by one or more of 11 specific exceptions. *Local 2047, Am. Federation of Government Emp. v. Defense General Supply Center*, E.D.Va.1976, 423 F.Supp. 481, affirmed 573 F.2d 184. Records 🔑 58

122. ---- Release form, consent of individual, conditions of disclosure

Written release signed by veteran, in connection with his application for employment, that broadly authorized employer to corroborate and secure information about veteran's background, without reference to particular time frame, supplied the requisite written consent under the Privacy Act to authorize disclosure of veteran's Veteran

Administration (VA) claims file by Department of Veterans Affairs (DVA) to employer to be used at union grievance proceeding, although the release was signed eight years before the disclosure. *Wiley v. Department of Veterans Affairs*, E.D.Mich.2001, 176 F.Supp.2d 747. Records 🔑 31

Under Privacy Act, government could not require employees to sign, as condition of employment, Authority for Release of Information contained in employee questionnaire; release form authorized collection of information which could not constitutionally be gathered, and release form specified neither purpose for redisclosure of that information, nor persons to whom disclosure may be made. *American Federation of Government Employees, R.R. Retirement Bd. Council, AFL-CIO v. U.S. R.R. Retirement Bd.*, N.D.Ill.1990, 742 F.Supp. 450. Records 🔑 31; *United States* 🔑 36

123. Sealing of records, conditions of disclosure

Factors militated in favor of release of sealed documents filed by Department of the Treasury, in compliance with order that Department inform Court of corrective actions taken in case involving destruction of government documents and concealment of that destruction; public had bona fide interest in having conduct of government agencies and officers revealed, need for openness so as to restore public confidence was strong in light of widespread reporting of events, six Department attorneys involved had consented or indicated no objection to disclosure despite fact that their professional reputations might be affected, and Department had already agreed to need for corrective measures and so would not be prejudiced by release. *Cobell v. Norton*, D.D.C.2001, 157 F.Supp.2d 82. Records 🔑 32

Board would not grant appellant's request in involuntary resignation case to seal her medical records, as sealing the records would not provide the appellant with any additional privacy protection; such records were exempt from disclosure under the Freedom of Information Act (FOIA), and pursuant to the Privacy Act, could not be disclosed by the Board without the appellant's express written consent. *Nefcy v. E.P.A.*, M.S.P.B.2003, 94 M.S.P.R. 435. Merit Systems Protection 🔑 435

124. System of records, conditions of disclosure

Former Peace Corps volunteer who resigned prior to any official decision to administratively separate him from the Peace Corps was not entitled to disclosure of a draft of the administrative separation report under the Privacy Act; the report was not maintained or required to be maintained under an agency's system of records, as the Peace Corps regulations dictated that such reports should not be maintained as part of the Peace Corps records if the volunteer resigned prior to decision of administrative separation, report was not placed in the Peace Corps system of records, and since report was predecisional, it had no official existence. *Horowitz v. Peace Corps*, C.A.D.C.2005, 428 F.3d 271, 368 U.S.App.D.C. 192, certiorari denied 126 S.Ct. 1627, 164 L.Ed.2d 335. Records 🔑 54

Federal Reserve Bank records maintained under names of regulated banks were not maintained in system of records retrievable by bank owner's name, and thus were not accessible by owner under Privacy Act. *Betterworth v. F.D.I.C.*, C.A.5 (Tex.) 2001, 248 F.3d 386, rehearing denied, certiorari denied 122 S.Ct. 547, 534 U.S. 1021, 151 L.Ed.2d 424. Records 🔑 31

Government agency's alleged disclosure of information concerning employee did not violate Privacy Act, absent allegation that any of the information disclosed came from a "system of records." *Beaulieu v. U.S. I.R.S.*, C.A.1 (Mass.) 1989, 865 F.2d 1351. Records 🔑 31

Physician's disclosure that Department of Veterans Affairs (VA) employee was HIV-positive and used marijuana for medical purposes was not actionable under Privacy Act since physician obtained medical information directly from employee, not from record within system of VA records; physician could have disclosed employee's extraordinarily private information to anyone and everyone without violating Privacy Act. *Doe v. Department of Veterans Affairs of U.S.*, D.Minn.2007, 474 F.Supp.2d 1100. Records 🔑 31

Privacy Act did not apply to Air Force Reserve retiree's request to Air Force seeking documents related to retiree's highest grade for retirement, and thus request was processible via Freedom of Information Act (FOIA) instead; although some relevant documents contained identifiers such as Social Security number, documents were not readily retrievable by such identifiers, and therefore were not contained in "system of records." *Brannum v. Dominguez*, D.D.C.2005, 377 F.Supp.2d 75. Records 🔑 62

Privacy Act did not apply to Air Force Reserve retiree's request to Air Force seeking documents related to retiree's highest grade for retirement, and thus request was processible via Freedom of Information Act (FOIA) instead; although some relevant documents contained identifiers such as Social Security number, documents were not readily retrievable by such identifiers, and therefore were not contained in "system of records." *Brannum v. Dominguez*, D.D.C.2005, 377 F.Supp.2d 75. Records 🔑 62

Informational paper regarding ship accident involving commander in Navy was not retrieved from a system of records by reference to commander's name, as required to support commander's allegation that Navy violated the Privacy Act by releasing information, where paper was retrieved by reference to ship's name. *Chang v. Department of Navy*, D.D.C.2004, 314 F.Supp.2d 35. Records 🔑 31

Privacy Act prohibition, on public disclosure of records contain in system of records, did not apply to final audit report on management performance of Principal Deputy Assistant Secretary (PDAS) of Veterans' Administration (VA), as report was not so contained, and in any event public's interest in knowing about performance of leading government executives outweighed PDAS' privacy interest. *McCready v. Principi*, D.D.C.2003, 297 F.Supp.2d 178, affirmed in part, reversed in part and remanded 465 F.3d 1, 373 U.S.App.D.C. 236. Records 🔑 31

Letter written by member of land use groups to Drug Enforcement Agency (DEA) regarding drug trafficking in area was not contained within DEA's "system of records" under Privacy Act, and thus Act did not apply to limit DEA's disclosure of letter; DEA agent who received letter put it in his desk drawer with other assorted, unrelated documents, and neither he nor anyone else in his office either opened or created file concerning land use groups' member's communication with DEA to make it a part of either DEA's formal or informal recordkeeping system such that it could be retrieved in a system keyed to individual's name or other particulars. *Bechhoefer v. U.S. Dept. of Justice*, W.D.N.Y.2001, 179 F.Supp.2d 93, affirmed 312 F.3d 563, certiorari denied 123 S.Ct. 2621, 539 U.S. 944, 156 L.Ed.2d 630. Records 🔑 31

Internal memorandum from special counsel for the Social Security Administration regarding whether irregularities in administrative law judge's travel voucher warranted filing disciplinary charges with Merit Systems Protection Board was not maintained within system of records within meaning of Privacy Act, so as to require its production. *Quinn v. Department of Health and Human Services*, W.D.N.Y.1993, 838 F.Supp. 70. Records 🔑 31

Information that federal employee had previously been placed on personal improvement plan by another agency was not encompassed by Privacy Act's prohibition against disclosure; information was not contained within system of records at employee's current agency and was not retrievable by employee's name. *Gibbs v. Brady*, D.D.C.1991, 773 F.Supp. 454. Records 🔑 31

Petition which was circulated by and among plaintiff's coworkers at an air force base maintained by the defendant and which purportedly claimed that plaintiff was responsible for a "no reading" policy in the data automation division was not maintained in a "system of records" and, hence was not violative of the Privacy Act when turned over to a third party in absence of evidence that the defendant officially authorized or participated in any manner in originating and circulating the petition or evidence that the petition was placed in plaintiff's personnel file or the separate personnel file maintained by the controller on all the employees or included in any pay records or any other records maintained by the defendant. *Johnson v. U. S. Dept. of Air Force*, W.D.Okla.1980, 526 F.Supp. 679, affirmed 703 F.2d 583. Records 🔑 31

Agency's defense that Privacy Act prohibited its disclosure of inmate medical records was not established, where agency failed to prove that records were kept within a "system of records," and it offered nothing more in support of its resistance to discovery than conclusory assertion that Privacy Act prohibited their production. *Eaks v. Department of Justice*, M.S.P.B.1983, 18 M.S.P.R. 328. Merit Systems Protection 🔑 452

125. Independent source of information, conditions of disclosure

Disclosures by agent of Bureau of Alcohol, Tobacco, and Firearms (ATF) regarding another agent's alleged association with motorcycle gang did not violate the Privacy Act, where it was undisputed that the information came from outside the ATF, not from records maintained by ATF. *Hoffman v. Rubin*, C.A.8 (Minn.) 1999, 193 F.3d 959. Records 🔑 31

Information which does not originate from federal agency records enjoys no protection under this section. *Winters v. Board of County Com'rs*, C.A.10 (Okla.) 1993, 4 F.3d 848, certiorari denied 114 S.Ct. 1539, 511 U.S. 1031, 128 L.Ed.2d 192. Records 🔑 58

Since this section expressly contemplates a "system of records" as the direct or indirect source of the information disclosed, the disclosure of information derived solely from independent sources is not prohibited by this section even though identical information may be contained in an agency system of records. *Thomas v. U.S. Dept. of Energy*, C.A.10 (N.M.) 1983, 719 F.2d 342. Records 🔑 31

"System of records" from which sovereign immunity was removed by Privacy Act, included group of records from which information was retrieved by name of individual, only when retrieval is made by government. *McCready v. Principi*, D.D.C.2003, 297 F.Supp.2d 178, affirmed in part, reversed in part and remanded 465 F.3d 1, 373 U.S.App.D.C. 236. Records 🔑 31

Disclosures of which former serviceman complained were not made as a result of any retrieval of disclosed information from copy of psychiatrist's report of mental status evaluation relating to examination of serviceman and were not prohibited by this section but, rather, disclosures all flowed from order of serviceman's superior to the serviceman to report to headquarters with his medical records and from superior's knowledge of psychiatric examination, which he ordered, and his knowledge of the results, which he obtained directly from psychiatrist with serviceman's consent, and neither the superior nor any other officer of the Army retrieved from medical center files psychiatric examination record or any information from that record. *Olberding v. U.S. Dept. of Defense*, Dept. of the Army, S.D.Iowa 1982, 564 F.Supp. 907, affirmed 709 F.2d 621. Records 🔑 31

Privacy Act did not cover records within possession or custody of individual party, even if government agency housed copies of same material. *Lohrenz v. Donnelly*, D.D.C.1999, 187 F.R.D. 1. Records 🔑 31

126. Request by individual, conditions of disclosure

Former Air Force member failed to state Privacy Act claim against Secretary of Air Force, seeking records relating to a form former member believed was titled "Volunteer for Duty Above and Beyond the Call of Duty"; former member failed to adequately describe the document for purposes of FOIA request, and Privacy Act had an even higher standard for specificity of description. *Nurse v. Secretary of Air Force*, D.D.C.2002, 231 F.Supp.2d 323. Records 🔑 31

Absent request by discharged probationary employee for disclosure of his file or written consent by the employee to disclosure of his file to union, union president was not entitled to obtain documents allegedly used by government agency to support the discharge of the employee and further judicial inquiry into the agency's compliance with a prior stipulation assertedly encompassing such disclosure or with this section was not warranted. *Abramsky v. U. S. Consumer Products Safety Commission*, S.D.N.Y.1979, 478 F.Supp. 1040. Records 🔑 30

127. Intra-agency disclosures, conditions of disclosure

IRS did not violate Privacy Act's disclosure requirements, where agency's alleged disclosures were only to other criminal investigation units within IRS itself. *Clarkson v. I.R.S.*, C.A.11 (Ga.) 1987, 811 F.2d 1396, certiorari denied 107 S.Ct. 1961, 481 U.S. 1031, 95 L.Ed.2d 533. Records 🔑 31

Communications between the Naval Investigative Service of the Department of the Navy and the Defense Logistics Agency over an incident in which marijuana was found in Defense Logistics Agency employee's jacket were between components of the same agency, the Department of Defense, and thus did not violate the Privacy Act and DLA regulations prohibiting unauthorized disclosure of personnel records to the public or another agency. *Williams v. Reilly*, S.D.N.Y.1990, 743 F.Supp. 168. Records 🔑 31

128. Disclosures within this section, conditions of disclosure--Generally

Single publication rule applied under Privacy Act to general Internet publications, since application of rule was not inconsistent with Privacy Act's strictures, and application of rule would focus Privacy Act claims against a defendant, thereby economizing judicial resources while preserving plaintiff's ability to bring claims. *Oja v. U.S. Army Corps of Engineers*, C.A.9 (Or.) 2006, 440 F.3d 1122. Limitation Of Actions 🔑 58(1)

Out-of-date home address and time card information regarding hours worked on particular date were "disclosed" for Privacy Act purposes when that information was provided to investigators checking into potential deer hunting violation, despite argument that address information had previously been disclosed by hunter to Pennsylvania Game Commission. *Quinn v. Stone*, C.A.3 (Pa.) 1992, 978 F.2d 126, 121 A.L.R. Fed. 745, rehearing denied. Records 🔑 31

Army's tender of information, concerning amount of child support allotment made from soldier's pay, to designated recipient of those deductions for use in pending litigation concerning past-due child support, did not violate the Privacy Act. *Hollis v. U.S. Dept. of Army*, C.A.D.C.1988, 856 F.2d 1541, 272 U.S.App.D.C. 379. Records 🔑 31

🔑 31

Veterans' Administration (VA) did not violate Privacy Act by posting on Electronic Data Management System (EDMS) reference to confidential memorandum critical of performance of Principal Deputy Assistant Secretary (PDAS), when memorandum was not scanned into EDMS, and reference was limited to statement that "sensitive" memo regarding PDAS was hand carried to VA Secretary. *McCready v. Principi*, D.D.C.2003, 297 F.Supp.2d 178, affirmed in part, reversed in part and remanded 465 F.3d 1, 373 U.S.App.D.C. 236. Records 🔑 31

United States Postal Service employee's disclosure to job applicant's employer that applicant had applied for employment with Postal Service was "disclosure" of record for purposes of Privacy Act, despite Postal Service's contention that employee merely disclosed existence of employment application record without disclosing any information in record; applicant's name was part of information contained on record, and Postal Service employee disclosed that particular applicant by that name had applied for employment. *Sullivan v. U.S. Postal Service*, W.D.N.Y.1996, 944 F.Supp. 191. Records 🔑 31

129. --- Independent knowledge of information disclosed, disclosures within this section, conditions of disclosure

"Disclose" in statute, which states that no agency shall disclose any record contained in Privacy Act system was intended by Congress to apply in virtually all instances to agency's unauthorized transmission of protected record, regardless of recipient's prior familiarity with it. *Pilon v. U.S. Dept. of Justice*, C.A.D.C.1996, 73 F.3d 1111, 315 U.S.App.D.C. 329. Records 🔑 31

Administrative law judge violated Privacy Act by including in opinion reference to discipline which had been imposed upon attorney while he was employed by the agency, even though administrative law judge was not required to retrieve that information from the attorney's personnel file as the administrative law judge had personal knowledge of the matter. *Wilborn v. Department of Health and Human Services*, C.A.9 (Or.) 1995, 49 F.3d 597. Records 🔑 31

Department of Health and Human Services did not violate Privacy Act by releasing to state Board of Medical Examiners information from employee's file or records requested by Board in connection with employee's application for licensure; Board had prior knowledge of information contained in documents, as employee had referred to information in her application. *Kline v. Department of Health & Human Services*, C.A.10 (Okla.) 1991, 927 F.2d 522. Records 🔑 31

Disclosure by Department of Energy employee's supervisor to coemployees that plaintiff employee had been sent for psychiatric evaluation and probably would not return did not violate this section where such information was derived from supervisor's independent knowledge and not from agency system of records, regardless whether such records existed and, if so, whether supervisor knew of existence thereof. *Thomas v. U.S. Dept. of Energy*, C.A.10 (N.M.) 1983, 719 F.2d 342. Records 🔑 31

Army officers' disclosures that a commissioned officer had undergone psychiatric examination did not violate this section where the disclosures of information arose from the personal knowledge of an individual, and not from retrieval of information from the examining psychiatrist's report. *Olberding v. U.S. Dept. of Defense, Dept. of Army*, C.A.8 (Iowa) 1983, 709 F.2d 621. Records 🔑 31

Provisions of this section did not apply to information conveyed during conversation between Chief Benefits Director of Veterans' Administration and congressional staff member pertaining to former counseling psychologist who was accused of making sexual advances toward female beneficiaries where those remarks were based upon independent knowledge, not from examination of counselor's records kept by the Veterans' Administration. *Doyle v. Behan*, C.A.5 (Tex.) 1982, 670 F.2d 535. Records 🔑 54

Dental hygienist's alleged disclosure of federal prisoner's medical records to another inmate did not violate Privacy Act, even if hygienist flagrantly disregarded prisoner's rights, absent showing that prisoner's maltreatment by prison staff and inmates was result of disclosure; other inmate testified that he did not decipher anything on chart and did not know about prisoner's HIV status until he was told about it during his deposition, and prisoner testified that other inmates knew about his HIV status and that his condition could have been deduced by anyone who saw his medications, which he did not conceal. *Clark v. Bureau of Prisons*, D.D.C.2005, 407 F.Supp.2d 127. Records 🔑 31

Office of the Inspector General for the Department of Justice (OIG-DOJ) did not "disclose" report critical of former government employee, within meaning of Privacy Act, by posting the report on the OIG's Internet web site, where the report had already been fully released to the media and discussed in a Congressional hearing, though some Internet users might encounter the report for the first time on the OIG web site. *Barry v. U.S. Department of Justice*, D.D.C.1999, 63 F.Supp.2d 25. Records 🔑 31

In view of fact that person to whom disclosure of Veterans Administration records was made had knowledge of the nature of the individual's medical problems prior to her discussion with Veterans Administration employ, any discussion of the medical problems would not qualify as a "disclosure" under the Privacy Act. *Brooks v. Veterans Admin.*, D.Kan.1991, 773 F.Supp. 1483. Records 🔑 31

There is no section of Privacy Act which prohibits providing to third party, without prior consent of subject information which federal officer has acquired from personal observation or knowledge obtained from sources other than record within meaning of Act. *Stephens v. Tennessee Valley Authority*, E.D.Tenn.1990, 754 F.Supp. 579. Records 🔑 31

There was "disclosure" within Privacy Act of personnel security questionnaires completed by employees of Department of Energy contractor when DOE inspector general provided those reports to Department of Justice in connection with investigation into whether some of the employees have been filing false claims for subsistence payments, even though it was alleged that the information of interest in the questionnaires could have been discovered from other sources. *Covert v. Herrington*, E.D.Wash.1987, 667 F.Supp. 730, affirmed 876 F.2d 751. Records 🔑 31

Agency official's disclosures to his wife, friends, and staff concerning alleged employment problems of agency employee, who was within same circle of friends as official, did not violate Privacy Act, as official had not used government information-collecting methods to gain personal information, but had based his statements on independent recollections and personal opinion, and statements to staff were necessary to enable them to assist employee; declining to follow *Bartel v. Federal Aviation Administration*, 725 F.2d 1403 (D.C.Cir.). *Krowitz v. Department of Agriculture*, U.S. Forest Service, W.D.Mich.1986, 641 F.Supp. 1536, affirmed 826 F.2d 1063, certiorari denied 108 S.Ct. 705, 484 U.S. 1009, 98 L.Ed.2d 656. Records 🔑 31

Where investigation of Veterans Administration employee would have taken place on basis of report that employee had been arrested for federal offense in the past regardless of FBI rap sheet, which contained technically

erroneous information and which should not have been requested without employee's consent, and where waiver was signed by employee, a college graduate with numerous years of administrative experience, allowing access to drug enforcement files, investigation of employee did not violate his privacy rights on theories that "rap sheet" was critical catalyst to investigation or that waiver was invalid. *Thomas v. Veterans Administration*, D.C.Conn.1979, 467 F.Supp. 458. Constitutional Law 🔑 1253

Where it was reasonable to believe that any disclosures arguably implicit in letters mailed by Internal Revenue Service were already well known to recipients, the imparting of such information could not constitute a "disclosure" within meaning of this section. *Harper v. U. S.*, D.C.S.C.1976, 423 F.Supp. 192. Torts 🔑 351

Under this section, common sense requires that term "disclosure" be taken to denote the imparting of information which in itself has meaning and which was previously unknown to the person to whom it is imparted. *Harper v. U. S.*, D.C.S.C.1976, 423 F.Supp. 192. Torts 🔑 350

130. ---- Public nature of information, disclosures within this section, conditions of disclosure

Advertisements of Federal Deposit Insurance Corporation of foreclosure sales not only in the county where the property was located as was required under Ga. Code § 67-1506 but also in an adjoining more populous county, where debtor principally practiced law, did not constitute violation of this section as respects the debtor, as the information in the extra advertisements was public. *Federal Deposit Ins. Corp. v. Dye*, C.A.5 (Ga.) 1981, 642 F.2d 833. Torts 🔑 357

"Disclosure" to personnel of naval command of result of nonjudicial proceedings under section 815 of Title 10 that were open to them, and in that sense public, was not such a disclosure as this section forbids. *Ash v. U. S.*, C.A.5 (Fla.) 1979, 608 F.2d 178, certiorari denied 100 S.Ct. 1655, 445 U.S. 965, 64 L.Ed.2d 241. Records 🔑 31

Information from Federal Bureau of Investigation (FBI) agent's personnel records was in public domain, and thus was not protected from disclosure under Privacy Act, where agent himself revealed information to public through press conferences, his own website, and in publicly filed lawsuit. *Wright v. F.B.I.*, C.D.Cal.2005, 385 F.Supp.2d 1038. Records 🔑 31


Information regarding litigant's involvement in Internal Affairs investigations was already in the public domain, and, thus, information was not protected from disclosure under the Privacy Act; litigant himself disclosed the information through press conferences or on his own website, and as a result of a publicly filed lawsuit. *Wright v. F.B.I.*, C.D.Cal.2005, 381 F.Supp.2d 1114, review denied 385 F.Supp.2d 1038. Records 🔑 31


Issue of whether information disclosed by Department of Justice personnel was already public such that disclosure could not violate Privacy Act was a factual one specifically disputed between parties and therefore inappropriate for summary judgment. *Pilon v. U.S. Dept. of Justice*, D.D.C.1992, 796 F.Supp. 7. Federal Civil Procedure 🔑 2509.8

Where information disclosed was publicly known prior to publication, there was no wrongful disclosure in violation of this section. *King v. Califano*, D.C.D.C.1979, 471 F.Supp. 180. Records 🔑 35


131. Means of communication, conditions of disclosure

Privacy Act was not violated by verbal information communicated by employees of Department of Health and


Human Services regarding fellow employee who was applying for licensure by state medical board; information in question had been derived from independent knowledge and not from agency system of records, and was thus not covered by the Act. *Kline v. Department of Health & Human Services*, C.A.10 (Okla.) 1991, 927 F.2d 522. Records  31


One may disclose a record within the meaning of this section by oral communication. *Olberding v. U.S. Dept. of Defense, Dept. of the Army*, S.D.Iowa 1982, 564 F.Supp. 907, affirmed 709 F.2d 621. Records  31


132. Exceptions to prohibition of disclosure generally, conditions of disclosure



Air Force did not violate Privacy Act when, in military officer's action against Air Force under Right to Financial Privacy Act (RFPA), it disclosed in public pleadings information regarding Air Force investigation of military officer's alleged misuse of funds; whether officer had been investigated for embezzlement and whether investigation caused hold to be placed on early retirement application was relevant to action, and officer "opened the door" to discussion involving investigation. *Russell v. U.S. General Services Admin.*, D.Colo.1996, 935 F.Supp. 1142. Records  31

133. Need for record, conditions of disclosure


Internal Revenue Service district director's staff members needed to know information in employee's files, including employee's name, pertaining to employee's romantic relationship with subordinate and employee's subsequent allegedly misleading statements pertaining thereto, and thus director's disclosure of that information fell within "need to know" exception to Privacy Act's general prohibition against disclosing record without request or consent of individual to whom record pertains; staff members' jobs included helping director decide whether and how to discipline employee, knowledge of employee's identity allowed staff members to put investigation in context, and might potentially have enabled them to connect information about employee's misconduct with other data already know to them. *Pippinger v. Rubin*, C.A.10 (Wyo.) 1997, 129 F.3d 519. Records  31


Postal Service agents and employees with responsibility for making employment and/or disciplinary decisions regarding employee had a need to know about employee's medical records given questions surrounding employee's mental stability; therefore, disclosure of medical records to those agents and employees was not a violation of Privacy Act. *Mount v. U.S. Postal Service*, C.A.6 (Ky.) 1996, 79 F.3d 531. Records  31


Disclosure of contents of letter suspending anesthesiologist's clinical privileges to committee members and witnesses at peer review proceeding did not violate anesthesiologist's rights under Privacy Act, even if letter was "record" maintained within "system of records." *Daly-Murphy v. Winston*, C.A.9 (Cal.) 1987, 837 F.2d 348. Records  31


Disclosure of employee's personnel records to agency attorney and personnel specialist who were gathering information concerning discrimination complaint that had been filed against agency by employee came within "need" exception to the Privacy Act [5 U.S.C.A. § 552a(b)(1)], since attorney and personnel specialist were appropriate persons to gather information concerning such complaint and head of agency directed them to do so, and thus, they had a need for the records in performing their duties. *Howard v. Marsh*, C.A.8 (Mo.) 1986, 785 F.2d 645, certiorari denied 107 S.Ct. 581, 479 U.S. 988, 93 L.Ed.2d 584, on remand 654 F.Supp. 853. Records  31; Records  58


Any disclosure by the Army of Equal Employment Opportunity files concerning Army civilian employee was


not improper, where disclosure was to personnel advisers for review and analysis to determine whether any personnel action should be taken against plaintiff based on his statements and actions, allegedly contained in his Equal Employment Opportunity files. *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402. Records  31

Where during routine investigation to upgrade security clearance of Navy enlistee it was discovered that he had contacts with homosexual groups following enlistment, which information was forwarded to Naval Investigative Service, disclosure of such information by Service to commanding officer of the installation was proper and did not violate subsec. (b) of this section; likewise, there was no violation of the requirement of subsec. (e) of this section that an agency inform the individual who provided information of the principal purposes for which such information is intended to be used and routine uses thereof, although such information was used in subsequent discharge proceedings. *Beller v. Middendorf*, C.A.9 (Cal.) 1980, 632 F.2d 788, rehearing denied 647 F.2d 80, certiorari denied 101 S.Ct. 3030, 452 U.S. 905, 69 L.Ed.2d 405, certiorari denied 102 S.Ct. 304, 454 U.S. 855, 70 L.Ed.2d 150, rehearing denied 102 S.Ct. 621, 454 U.S. 1069, 70 L.Ed.2d 605. Records  31



Subsec. (b)(1) of this section prohibiting disclosure of agency records except on request of individual to whom record pertains or with his prior consent unless disclosure of record is to officers and employees of agency which maintains record who have need for record in performance of their duties was designed to halt internal blacklisting of persons who do not comply with organizational norms and standards such as participation in savings bond drives or charity campaigns and listing of results of employee tests or performances. *Parks v. U. S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677. Records  31


Conduct by Office of Inspector General (OIG) of Department of Justice (DOJ) in disclosing its draft report regarding Federal Bureau of Investigation (FBI) employee's retaliation and reprisal complaints without her consent did not violate Privacy Act; such disclosure was subject to Act's intra-agency need-to-know exception, as employee complained first to FBI, which referred complaints to OIG for its analysis. *Roberts v. U.S. Dept. of Justice*, D.D.C.2005, 366 F.Supp.2d 13. Records  31


Indian Health Service (IHS) employees' intraagency disclosure of incomplete Patient Care Components to member of IHS's risk management team, out of concern that patients were receiving pain relief prescriptions without adequate documentation, came within exception to Privacy Act for disclosures to officers and employees who needed disclosed records for performance of their duties. *Buckles v. Indian Health Service*, D.N.D.2004, 305 F.Supp.2d 1108. Records  31


Pro bono counsel was entitled to retain files given to it by class counsel in violation of Privacy Act protective order in action alleging that United States Department of Agriculture (USDA) systematically discriminated against African-American farmers on basis of their race in administration of credit and benefit programs, so long as all persons provided access to files complied with requirements of protective order; pro bono counsel were solicited by class counsel and by court to assist class counsel in representing claimants, and denying pro bono counsel access to files would have placed those black farmers currently represented by pro bono counsel but previously represented by class counsel at distinct disadvantage. *Pigford v. Veneman*, D.D.C.2002, 182 F.Supp.2d 53. Records  31


Inmate seeking to enjoin Department of Justice and Drug Enforcement Administration from disseminating information regarding his arrest, amount of drugs, and laboratory reports, failed to state claim under the catch-all provision of Privacy Act; the Act specifically excepted from its coverage disclosure to "officers and employees


of the agency which maintains the record who have a need for the record in the performance of their duties” and other law enforcement agencies, and Act did not allow a private cause of action for injunctive relief. *Gomez-Cavazos v. U.S. Dept. of Justice*, E.D.Tex.1999, 75 F.Supp.2d 587. Action  3; Records  31

Disclosure of Postal Service employee's medical report following previous fit for duty examination to Postmaster of Post Office where employee worked and to Postmaster's supervisor did not violate the Privacy Act which allows disclosure “to those officers and employees of the agency * * * who have a need for the record in the performance of their duties”; Postmaster needed report to determine whether employee could perform essential functions of his job, and if he could not, what reasonable accommodations could be made; supervisor was approving official on decision and, as such, needed the information to review Postmaster's decision. *Magee v. U.S. Postal Service*, W.D.La.1995, 903 F.Supp. 1022, affirmed 79 F.3d 1145. Records  31




Privacy Act did not prohibit United States Postal Service (USPS) Labor Relations from disclosing settlement agreement between Postal Service employee and USPS to Postal Inspection Service, since persons within Inspection Service were conducting investigation and thus had need for records in performance of their duties; employee wrote to congressman regarding his Privacy Act concerns, congressman requested investigation, and, in response, Inspection Service sought information on employee's employment with Postal Service, including settlement agreement that in part settled prior Privacy Act complaints by employee. *Harry v. U.S. Postal Service*, M.D.Pa.1994, 867 F.Supp. 1199, affirmed 60 F.3d 815. Records  31

“Need to know” exception of Privacy Act did not authorize Department of Energy's Inspector General to disclose information in contractor's employees' personnel security files to Department of Justice; statute allows disclosure to officers “of the agency which maintains the record,” not to other agencies. *Covert v. Herrington*, E.D.Wash.1987, 663 F.Supp. 577. Records  31

Disclosure of talking paper, which was a chronology of former officer's attempts to have his officer effectiveness reports voided and to get promoted to major, without his prior written consent did not violate the Privacy Act [5 U.S.C.A. § 552a(b)(1)] since inspector general was officer employee of agency that maintained records, and inspector general had need for talking paper in order to adequately perform his duties by responding to former officer's action request challenging propriety of staff advisories. *Marcotte v. Secretary of Defense*, D.C.Kan.1985, 618 F.Supp. 756. Records  31

Agency failed to prove charge of unauthorized disclosure of confidential information in violation of the Privacy Act and implementing regulation; supervisor's disclosure of confidential information concerning subordinates to Equal Employment Opportunity (EEO) counselor fell within an exception to the non-disclosure provisions of the Privacy Act, and agency did not show that the disclosure was from a “system of records.” *Gill v. Department of Defense*, M.S.P.B.2002, 92 M.S.P.R. 23. Merit Systems Protection  161

134. Freedom of Information Act requirements, conditions of disclosure

Disclosure to collective bargaining representative for agency employees of employees' home addresses would be unwarranted invasion of employees' privacy so that addresses were within exemption from Freedom of Information Act (FOIA) and thus protected by Privacy Act, and federal service labor-management relations statute did not entitle union to the addresses. *U.S. Dept. of Defense v. Federal Labor Relations Authority*, U.S.1994, 114 S.Ct. 1006, 510 U.S. 487, 127 L.Ed.2d 325. Labor And Employment  1118; Records  31; Records  58

Privacy Act excepts from its prohibition against disclosure personal information which must be made available under Freedom of Information Act (FOIA) and routine use of information, and, thus, whether federal agency must disclose names and home addresses of its employees to employees' union requires determination of whether such information would have to be disclosed under FOIA. *Federal Labor Relations Authority v. U.S. Dept. of Veterans Affairs*, C.A.2 1992, 958 F.2d 503. Records 🔑 31

Privacy Act prohibited disclosure to federal employees' labor union of names and addresses of federal employees; employees' privacy interest outweighed public interest in advancing collective bargaining process by compelling such disclosure. *Federal Labor Relations Authority v. U.S. Dept. of Treasury, Financial Management Service*, C.A.D.C.1989, 884 F.2d 1446, 280 U.S.App.D.C. 236, certiorari denied 110 S.Ct. 863, 493 U.S. 1055, 107 L.Ed.2d 947, certiorari denied 110 S.Ct. 863, 493 U.S. 1055, 107 L.Ed.2d 948, certiorari denied 110 S.Ct. 864, 493 U.S. 1055, 107 L.Ed.2d 948. Records 🔑 31

Disclosures of information required by the Freedom of Information Act are excluded from the general prohibition of this section. *American Federation of Government Employees, AFL-CIO, Local 1345 v. Federal Labor Relations Authority*, C.A.D.C.1986, 793 F.2d 1360, 253 U.S.App.D.C. 374.

That, contrary to an Army regulation promulgated under the Freedom of Information Act [5 U.S.C.A. § 552], no written FOIA request was made for disclosure of findings of nonjudicial proceedings and discipline imposed on major general did not compel finding that, for purposes of Freedom of Information Act exception to the Privacy Act [5 U.S.C.A. § 552a(b)] which provides that disclosure of records is not a violation of the Privacy Act if disclosure would be required under the FOIA the disclosure was not "required under the FOIA"; therefore, there was no Privacy Act violation in Army's release of the information to the public. *Cochran v. U.S.*, C.A.11 (Ga.) 1985, 770 F.2d 949. Records 🔑 31

Exception to disclosure provisions did not permit official of Federal Aviation admission to send letters informing persons who allegedly had no official need for the information that an internal agency investigation indicated that plaintiff employee had improperly obtained access to files of Administration inspectors, as letters were not sent in response to a request. *Bartel v. F.A.A.*, C.A.D.C.1984, 725 F.2d 1403, 233 U.S.App.D.C. 297, on remand 617 F.Supp. 190. Records 🔑 60

This section absolutely prohibits nonconsensual release of information personal to kidnapping victim and held by Federal Bureau of Investigation except as required under the Freedom of Information Act, section 552 of this title. *Brown v. Federal Bureau of Investigation*, C.A.2 (N.Y.) 1981, 658 F.2d 71. Records 🔑 60

Prison records were discoverable under section 552 of this title by defendant in drug prosecution, and were not protected by this section; absent any showing of prejudice, however, error of trial court in failing to order discovery of such records was harmless. *U. S. v. Brown*, C.A.9 (Wash.) 1977, 562 F.2d 1144. Records 🔑 58

Federal Deposit Insurance Corporation (FDIC) could not rely upon specific exemptions under Privacy Act to withhold investigative files of Office of Inspector General (OIG) regarding employee, as petitioner, that had been requested by employee, to extent that disclosure of such records was required under Freedom of Information Act (FOIA), since information could not be withheld under Privacy Act if its disclosure was required by FOIA. *Dean v. F.D.I.C.*, E.D.Ky.2005, 389 F.Supp.2d 780. Records 🔑 60

Records otherwise protected by Privacy Act must be disclosed if required by Freedom of Information Act. *Stephens v. Tennessee Valley Authority*, E.D.Tenn.1990, 754 F.Supp. 579. Records 🔑 31

This section does not protect against disclosure when otherwise required by section 552 of this title. *National Ass'n of Atomic Veterans, Inc. v. Director, Defense Nuclear Agency*, D.C.D.C.1984, 583 F.Supp. 1483. Records 🔑 31

Exemptions from disclosure under this section do not qualify as specific exemptions from disclosure under Freedom of Information Act, section 552(b) of this title; enumerated exemptions contained in the Act must be relied on in withholding documents requested by member of public under the Act. *Antonelli v. F.B.I.*, N.D.Ill.1982, 553 F.Supp. 19. Records 🔑 31; Records 🔑 55

Secretary of Health, Education and Welfare could not disclose, in an individually identifying manner, the annual amounts of reimbursements to medicare providers without obtaining their prior written consent. *Florida Medical Ass'n, Inc. v. Department of Health, Ed. & Welfare*, M.D.Fla.1979, 479 F.Supp. 1291. Records 🔑 30

Provisions of this section prohibit disclosure of any kind of retrievable information about an individual in government's files, but do provide that an agency may disclose such information without obtaining individual's consent if disclosure would be required under Freedom of Information Act, section 552 of this title. *Plain Dealer Pub. Co. v. U. S. Dept. of Labor*, D.C.D.C.1979, 471 F.Supp. 1023. Records 🔑 35

In prosecution in which defendant pleaded not responsible by reason of mental disease consisting of an alleged posttraumatic stress disorder caused by his service in the United States Air Force in Vietnam, defendant's military record was not protected by a privilege under this section. *People v. Lockett*, N.Y.Sup.1983, 468 N.Y.S.2d 802, 121 Misc.2d 549. Criminal Law 🔑 627.5(6); Criminal Law 🔑 627.6(6); Records 🔑 31

Under subsecs. (b)(2) and (3) of this section prohibiting the disclosure of records without authorization unless disclosure of such records would be "required under section 552 of this title" or "for a routine use ..." the disclosure of any financial statements of government employees would be prohibited, since section 552(b)(6) of this title prohibits the disclosure of any "personnel ... and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy", and since the routine use exception of subsec. (b)(3) of this section was not intended to be an independent means of making public disclosures of information. 1978 (Counsel-Inf. Op.) 2 Op.O.L.C. 329.

135. Routine use, conditions of disclosure--Generally

Alleged disclosures of non-tax information, including "defamatory statements" made in state and federal administrative proceedings by Internal Revenue Service (IRS) officials and intra-Treasury/IRS disclosures of IRS employee's wage records, constituted "routine uses" exempt from Privacy Act protection. *Gardner v. U.S.*, C.A.D.C.2000, 213 F.3d 735, 341 U.S.App.D.C. 378, certiorari denied 121 S.Ct. 1099, 531 U.S. 1153, 148 L.Ed.2d 971. Records 🔑 31

Routine use is defined as the use of a record compatible with its collection purpose. *Kimberlin v. U.S. Dept. of Justice*, C.A.7 (Ill.) 1986, 788 F.2d 434, certiorari denied 106 S.Ct. 3306, 478 U.S. 1009, 92 L.Ed.2d 719.

Public disclosure of decision of Employee Compensation Appeals Board (ECAB) that contained federal employee's private medical information, without redacting his name or other details directly revealing his identity, was not a use of employee's information for a purpose that was compatible with the purpose of its collection, and thus was not "routine use" protected by Privacy Act's routine use exception. *Doe v. U.S. Dept. of Labor*, D.D.C.2006, 451 F.Supp.2d 156. Records 🔑 31

Office of Personnel Management's (OPM) disclosure of confidential documents regarding federal employee to his former county corrections supervisors, including summary of charges and supporting information and copy of OPM's investigation, in connection with supervisors' testimony at employee's appeal hearing with Merit Systems Protection Board (MSPB) following determination of unsuitability for federal employment due to prior employment record and failure to disclose history, fell within "routine use" exception under Privacy Act. *Mandel v. U.S. Office of Personnel Management*, E.D.N.Y.2003, 244 F.Supp.2d 146, affirmed 79 Fed.Appx. 479, 2003 WL 22469719. Records 🔑 31

Purpose of this section of restricting unconsented disclosure of personal information is advanced by listing of a limited number of narrowly defined routine uses. *Local 2047, Am. Federation of Government Emp. v. Defense General Supply Center*, E.D.Va.1976, 423 F.Supp. 481, affirmed 573 F.2d 184. Records 🔑 58

When listing of a limited number of narrowly defined routine uses under routine use exception to this section is so narrow as to impair the legitimate flow of information, the answer lies in expanding the list. *Local 2047, Am. Federation of Government Emp. v. Defense General Supply Center*, E.D.Va.1976, 423 F.Supp. 481, affirmed 573 F.2d 184. Records 🔑 58

136. ---- Compatibility requirement, routine use, conditions of disclosure

The statutory requirement of compatibility requires a dual inquiry into the purpose for the collection of the record in the specific case and the purpose of the disclosure. *Britt v. Naval Investigative Service*, C.A.3 (Pa.) 1989, 886 F.2d 544.


Disclosure by a Social Security Administration (SSA) employee of confidential medical information about the subject of a child abuse investigation, which information had been collected to determine whether the subject was eligible for disability benefits, did not fall within the Privacy Act's routine use exception; while notice in the Federal Register of two exceptions relied on was sufficient, the SSA disclosure was not for a use compatible with the purpose for which the information was collected, absent any indication that the information would be used to determine eligibility for an income-maintenance program or related medical benefits. *Stafford v. Social Sec. Admin.*, N.D.Cal.2006, 437 F.Supp.2d 1113. Records 🔑 31



Department of Justice (DOJ) satisfied publication and compatibility requirements for disclosure of information under routine uses exception to Privacy Act's general prohibition against disclosure of information contained in agency records, absent subject's consent, with respect to information disclosed about former employee to bar authorities of District of Columbia and Maryland, given that requisite details about system of records that was maintained by DOJ's office of professional responsibility to provide for resolution of allegations of misconduct against DOJ employees and to advise complainants of status of investigations and results were published in Federal Register, and that information collected about former employee's alleged unethical behavior was disclosed in accordance with purpose for which it was collected. *Radack v. U.S. Dept. of Justice*, D.D.C.2005, 402 F.Supp.2d 99. Records 🔑 31

137. ---- Duty of official, routine use, conditions of disclosure


It was not necessary that law enforcement official have specific "duty" before information concerning inmate's commissary account could be disclosed pursuant to "routine use" exception to Privacy Act. *Kimberlin v. U.S. Dept. of Justice*, C.A.7 (Ill.) 1986, 788 F.2d 434, certiorari denied 106 S.Ct. 3306, 478 U.S. 1009, 92 L.Ed.2d 719. Records 🔑 31


138. ---- Subpoenas, routine use, conditions of disclosure


Veterans Administration's regulation authorizing disclosure of information pursuant to grand jury subpoenas as "routine use" exempted from Privacy Act coverage was invalid to extent it authorized disclosures pursuant to grand jury subpoenas alone. *Doe v. Stephens*, C.A.D.C.1988, 851 F.2d 1457, 271 U.S.App.D.C. 230. Records  31

Disclosure of defendant's military record in response to the Supreme Court's subpoena during litigation with that defendant was permitted under subsecs. (a)(7) and (b)(3) of this section permitting disclosure of an individual's record for "routine use." *People v. Lockett*, N.Y.Sup.1983, 468 N.Y.S.2d 802, 121 Misc.2d 549. Criminal Law  627.6(6); Records  58


139. ---- Labor organizations requesting records, routine use, conditions of disclosure


Postal Service's disclosure of employee's medical records to union official representing employee in administrative grievance action against employee fell under "routine use" exception to Privacy Act's prohibition against disclosure of federal employee personnel records, where central issue in grievance action was employee's mental health. *Mount v. U.S. Postal Service*, C.A.6 (Ky.) 1996, 79 F.3d 531. Records  31

Provisions of this section operated to prohibit the disclosure of the information on employment and personnel to which the union had a contractual right unless the information was disclosed for a "routine use" where the executive order under which the bargaining agreement was negotiated and the agreement itself provided that the administration of all matters covered by the agreement was governed by existing or future laws and regulations of appropriate authorities such as the policy set forth in the federal personnel manual. *Local 2047, Am. Federation of Government Emp. v. Defense General Supply Center*, C.A.4 (Va.) 1978, 573 F.2d 184. Records  58


National Labor Relations Board (NLRB) subpoena requesting Postal Service to produce names and addresses of its employees sought release of records "for a routine use" within exception of Privacy Act, even though union that requested information was not yet employees' collective bargaining representative; for union to become collective bargaining representative, it would have had to commence election petition process, which was exactly what union did, and application of routine use exception would promote ability and right of employees to choose their collective bargaining representative. *N.L.R.B. v. U.S. Postal Service*, D.D.C.1992, 790 F.Supp. 31. Records  31


140. ---- Addresses, routine use, conditions of disclosure

Federal employees' home addresses were not available to their unions under Privacy Act's routine use exception, absent showing that alternative means of communication were inadequate. *Federal Labor Relations Authority v. U.S. Dept. of Defense, Army and Air Force Exchange Service*, Dallas, Tex., C.A.10 1993, 984 F.2d 370. Records  31


Disclosure of federal employees' home addresses to union that was employees' collective bargaining representative was within "routine use" exception of Privacy Act, even if Office of Personnel Management (OPM), as agency that maintained records, had adopted narrow interpretation of routine use exception to allow disclosure only when information was relevant and necessary to union's duties of exclusive representation. *Federal Labor Relations Authority v. U.S. Dept. of Navy*, C.A.3 1992, 966 F.2d 747, dissenting opinion amended. Records  31

141. ---- Civil action records, routine use, conditions of disclosure


Assistant United States attorney's disclosure, during course of representation of federal defendants in civil rights action brought by plaintiff, of Freedom of Information Act documents [5 U.S.C.A. § 552] fell within "routine use" exception to the Privacy Act [5 U.S.C.A. § 552a(b)(3)], where documents were given to plaintiff's counsel to help him oppose motion to transfer venue, and thus, disclosure did not violate the Privacy Act [5 U.S.C.A. § 552a]. *Ely v. Department of Justice*, N.D.Ill.1985, 610 F.Supp. 942, affirmed 792 F.2d 142. Records  31


Routine use exception does not mean that any time any case is in litigation, all files within that covered system of records, which would otherwise be nondisclosable, automatically lose their protection under this section but instead applies only to disclosure of individual's otherwise protected files during course of litigation with that specific individual. *Stiles v. Atlanta Gas Light Co.*, N.D.Ga.1978, 453 F.Supp. 798. Records  54

142. ---- Congressional inquiry responses, routine use, conditions of disclosure


All reasonable responses to congressional inquiries constituted acceptable disclosures for "routine uses" under Privacy Act, and thus United States Postal Service (USPS) inspector general's response to congressman, when congressman asked for investigation regarding Postal Service employee's Privacy Act complaints, was wholly permissible regardless of its depth, and regardless of its paraphrasing of earlier settlement agreement between employee and USPS, that in part settled prior Privacy Act complaints by employee. *Harry v. U.S. Postal Service*, M.D.Pa.1994, 867 F.Supp. 1199, affirmed 60 F.3d 815. Records  31


143. ---- Disciplinary action records, routine use, conditions of disclosure

Records of disciplinary actions taken against post office supervisors for engaging in gambling were not protected under Privacy Act from disclosure to unions filing grievance alleging disparate treatment of unit members who also engaged in gambling; requested information was stored in two record system which provided for disclosure pursuant to routine uses, including furnishing of records to labor organizations when organization needs records to perform properly its duties as collective bargaining representative. *N.L.R.B. v. U.S. Postal Service*, C.A.11 1989, 888 F.2d 1568. Records  31


Former employee of Department of Justice (DOJ) was covered by system of records maintained by DOJ's office of professional responsibility (OPR) to provide for resolution of allegations of misconduct against DOJ employees and to advise complainants of status of investigations and results even after her employment with DOJ ended, and therefore DOJ could disclose information about former employee under routine uses exception to Privacy Act's restrictions on disclosure of information collected by federal agencies, given that DOJ interpreted category of covered persons which included DOJ employees who were subjects of complaints or investigations conducted by OPR to encompass those who were employees at the time of alleged unethical conduct but who resigned before investigation was completed. *Radack v. U.S. Dept. of Justice*, D.D.C.2005, 402 F.Supp.2d 99. Records  31


144. ---- Identification records, routine use, conditions of disclosure


Union rule prohibiting applicants for management positions from holding union office was relevant to the union's duty to provide loyal representation so that union was entitled to disclosure by Postal Service of identity of union members who applied for supervisory positions under routine use exception to Privacy Act. *N.L.R.B. v. U.S. Postal Service*, C.A.6 1988, 841 F.2d 141. Records  31


Information which was sought of government by union representing government employees and which, though previously made available under collective bargaining agreement, went substantially beyond mere identification of employees did not fall within "routine use" exception of this section and its implementing regulations and, hence, could not be disclosed in absence of written consent of individual employees. *Local 2047, Am. Federation of Government Emp. v. Defense General Supply Center*, E.D.Va.1976, 423 F.Supp. 481, affirmed 573 F.2d 184. Records  58


145. ---- Law enforcement records, routine use, conditions of disclosure

Naval Investigative Service's disclosure of information collected on special agent for Immigration and Naturalization Services to his employer did not satisfy "routine use" exception to Privacy Act that disclosure of record be "for a purpose which is compatible with the purpose for which the information was collected"; information disclosed was part of preliminary investigation into possible improper requisitioning of Naval supplies by agent, who also served in Marine Corps Reserves, and resulted in no inculpatory findings. *Britt v. Naval Investigative Service*, C.A.3 (Pa.) 1989, 886 F.2d 544. Records  31


Information that inmate was sending money outside prison from his commissary account fell into category of routine use exception of Privacy Act (5 U.S.C.A. § 552a(b)(3)), so that disclosure of such information by inmate's case manager to his probation officer did not violate Act. *Kimberlin v. U.S. Dept. of Justice*, C.A.7 (Ill.) 1986, 788 F.2d 434, certiorari denied 106 S.Ct. 3306, 478 U.S. 1009, 92 L.Ed.2d 719. Records  31


Veterans' Administration's routine use of medical records in referring records to law enforcement officials only when records themselves indicate violation of law did not authorize disclosure of veteran's medical records pursuant to federal grand jury subpoena under veterans' records statute [38 U.S.C.A. § 3301], which incorporates stricter provision of Privacy Act [5 U.S.C.A. § 552a(a)(7)] which permits disclosure of information for routine use where disclosure was in no way related to Veterans' Administration's suspicion that records indicated violation of law. *Doe v. DiGenova*, C.A.D.C.1985, 779 F.2d 74, 250 U.S.App.D.C. 274, on remand 642 F.Supp. 624. Records  31


Once parolee turned records over to his parole officer, they became part of Justice Department's supervision files, and though such files are covered by provisions of this section, release of those records to further a criminal investigation qualified as a "routine use" under Justice Department regulations, and no violation of this section occurred. *U. S. v. Miller*, C.A.10 (Colo.) 1981, 643 F.2d 713. Records  31


Bureau of Prisons (BOP) did not intentionally or willfully violate Privacy Act by using 15-year-old pre-sentence report in determining that inmate should serve period of incarceration at federal correctional institution, where report was only background information available prior to inmate's initial designation, and there was no evidence that BOP was aware of any potential inaccuracy in report as to inmate's medical condition when it initially designated him for service at institution. *Elliott v. Federal Bureau of Prisons*, D.D.C.2007, 521 F.Supp.2d 41. Records  31

Disclosure by the Bureau of Alcohol, Tobacco, and Firearms (ATF) to condominium association that condominium resident had applied for federal license to sell firearms from his residence was necessary to determine whether condominium bylaws prohibited operation of firearms business, and thus disclosure fit within scope of ATF's definition of "routine uses" published in Federal Register, as would support application of "routine use exception" from the Privacy Act's general prohibition against disclosure of federal agency records. *Fattahi v. Bureau of Alcohol, Tobacco & Firearms*, E.D.Va.2002, 186 F.Supp.2d 656, reconsideration denied 195

F.Supp.2d 745, affirmed 328 F.3d 176. Records  31

Drug Enforcement Agency's (DEA's) disclosure of land use group member's letter, regarding alleged drug trafficking in area, to sheriff's department in that area was not permissible "routine use" under Privacy Act; DEA agent who faxed letter to sheriff's investigator thought there was no merit in letter's allegations, agent was not under impression that investigator, who did not reveal reasons for requesting letter, was going to investigate allegations further, and investigator wanted copy of letter based on his considering letter's author to be suspect in fire of home of one of people named in letter. *Bechhoefer v. U.S. Dept. of Justice*, W.D.N.Y.2001, 179 F.Supp.2d 93, affirmed 312 F.3d 563, certiorari denied 123 S.Ct. 2621, 539 U.S. 944, 156 L.Ed.2d 630. Records  31


Federal Bureau of Investigation (FBI) officials' disclosure to Maryland probation authorities of information concerning FBI agent who had been convicted in Maryland of driving while intoxicated did not violate Privacy Act, although agent's probation was subsequently revoked. *Little v. F.B.I.*, D.Md.1992, 793 F.Supp. 652, affirmed 1 F.3d 255. Records  31

Transfer to Tennessee state agency charged with licensing and regulating pharmacists in Tennessee of Drug Enforcement Administration investigative report was a "routine use" of the report which was not prohibited by this section. *Burley v. U. S. Drug Enforcement Administration*, M.D.Tenn.1977, 443 F.Supp. 619. Records  54


The disclosure by the Secret Service and the Federal Bureau of Investigation of information on activities of individuals not subject to arrest through entry of such information in the National Crime Information Center must meet the requirements of this section as a routine use. 1982 (Counsel-Inf.Op.) 6 Op.O.L.C. 313.

This section authorizes the disclosure by the United States Parole Commission to local law enforcement authorities, on a routine basis, the names of parolees released into their communities, as a routine use of such information. 1982 (Counsel-Inf.Op.) 6 Op.O.L.C. 227.


146. ---- Security clearance records, routine use, conditions of disclosure


Disclosure by Department of Energy inspector general to the Department of Justice of personnel security questionnaires completed by employees of DOE contractors and used to determine whether those employees had submitted false claims for subsistence payments was not permitted as "routine use" of the personnel security questionnaires and violated the Privacy Act. *Covert v. Herrington*, E.D.Wash.1987, 667 F.Supp. 730, affirmed 876 F.2d 751. Records  31

147. ---- Postal Service records, routine use, conditions of disclosure


Postal Service's disclosure of employee's medical records to union official representing employee in administrative grievance action against employee fell under "routine use" exception to Privacy Act's prohibition against disclosure of federal employee personnel records, where central issue in grievance action was employee's mental health. *Mount v. U.S. Postal Service*, C.A.6 (Ky.) 1996, 79 F.3d 531. Records  31


Postal Service's alleged disclosure of rural mail carrier's charges with Equal Employment Opportunity Commission (EEOC) and of warning letters on unrelated matters was not made for "routine use" of congressmen investigating carrier's claims about alleged undercounting of rural mail routes, and, thus, Privacy Act exemption for routine uses was inapplicable; carrier asked congressmen to investigate the undercounting of routes; and dis-


closed information had been collected to adjudicate claims of alleged discrimination and to perform routine, personnel functions. *Swenson v. U.S. Postal Service*, C.A.9 (Cal.) 1989, 890 F.2d 1075, 107 A.L.R. Fed. 849. Records  31


Release by the Postal Service of employee's medical records to clinical psychologist who was hired by agency to perform fitness for duty examination on employee did not violate section of Privacy Act containing general restriction that no information be released without written consent of individual; section contains exception when disclosure is "for a routine use" of information, and such routine use includes disclosure for purpose of determining employee's fitness for duty. *Magee v. U.S. Postal Service*, W.D.La.1995, 903 F.Supp. 1022, affirmed 79 F.3d 1145. Records  31

148. Law enforcement activities, conditions of disclosure

Provision of veterans' records statute [38 U.S.C.A. § 3301(b)(3)] permitting disclosure of veteran's medical records when required by department or other agency of United States government did not authorize disclosure of veteran's medical records pursuant to federal grand jury subpoena where there was no written request from head of agency as required by stricter provision of Privacy Act [5 U.S.C.A. § 552a, (b)(7)] incorporated into veterans' records statute. *Doe v. DiGenova*, C.A.D.C.1985, 779 F.2d 74, 250 U.S.App.D.C. 274, on remand 642 F.Supp. 624. Records  31

Privacy Act suit brought against Department of the Navy, predicated on naval investigative service special agent's disclosure to county sheriff of the home address and phone number of a civilian employee, was not subject to dismissal on basis of Privacy Act's law-enforcement exemption, since that exemption requires a written request for disclosure by head of agency making such request to agency which maintains the record, since plaintiff alleged that the information was released pursuant to a telephone request from county sheriff's department, and since issues of fact thus existed as to the method by which request was made and whether it was made by "head" of county sheriff's department. *Doe v. Naval Air Station, Pensacola, Fla.*, C.A.11 (Fla.) 1985, 768 F.2d 1229. Records  31

Where disclosure by the Department of Health, Education and Welfare to the Department of Justice of cost reports submitted to the Ohio Department of Public Welfare in connection with medicaid cost reimbursement program that was administered for Health, Education and Welfare by the state of Ohio was for a routine use and also for criminal law enforcement activity in that the nursing home operator who submitted the reports was suspected of fraud, the disclosure did not violate federal privacy laws. *U. S. v. Collins*, C.A.6 (Ohio) 1979, 596 F.2d 166. Records  31

Disclosure by a Social Security Administration (SSA) employee of confidential medical information about the subject of a child abuse investigation, which information had been collected to determine whether the subject was eligible for disability benefits, did not fall within the Privacy Act's law enforcement exception, as the head of the state agency to whom the information was disclosed did not request the information from the SSA in writing. *Stafford v. Social Sec. Admin.*, N.D.Cal.2006, 437 F.Supp.2d 1113. Records  31

Even assuming a technical recordation flaw with respect to the condominium bylaws, it was nonetheless reasonable for the Bureau of Alcohol, Tobacco, and Firearms (ATF) agent, investigating application for federal license to sell firearms from a condominium residence, to assume the bylaws were valid under Virginia law and to inquire of counsel for the condominium owners' association whether applicant's proposed firearms business would violate the bylaws' provisions, so that the disclosure of the application was consistent with the purpose of invest-

igating the application and was reasonably necessary to that investigation, and thus did not violate the Privacy Act. *Fattahi v. Bureau of Alcohol, Tobacco & Firearms*, E.D.Va.2002, 195 F.Supp.2d 745. Records 🔑 31

Disclosure of transcript of defendant's parole hearing did not violate subsec. (b) of this section or Parole Commission rules. *S. E. C. v. Dimensional Entertainment Corp.*, S.D.N.Y.1981, 518 F.Supp. 773. Records 🔑 31

Court to whom motion to discover federal records concerning federal agent who was involved in arrest of defendant is addressed should, upon determining that the records are described with sufficient specificity and that there is plausible justification for their production, order the prosecutor to request the records pursuant to this section. *Saulter v. Municipal Court for Oakland-Piedmont Judicial Dist.*, Cal.App. 1 Dist.1977, 142 Cal.Rptr. 266, 75 Cal.App.3d 231. Criminal Law 🔑 627.8(1)

In connection with charge that defendant had used false social security number in order to obtain credit from bank, United States would be required to disclose whether defendant had social security number, and whether social security number given to bank was number assigned to defendant, even though United States claimed that disclosure was barred by federal law. *People v. Purrier*, N.Y.Co.Ct.1994, 607 N.Y.S.2d 218, 159 Misc.2d 917. Records 🔑 31

In prosecution in which defendant pleaded not guilty by reason of a mental disease consisting of an alleged posttraumatic stress disorder caused by his service in the United States Air Force in Vietnam, the defendant's military records were subpoenaed by the district attorney for a legitimate purpose related to law enforcement, i.e., to shed light on defendant's present mental state, including possible dangerousness, by showing his condition during and after his alleged service in Vietnam. *People v. Lockett*, N.Y.Sup.1983, 468 N.Y.S.2d 802, 121 Misc.2d 549. Criminal Law 🔑 627.6(6)

149. Health or safety of individual, conditions of disclosure

Bureau of Prisons' (BOP) alleged failure to provide federal inmate with proper medical treatment and its decisions regarding inmate's placement and transfers did not violate Privacy Act, even though BOP did not attempt to obtain inmate's pre-incarceration medical records, where BOP was in possession of medical reports reflecting vast majority of ailments as to which inmate alleged his medical records were inaccurate or incomplete. *Elliott v. Federal Bureau of Prisons*, D.D.C.2007, 521 F.Supp.2d 41. Records 🔑 31

Disclosure by a Social Security Administration (SSA) employee of confidential medical information about the subject of a child abuse investigation, which information had been collected to determine whether the subject was eligible for disability benefits, did not fall within the Privacy Act's health and safety exception, as the SSA did not provide the requisite notice of the disclosure to the subject after making the disclosure. *Stafford v. Social Sec. Admin.*, N.D.Cal.2006, 437 F.Supp.2d 1113. Records 🔑 31

Unsubstantiated allegations that requester's supposed spouse was being wrongfully incarcerated as part of Nazi conspiracy did not constitute showing of compelling circumstances request for documents within health and safety exception against disclosure of documents concerning persons other than requester. *Schwarz v. U.S. Dept. of Treasury*, D.D.C.2000, 131 F.Supp.2d 142, affirmed 2001 WL 674636. Records 🔑 33

Unmarried father's statement in affidavit that he was informed that children were being neglected was not sufficient to show such compelling circumstances affecting the health or safety of the children within meaning of this section to warrant disclosure of children's address to him by Social Security Administration. *DePlanche v. Cali-*

fano, W.D.Mich.1982, 549 F.Supp. 685. Social Security And Public Welfare 🔑 124.25

150. Congressional inquiry responses, conditions of disclosure

Privacy Act exception for disclosure of information to Congressional subcommittee permitted release of letter written by Inspector General (IG) of United States Department of Justice to members of Congressional subcommittee, in which IG expressed dissatisfaction with Merit Systems Protection Board's exoneration of Immigration and Naturalization Service (INS) official on neglect of duty and other charges, since release of letter fell within plain language of statutory exception, despite contention that submission of agency's letter to Subcommittee constituted a de facto release to the media. *Devine v. U.S.*, C.A.2 (Vt.) 2000, 202 F.3d 547. Records 🔑 31

Navy was permitted to disclose information from system of records to individual members of Congress that made inquiries on behalf of constituents, where Navy only provided information which would have been releasable under the Freedom of Information Act (FOIA). *Chang v. Department of Navy*, D.D.C.2004, 314 F.Supp.2d 35. Records 🔑 31

151. Order of court of competent jurisdiction, conditions of disclosure

This section expressly authorizes disclosure of information "pursuant to the order of a court of competent jurisdiction". *Gilbreath v. Guadalupe Hosp. Foundation Inc.*, C.A.5 (Tex.) 1993, 5 F.3d 785.

When district court considers request for Privacy Act order in discovery context, it must consider use of protective orders and possibility of in camera inspection and should also consider, in its discretion, wisdom of notifying affected parties. *Laxalt v. McClatchy*, C.A.D.C.1987, 809 F.2d 885, 258 U.S.App.D.C. 44. Federal Civil Procedure 🔑 1623

Federal grand jury subpoena is not "order of a court of competent jurisdiction" for purposes of disclosure of veteran's medical records under veterans' records statute (38 U.S.C.A. § 3301), which incorporates stricter provision of Privacy Act (5 U.S.C.A. § 552a, (b)(11)) precluding disclosure of records maintained on individuals unless disclosure is pursuant to order of court of competent jurisdiction. *Doe v. DiGenova*, C.A.D.C.1985, 779 F.2d 74, 250 U.S.App.D.C. 274, on remand 642 F.Supp. 624. Records 🔑 31

Release is allowed when a court of competent jurisdiction so orders. *Perry v. State Farm Fire & Cas. Co.*, C.A.11 (Ga.) 1984, 734 F.2d 1441, certiorari denied 105 S.Ct. 784, 469 U.S. 1108, 83 L.Ed.2d 778.

Government was not obligated by the Privacy Act to withhold documents containing purported personal information, where discovery of the documents was ordered by the court in a criminal proceeding, and therefore Government would be ordered to disclose documents responsive to the discovery order. *U.S. v. W.R. Grace*, D.Mont.2006, 455 F.Supp.2d 1140. Criminal Law 🔑 627.5(6); Records 🔑 31

Information sought by importer in its action against federal government with respect to merchandise that it entered into country, including the names and addresses of customs officials who controlled movement of merchandise from free trade subzone into the United States, was relevant to importer's lawsuit and thus discoverable by importer under the "court order" exemption to Privacy Act. *Ford Motor Co. v. U.S.*, CIT 1993, 825 F.Supp. 1081, 17 C.I.T. 584. Records 🔑 31

Subpoena duces tecum prepared by attorney for postal employee's wife in divorce action and approved by state court judge was "court order" for purposes of exception to rule that federal agency cannot disclose employee's

records without employee's consent, and thus, Postal Service did not violate employee's statutory right by disclosure of his employment records pursuant to subpoena. *Moore v. U.S. Postal Service*, E.D.N.Y.1985, 609 F.Supp. 681. Records 🔑 31

In civil rights action by federal prisoner against three former federal prison employees, district court would compel two defendants to release to counsel for plaintiff home address of third defendant, despite subsec. (b) of this section prohibiting revelation of home address of employee of Bureau of Prisons, provided that counsel agreed not to disclose that address to any person except as necessary to perfect service of process and as otherwise necessary to prosecute the suit; alternatively, plaintiff's counsel was entitled to address other than defendant's home where service of process might be effected. *Clymer v. Grzegorek*, E.D.Va.1981, 515 F.Supp. 938. Federal Civil Procedure 🔑 425

Mere issuance in discovery proceedings of a subpoena, which is always subject to power of court to quash or limit, does not come within this section exception permitting disclosure of records pursuant to order of court of competent jurisdiction but instead such exception applies only to those cases in which, for compelling reasons, court specifically directs that records be disclosed. *Stiles v. Atlanta Gas Light Co.*, N.D.Ga.1978, 453 F.Supp. 798. Records 🔑 54

Subsec. (b)(11) of this section prohibiting certain disclosures of personal data unless disclosure would be pursuant to the order of court of competent jurisdiction would not preclude discovery of criminal record of inmate who allegedly raped plaintiff while plaintiff was visiting another inmate at federal correctional institution. *Christy v. U. S.*, N.D.Tex.1975, 68 F.R.D. 375. Federal Civil Procedure 🔑 1600(1)


Privacy Act did not relieve the government from complying with the court orders respecting identification of witnesses who were current or former government employees. *Long Island Savings Bank, FSB v. U.S.*, Fed.Cl.2004, 63 Fed.Cl. 157. Federal Courts 🔑 1112

Court of Veterans Appeals is a "court of competent jurisdiction" under Privacy Act section providing exception to nondisclosure of agency records when disclosures are made pursuant to order of court of competent jurisdiction. In re A Motion For a Standing Order, *Vet.App.*1990, 1 *Vet.App.* 555. Records 🔑 31

Trial court order requiring personal injury plaintiff to execute an authorization to be filed with the Social Security Administration, allowing defendant to depose psychologist who examined plaintiff for the Social Security Administration, fell within exception to the Privacy Act allowing disclosure of records pertaining to an individual when the disclosure is pursuant to the order of a court of competent jurisdiction, which is construed in favor of disclosure, especially in discovery matters, since trial court order in question reaffirmed previous order compelling psychologist to give his deposition, and stated that psychologist's deposition may well lead to material and relevant discovery. *Tootle v. Seaboard Coast Line R. Co.*, Fla.App. 5 Dist.1984, 468 So.2d 237. Records 🔑 31

Department of Veterans' Affairs' (VA) release of veteran's medical files to insurer pursuant to state court subpoena fell within Privacy Act exception for orders of court of competent jurisdiction, even if VA did not give veteran notice prior to release, where state court issuing order determined that records were relevant, employees of Regional Counsel determined that disclosure of records was necessary to prevent perpetration of fraud or other injustice, and VA gave notice after release. *Robinett v. State Farm Mut. Auto. Ins. Co.*, C.A.5 (La.) 2003, 83 Fed.Appx. 638, 2003 WL 22966127, Unreported, certiorari denied 124 S.Ct. 2175, 541 U.S. 1043, 158 L.Ed.2d 733. Records 🔑 31

152. Notice, conditions of disclosure

Postal employee had no cause of action against Postal Service for its failure to notify him of its release, pursuant to subpoena duces tecum, of his employment records to his wife in connection with divorce action, absent any showing of prejudice to employee. *Moore v. U.S. Postal Service*, E.D.N.Y.1985, 609 F.Supp. 681. Records  31

IV. AGENCY REQUIREMENTS

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181. Relevant and necessary information, agency requirements

Department of Health and Human Service's retention of reprimand letter from director of federal laboratory to scientist employed by Government contractor served justifiable interest of demonstrating contractor's awareness of circumstances and commitment to better in-house discipline and did not violate Privacy Act statute, which requires agencies to maintain only information that is relevant and necessary to accomplish legitimate agency purpose; National Cancer Institute needed to insure public confidence in its work and to avoid public association with scientist's private dissenting views as to carcinogenicity of malathion. *Reuber v. U.S.*, C.A.D.C.1987, 829 F.2d 133, 264 U.S.App.D.C. 348. Records 🔑 31

Government's use of DDF Form 1357 which required a retiree to submit his employer's name and address, to indicate what goods and services, if any, his employer provided to the Defense Department or specified agencies, to describe his own position and duties, and to subscribe to statement that duties did not involve selling to the government in violation of statutes and policies, which was modified in 1977 so as to add a disclosure under this section, did not violate this section. *Field v. Brown*, C.A.D.C.1979, 610 F.2d 981, 198 U.S.App.D.C. 39, certiorari denied 100 S.Ct. 2160, 446 U.S. 939, 64 L.Ed.2d 792. Records 🔑 31

Marshal's Service's retention of a record of interim security officer's medical disqualification did not violate provision of Privacy Act permitting an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency. *International Union, Security, Police, and Fire Professionals of America (SPFPA) v. U.S. Marshal's Service*, S.D.N.Y.2004, 350 F.Supp.2d 522. Records 🔑 31


Addendum Report submitted by Office of Inspector General (OIG) of Veterans' Administration (VA), discussing leave abuse allegations made against former Principal Deputy Assistant Secretary (PDAS) of VA, and memorandum of VA from another employee critical of PDAS' performance, were relevant to VA purposes, precluding deletion or correction under Privacy Act on grounds of irrelevance. *McCready v. Principi*, D.D.C.2003, 297 F.Supp.2d 178, affirmed in part, reversed in part and remanded 465 F.3d 1, 373 U.S.App.D.C. 236. Records 🔑 10; Records 🔑 22


Army did not violate Privacy Act by including in former Captain's personnel file relief-for-cause Officer Evaluation Report (OER) that had been upheld through three successive appeals, or by using that information in making personnel management, specifically promotion, decisions. *Charette v. Walker*, D.D.C.1998, 996 F.Supp. 43. Records 🔑 31


Where letters written by attorneys appearing before former administrative law judge, which criticized her conduct, were relevant and necessary within meaning of this section, and relevant to determination of whether former administrative law judge adequately and properly performed her duties, this section which proscribed collection of irrelevant information which was not necessary to accomplish purpose of agency was not violated. *Chocallo v. Bureau of Hearings and Appeals, SSA*, E.D.Pa.1982, 548 F.Supp. 1349, affirmed 716 F.2d 889, certiorari denied 104 S.Ct. 426, 464 U.S. 983, 78 L.Ed.2d 360. Records 🔑 31


182. Collection of information from individual, agency requirements


Department of Defense did not violate requirement, under Privacy Act, that agency collect information "to the greatest extent practicable" from subject of investigation when investigator responding to allegations of hostile managerial practices and other misconduct by superintendent of Department-operated school system interviewed


61 other witnesses before interviewing superintendent; charges of employee mistreatment and harassment could not be resolved by interviewing superintendent before others, and Department was not required to conduct its investigation in piecemeal fashion by first approaching superintendent about allegations for which objective proof might have been available, then interview third-party witnesses as to more subjective claims. *Cardamone v. Cohen*, C.A.6 (Ky.) 2001, 241 F.3d 520. Records  31

Social Security Administration (SSA) did not violate Privacy Act when, during internal investigation into possible ethics violations by administrative law judge, it reviewed documents in judge's application for Medicare coverage file without first obtaining information directly from judge, given that information in file obviated need to interview judge or third persons. *Darst v. Social Sec. Admin.*, C.A.8 (Mo.) 1999, 172 F.3d 1065. Records  30


Supervisors' doubts about federal employee's credibility, even if justified, did not equal "impracticability" for Privacy Act purposes and did not excuse failure to obtain information from employee "to the greatest extent practicable" before seeking information from third parties. *Waters v. Thornburgh*, C.A.D.C.1989, 888 F.2d 870, 281 U.S.App.D.C. 173. Records  31


Agency's conduct in seeking information from coworkers while investigating allegations that supervisor of foreign service officer in State Department had promoted officer's career to the detriment of others as a result of his romantic involvement with her did not violate Privacy Act subsection requiring federal agencies that maintain systems of records to 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; issues raised by coworkers were not resolvable by objective evidence in officer's possession, and agency, which already had officer's version of some of the key facts before it sought information from coworkers, sought information directly from officer "to the extent practicable" as required by subsection. *Thompson v. Department of State*, D.D.C.2005, 400 F.Supp.2d 1, affirmed 2006 WL 3835766, rehearing en banc denied. Records  31

State Department's solicitation of foreign service officer's medical information directly from her neurologist in connection with misconduct inquiry did not give rise to a cognizable claim under Privacy Act subsection requiring federal agencies that maintain systems of records to 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; even if Department maintained the records at issue, there was insufficient evidence to establish that Department acted in a manner that was intentional or willful, and that Department's alleged violation caused the revocation of officer's security clearance or proximately caused her emotional distress. *Thompson v. Department of State*, D.D.C.2005, 400 F.Supp.2d 1, affirmed 2006 WL 3835766, rehearing en banc denied. Records  31


FBI supervisor's use of electronic door logs to determine whether there were discrepancies between agent's time sheets and actual hours worked did not violate Privacy Act's requirement to collect information to the greatest extent practicable directly from the subject individual; agent had ample time to respond to FBI's allegations of time sheet and attendance violations, and assistant director of FBI's inspection division stated that there was no acceptable justification for agent's violations. *Velikonja v. Mueller*, D.D.C.2004, 362 F.Supp.2d 1, affirmed 466 F.3d 122, 373 U.S.App.D.C. 276. Records  31


Memorandum prepared by supervisor of female FBI agent being investigated by the FBI's Office of Professional Responsibility (OPR) for time sheet falsification and attendance violations, which described supervisor's own observations and other employees' observations of discrepancies between time agent reported on her time sheets


and when she was actually in the office, did not violate Privacy Act requirement to collect information to the greatest extent practicable directly from the subject individual; agent offered no competent evidence to explain five late afternoon absences, and FBI had reasonable rationale for not seeking explanation for absences from agent herself, as investigation into her alleged violations was ongoing. *Velikonja v. Mueller*, D.D.C.2004, 362 F.Supp.2d 1, affirmed 466 F.3d 122, 373 U.S.App.D.C. 276. Records  31

Privacy Act requirements that federal agency which maintains systems of records collect the information to the greatest extent practical directly from the subject individual applied to report of board of inquiry into conduct of Veterans' Administration physician. *Kassel v. U.S. Veterans' Admin.*, D.N.H.1989, 709 F.Supp. 1194. Records  31


183. Notice, agency requirements--Generally


Warning and assurance form supplied by State Department to foreign service officer prior to her interview was sufficient to meet the agency's notice obligations under Privacy Act even if the form did not specifically notify officer that she had become a subject of an investigation; officer was clearly warned that the information she provided could be used to determine "an individual's" suitability for continued employment and security clearance. *Thompson v. Department of State*, D.D.C.2005, 400 F.Supp.2d 1, affirmed 2006 WL 3835766, rehearing en banc denied. Records  31

Purpose and intent of this section is to let citizens know why and for what reasons the United States is asking the questions. *Saunders v. Schweiker*, W.D.N.Y.1981, 508 F.Supp. 305. Records  31


This section does not empower courts to enjoin use of information collected by agency which has failed to give notice required to individual from whom agency seeks information. *Houston v. U. S. Dept. of Treasury*, D.C.D.C.1979, 494 F.Supp. 24. Records  31

184. ---- Authority of solicitation, notice, agency requirements


Internal Revenue Service (IRS) summons need not establish on its face that government has complied with good-faith requirements for judicial enforcement and, thus, summons may be judicially enforceable, yet not meet Privacy Act's content requirement that summons itself give notice of authority under which IRS seeks to obtain information. *Estate of Myers v. U.S.*, E.D.Wash.1993, 842 F.Supp. 1297. Internal Revenue  4509

United States office of management and budget guideline, 40 F.R. 28949, at 28961, stating that this section does not require disclosure of authority and purpose where one person is asked to supply information about another conflicts with this section and is null and void to extent that it is a binding regulation. *Saunders v. Schweiker*, W.D.N.Y.1981, 508 F.Supp. 305. Federal Civil Procedure  173


185. ---- Routine use, notice, agency requirements


Whether Postal Service provided its employees with actual notice of routine use to which employees' handicap, life insurance, and thrift plan codes would be put on forms that complied with Privacy Act presented issues of fact that had to be resolved by district court in first instance, with respect to postal union's attempt to compel disclosure of that information. *U.S. Postal Service v. National Ass'n of Letter Carriers, AFL-CIO*, C.A.D.C.1993, 9 F.3d 138. Federal Courts  939


Department of Energy Inspector General's disclosure of nuclear reservation employees' personnel security ques-


tionnaires to Department of Justice, for purpose of criminal prosecution, violated Privacy Act, regardless of whether disclosure was "routine use" of information within meaning of exception to Act, in that Department did not indicate to employees that questionnaire information could be used for law enforcement purposes; employees were explicitly told that information would only be used for security clearance purposes. *Covert v. Harrington*, C.A.9 (Wash.) 1989, 876 F.2d 751. Records  31


186. ---- Effects of not providing information, notice, agency requirements


Internal Revenue Service notice in instruction booklets informing taxpayers that they must file a return or statement for any tax for which taxpayer is liable adequately and clearly informed taxpayers that filing was mandatory; thus, defendant was not entitled to reversal of his conviction for failure to file income tax returns on basis that IRS failed to comply with Privacy Act [5 U.S.C.A. § 552a(e)(3)] by failing to inform that filing returns is mandatory and that criminal sanctions, including imprisonment, may result from failing to comply. *U.S. v. Bressler*, C.A.7 (Ill.) 1985, 772 F.2d 287, certiorari denied 106 S.Ct. 852, 474 U.S. 1082, 88 L.Ed.2d 892. Internal Revenue  5261

In tax evasion prosecution, district court did not err in denying taxpayer's motion to dismiss for failure to publish adequate notice, pursuant to this section, of specific criminal penalty that might be imposed for failure to file tax return. *U.S. v. Dack*, C.A.7 (Ind.) 1984, 747 F.2d 1172. Internal Revenue  5263.15


This section did not require Internal Revenue Service to inform taxpayer of specific criminal penalties which could be imposed for taxpayer's failure to file income tax returns; it was enough that Internal Revenue Service booklets for years in question stated that information given could be turned over to Department of Justice. *U.S. v. Bell*, C.A.8 (Mo.) 1984, 734 F.2d 1315. Internal Revenue  4440

Instruction booklet accompanying Form 1040 Individual Income Tax Returns was not defective for failing to inform taxpayer that failure to file may result in criminal liability. *U.S. v. Wilber*, C.A.8 (Mo.) 1982, 696 F.2d 79. Internal Revenue  4470

Failure of federal income tax form to inform defendant, who was charged with willfully failing to file federal income tax returns, of specific criminal penalties for such failure did not constitute a violation of this section. *U.S. v. Rickman*, C.A.10 (Kan.) 1980, 638 F.2d 182. Records  31

West's Ann.Cal.Rev. & T. Code § 19406 governing unfiled, false and fraudulent returns or information does not violate requirements of this section and West's Ann.Cal.Civ.Code § 1798 et seq. that public agencies collecting personal information notify individuals of consequences of not providing all or part of information requested. *People v. Roper*, Cal.App. 2 Dist.1983, 193 Cal.Rptr. 15, 144 Cal.App.3d 1033. Taxation  3427

187. ---- Separate notices, agency requirements

Where application form for ration control plate necessary for purchaser to become eligible to make purchase at United States military retail sales outlets and have access to transaction cards contained clearly printed in this section's notice setting forth authority, principal purpose, routine uses and effect on individual of not providing information, fact that individual transaction cards did not contain separate notice did not violate this section. *U.S. v. McGaughey*, ACMR 1984, 17 M.J. 809. Military Justice  1109

188. ---- Miscellaneous information, notice, agency requirements

Compliance with the Privacy Act is not a prerequisite to enforcement of an Internal Revenue Service summons. *U.S. v. McAnlis*, C.A.11 (Fla.) 1983, 721 F.2d 334, certiorari denied 104 S.Ct. 2681, 467 U.S. 1227, 81 L.Ed.2d 877, rehearing denied 105 S.Ct. 21, 468 U.S. 1224, 82 L.Ed.2d 916. Internal Revenue 🔑 4508

In prosecution for filing false withholding allowance certificates, there was no violation of defendants' rights under this section when government introduced in evidence certain documents which were required by law to be filed by defendants with their employers and with government where instructions accompanying forms submitted by defendants contained necessary admonition. *U. S. v. Amon*, C.A.10 (Colo.) 1981, 669 F.2d 1351, certiorari denied 103 S.Ct. 57, 459 U.S. 825, 74 L.Ed.2d 61. Criminal Law 🔑 673(1)

If real mission of board of inquiry into incident involving Veterans' Administration physician was to create a foundation for taking adverse action against him, rather than merely to determine its impact on the image of the Veterans' Administration and its ability to serve the veterans' community, failure of the board to so advise each person to whom it spoke was a violation of the Privacy Act. *Kassel v. U.S. Veterans' Admin.*, D.N.H.1989, 709 F.Supp. 1194. Records 🔑 31

Forms used by Social Security Administration in compiling information from potential supplemental security income recipients and their families does not violate provisions of this section; both of the challenged forms provide at least some minimal amount of information to information giver and additionally informs person that more information is available from Social Security Administration. *Glasgold v. Secretary of Health and Human Services*, E.D.N.Y.1982, 558 F.Supp. 129, affirmed 706 F.2d 407, certiorari denied 104 S.Ct. 428, 464 U.S. 984, 78 L.Ed.2d 362. Social Security And Public Welfare 🔑 175.5

189. Federal Register publication, agency requirements

So long as information is "about" individual, nothing in Privacy Act requires that it additionally be about "quality or characteristic" of individual in order for publication of notice of existence and character of system in Federal Register to be required. *Tobey v. N.L.R.B.*, C.A.D.C.1994, 40 F.3d 469, 309 U.S.App.D.C. 213. Records 🔑 31

Postal Service's routine use notice relating to disclosure of necessary records to labor organizations, promulgated under Privacy Act, authorized Postal Service to disclose to postal union information that arbitrator determined Postal Service was obliged to disclose, in absence of official interpretation of notice that articulated different standard, so long as order remained unchallenged. *U.S. Postal Service v. National Ass'n of Letter Carriers, AFL-CIO*, C.A.D.C.1993, 9 F.3d 138. Labor And Employment 🔑 1120

Unsolicited letter by Veterans Administration's Office of Inspector General, which told Texas Board of Law Examiners about applicant's alleged falsification of document in connection with guaranteed home loan, did not qualify under Privacy Act's routine use exception five, which permitted unconsented disclosure of information relevant to suspected violation or reasonably imminent violation of law to another agency, where it was not clear that applicant would have violated Texas statute by taking bar examination, where violation of Texas statute was not reasonably imminent, and where Office knew only that applicant could take Texas bar examination at some time in future. *Tijerina v. Walters*, C.A.D.C.1987, 821 F.2d 789, 261 U.S.App.D.C. 301. Records 🔑 31

Naval investigative service special agent's disclosure to county sheriff of the home address and phone number of a civilian employee of the naval air rework facility of the Pensacola Naval Air Station was not permissible under the Privacy Act's routine-use exemption, since it was clear that, when the scope of routine uses was confined by

the published definitions, the release by PNAS of vehicle registration information to outside law enforcement agencies to assist in their ongoing criminal investigations was not a routine use. *Doe v. Naval Air Station, Pensacola, Fla.*, C.A.11 (Fla.) 1985, 768 F.2d 1229. Records 🔑 31

Maintenance of supervisor's private notes about individual agency employee, and use of such notes to contradict public periodic evaluations of the employee's job performance, had to be disclosed by regular Federal Register publication in order to be properly maintainable under this section as agency records. *Chapman v. National Aeronautics and Space Admin.*, C.A.5 (Tex.) 1982, 682 F.2d 526. Records 🔑 31

Use of agency records to pinpoint government employees who had not pledged to purchase government bonds was not "routine use" within exemption of this section, in view of notice and comment rule making procedures established by this section for determining what constitutes routine use and fact that such use for pinpointing nonpledging employees had not been so designated as routine use. *Parks v. U. S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677. Records 🔑 31

Requirements for proper routine use disclosure of record under Privacy Act are that notice of routine use be published in Federal Register, and that use be compatible with purpose for which information was collected. *Shannon v. General Elec. Co.*, N.D.N.Y.1993, 812 F.Supp. 308. Records 🔑 31

"Routine use" exception to the Privacy Act contained in 5 U.S.C.A. 552a(b)(3) allows agency to make unconsented to disclosures provided the use to which disclosed information is to be put is one which has been previously published in the Federal Register. *Ely v. Department of Justice*, N.D.Ill.1985, 610 F.Supp. 942, affirmed 792 F.2d 142. Records 🔑 31

Disclosure of 1971 press release concerning plaintiff to two individuals in 1975 without plaintiff's consent, as "object lesson" to individuals seeking information about transportation broker's licenses from the Interstate Commerce Commission could not be justified under this section as routine use absent any indication that the Commission had noticed such disclosure in advance in the Federal Register. *Zeller v. U. S.*, E.D.N.Y.1979, 467 F.Supp. 487. Records 🔑 58

Even assuming that letters mailed by Internal Revenue Service containing notification of referral of cases to Justice Department resulted in disclosures within meaning of this section, such disclosures were in context of duly noticed routine uses by defendants and thus were not within purview of this section. *Harper v. U. S.*, D.C.S.C.1976, 423 F.Supp. 192. Torts 🔑 351

190. Maintenance of records, agency requirements--Generally

Privacy Act provision permitting suit against agency for failure to maintain any record concerning any individual with sufficient accuracy, relevance, timeliness, and completeness does not require that the record be in system of records. *McCready v. Nicholson*, C.A.D.C.2006, 465 F.3d 1, 373 U.S.App.D.C. 236. Records 🔑 31

Bureau of Prisons' (BOP) maintenance of duplicate photographs of prisoners visiting with family, friends, and associates, which were taken pursuant to inmate photography program, was permitted by the Privacy Act to extent it was pertinent to authorized law enforcement activity, even if photographs depicted inmates exercising associational rights protected by First Amendment; examining photographs for conduct that could threaten prison security, gang-related activity, and obscene conduct was pertinent to and within the scope of an authorized law enforcement activity. *Maydak v. U.S.*, C.A.D.C.2004, 363 F.3d 512, 361 U.S.App.D.C. 76, rehearing denied.

Records 🔑 31

Postmaster General did not violate the Privacy Act by maintaining purportedly “secret files” on employees, which included medical files and employee assistance program files; the files were published as a system of records, entitled “Supervisors' Personnel Records,” as required by the Act, and the employee labor manual allowed the maintenance of any “other information at the supervisor's discretion” or other “relevant” records. *Risch v. U.S. Postal Service*, C.A.6 (Mich.) 2001, 244 F.3d 510. Records 🔑 31

Lack of evaluation by immediate supervisor of applicant for foreman position within Postal Service did not violate subsec. (e)(5) of this section, where evaluation by immediate supervisor, who was temporarily holding foreman position and had applied for that position would violate Postal Service regulations by having applicant be evaluated by competitor. *DeBold v. Stimson*, C.A.7 (Ind.) 1984, 735 F.2d 1037.

Federal Bureau of Investigation (FBI) did not maintain records showing how well-known religious figure exercised his First Amendment rights, in violation of Privacy Act, when it retained document discussing his utilization of those rights as part of ongoing investigation of Communist Party activities in United States. *Falwell v. Executive Office of the President*, W.D.Va.2001, 158 F.Supp.2d 734. Records 🔑 31

191. ---- Accuracy, maintenance of records, agency requirements

Naval officer failed to identify new information or factual inaccuracies forming basis of his reporting senior's opinion, as expressed in original fitness report, and therefore Department of the Navy did not violate Privacy Act by retaining original fitness report in officer's naval record, instead of replacing it with more favorable supplemental report. *Mueller v. Winter*, C.A.D.C.2007, 485 F.3d 1191. Records 🔑 31


As long as information contained in agency's files is capable of being verified, then, under Privacy Act, agency must take reasonable steps to maintain accuracy of information to assure fairness to individual and, if agency willfully or intentionally fails to maintain its records in that way, and consequently makes determination adverse to individual, it will be liable to that person for money damages. *Sellers v. Bureau of Prisons*, C.A.D.C.1992, 959 F.2d 307, 294 U.S.App.D.C. 361. Records 🔑 31


Remand was necessary following improperly granted summary judgment against federal employee bringing Privacy Act action seeking expungement or amendment of memoranda stating that she failed to obtain necessary clearances before giving foreign officials document containing sensitive national security information; employee claimed, without contradicting prior concessions, that clearance procedures did not apply to information culled solely from diplomatic channels and that she was justifiably ignorant of government's view of procedural requirements and that her state of mind should have been reflected in agency's records. *Strang v. U.S. Arms Control and Disarmament Agency*, C.A.D.C.1990, 920 F.2d 30, 287 U.S.App.D.C. 99. Records 🔑 31


Bureau of Prisons met its duty under Privacy Act to maintain its records with sufficient accuracy to ensure fairness to prisoner through its inclusion in report sent to Parole Commission of prisoner's 17-page rebuttal to inaccurate information contained in presentence report and internal Bureau documents. *Fendler v. U.S. Bureau of Prisons*, C.A.9 (Cal.) 1988, 846 F.2d 550. Prisons 🔑 9


Department of State fulfilled its responsibility under Privacy Act when it verified report of investigation of job applicant to the extent possible, against factual record, and narrowed controversy as to accuracy of job interview to the applicant's statements. *Doe v. U.S.*, C.A.D.C.1987, 821 F.2d 694, 261 U.S.App.D.C. 206. Records 🔑


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It was proper for Office of Personnel Management to retain and rely upon disputed subjective evaluations of administrative law judge applicant that were based on multitude of factors so there were various ways of characterizing some of underlying events, and to do so did not violate requirement of accuracy in Privacy Act. *White v. Office of Personnel Management*, C.A.D.C.1986, 787 F.2d 660, 252 U.S.App.D.C. 104, certiorari denied 107 S.Ct. 276, 479 U.S. 885, 93 L.Ed.2d 252. Records  31

Challenged portions of a serviceman's records were accurate, thus precluding relief on his claim under the Privacy Act section providing for a civil action when an agency makes a determination not to amend an individual's record in accordance with his request; the serviceman, who framed his amendment requests only as attacks on statements indicating that judgments were made, and not on the facts underlying those judgments, was not seeking to correct any true errors in his records, but was hoping the court would expunge references in his records to an adverse personnel action that he could not challenge directly because the Civil Service Reform Act (CSRA) precluded such review. *Lee v. Geren*, D.D.C.2007, 2007 WL 935592. Records  31

The Bureau of Prisons (BOP) did not violate the Privacy Act's accuracy provision, requiring it to maintain accurate prison records, when it changed federal prisoner's Inmate Financial Responsibility Program (IFRP) records from "participates" status to "refuses" status, based upon prisoner's failure to comply with IFRP payment schedule for his court-ordered special assessment; IFRP records were exempt from the Act's accuracy requirement, and status change accurately reflected prisoner's failure to participate in the program, since his inmate account lacked the necessary funds to make the scheduled payment at the time of the status change. *Williams v. Farrior*, E.D.Va.2004, 334 F.Supp.2d 898, affirmed 122 Fed.Appx. 65, 2005 WL 428776, certiorari denied 126 S.Ct. 260, 163 L.Ed.2d 235. Records  31

Privacy Act does not require Bureau of Prisons to exclude from its files on prisoners every iota of disputed hearsay; records may contain hearsay and reports from informants and unnamed parties, provided that records accurately reflect nature of evidence. *Graham v. Hawk*, W.D.Tenn.1994, 857 F.Supp. 38, affirmed 59 F.3d 170. Records  31

Former Army officer who brought action under Privacy Act seeking to amend record of his service in Army failed to show that references in his record to "fraternizing" with female subordinates were factually inaccurate; Army policy letter stating that term "fraternization" should be used only to refer to criminal offense and should not be confused with regulatory policy did not require different result, as word "should" did not mean "shall," and policy letter was no longer in effect during time period in question. *Frobish v. U.S. Army*, D.Kan.1991, 766 F.Supp. 919. Records  31

Information in talking paper, which was chronology of former officer's attempts to have his officer effectiveness reports voided and to get promoted to major, was reasonably accurate, complete and relevant; hence, creation and maintenance of document was not a violation of the Privacy Act [5 U.S.C.A. § 552a(e)(5)]. *Marcotte v. Secretary of Defense*, D.C.Kan.1985, 618 F.Supp. 756. Records  31

Civilian employees of Coast Guard engine shop failed to meet their burden of proving that amendment or expungement of their disciplinary support files was necessary or appropriate under this section on basis of supervisor's having maintained memory aids in shop book, where records were not inaccurate, untimely or otherwise deficient, Coast Guard and other federal procedures and regulations were followed in compilation and maintenance of disciplinary files, and records were of great value and relevancy to the Coast Guard in making fair and accurate

ate determinations with regard to disciplinary matter, though the memory aids were not attached to official file cards until several months after they were made. *Thompson v. Department of Transp. U. S. Coast Guard*, S.D.Fla.1982, 547 F.Supp. 274. Records 🔑 10; Records 🔑 35

In suit based on allegation that the Civil Service Commission failed to maintain its records concerning applicant for position of noncompetitive service in the manner required by this section, summary judgment for the Commission was precluded by the existence of a genuine question of fact as to whether the records concerning the applicant were fair and accurate. *Doe v. U.S. Civil Service Commission*, S.D.N.Y.1980, 483 F.Supp. 539. Federal Civil Procedure 🔑 2509.8

Even if mention of Marine Corps officer's experience in comment portion of fitness report in violation of a reporting regulation constituted a factual error for purposes of the Privacy Act, this did not require correction of the report, since the problematic portion of the report was laudatory and removal was therefore not necessary to assure fairness to the officer. *Baker v. Winter*, C.A.D.C.2006, 2006 WL 3836573, Unreported. Armed Services 🔑 6.3

192. ---- Completeness, maintenance of records, agency requirements

Privacy Act placed no affirmative duty on Veterans Administration employees to place documents generated by special undercover investigators assigned to special investigative project at Veterans Administration Hospital into Veterans Administration's "system of records," where documents involved were not part of official agency investigation into activities of individual requesting records, and records requested did not have adverse effect on that individual. *Manuel v. Veterans Admin. Hosp.*, C.A.6 (Mich.) 1988, 857 F.2d 1112, certiorari denied 109 S.Ct. 1317, 489 U.S. 1055, 103 L.Ed.2d 586. Records 🔑 31

Applicant for employment with Justice Department was not entitled to discovery to develop a wholly unsupported contention that the records developed during background investigation into his suitability for employment were incomplete. *Doe v. U.S. Dept. of Justice*, D.D.C.1992, 790 F.Supp. 17. Records 🔑 60

Duty of record maintenance as this section may have imposed upon the Veterans Administration when it became effective did not extend to a quest for documents which antedated this section by more than 20 years. *Leib v. Veterans Admin.*, D.C.D.C.1982, 546 F.Supp. 758. Records 🔑 62

193. ---- Timeliness, maintenance of records, agency requirements

Use of supervisor's private notes in decision to terminate employee of federal agency violated record incorporation requirement under this section where the notes were kept private and available only to employee's supervisor during two-year period preceding employee's receipt of notice of impending removal action and of information that file against him was available for inspection. *Chapman v. National Aeronautics and Space Admin.*, C.A.5 (Tex.) 1982, 682 F.2d 526. Records 🔑 31

Timeliness requirement of this section was met with respect to memory aids which supervisor of civilian employees of Coast Guard engine shop maintained in shop book, where the memory aids were attached to official employee record cards prior to time adverse disciplinary actions were proposed and disciplinary support files relating to each employee were opened contemporaneously with the proposal of adverse disciplinary actions, and employees were allowed access to the files and opportunity to make copies of the materials therein. *Thompson v. Department of Transp. U. S. Coast Guard*, S.D.Fla.1982, 547 F.Supp. 274. Records 🔑 30

Where certain documents were provided to plaintiffs well in advance of Air Force status review hearing, and documents were not disclosed to status review board prior to hearing in order to prevent preconceptions by board, which as result of hearing recommended that Air Force captain's "Missing in Action" status be changed to "Killed in Action," failure to provide documents to board members until hearing did not violate this section's timeliness requirement. *Townsend v. Carter*, N.D.Tex.1979, 476 F.Supp. 1070. Records 🔑 3

194. ---- Opinions, maintenance of records, agency requirements

Psychological evaluation of National Security Agency (NSA) employee, his supervisor's statement regarding his behavior, and incident reports detailing his removal from a secure facility reflected the declarants' opinions, and thus, the NSA did not violate the Privacy Act by refusing to expunge them from the employee's records; such opinions, while possibly subject to debate, were not subject to alteration under the Privacy Act as long as they were recorded accurately. *Reinbold v. Evers*, C.A.4 (W.Va.) 1999, 187 F.3d 348. Records 🔑 31

Naval officer did not identify any inaccurate facts forming basis of opinion of his reporting senior at the time reporting senior signed original fitness report in officer's naval record, and increased performance trait classifications set forth in reporting senior's supplemental fitness report were matters of opinion which, under Navy regulation, could not be amended upon officer's request, and therefore Department of the Navy did not violate Privacy Act by retaining original fitness report in officer's naval record, instead of replacing it with more favorable supplemental report. *Mueller v. England*, D.D.C.2005, 404 F.Supp.2d 51. Armed Services 🔑 6.3; Records 🔑 31

Derogatory personal statements in former Central Intelligence Agency (CIA) employee's personnel file, made by several interviewees during his security clearance process, were unverifiable opinions, and maintaining them in file therefore was not violation of Privacy Act section requiring agencies to maintain accurate records; statements indicated that employee had "paranoid streak," that clearance process had made him "bitter and [wanting to] seek revenge," and that he was "snake in the grass." *Blazy v. Tenet*, D.D.C.1997, 979 F.Supp. 10, affirmed 1998 WL 315583. Records 🔑 31

195. Destruction of records, agency requirements


Agency's offer to destroy memorandum, even though never accepted by plaintiff, constituted compliance with this section. *Metadure Corp. v. U. S.*, S.D.N.Y.1980, 490 F.Supp. 1368. Records 🔑 31


196. Dissemination of records, agency requirements--Generally


Waiver signed by former Internal Revenue Service employee releasing prospective employer and any other company from any liability arising from investigation and verification barred liability on part of Internal Revenue Service under section of the Privacy Act stating that each agency shall, prior to disseminating any record about an individual to any person other than an agency, unless dissemination is made pursuant to Freedom of Information Act, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes. *National Treasury Employees Union v. I.R.S.*, D.C.D.C.1985, 601 F.Supp. 1268. Records 🔑 31


197. ---- Accuracy, dissemination of records, agency requirements


Department of Health and Human Services had not violated Privacy Act prohibition against release of inaccurate


information to state medical licensing board when it released to board information regarding her termination, which had been reversed by a federal appeals board, on grounds that reversal indicated information was false; federal board had found in favor of employee based upon Department's presentation of insufficient evidence, rather than false evidence. *Kline v. Department of Health & Human Services*, C.A.10 (Okla.) 1991, 927 F.2d 522. Records  31

Failure of Internal Revenue Service to include notice of deficiency among documents produced pursuant to taxpayer's request under Freedom of Information Act did not support taxpayer's claim against Internal Revenue Service for violation of Privacy Act provision requiring agency to make reasonable efforts to assure that records are accurate and relevant for agency purposes prior to any dissemination. *Smith v. U.S.*, C.A.10 (Colo.) 1987, 817 F.2d 86. Records  31

Privacy Act section requiring each federal agency that maintains system of records to maintain all records used by 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 did not require Federal Bureau of Investigation to insure that its records were accurate before sending them to other agencies; disagreeing with *Doe v. United States Civil Service Comm'n*, 483 F.Supp. 539 and *R.R. v. Dept. of the Army*, 482 F.Supp. 770. *Perry v. F.B.I.*, C.A.7 (Ill.) 1985, 759 F.2d 1271, rehearing granted in part 769 F.2d 450, on rehearing 781 F.2d 1294, certiorari denied 107 S.Ct. 67, 479 U.S. 814, 93 L.Ed.2d 25. Records  31

Employee of Federal Bureau of Investigation (FBI) did not state claim under Privacy Act against FBI, as employer, on allegations that other employee provided "false and misleading information" about employee's psychological condition to two Office of Professional Responsibility (OPR) investigators despite having access to employee's "complete records," since clear inference was that other employee chose to spread false information rather than disclose presumably accurate information contained in records kept by agency and thus allegation amounted only to accusation of rumor-mongering. *Runkle v. Gonzales*, D.D.C.2005, 391 F.Supp.2d 210. Records  31

Documents, supporting discharge of employee and allegedly kept by Army and Air Force Exchange Service, did not cause former employee to incur damages under Privacy Act in form of attorney's fees in state law employment commission proceedings; rather, Exchange Service's determination that employee committed dischargeable offense caused the costs, and the documents merely memorialized that decision; thus, former employee could not bring Privacy Act challenge to the determination by challenging the documents as false. *Castella v. Long*, N.D.Tex.1988, 701 F.Supp. 578, affirmed 862 F.2d 872, certiorari denied 110 S.Ct. 330, 493 U.S. 936, 107 L.Ed.2d 319. Records  31

In action by former officer of United States Public Health Service against Department of Health, Education and Welfare pursuant to public information provisions of this section, genuine issue of material fact existed as to whether information in records of the Service concerning the officer's purported job performance was true and whether determination of the Service was made reasonably so as to assure fairness to the officer, thus precluding summary judgment in favor of the Department and the official on count concerning accuracy of such information and reasonableness of determination by the agency. *Savarese v. U. S. Dept. of Health, Ed. and Welfare*, N.D.Ga.1979, 479 F.Supp. 304, affirmed 620 F.2d 298, certiorari denied 101 S.Ct. 858, 449 U.S. 1078, 66 L.Ed.2d 801. Federal Civil Procedure  2515

198. First Amendment rights, agency requirements

Privacy Act does not prohibit agency from maintaining records about individual's First Amendment activities if information was pertinent to authorized law enforcement activity when agency collected information; Act does not require agency to expunge records when they are no longer pertinent to current law enforcement activity. *J. Roderick MacArthur Foundation v. F.B.I.*, C.A.D.C.1996, 102 F.3d 600, 322 U.S.App.D.C. 202, rehearing denied, certiorari denied 118 S.Ct. 296, 522 U.S. 913, 139 L.Ed.2d 228. Records 🔑 31

Internal Revenue Service (IRS) failed to sufficiently justify maintenance of newspaper articles, which were nearly ten years old and in which no reference was made to brothers under investigation by IRS, in brothers' files, and thus IRS was required to remove newspaper articles from brothers' files pursuant to Privacy Act; retention of articles in files implicated brothers' First Amendment rights and articles would not be helpful in any future enforcement activity. *Becker v. I.R.S.*, C.A.7 (Ill.) 1994, 34 F.3d 398, rehearing denied. Constitutional Law 🔑 1170; Records 🔑 31

Federal Bureau of Investigation's (FBI's) purchase of set of prints from negatives left by plaintiff was authorized under Privacy Act exemption permitting agency to maintain record of individual's exercise of First Amendment rights if pertinent to and within scope of authorized law enforcement activity. *Wabun-Inini v. Sessions*, C.A.8 (Minn.) 1990, 900 F.2d 1234, rehearing denied. Records 🔑 31

Federal Bureau of Investigation's maintenance of records on a minor, who received flood of international correspondence in connection with his attempt to compile an encyclopedia of the world as part of his sixth grade project, did not violate the Privacy Act under a subsection authorizing the agency's maintenance of records on an individual's exercise of First Amendment rights under the Privacy Act so long as the records were relevant to an authorized law enforcement activity of the agency. *Patterson by Patterson v. F.B.I.*, C.A.3 (N.J.) 1990, 893 F.2d 595, rehearing denied, certiorari denied 111 S.Ct. 48, 498 U.S. 812, 112 L.Ed.2d 24. Records 🔑 60

Letter, in which Government contractor's director of federal laboratory reprimanded contractor's scientist for improperly assuming mantle of National Cancer Institute endorsement for private research project on malathion, did not describe how scientist exercised rights guaranteed by First Amendment and, therefore, did not violate Privacy Act statute; letter made scant reference to scientist's dissemination of views on carcinogenicity of malathion, revealed director's disappointment with scientist's putative indiscretions, but did not make single reference to content of scientist's position on malathion and only vaguely alluded to manner in which scientist expressed his views. *Reuber v. U.S.*, C.A.D.C.1987, 829 F.2d 133, 264 U.S.App.D.C. 348. Records 🔑 31

Maintenance of records of a tax protester's activities, including notes of his speeches and purchased tapes of speeches, by the Internal Revenue Service and Justice Department fell within "law enforcement activities" exception to the Privacy Act; the speeches were a significant part of conferences and conventions at which the protester was a speaker, and the records were necessary to give the IRS a complete and representative picture of the events. *MacPherson v. I.R.S.*, C.A.9 (Ariz.) 1986, 803 F.2d 479. Records 🔑 31

Agency's determination whether employee is performing his job adequately constitutes "authorized law enforcement activity" under this section. *Nagel v. U.S. Dept. of Health, Educ. and Welfare*, C.A.D.C.1984, 725 F.2d 1438, 233 U.S.App.D.C. 332.

Supervisors' memorandum, which merely recorded what employee was told at meeting and informed employee of need to follow chain of command in submitting memoranda, was a valid restriction on time, place and manner of employee's expression and did not implicate employee's rights under U.S.C.A. Const.Amend. 1; thus, maintenance of memorandum was not a violation of this section's prohibition against maintaining any record describ-

ing how an individual exercises his or her rights under U.S.C.A. Const.Amend. 1. *Boyd v. Secretary of the Navy*, C.A.11 (Fla.) 1983, 709 F.2d 684, certiorari denied 104 S.Ct. 709, 464 U.S. 1043, 79 L.Ed.2d 173. Constitutional Law 🔑 1925; Records 🔑 31

This section's exemption for records "pertinent to and within the scope of an authorized law enforcement activity" is not limited to investigation of past, present or future criminal activity; rather, maintenance of records describing how a person exercises rights under U.S.C.A. Const. Amend. 1 is not barred if there is a direct nexus to an authorized criminal, civil or administrative law enforcement activity. *Jabara v. Webster*, C.A.6 (Mich.) 1982, 691 F.2d 272, certiorari denied 104 S.Ct. 193, 464 U.S. 863, 78 L.Ed.2d 170. Records 🔑 31

Objective of subsec. (e)(7) of this section qualifiedly prohibiting agency from maintaining record describing how individual exercises rights under U.S.C.A. Const. Amend. 1 was to make certain that political and religious activities are not used as cover for illegal or subversive activities, and Congress by enacting this subsection did not intend to dilute guarantees of U.S.C.A. Const. Amend. 1 by authorizing maintenance of files on persons who are merely exercising their constitutional rights. *Clarkson v. I. R. S.*, C.A.11 (Ga.) 1982, 678 F.2d 1368. Records 🔑 31

Videotape showing government employees complaining to their employer about work-related grievances was record of exercise of rights under U.S.C.A. Const. Amend. 1 and its creation violated this section. *Albright v. U. S.*, C.A.D.C.1980, 631 F.2d 915, 203 U.S.App.D.C. 333, on remand 558 F.Supp. 260. Records 🔑 13

In his criminal prosecution for failing to file tax returns, defendant was not entitled to evidentiary hearing on his claim that government had violated Privacy Act by engaging in "political spying" and maintaining records derived therefrom; although defendant claimed that information in IRS files was obtained illegally and thus could not be used against him, he failed to show any factual basis for his claim and sought evidentiary hearing in order to obtain necessary information to pursue his theory. *U.S. v. Gillotti*, W.D.N.Y.1993, 822 F.Supp. 984. Criminal Law 🔑 36.6; Criminal Law 🔑 394.6(5)

Federal consultant denied appointment as deputy medical officer in Social Security Administration was not entitled under Privacy Act to damages due to injury to his reputation; consultant simply stated that individuals previously sympathetic to the appointment had stopped pushing on his behalf and ceased associating with him, without providing corroborative statements from such individuals, and evidence indicated support for his appointment continued following disclosure of information in question. *Doe v. F.B.I.*, D.D.C.1989, 718 F.Supp. 90, affirmed in part, reversed in part on other grounds 936 F.2d 1346, 290 U.S.App.D.C. 289, rehearing denied. Records 🔑 31


Document submitted by Marine Corps officer to his commanding officer did not come with section of the Privacy Act providing that no agency shall keep records "describing how any individual exercises rights guaranteed by the First Amendment" unless certain conditions apply; document did not describe how the officer exercised his First Amendment rights, but merely indicated that such a right was exercised. *Pototsky v. Department of Navy*, D.Mass.1989, 717 F.Supp. 20. Records 🔑 31


199. Rules of conduct, agency requirements


This section authorizes regulations of the type contemplated by the Office of Management and Budget requiring Federal agencies to establish personnel security policies for screening all individuals participating in the design, operation, or maintenance of Federal computer systems or having access to data in Federal computer systems.

1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 384.


200. Safeguards, agency requirements

In some circumstances, existence of regulations in accordance with which records were released may not shield an agency from liability under this section. *Wisdom v. Department of Housing and Urban Development*, C.A.8 (Ark.) 1983, 713 F.2d 422, certiorari denied 104 S.Ct. 1272, 465 U.S. 1021, 79 L.Ed.2d 678. Records  31

Former agency officials bringing Privacy Act claim against Department of Justice based on its alleged failure to “establish appropriate administrative, technical and physical safeguards to ensure security and confidentiality of records” satisfactorily pled that agency acted in manner that was intentional or willful; disclosures that were subject of lawsuit allegedly occurred after Department became aware of several prior disclosures regarding that official and several requests for investigation and corrective action. *Pilon v. U.S. Dept. of Justice*, D.D.C.1992, 796 F.Supp. 7. Records  31

Evidence supported finding that government agency provided adequate safeguards to prevent disclosure of employee's employment records; records were compiled and maintained in substantial compliance with agency rules, and agency official's disclosures of employee's employment problems were based, not on agency records, but on official's own independent recollections and personal opinions. *Krowitz v. Department of Agriculture, U.S. Forest Service*, W.D.Mich.1986, 641 F.Supp. 1536, affirmed 826 F.2d 1063, certiorari denied 108 S.Ct. 705, 484 U.S. 1009, 98 L.Ed.2d 656. Records  31

201. Secret records, agency requirements

Postmaster General did not violate the Privacy Act by maintaining purportedly “secret files” on employees, which included medical files and employee assistance program files; the files were published as a system of records, entitled “Supervisors' Personnel Records,” as required by the Act, and the employee labor manual allowed the maintenance of any “other information at the supervisor's discretion” or other “relevant” records. *Risch v. Henderson*, E.D.Mich.1999, 128 F.Supp.2d 437, affirmed 244 F.3d 510. Records  31

V. CIVIL REMEDIES

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231. Exclusive nature of section, civil remedies--Generally


Allegedly inaccurate comments in former Veterans Administration physician's proficiency reports did not invade a constitutionally protected liberty interest, so that physician's rights with regard to amendment of those records were limited to those provided in Privacy Act. *Hewitt v. Grabicki*, C.A.9 (Wash.) 1986, 794 F.2d 1373. Constitutional Law  4187


Privacy Act furnished mortgagor with appropriate remedy for privacy violations by the Department of Housing and Urban Development; therefore, court would not address merits of assertion that HUD privacy regulations were violated in foreclosure proceedings. *U.S. v. OCC Co.*, C.A.7 (Wis.) 1985, 758 F.2d 1160. Federal Courts  757; Records  31

If United States' consent to be sued in court of claims ever included back pay claim of one having no property interest in his job, and legally aggrieved solely because of derogatory material in government files generated by his firing, that consent was withdrawn by this section which provides administrative remedy for one so aggrieved. *Fiorentino v. U. S.*, Ct.Cl.1979, 607 F.2d 963, 221 Ct.Cl. 545, certiorari denied 100 S.Ct. 1039, 444 U.S. 1083, 62 L.Ed.2d 768. United States  125(9)


Former government employee's constitutional damage claims relating to disclosure of false information in her records were precluded by Privacy Act. *Mittleman v. U.S. Treasury*, D.D.C.1991, 773 F.Supp. 442. United States  50.10(7)


Nothing in this section or in its legislative history indicated that it was intended to be an exclusive remedy for claims arising out of administrative investigations. *Doe v. U.S. Civil Service Commission*, S.D.N.Y.1980, 483 F.Supp. 539. Action  2

Where an "individual" within meaning of the Privacy Act made several requests of the type authorized under the Act, final determination denying the requests was sufficient predicate for individual's pursuit of the various civil remedies authorized by the Act, which provides for broader, more direct judicial action than does the Administrative Procedure Act, and there was no requirement that review be pursuant to the latter Act. *Zeller v. U. S.*, E.D.N.Y.1979, 467 F.Supp. 487. Records  63


Board was without authority to consider employee's Privacy Act and Freedom of Information Act (FOIA) claims arising from agency's revision of employee's performance appraisal to comply with Board's prior order; rather, proper forum for those claims was federal district court after exhaustion of administrative remedies. *Normoyle v. Department of Air Force*, M.S.P.B.1994, 65 M.S.P.R. 80. Merit Systems Protection  21


Merit Systems Protection Board (MSPB) lacked jurisdiction to order Office of Personnel Management (OPM) to


obtain a certified individual retirement record (IRR) from employing agency correcting the last day in pay status (LDPS) for purpose of calculating disability retirement annuity; instead, applicant was required to pursue his legal rights in district court under the Privacy Act. *Rainone v. Office of Personnel Management*, C.A.Fed.2007, 249 Fed.Appx. 823, 2007 WL 2736314, Unreported. United States  39(15)


Claims that Bureau of Prisons (BOP) violated federal inmate's rights under Due Process and Double Jeopardy Clauses through its alleged maintenance and use of inaccurate information in inmate's presentence investigation (PSI) report were encompassed within Privacy Act's comprehensive remedial scheme, necessitating dismissal of such claims. *Griffin v. Ashcroft*, C.A.D.C.2003, 2003 WL 22097940, Unreported. Civil Rights  1311


232. ---- *Bivens* action, exclusive nature of section, civil remedies

Special factors counseled against judicial implication of a *Bivens* remedy for claims, brought by Central Intelligence Agency (CIA) employee and her husband, arising out of government officials' public disclosure of employee's covert operative status; Privacy Act provided comprehensive legislative scheme, supplementation of which with a new judicial remedy would be inappropriate, and Intelligence Identities Protection Act (IIPA) and need to maintain Executive Branch discretion in national security matters raised serious questions of justiciability. *Wilson v. Libby*, D.D.C.2007, 2007 WL 2059094. United States  50.3


Comprehensive remedial scheme provided by the Privacy Act precluded *Bivens* claim brought by former senior advisor to the Iraqi Ministry of Communications under the Coalition Provisional Authority (CPA) against former Department of Defense (DoD) official, which alleged that official violated the senior advisor's Fifth Amendment due process rights by publicly stigmatizing him through a campaign of making false representations and allegations; *Bivens* claim was based entirely on DoD official's alleged disclosure of Privacy Act-covered information pertaining to senior advisor. *Sudnick v. Department of Defense*, D.D.C.2007, 474 F.Supp.2d 91. United States  50.10(7)

Due to remedy available under Privacy Act, subject of Department of Justice (DOJ) criminal investigation could not maintain *Bivens* due process claim against DOJ and FBI officials and agents arising from alleged campaign of harassment, including intimidation, defamatory public statements, defamatory statements to employers, and retaliation for subject's public statements and filing of administrative complaint; although subject contended that not all of his claims of damage to his property rights were redressable via Privacy Act, Act was comprehensive legislative scheme providing meaningful remedy for kinds of harm alleged. *Hatfill v. Ashcroft*, D.D.C.2005, 404 F.Supp.2d 104. United States  50.10(3)


Privacy Act barred *Bivens* First Amendment retaliation claim by former undercover informant for Customs Service against federal officials alleging creation, maintenance, and dissemination of allegedly defamatory "blackball" memo in retaliation for charges of corruption contained in informant's resignation letter; Privacy Act provided comprehensive legislative scheme that provided meaningful remedy for wrong alleged. *Downie v. City of Middleburg Heights*, C.A.6 (Ohio) 2002, 301 F.3d 688. United States  50.3

Comprehensive remedial scheme available to Veterans Administration (VA) physician under Privacy Act of 1974 barred him from going forward with *Bivens* claim relating to alleged denial of statutory rights to meaningful review of employment records without due process. *Newmark v. Principi*, E.D.Pa.2003, 262 F.Supp.2d 509. United States  50.10(4)


Even if United States Postal Service employee was not entitled to qualified immunity from unsuccessful job ap-


plicant's *Bivens* claim, alleging that employee violated applicant's constitutional right to privacy by disclosing to applicant's employer that applicant had applied for employment with Postal Service, *Bivens* damages action would still be precluded by Privacy Act, since comprehensive legislative scheme for remedying privacy violations existed in Privacy Act. *Sullivan v. U.S. Postal Service*, W.D.N.Y.1996, 944 F.Supp. 191. United States  50.10(7)


233. Elements of action, civil remedies


To maintain suit for damages under catch-all provision for violation of Privacy Act's central prohibition against disclosure, plaintiff must advance evidence to support finding of four necessary elements: information is covered by Act as "record" contained in "system of records," agency "disclosed" information, disclosure had "adverse effect" on plaintiff, which includes adverse effect standing requirement and causal nexus between disclosure and adverse effect, and disclosure was "willful or intentional." *Quinn v. Stone*, C.A.3 (Pa.) 1992, 978 F.2d 126, 121 A.L.R. Fed. 745, rehearing denied. Records  31

234. Adverse effect, civil remedies


Alleged transfer and reclassification of prisoner as a "special offender" in retaliation for the exercise of his First Amendment rights, if proven, constituted an "adverse determination" under the Privacy Act; reclassification allegedly prevented prisoner from obtaining tutoring jobs at new Federal Correctional Institute (FCI) akin to those at which he had excelled at FCI from which he was transferred, transfer allegedly distanced prisoner from his ill parents and from Bureau of Prisons staff members who could have testified on his behalf at parole hearing, and alleged deprivations were sufficient to deter a person of ordinary firmness from speaking again. *Toolasprashad v. Bureau of Prisons*, C.A.D.C.2002, 286 F.3d 576, 351 U.S.App.D.C. 64. Prisons  13(5)


Where there was no attack on validity of determination that current market value of social security recipient's apartment was \$150 per month and that she was paying only \$100 a month and thus should be charged with \$50 a month unearned income, she could not show any harm from alleged violation of this section by forms which requested rental information from landlord but did not indicate the use to which that information would be put and thus could not maintain action for violation of this section. *Usher v. Secretary of Health and Human Services*, C.A.1 (Mass.) 1983, 721 F.2d 854. Records  31


Bank's former director and legal counsel failed to state claim of illegal disclosure under this section based on revelation of list he prepared and submitted to Federal Deposit Insurance Corporation examiners allegedly on confidential basis which showed that he had receipts from the bank for some documents that it had classified as pending and on the examiners' comments on his approach to the agency, where such references, aside from being vague and almost devoid of factual content, dealt with disclosure of material which had not been shown to have been part of a system of records as defined by this section, and where no concrete, adverse determination based on such records had ever been taken. *Fagot v. Federal Deposit Ins. Corp.*, D.C.Puerto Rico 1984, 584 F.Supp. 1168. Records  31

Plaintiff who was the subject of an FBI background investigation performed during the Bush Administration failed to establish that he was "adversely affected" by handover of FBI files to the Clinton Administration, as required to sustain a cause of action under the Privacy Act, absent evidence that plaintiff's FBI file was ever subsequently requested by anyone. *Alexander v. F.B.I.*, D.D.C.1999, 186 F.R.D. 180. Records  31


235. Delay, civil remedies


Where nothing suggested that actions of government, however disjointed or confused, were willful or deliberate, where there was no demonstration whatsoever of any alleged inaccuracies in records assembled and disseminated by agencies to farmer, and where nothing demonstrated existence of any "adverse effect" on farmer as result of supposed Privacy Act violations, delay in disclosure of documents requested by farmer from Farmers Home Administration did not entitle farmer to damages under the Privacy Act. *Perry v. Block*, C.A.D.C.1982, 684 F.2d 121, 221 U.S.App.D.C. 347. Records  67


Agency's delay in providing requested records did not give rise to claim for improper denial of records under Privacy Act, where documents were provided before case was filed. *Fisher v. F.B.I.*, D.Conn.2000, 94 F.Supp.2d 213. Records  62


Although action for money damages for delay in producing requested document is available under this section, it is available only against the United States and only if the court determines the agency acted in a manner which was intentional or willful. *Daniels v. St. Louis VA Regional Office*, E.D.Mo.1983, 561 F.Supp. 250. Records  31


236. Causal relationship between violation and adverse effect, civil remedies

Absence of causal connection between depression allegedly suffered by employee and his wife and alleged failure of federal agency to inform witnesses of principal purposes of its investigation into allegations of misconduct by employee, as required under Privacy Act, precluded employee's recovery of damages under Act. *Cardamone v. Cohen*, C.A.6 (Ky.) 2001, 241 F.3d 520. Records  31


Individual bringing claim under this section must demonstrate causal connection between alleged violation of this section and harm suffered by the individual. *Houlihan v. Office of Personnel Management*, C.A.9 (Ariz.) 1990, 909 F.2d 383. Records  31


In government employees' action against agency to recover award under this section for agency's videotaping of an informational hearing attended by employees, evidence failed to establish that the employees, who were depicted visually or orally on the videotape, suffered any adverse effect from the videotaping itself, as opposed to emotional trauma and shock more likely caused by agency's decision to restrict drastically the employees' prospects for promotions and pay increases. *Albright v. U.S.*, C.A.D.C.1984, 732 F.2d 181, 235 U.S.App.D.C. 295. Records  35


Requisite causal connection to establish Privacy Act claim was lacking between Marshal's Service's failure to publish a description of its medical records system and interim security officer's discharge for failure to meet certain objective medical criteria; publication would not have made any difference to officer's discharge nor affected his ability to make an informed career choice since he did not claim that he checked the Federal Register prior to applying. *International Union, Security, Police, and Fire Professionals of America (SPFPA) v. U.S. Marshal's Service*, S.D.N.Y.2004, 350 F.Supp.2d 522. Records  31


While public employee offered evidence to show that his performance rating had been lowered, he had been detailed from his ordinary duties and he was transferred twice, public employee failed to establish that those damages were the result of any Privacy Act violation; accordingly, public employee could not maintain a damage action under the Act. *Tuesburg v. U.S. Dept. of Housing and Urban Development*, E.D.Mo.1987, 652 F.Supp. 1044. Records  35


237. Intentional or willful acts, civil remedies--Generally


Agency acts intentionally or willfully in violating Privacy Act so as to warrant award of damages either by committing the act without grounds for believing it to be lawful, or flagrantly disregarding others' rights under the Act. *Mount v. U.S. Postal Service*, C.A.6 (Ky.) 1996, 79 F.3d 531. Records  31


Remand was necessary for further proceedings on whether Department of Justice's violation of Privacy Act was "intentional or willful," even though underlying issue of violation of Act could be decided as matter of law on appeal from granting of Government's motion for summary judgment and denial of federal employee's cross motion. *Waters v. Thornburgh*, C.A.D.C.1989, 888 F.2d 870, 281 U.S.App.D.C. 173. Federal Courts  938

Claim that government officials intentionally and willfully refused to allow administrative law judge to see his file and failed to adequately maintain file in accordance with this section gave rise to a cause of action for money damages. *Wren v. Harris*, C.A.10 (N.M.) 1982, 675 F.2d 1144. Records  31


In action by Internal Revenue Service employees against Service and United States for violation of this section, allegations that disclosure of information concerning plaintiffs was not needed by agency officials and employees in regular performance of their work and that defendant condoned use of list for soliciting savings bond sales served generally to fill in gaps on question of willfulness and intentional misconduct so as to make leave to amend complaint appropriate so that damages remedy provision, subsec. (g)(4) of this section might be satisfied by showing that agency acted in manner which was "intentional or willful." *Parks v. U. S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677. Civil Rights  1395(8)

There may be no recovery for violation of Privacy Act by agency where there was wrongful disclosure but agency did not act intentionally or willfully. *Stephens v. Tennessee Valley Authority*, E.D.Tenn.1990, 754 F.Supp. 579. Records  31


Claim brought under § 552a(g)(1)(C) of Privacy Act is actionable only where agency acted in "intentional or willful" manner in failing to maintain accurate records. *Hay v. Secretary of Army*, S.D.Ga.1990, 739 F.Supp. 609. Records  31


The words "intentional or willful" in this section rendering the United States liable to individual if government agency acted in a manner which was intentional or willful are used as terms of art and given broader scope by courts than the common definition would imply; to properly construe the section at issue, court must attempt to give effect to its intended meaning, and legislative history of the section provides such guidance. *South v. Federal Bureau of Investigation*, N.D.Ill.1981, 508 F.Supp. 1104. Records  31

238. ---- Bad faith, intentional or willful acts, civil remedies


Failure by Office of Administrative Law Judges to contact references listed on application for position as administrative law judge, despite requirement in agency's "rating schedule" that agency do so, was not willful or intentional conduct in violation of Privacy Act so as to entitle applicant to recover damages against agency under Act, absent showing of any reason to suspect that agency acted in bad faith or in disregard for applicant's rights under Act or without grounds for believing conduct was lawful. *White v. Office of Personnel Management*, C.A.D.C.1988, 840 F.2d 85, 268 U.S.App.D.C. 205. Records  31


239. ---- Flagrant disregard, intentional or willful acts, civil remedies


Administrative law judge's action in including reference in opinion to disciplinary action which had been taken against one of the parties' attorney while he was employed by the agency was intentional violation of the Privacy Act where law judge had been informed by advisor that the language was inappropriate and should not be included in the decision. *Wilborn v. Department of Health and Human Services*, C.A.9 (Or.) 1995, 49 F.3d 597. Records  31


To recover in action for damages for violation of the Privacy Act [5 U.S.C.A. § 552a] agency must either commit the act without grounds for believing it to be lawful, or must flagrantly disregard individual's rights under the Act. *Sullivan v. Veterans Admin.*, D.C.D.C.1985, 617 F.Supp. 258. Records  31


240. ---- Negligence, intentional or willful acts, civil remedies

Any inaccuracies or admissions in background briefing compiled by labor relations specialist at shipyard for purpose of having naval shipyard worker retired involuntarily did not amount to anything greater than gross negligence, and thus did not constitute Privacy Act violation. *Johnston v. Horne*, C.A.9 (Wash.) 1989, 875 F.2d 1415. Records  31


No punishment may be imposed for violation of Privacy Act unless agency acted in manner which was intentional or willful, and gross negligence is insufficient to impose liability; to be willful, agency action must be so patently egregious and unlawful that anyone undertaking conduct should have known it unlawful, or committed without grounds for believing it to be lawful, or committed in flagrant disregard of others' rights under Privacy Act, and must amount to at least reckless behavior. *Andrews v. Veterans Admin. of U.S.*, C.A.10 (Wyo.) 1988, 838 F.2d 418, certiorari denied 109 S.Ct. 56, 488 U.S. 817, 102 L.Ed.2d 35. Records  31


Actions of Department of Agriculture and Farmers Home Administration in maintaining records which resulted in denial of emergency loan application were not so reckless as to meet greater-than-gross-negligence standard for purposes of maintaining action for damages under Privacy Act, where there were legitimate disagreements between parties on data that should be used in determining farmers' eligibility for economic emergency loan. *Moskiewicz v. U.S. Dept. of Agriculture*, C.A.7 (Wis.) 1986, 791 F.2d 561. Records  31

Internal Revenue Service's destruction of certain documents in taxpayers' files was negligent conduct for which taxpayers were not entitled to relief under Privacy Act [5 U.S.C.A. § 552a(g)(4)], absent evidence that employees willfully or intentionally violated strictures of Act or that purpose for destroying those particular files existed. *Dowd v. I.R.S.*, C.A.2 (N.Y.) 1985, 776 F.2d 1083. Records  22


Fact that supervisor of scientist employed with National Aeronautics and Space Administration withheld notes concerning the scientist and then incorporated them into the scientist's personnel records several months later, just prior to the scientist's dismissal, without more, did not necessarily imply that the Administration acted with the willfulness or "gross negligence" that is prerequisite to recovery of damages under subsec. (g)(4) of this section. *Chapman v. National Aeronautics and Space Admin.*, C.A.5 (Tex.) 1984, 736 F.2d 238, certiorari denied 105 S.Ct. 517, 469 U.S. 1038, 83 L.Ed.2d 406. Records  31


Even if Department of Veterans Affairs (DVA) violated Privacy Act by releasing veteran's Veteran Administration claims file to his employer, pursuant to written release that veteran signed authorizing employer to corroborate and secure information about veteran's background, DVA's conduct was not beyond grossly negligent, as required to hold DVA liable under the Act; reasonable minds could differ on scope of release, and there was no direct or affirmative evidence of malfeasance or improper motive on DVA's part in disclosing file. *Wiley v. De-*


partment of Veterans Affairs, E.D.Mich.2001, 176 F.Supp.2d 747. Records  31


Standard for assessing whether agency's conduct which allegedly violates Privacy Act is sufficiently intentional or willful to subject acting agency to liability for damages is only somewhat greater than gross negligence. *Rodgers v. Department of Army*, N.D.Ill.1988, 676 F.Supp. 858. Records  31


241. ---- Damages, intentional or willful acts, civil remedies


Claimant was not entitled to \$1,000 minimum statutory award for Department of Labor's intentional or willful violation of Privacy Act in disclosing claimant's social security number, since claimant failed to show that he suffered "actual damages" as result of violation. *Doe v. Chao*, U.S.2004, 124 S.Ct. 1204, 540 U.S. 614, 157 L.Ed.2d 1122. Records  31

Even if term "actual damages," as used in provision of Privacy Act allowing for statutory minimum damages award, encompassed damages for non-pecuniary emotional distress, claimant failed to establish that he suffered compensatory emotional distress as a result of government's disclosure of his social security number during adjudication of his claim for black lung benefits, so as to satisfy actual damages requirement, where claimant testified that he was greatly concerned and worried about disclosure of his social security number, that he felt his privacy had been violated and consequences of disclosure could be devastating for him and his wife, and that disclosure had "torn [him] all to pieces," but did not produce any evidence of tangible consequences stemming from his alleged angst, and claimed no medical or psychological treatment, purchase of medications, impact on his behavior, or physical consequences. *Doe v. Chao*, C.A.4 (Va.) 2002, 306 F.3d 170, 189 A.L.R. Fed. 719, certiorari granted 123 S.Ct. 2640, 539 U.S. 957, 156 L.Ed.2d 654, affirmed 124 S.Ct. 1204, 540 U.S. 614, 157 L.Ed.2d 1122. Records  31



Privacy Act's damages provision's requirement of "willful and intentional conduct" included First Amendment retaliation, and thus applied to claim brought by former undercover informant for Customs Service against federal officials alleging issuance of allegedly defamatory "blackball" memo in retaliation for charges of corruption contained in informant's resignation letter. *Downie v. City of Middleburg Heights*, C.A.6 (Ohio) 2002, 301 F.3d 688. Records  31



As damages on federal employee's Privacy Act claim stemming from letter sent by director of the Bureau of Alcohol Tobacco and Firearms (ATF) to 4,500 ATF agents nationwide, employee was not entitled to \$1,000 for each copy of the letter sent to the ATF agents; under reasonable, common-sense interpretation of statutory language, each letter disclosure was not independently compensable. *Tomasello v. Rubin*, C.A.D.C.1999, 167 F.3d 612, 334 U.S.App.D.C. 375, rehearing and suggestion for rehearing en banc denied. *United States*  142


Privacy Act plaintiff, who alleged that Government agency refused to comply with her request to see her records, was not entitled to statutory damages. *Thurston v. U.S.*, C.A.4 (Va.) 1987, 810 F.2d 438. Records  67


Cause of action under this section for persons harmed by an agency's intentional or willful failure to maintain accurate files requires not merely intentional or willful failure to maintain accurate records but also "actual damages sustained" as result of such failure, and it must be shown that violation of this section caused the damages complained of. *Molerio v. F.B.I.*, C.A.D.C.1984, 749 F.2d 815, 242 U.S.App.D.C. 137. Records  31


"Actual damages" under this section include damages for physical and mental injury for which there is competent evidence in record, as well as damages for out-of-pocket expenses. *Johnson v. Department of Treasury*,


I.R.S., C.A.5 (Tex.) 1983, 700 F.2d 971. Damages  57.1; Records  31


Where plaintiff proved only that he suffered a general mental injury from willful disclosure, in violation of this section, concerning his disability discharge from the Internal Revenue Service, and did not introduce evidence of expenses for psychiatric care or other pecuniary losses necessitated by the disclosure, he could not recover beyond the statutory \$1,000 minimum damages, costs and reasonable attorneys' fees. *Fitzpatrick v. Internal Revenue Service*, C.A.11 (Ga.) 1982, 665 F.2d 327. United States  142; United States  147(13)


Agency employee who brought Privacy Act claim against Department of Defense was required to offer evidence sufficient for jury to find that emotional harm suffered based on supervisor's disclosure of information pertaining to internal investigation to subsequent employer was acute, tangible, and severe enough to give rise to actual damages. *Mulhern v. Gates*, D.D.C.2007, 525 F.Supp.2d 174. Records  31

An agency's intentional or willful action, as required to recover monetary damages, costs and attorney fees under the Privacy Act (PA), can be demonstrated by showing that the agency committed the act without grounds for believing it to be lawful, or by flagrantly disregarding others' rights under the PA; the violation must be so patently egregious and unlawful that anyone undertaking the conduct should have known it unlawful. *Lopez v. Huff*, D.D.C.2007, 508 F.Supp.2d 71. Records  31


Employee Compensation Appeals Board (ECAB) did not act in willful or intentional manner, as required for award of damages under Privacy Act, when, in violation of Act, it published decision containing both federal employee's name and employee's private medical information, given ECAB's reasonable belief that its actions were compatible with, if not required by, Act. *Doe v. U.S. Dept. of Labor*, D.D.C.2006, 451 F.Supp.2d 156. Records  31

Employee was not entitled to monetary damages for employer's release of his Social Security number allegedly in violation of Privacy Act, since employee could not show that he suffered actual harm as result of violation. *Dodge v. Trustees of Nat. Gallery of Art*, D.D.C.2004, 326 F.Supp.2d 1. Records  31



Plaintiff must demonstrate willful or intentional failure to maintain accurate records and must demonstrate causal relationship between allegedly erroneous record and adverse determination based on that record in order to state claim for damages under Privacy Act. *Barhorst v. Marsh*, E.D.Mo.1991, 765 F.Supp. 995. Records  31

Damages may be awarded under this section if agency has acted in a manner which was intentional or willful. *Diamond v. Federal Bureau of Investigation*, S.D.N.Y.1981, 532 F.Supp. 216, affirmed 707 F.2d 75, certiorari denied 104 S.Ct. 995, 465 U.S. 1004, 79 L.Ed.2d 228. Records  31


242. ---- Attorney fees, intentional or willful acts, civil remedies


Black lung claimant who suffered adverse effect due to Secretary of Labor's violation of Privacy Act by including Social Security Numbers (SSNs) on black lung hearing notices, and who showed that Secretary's violation was intentional and willful, was entitled to award of attorney fees even though claimant did not recover monetary damages. *Doe v. Chao*, W.D.Va.2004, 346 F.Supp.2d 840, affirmed in part, reversed in part and remanded 435 F.3d 492, on remand 2006 WL 2038442. Labor And Employment  2698

Even though potential voter prevailed on his claim that county general registrar and officers comprising Virginia's state board of elections violated Privacy Act by requiring persons to furnish their social security numbers in


order to register to vote without providing certain information to those persons, potential voter was not entitled to attorney fees; he had been given prescribed disclosure, and defendants' conduct did not rise to level of "willful or intentional." *Greidinger v. Davis*, E.D.Va.1992, 782 F.Supp. 1106, reversed on other grounds 988 F.2d 1344. Counties  228; States  215


243. ---- Miscellaneous actions intentional or willful, intentional or willful acts, civil remedies


Public agency's violation of Privacy Act through supervisors' actions during investigation into rumor regarding unauthorized trip taken by employee, in which supervisors sought information through third parties rather than collecting information directly from employee, was willful and intentional for purposes of damages, where agency and its top management were aware that they were subject to Act yet took no action to inform other employees of this information and made no effort to educate or instruct employees about procedures and substance of Act. *Dong v. Smithsonian Inst.*, D.D.C.1996, 943 F.Supp. 69. Records  31


Disclosure to Department of Justice by Department of Energy inspector general of personnel security questionnaires completed by employees of government contractor was "intentional or willful" for purposes of entitling employees to recover damages under Privacy Act. *Covert v. Herrington*, E.D.Wash.1987, 667 F.Supp. 730, affirmed 876 F.2d 751. Records  31

244. ---- Miscellaneous actions not intentional or willful, intentional or willful acts, civil remedies


Internal Revenue Service (IRS) district director's failure to redact employee's name from necessary discussions of employee's case with members of director's staff was not intentional or willful violation of employee's privacy, as required for liability to attach to agency under Privacy Act; staff members were fellow IRS officials whose job included helping director fashion disciplinary action against employee, and thus director had ample reason to believe that it was lawful for him to discuss employee's case, including employee's name, with his staff. *Pippinger v. Rubin*, C.A.10 (Wyo.) 1997, 129 F.3d 519. Records  31


Former postal service worker did not show that Postal Service's failure to mail compensation forms, to notify worker of her rights, and to provide her with appropriate forms was done intentionally, and, thus, worker failed to support claim that Postal Service violated Privacy Act. *Rose v. U.S.*, C.A.9 (Cal.) 1990, 905 F.2d 1257. Records  31


Former servicemember could not recover damages from United States Navy for violation of Privacy Act for Navy's disclosure of confidential documents relating to servicemember's reevaluation for disability retirement purposes during prior action by servicemember to recover wrongfully terminated disability payments, where it was standard Justice Department practice to disclose documents, and disclosure was necessary to rebut mistaken impression created by servicemember's partial submissions from same set of documents, and to dispel any notion of improper conduct of administrative proceedings pendent lite. *Laningham v. U.S. Navy*, C.A.D.C.1987, 813 F.2d 1236, 259 U.S.App.D.C. 115. Records  31


Record did not support civilian air force employee's allegations that air force willfully maintained inaccurate records in violation of Privacy Act. *Hill v. U.S. Air Force*, C.A.D.C.1986, 795 F.2d 1067, 254 U.S.App.D.C. 171. Records  31


Government agency's videotaping of informational hearing at which agency action in discontinuing higher grade level was explained was not the type of "intentional or willful" action required to prevent recovery by attending


employees under this section; rather, the statutory language refers only to intentional or willful failure of agency to abide by this section and not to all voluntary actions which might otherwise inadvertently contravene one of this section's strictures. *Albright v. U.S.*, C.A.D.C.1984, 732 F.2d 181, 235 U.S.App.D.C. 295. Torts  341


Department of Housing and Urban Development's continued reliance on "Collection Handbook," which implemented Federal Claims Collection Act, section 3701 et seq. of Title 31, and pursuant to which Housing and Urban Development released information to Internal Revenue Service regarding Internal Revenue Service employee's default on loan on which Housing and Urban Development was guarantor, could not be characterized as a willful violation of this section, and therefore where nothing in record indicated that "Handbook's" guidelines were questioned or challenged, Housing and Urban Development was not liable to employee for violation of this section. *Wisdom v. Department of Housing and Urban Development*, C.A.8 (Ark.) 1983, 713 F.2d 422, certiorari denied 104 S.Ct. 1272, 465 U.S. 1021, 79 L.Ed.2d 678. Records  31

Plaintiff in action under this section failed to establish his claim for damages on theory that employing agency and its agents intentionally and willfully failed to maintain records relating to plaintiff in an accurate, relevant, timely and complete manner. *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402. Records  31


Where, at time National Personnel Records Center of General Services Administration released state prisoner's United States Marine Corps personnel and medical records pursuant to state court subpoena, existing Department of Defense and General Services Administration regulations suggested that release of records pursuant to subpoena was proper and there were at that time no regulations or other authority to the contrary and where Administration had specifically requested subpoena prior to releasing records, Administration's decision to release records pursuant to subpoena could not be considered to be willful or intentional violation of this section, and thus prisoner was precluded from recovering damages under this section. *Bruce v. U. S.*, C.A.8 (Mo.) 1980, 621 F.2d 914. Records  31


Bureau of Prisons (BOP) did not intentionally or willfully violate prisoner's rights under the Privacy Act, as required to support claim for monetary damages under the Act, when it relied on prior drug conviction and probation violation charges in his presentence investigation report in determining his custody classification; such information was not clearly wrong, and BOP took affirmative steps to verify the information when prisoner challenged its accuracy. *Doyon v. U.S. Dept. of Justice*, D.D.C.2004, 304 F.Supp.2d 32, appeal dismissed 2004 WL 2185923. Records  31


Postal Service's unlawful release of postal customer's address to FBI agent was not willful or intentional, and thus would not support liability under Privacy Act, where employee acted based on her mistaken belief that release was lawful and release would have been permissible if postal employee had asked agent to make written request or confirm that he was conducting criminal investigation. *Wesley v. Don Stein Buick, Inc.*, D.Kan.1997, 985 F.Supp. 1288, vacated in part 996 F.Supp. 1299. Records  31


Failure of Bureau of Prisons (BOP) to amend prison records during inmate's second incarceration, so as to incorporate favorable information from first incarceration that allegedly would have aided inmate's requests for custody reductions, transfers, and furloughs, did not constitute the type of willful or intentional conduct that could support recovery of damages under Privacy Act; BOP was in fact following its own guidelines by not amending second file to include information from first file. *Armstrong v. U.S. Bureau of Prisons*, D.D.C.1997, 976 F.Supp. 17, affirmed 1998 WL 65543. Prisons  13(10)


There was no evidence that prison officials had acted willfully or intentionally, as required to subject govern-


ment to liability to prisoner under Privacy Act for release of information to another prisoner from which second prisoner could conclude that first prisoner had given information in connection with second prisoner's disciplinary proceeding; names had been redacted from information given to second prisoner and after first prisoner complained that second prisoner knew he was an informant, prison took steps to separate prisoners, indicating concern for welfare of first prisoner and negating idea of willful or intentional disclosure. *Sterling v. U.S.*, D.D.C.1993, 826 F.Supp. 570, affirmed 1994 WL 88894. Records  31

Alleged lapses in security by Internal Revenue Service (IRS) in leaking documents naming plaintiff as leader of violent tax protest group were not willful and intentional as required to establish violation of Privacy Act, even if classifying document as "official use only" rather than "limited official use" was inappropriate; alleged misclassification did not approach level of culpability necessary for liability to attach. *Kostyu v. U.S.*, E.D.Mich.1990, 742 F.Supp. 413. Records  31


Where Bureau of Hearings and Appeals and Social Security Administration attempted to comply with former administrative law judge's request for information in former administrative law judge's file by promptly informing her of records regarding her which were maintained by Bureau, conduct of Bureau was not intentionally and willfully dilatory so as to subject Bureau to liability for monetary damages. *Chocallo v. Bureau of Hearings and Appeals, SSA*, E.D.Pa.1982, 548 F.Supp. 1349, affirmed 716 F.2d 889, certiorari denied 104 S.Ct. 426, 464 U.S. 983, 78 L.Ed.2d 360. Social Security And Public Welfare  5

Any violation of regulation requiring agencies to announce at least annually opportunity to request access to personnel records did not entitle civilian employees of Coast Guard to damages under this section, where they gained access to their disciplinary support files shortly after the files were opened and files contained copies of all supervisor's memory aids, which had initially been kept separately in a shop book, on which proposed disciplinary actions were based and where, and in any event, failure to strictly comply with regulations was not intentional or willful. *Thompson v. Department of Transp. U. S. Coast Guard*, S.D.Fla.1982, 547 F.Supp. 274. Records  30


Veterans Administration's (VA) placing of employees' Social Security numbers (SSNs) on computer system which could be accessed by authorized VA personnel was not a willful or intentional failure to appropriately protect the confidentiality of their records, as required for recovery of damages under the Privacy Act by employees whose SSNs were placed on the system, where users needed to access employee records as well as patient records via the computer system in case an employee needed emergency medical treatment at the VA. *Schmidt v. U.S. Dept. of Veterans Affairs*, E.D.Wis.2003, 218 F.R.D. 619, amended on reconsideration in part 222 F.R.D. 592. Records  31


Veterans Administration's (VA) displaying the entire 9-digit Social Security number (SSN) of employees, rather than only the last four digits of the SSN, on computer system which could be accessed by authorized VA personnel, was not a willful or intentional failure to appropriately protect the confidentiality of their records, as required for recovery of damages under the Privacy Act by employees whose SSNs were placed on the system, where only displaying the last 4 digits of an SSN would lead to the potential misidentification of a patient. *Schmidt v. U.S. Dept. of Veterans Affairs*, E.D.Wis.2003, 218 F.R.D. 619, amended on reconsideration in part 222 F.R.D. 592. Records  31


Veterans Administration's (VA) failure to keep employee records separate from patient records, on computer system which could be accessed by authorized VA personnel and which included employees' Social Security


numbers (SSNs), through use of key system patch or use of separate database, was not a willful or intentional failure to appropriately protect the confidentiality of their records, as required for recovery of damages under the Privacy Act by employees whose SSNs were placed on the system; VA concluded that separate databases would not provide same quality of care as combined database, and believed key system would risk denying VA emergency medical personnel access to the employee's records in case of a medical emergency. *Schmidt v. U.S. Dept. of Veterans Affairs*, E.D.Wis.2003, 218 F.R.D. 619, amended on reconsideration in part 222 F.R.D. 592. Records  31


245. Maintenance of records, civil remedies--Generally


Privacy Act subsection which provides civil remedy for agency's failure to comply with other provisions of the Act does not apply to plaintiff seeking damages for agency's failure to maintain reasonably accurate records; different subsection of Act specifically covers agency's noncompliance with accurate recordkeeping requirement. *Deters v. U.S. Parole Com'n*, C.A.D.C.1996, 85 F.3d 655, 318 U.S.App.D.C. 89. Records  31

Privacy Act is violated if plaintiff shows that Government failed to fulfill record-keeping obligation, that failure proximately caused adverse determination, that agency failed intentionally or willfully to maintain records, and that plaintiff suffered actual damages. *Rose v. U.S.*, C.A.9 (Cal.) 1990, 905 F.2d 1257. Records  31


Under Privacy Act, plaintiff must show both that his records were incorrectly maintained and that he suffered adverse determination as result of wrongful maintenance of his files. *Harry v. U.S. Postal Service*, M.D.Pa.1994, 867 F.Supp. 1199, affirmed 60 F.3d 815. Records  31


To maintain cause of action under Privacy Act for agency's failure to "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," plaintiff must plead: agency's failure to maintain accurate records; adverse agency decision resulting from inaccurate records; and willful or intentional quality of agency's action. *Hass v. U.S. Air Force*, D.Kan.1994, 848 F.Supp. 926. Records  31


To establish violation of section of Privacy Act stating that each agency shall maintain records which are used by agency in making any determination about any individual which such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual and the determination, a plaintiff must show that the agency made some unfair determination about the individual, that the determination was based upon records of flawed informational quality, and the causal relationship between allegedly erroneous record and an adverse determination based on that record. *National Treasury Employees Union v. I.R.S.*, D.C.D.C.1985, 601 F.Supp. 1268. Records  31


Even if the federal bureau of prisons improperly used information that inmate had committed non-violent juvenile robbery offense in order to classify him and put him in a higher security facility than was allegedly warranted, agency's use of the information would not amount to a violation of the Privacy Act, which instead requires an allegation that the agency failed to maintain accurate records, leading to a determination adverse to plaintiff. *Treadwell v. Bureau of Prisons*, Washington, D.C., C.A.10 (Colo.) 2002, 32 Fed.Appx. 519, 2002 WL 462000, Unreported. Prisons  13(5)


246. ---- Adverse effect, maintenance of records, civil remedies


Neither Federal Reserve Bank letter informing bank that its Bank Holding Company Act application was unlikely to be approved without further explanation of apparently adverse facts, nor documents and record entries allegedly relied upon to draft letter, constituted "adverse determination," within meaning of Privacy Act provision requiring agency to rely on accurate records when making determinations. *Betterworth v. F.D.I.C.*, C.A.5 (Tex.) 2001, 248 F.3d 386, rehearing denied, certiorari denied 122 S.Ct. 547, 534 U.S. 1021, 151 L.Ed.2d 424. Records  31


Even if the Postmaster General's maintenance of the allegedly "secret files" on employees was in violation of the Privacy Act, postal employee was unable to show she had either suffered "actual damages" from the maintenance of the files or had exhausted available administrative remedies, elements necessary to support a cause of action under the Privacy Act. *Risch v. U.S. Postal Service*, C.A.6 (Mich.) 2001, 244 F.3d 510. Records  31

Decision by Parole Commission to not grant parole on the record was not an "adverse determination" required for federal inmate to state damages claim under Privacy Act based on Commission's alleged failure to maintain accurate records of quantity of cocaine involved in offenses; decision to not grant parole on the record is not a decision to deny parole. *Deters v. U.S. Parole Com'n*, C.A.D.C.1996, 85 F.3d 655, 318 U.S.App.D.C. 89. Records  31


Office of Personnel Management is subject to damages action whenever it maintains a record violating the standard of fairness mandated by the Privacy Act, and action for damages against OPM is not restricted to those cases where the OPM has itself made the adverse determination. *Dickson v. Office of Personnel Management*, C.A.D.C.1987, 828 F.2d 32, 264 U.S.App.D.C. 182, on remand. Records  31


Department of Veteran Affairs (VA) did not intentionally or willfully fail to maintain records of veteran's benefit determinations as to result in an adverse determination to veteran and permit civil remedies under the Privacy Act, in veteran's action against VA arising from veteran's request for documents relating to his reapplication for fee basis status upon his move to a new state, and his subsequent administrative claim under the Federal Torts Claims Act (FTCA); while veteran's reapplication for fee basis treatment was initially denied, it was authorized on appeal and applied retroactively to the date immediately following the expiration of his other fee basis authorization. *Williams v. Department of Veterans Affairs*, M.D.Fla.2007, 510 F.Supp.2d 912. Records  31


Veteran was not injured by alleged material omissions and misstatements in his records regarding his medical history, as required to support his Privacy Act claim; veteran produced no evidence that Department of Veterans Affairs (DVA) failed to amend or review his record after his request, that DVA failed to provide him with access to his records, that errors in his record effected the fairness of any benefits determination, or that alleged errors had any adverse effect on him. *Duke v. U.S.*, E.D.Pa.2004, 305 F.Supp.2d 478. Records  31


Absence of adverse determination by Veterans' Administration (VA) precluded claim by former Principal Deputy Assistant Secretary (PDAS), that VA violated Privacy Act statute requiring maintenance of accurate personnel records when there was adverse determination caused by records deficiency, through maintenance in file of critical reports and complaints regarding her job performance; PDAS sustained no decrease in grade, and claims that prospective improved employment opportunities vanished following filing of derogatory items were too unsubstantial. *McCready v. Principi*, D.D.C.2003, 297 F.Supp.2d 178, affirmed in part, reversed in part and remanded 465 F.3d 1, 373 U.S.App.D.C. 236. Records  10

Principal Deputy Assistant Secretary (PDAS) of Veterans' Administration (VA) adequately alleged that she suffered adverse effect, as required to obtain correction of personal records under section of Privacy Act allow-


ing for correction when claimant has suffered adverse effect from record custodian's violation of record keeping requirements of Act; employee claimed that her reputation was significantly damaged by publication of Office of Inspector General (OIG) report and memorandum from another VA executive, critical of her performance. *McCready v. Principi*, D.D.C.2003, 297 F.Supp.2d 178, affirmed in part, reversed in part and remanded 465 F.3d 1, 373 U.S.App.D.C. 236. Records  10


Privacy Act did not provide remedy for public employee for alleged violation of Act by failure to retain letter containing allegations against employee and reasons for her discharge where employee did not allege that absence of letter from her file resulted in any adverse decision against her. *McGregor v. Greer*, D.D.C.1990, 748 F.Supp. 881. Records  58


Bank presidential nominee's loss of contracted employment with bank organizers, and his loss of reputation in banking field, which made it more difficult for him to be employed, because Comptroller of the Currency officials allegedly failed to fully investigate his qualifications for bank presidency, satisfied injury requirement for filing suit under Privacy Act. *Connelly v. Comptroller of the Currency*, S.D.Tex.1987, 673 F.Supp. 1419, reversed on other grounds 876 F.2d 1209. Records  31


Mere existence of community services administration regional director's file on an employee of the agency without a showing of adverse effect failed to make out prima facie cause of action for damages under this section. *Crichton v. Community Services Admin.*, S.D.N.Y.1983, 567 F.Supp. 322. Records  31

247. ---- Causal relationship between violation and adverse effect, maintenance of records, civil remedies


Alleged withholding by Central Intelligence Agency (CIA) of affidavit from her file during internal appeal of decision to terminate employee, if proven, did not proximately cause CIA to uphold her termination, and CIA thus was not liable under Privacy Act provision requiring agencies to maintain adequate records concerning individuals, where decision-makers focused on her overall poor performance, rather than any one incident, and CIA had powerful evidence of long-term performance deficiencies. *Hutchinson v. C.I.A.*, C.A.D.C.2005, 393 F.3d 226, 364 U.S.App.D.C. 203. Records  31


Alleged inaccuracies in passover document had not caused federal agency applicant's rejection from employment, where agency employee had prepared that document after making hiring decision; document merely memorialized that decision even if it was necessary step in rejection process, and applicant had no Privacy Act claim for damages. *Hubbard v. U.S. E.P.A. Adm'r*, C.A.D.C.1986, 809 F.2d 1, 257 U.S.App.D.C. 305, on rehearing 859 F.2d 223, 273 U.S.App.D.C. 247, on remand 735 F.Supp. 435. Records  31


Former Veterans Administration physician was not entitled to recover damages from VA under Privacy Act based on alleged inaccuracies in his proficiency reports, where physician's resignation from VA involved dispute concerning his health and ability to return to work, and was not causally related to contents of proficiency report. *Hewitt v. Grabicki*, C.A.9 (Wash.) 1986, 794 F.2d 1373. Records  31

Documents challenged by a serviceman, which notified him of a 14-day suspension, documented the suspension, notified him of possible termination, and otherwise documented the progress of an unfolding personnel action were not the cause of his suspension, thus defeating his claim under the adverse determination provision of the Privacy Act. *Lee v. Geren*, D.D.C.2007, 2007 WL 935592. Records  31


Even if there were alleged inaccuracies in attendance chart comparing female FBI agent's time sheets with build-

ing's electronic access logs, resulting from days when agent was let into offices without using key card, such inaccuracies did not cause disciplinary action taken against agent, as required to establish agent's claim under Privacy Act for failure to maintain accurate records; agent alleged only three to four such errors per month, and disciplinary decision was based on at least 24 falsifications in less than a month. *Velikonja v. Mueller*, D.D.C.2004, 362 F.Supp.2d 1, affirmed 466 F.3d 122, 373 U.S.App.D.C. 276. Records  31


Prisoner failed to establish violation of accuracy provision of Privacy Act, even if prison records falsely stated amount of monetary loss underlying prisoner's conviction for making false statements to federally insured bank and falsely indicated that conviction for obstructing justice involved coercion of secretary to testify falsely; false statements did not proximately cause Bureau of Prisons (BOP) to deny transfer of prisoner to another correctional facility, because denial was justified on basis of seriousness of prisoner's offense and short length of sentence. *Kellett v. U.S.*, D.N.H.1994, 856 F.Supp. 65, affirmed 66 F.3d 306. Records  31


Even though decision issued by the Bureau of Prisons, concluding prisoner was ineligible for parole, may have been an "adverse determination," under the Privacy Act, prisoner's legal ineligibility, and not inaccurate record keeping, caused this determination and, thus, prisoner could not maintain action against Parole Commission or Bureau of Prisons for violating provisions in Privacy Act requiring federal agencies to maintain accurate individual records. *Rogers v. Federal Bureau of Prisons*, C.A.10 (Colo.) 2004, 105 Fed.Appx. 980, 2004 WL 1719461, Unreported. Records  31

248. ---- Identity of persons giving statements, maintenance of records, civil remedies

Assertion of claim under this section for failure to maintain a record with accuracy, relevancy, timeliness and completeness does not entitle plaintiff to identity of persons giving statements in confidence within meaning of exemption provision of this section in order to establish alleged inaccuracy or the like. *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402. Records  58


249. ---- Partial or complete inaccuracies, maintenance of records, civil remedies

Secret service agent's transfer to a different field office was not actually caused by inaccurate documents, as required for Privacy Act claim, pertaining to an investigation of agent's claims that his supervisor assaulted him; although documents played part in transfer process, in that they delayed it, they did not cause transfer, as decision to transfer was made prior to altercation with supervisor and subsequent investigation. *Murphy v. U.S.*, D.D.C.2001, 167 F.Supp.2d 94, affirmed 64 Fed.Appx. 250, 2003 WL 21242533. Records  31


Allegation that Farmers Home Administration (FmHA) intentionally placed and maintained inaccurate appraisal of plaintiff's property in loan file stated claim under Privacy Act, even if plaintiff did not dispute every fact underlying appraisal; plaintiff only needed to show that final dollar value in appraisal was predicated upon incorrect fact contained in agency records. *Douglas v. Farmers Home Admin.*, D.D.C.1991, 778 F.Supp. 584. Records  31


250. ---- Characterization of complaint, maintenance of records, civil remedies


Former federal employee could not maintain action under the Privacy Act for an order requiring employing agency to correct job descriptions listed in his personnel file, which allegedly failed to reflect accurately his actual job duties; nature of former employee's responsibilities and duties while employed by agency were personnel matters, and as such, fell within the Civil Service Reform Act (CSRA); plaintiff could not avoid the CSRA


simply by characterizing his action as an attempt to “correct” records, when it was clear from briefs and from oral argument that plaintiff challenged nature and substance of employment relationship itself. *Kleiman v. U.S. Dept. of Energy*, D.D.C.1990, 742 F.Supp. 697, affirmed 956 F.2d 335, 294 U.S.App.D.C. 49, rehearing denied. Records  31


251. Disclosure, civil remedies--Generally

Circumstantial evidence, including comparison of information that plaintiff gave Internal Revenue Service with information gathered by Venezuelan government during course of its investigations of bribery charges against plaintiff, was insufficient to support finding that Internal Revenue Service unlawfully disclosed plaintiff's records in violation of this section. *Askew v. U. S.*, C.A.8 (Ark.) 1982, 680 F.2d 1206. Records  31


Alleged disclosure of federal inmate's HIV/AIDS status to escort officer did not violate Privacy Act, where inmate failed to identify either individual responsible for alleged disclosure to officer or source of information. *Clark v. Bureau of Prisons*, D.D.C.2005, 407 F.Supp.2d 127. Records  31

Federal inmate's allegation that correctional counselor told his cellmate about his HIV status was insufficient to state claim for violation of Privacy Act, where counselor had no access to inmate's medical records, did not know of inmate's HIV status, and denied telling cellmate about inmate's HIV status, and inmate presented no contradicting evidence beyond his own hearsay statement. *Clark v. Bureau of Prisons*, D.D.C.2005, 407 F.Supp.2d 127. Records  31


Alleged disclosure of two employees' confidential medical information contained in supervisor's memorandum, by service unit director of Indian Health Service (IHS) to Indian tribal council, did not violate the Privacy Act, even though memorandum was retrieved by system of records maintained by IHS, and tribal council promptly passed resolution for employees' removal from positions; there was no evidence that IHS disclosed protected information because service unit director denied giving memorandum to council chairman who denied he ever received it, and it was unclear upon what facts the council relied in passing resolution. *Buckles v. Indian Health Service/Belcourt Service Unit*, D.N.D.2004, 310 F.Supp.2d 1060. Records  31


Employee failed to present evidence that any record contained in employer's system of records was ever disclosed, thus defeating her claim under the Privacy Act. *Brown v. Snow*, C.A.7 (Ill.) 2004, 94 Fed.Appx. 369, 2004 WL 764129, Unreported, certiorari denied 125 S.Ct. 409, 543 U.S. 959, 160 L.Ed.2d 322. Records  31


252. ---- Adverse effect, disclosure, civil remedies


Privacy Act's adverse effect standing requirement, that individual show adverse effect from violation of the Act to obtain civil remedy under the Act, was satisfied by allegations that hunting licensee about whom information was disclosed and her husband, both of whom were investigated for hunting violations, had undergone stress and emotional anguish and had suffered occupational losses due to investigation allegedly caused by disclosures in violation of the Act. *Quinn v. Stone*, C.A.3 (Pa.) 1992, 978 F.2d 126, 121 A.L.R. Fed. 745, rehearing denied. Records  31

Allegation that Government invaded the privacy of owners of allotments on Indian reservation by releasing their names and addresses to lessees of those allotment lands was sufficient to establish adverse effect element in owners' action alleging a Privacy Act violation; each disclosure violated an owner's privacy, and causation was established by fact that there was no evidence the lessees were receiving the information from any other source.


Fort Hall Landowners Alliance, Inc. v. Bureau of Indian Affairs, D.Idaho 2006, 407 F.Supp.2d 1220. Records  31


Even if Office of Personnel Management's (OPM) disclosure of confidential documents regarding federal employee to his former county corrections supervisors, in connection with their testimony at employee's Merit Systems Protection Board (MSPB) hearing following determination of unsuitability for federal employment due to prior employment record and failure to disclose history, did not fall within "routine use" exception under Privacy Act, disclosure had no adverse effect on employee permitting award of damages; no causal connection between violation and alleged adverse effects of emotional distress and pecuniary loss were demonstrated by employee. Mandel v. U.S. Office of Personnel Management, E.D.N.Y.2003, 244 F.Supp.2d 146, affirmed 79 Fed.Appx. 479, 2003 WL 22469719. Records  31

Allegations that Forest Services' release of ranchers' financial information to public, especially to environmental group, caused ranchers' harm, in that, it caused them emotional distress, sufficiently asserted that ranchers' suffered "adverse effects" to state claim under the Privacy Act; proof of pecuniary, economic, or "special" damages was not required under the Privacy Act to show adverse effect. Rice v. U.S., D.D.C.2002, 211 F.R.D. 10. Records  31

Office of Personnel Management's (OPM) disclosure of federal employee's personnel records to prepare supervisors from his prior job for his Merit Systems Protection Board (MSPB) hearing following determination of unsuitability for federal employment due to his prior employment record and failure to disclose history did not adversely affect employee, and thus did not violate Privacy Act, even though MSPB affirmed unsuitability determination; employee's falsifications and omissions in his application for federal employment were, independently, sufficient to find him unsuitable for federal employment. Mandel v. U.S. Office Personnel Management, C.A.2 (N.Y.) 2003, 79 Fed.Appx. 479, 2003 WL 22469719, Unreported. Records  31

253. ---- Causal relationship between violation and adverse effect, disclosure, civil remedies

Requisite causal connection to establish Privacy Act claim was lacking between Marshal's Service's disclosure of interim security officer's medical records to the Public Health Service and officer's discharge, which turned entirely on his inability to meet an objective medical standard. International Union, Security, Police, and Fire Professionals of America (SPFPA) v. U.S. Marshal's Service, S.D.N.Y.2004, 350 F.Supp.2d 522. Records  31

Even if Office of Personnel Management's (OPM) disclosure of confidential documents regarding federal employee to his former county corrections supervisors, in connection with their testimony at employee's Merit Systems Protection Board (MSPB) hearing following determination of unsuitability for federal employment due to prior employment record and failure to disclose history, did not fall within "routine use" exception under Privacy Act, disclosure had no adverse effect on employee permitting award of damages; no causal connection between violation and alleged adverse effects of emotional distress and pecuniary loss were demonstrated by employee. Mandel v. U.S. Office of Personnel Management, E.D.N.Y.2003, 244 F.Supp.2d 146, affirmed 79 Fed.Appx. 479, 2003 WL 22469719. Records  31

Plaintiff, who alleged that disclosure of Freedom of Information Act documents [5 U.S.C.A. § 552] concerning him by an assistant United States attorney to plaintiff's appointed counsel caused appointed counsel to garner ill thoughts about plaintiff and to withdraw as plaintiff's counsel, failed to allege that he suffered any adverse effect caused by the alleged improper safeguarding and accounting of documents by the Department of Justice and the

Office of the United States Attorney, in violation of 5 U.S.C.A. § 552a(c, e), because adversity alleged could not possibly have been caused by alleged violation, and thus, plaintiff failed to state cause of action. *Ely v. Department of Justice*, N.D.Ill.1985, 610 F.Supp. 942, affirmed 792 F.2d 142. Records 🔑 31

254. Persons entitled to maintain action, civil remedies--Generally

Catch-all provision of the Privacy Act creating a civil cause of action for disclosure violations not described elsewhere in the Act permits claims predicated on improper disclosure of "any record which is contained in a system of records" only by a person whose records are actually disclosed, and thus an adversely affected individual cannot bring suit under the provision for the improper disclosure of another person's records. *Sussman v. U.S. Marshals Service*, C.A.D.C.2007, 2007 WL 2176117. Records 🔑 31

Rights conferred by section of Privacy Act barring agencies from denying any right because of individual's refusal to disclose his social security account number could be enforced by a private right of action under § 1983. *Schwier v. Cox*, C.A.11 (Ga.) 2003, 340 F.3d 1284, on remand 412 F.Supp.2d 1266. Civil Rights 🔑 1040

State secrets privilege properly invoked by the United States warranted dismissal of action brought by terminated contract translator hired by the Federal Bureau of Investigation (FBI), alleging that government agencies violated the Privacy Act by disclosing contents of her employment records to unauthorized persons, where translator was unable to prove prima facie elements of her claim without disclosure of privileged information, and government was unable to assert valid defenses to claim without such disclosures; documents related to translator's employment, termination, and security review were privileged. *Edmonds v. U.S. Dept. of Justice*, D.D.C.2004, 323 F.Supp.2d 65, affirmed 161 Fed.Appx. 6, 2005 WL 3696301, certiorari denied 126 S.Ct. 734, 163 L.Ed.2d 569. Federal Civil Procedure 🔑 1741; Witnesses 🔑 216(1)


Ranchers had standing to sue United States Forest Service under Privacy Act for release of their financial information, submitted in connection with their grazing permits, to environmental group; ranchers sued in their individual capacities, they complained about the release of business and financial information that pertained to them as individuals, and ranchers showed that they suffered emotional injury sufficient to constitute an adverse effect from the release of their personal information. *Rice v. U.S.*, D.D.C.2007, 245 F.R.D. 3. Records 🔑 31


Association, association's former executive director, and several members of association bringing suit against various officers and agencies of United States on assertion that members' constitutional and other rights were violated by efforts to disrupt, discredit, and interfere with association's activities lacked standing to assert derivative invasions of privacy of others than themselves based upon constitutional or statutory provisions. *Wilkinson v. F.B.I.*, C.D.Cal.1983, 99 F.R.D. 148. Searches And Seizures 🔑 162

255. ---- Individuals, persons entitled to maintain action, civil remedies


Employee's allegations that supervisor's behavior of providing information regarding internal investigation to former supervisor who worked for employee's subsequent employer caused employee to experience emotional distress and that behavior sullied his professional reputation were sufficient to establish that employee suffered an adverse effect as a result of disclosure, as required for employee to have standing to bring a Privacy Act claim against Department of Defense. *Mulhern v. Gates*, D.D.C.2007, 525 F.Supp.2d 174. Records 🔑 31


Although it was unclear to court how disclosure by Internal Revenue Service (IRS) to others in office of employee's rebuttal statement to performance evaluation caused her "severe emotional and physical harm, stress,


sleeplessness and nightmares," employee would be allowed to attempt to prove her actual damages at trial, for purposes of her claim for agency's intentional or willful violation of Privacy Act through that disclosure. *Boyd v. Snow*, D.D.C.2004, 335 F.Supp.2d 28. Records  31


Lack of authorizing legislation barred suit claiming that Federal Bureau of Investigation (FBI) conspired with Executive Office of the President (EOP) to violate rights of well-known religious figure, under Freedom of Information Act (FOIA) and Privacy Act. *Falwell v. Executive Office of the President*, W.D.Va.2001, 158 F.Supp.2d 734. Conspiracy  7.5(1)

256. Class actions, civil remedies



Class of ranchers, whose personal financial information that was submitted to the Forest Service, in connection with their permits for grazing on public lands, was released to environmental group, would be decertified, for purpose of Privacy Act claims, where District Court determined that named plaintiffs failed to establish actual damages, as required by the Act, and the class could include some claims for which actual damages could be established. *Rice v. U.S.*, D.D.C.2007, 245 F.R.D. 3. Federal Civil Procedure  186


Individual questions of fact as to whether, for purposes of establishing a violation of the Privacy Act, the Veterans Administration (VA) actually disclosed the records of individual putative class members to a person or any agency that did not need the record, and whether any of the individual putative class members suffered an adverse effect as a result, precluded certification of class of VA employees, whose Social Security numbers (SSNs) the VA allegedly disclosed on a VA computer system, in action against the VA for violation of the Privacy Act, under rule permitting class certification where questions of law or fact common to the members of the class predominate over any questions affecting only individual members. *Schmidt v. U.S. Dept. of Veterans Affairs*, E.D.Wis.2003, 218 F.R.D. 619, amended on reconsideration in part 222 F.R.D. 592. Federal Civil Procedure  184.5

Proposed class of approximately 3,500 members satisfied numerosity requirement for class certification of ranchers' action against government, alleging it violated the Privacy Act when it released their financial information to environmental group, because joinder of all members was impracticable. *Rice v. U.S.*, D.D.C.2002, 211 F.R.D. 10. Federal Civil Procedure  186

There was no standing bar to assertion of invasion of privacy claims relying upon direct invasions of class members' constitutional and statutory privacy interests in action brought against various officers and agencies of the United States by association, association's former executive director, and several members of association on assertion that members' constitutional and other rights were violated by efforts to disrupt, discredit, and interfere with association's activities. *Wilkinson v. F.B.I.*, C.D.Cal.1983, 99 F.R.D. 148. United States  50.10(3)

257. Persons or entities liable, civil remedies--Generally

The Privacy Act and the Freedom of Information Act (FOIA) allow civil lawsuits against agencies only, not against individual defendants. *Buckles v. Indian Health Service/Belcourt Service Unit*, D.N.D.2003, 268 F.Supp.2d 1101. Records  31; Records  63

Privacy Act does not apply to individuals and, accordingly, university students could not bring Privacy Act claim against university president. *Krebs v. Rutgers*, D.N.J.1992, 797 F.Supp. 1246. Records  31

258. ---- Agencies, persons or entities liable, civil remedies

Agency is only proper party to private cause of action against agency for failure to comply with statute limiting disclosure of federal agency records; civil remedy provisions do not apply to individual defendants. *Schowengerdt v. General Dynamics Corp.*, C.A.9 (Cal.) 1987, 823 F.2d 1328. Records 🔑 31

Private right of civil action created by the Privacy Act [5 U.S.C.A. § 552a] is specifically limited to actions against agencies of the United States; therefore, the civil remedy provisions of the statute do not apply against private individuals, state agencies, private entities, or state and local officials. *Unt v. Aerospace Corp.*, C.A.9 (Cal.) 1985, 765 F.2d 1440. Records 🔑 31

This section authorizes private civil actions for violations of its provisions only against an agency, not against any individual. *Brown-Bey v. U.S.*, C.A.7 (Ill.) 1983, 720 F.2d 467. See, also, *Williams v. McCausland*, S.D.N.Y.1992, 791 F.Supp. 992; *Mittleman v. U.S. Treasury*, D.D.C.1991, 773 F.Supp. 442; *Hay v. Secretary of Army*, S.D.Ga.1990, 739 F.Supp. 609. Records 🔑 31

Privacy Act permits civil remedies against agency that violates certain conditions of its employees' privacy, but that remedy is restricted to one against agency itself. *Burns v. Potter*, D.Mass.2004, 334 F.Supp.2d 13. Records 🔑 31

Cancer patient could not maintain action under Privacy Act against Social Security Administration employee in her individual capacity, for disclosing of confidential medical information regarding patient's human immunodeficiency virus (HIV) status, but he could maintain claim against the Social Security Administration. *Stokes v. Barnhart*, D.Me.2003, 257 F.Supp.2d 288. Records 🔑 31

There is no private right of action against state agencies or officials, under the Privacy Act. *Stoianoff v. Commissioner of Motor Vehicles*, S.D.N.Y.2000, 107 F.Supp.2d 439, affirmed 12 Fed.Appx. 33, 2001 WL 568129, certiorari denied 122 S.Ct. 352, 534 U.S. 954, 151 L.Ed.2d 266, rehearing denied 122 S.Ct. 1352, 535 U.S. 952, 152 L.Ed.2d 254. Action 🔑 3

An agency is the only proper defendant under the Privacy Act and, therefore, individuals may not be named as defendants in such actions. *Wheeler v. Gilmore*, E.D.Va.1998, 998 F.Supp. 666. Records 🔑 31

Only United States Postal Service, and not Federal Bureau of Investigation, could be held liable for alleged violation of Privacy Act occurring when postal employees released plaintiff's address to FBI agent. *Wesley v. Don Stein Buick, Inc.*, D.Kan.1997, 985 F.Supp. 1288, vacated in part 996 F.Supp. 1299. Records 🔑 31

Private right of action created by Privacy Act is limited to actions against agencies of federal government. *Steward v. Bryan*, C.A.5 (Miss.) 2003, 2003 WL 22295510, Unreported. Records 🔑 31

259. ---- Individuals, persons or entities liable, civil remedies

Under the Freedom of Information Act (FOIA), and accordingly, under the Privacy Act as well, there is no private right of action against an official or employee of a municipal or state, rather than a federal, agency. *Pennyfeather v. Tessler*, C.A.2 (N.Y.) 2005, 431 F.3d 54. Records 🔑 31

Privacy Act provided acupuncturist no private cause of action against Executive Officer of State of California Acupuncture Committee, in either her official or personal capacity, with regard to requirement that acupunctur-

ist provide his social security number in order to obtain license renewal, inasmuch as Act's civil remedy provisions did not apply to state officials. *Dittman v. California*, C.A.9 (Cal.) 1999, 191 F.3d 1020, certiorari denied 120 S.Ct. 2717, 530 U.S. 1261, 147 L.Ed.2d 982. Action 🔑 3

If records concerning plaintiff were maintained by the Civil Service Commission and disclosed by it, such actions could not be basis for liability under this section where the action was brought against the Secretary of the Department of the Army, not against the Commission. *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402. Records 🔑 31

This section provided for civil remedies only against agency and not individuals, so that Chief of the Navy Reference Branch of the National Personnel Records Center of the General Services Administration was not a proper defendant in civil action for damages under this section. *Bruce v. U. S.*, C.A.8 (Mo.) 1980, 621 F.2d 914. Records 🔑 31

Under the Privacy Act, a plaintiff can only sue United States agencies, not individual defendants. *Corey v. McNamara*, D.Nev.2006, 409 F.Supp.2d 1225. Records 🔑 31

Scope of Privacy Act extended only to federal agencies, and thus private right of action created in Privacy Act did not apply to county agencies or officials. *Fetzer v. Cambria County Human Services*, W.D.Pa.2005, 384 F.Supp.2d 813. Records 🔑 31

Although individuals may be criminally sanctioned under the Privacy Act for unauthorized disclosure, there is no provision authorizing civil suit against federal officials to compel disclosure; only proper defendants in a Privacy Act action for withholding records are the agencies that allegedly improperly withheld the records. *Whittle v. Moschella*, D.D.C.1991, 756 F.Supp. 589. Records 🔑 35

The Privacy Act creates a right of action only against federal agency involved; its civil remedy provisions are inapplicable to individual governmental officials. *Nichols v. Block*, D.Mont.1987, 656 F.Supp. 1436. United States 🔑 50.10(7)

Under section of the Privacy Act which authorizes private civil actions for violations of its provisions only against agencies [5 U.S.C.A. § 552a(g)(1)], plaintiff could not maintain private actions against assistant United States attorney and plaintiff's appointed counsel for alleged violation of the Act arising from assistant's disclosure of Freedom of Information Act documents [5 U.S.C.A. § 552] to appointed counsel. *Ely v. Department of Justice*, N.D.Ill.1985, 610 F.Supp. 942, affirmed 792 F.2d 142. Records 🔑 31

In suit brought against federal and state officials allegedly responsible for disseminating to law enforcement agencies a telex message that erroneously accused plaintiffs of devising a plan to kill police officers, the Immigration and Naturalization Service, whose erroneous intelligence report precipitated the entire scenario, might be a proper party defendant in a case under this section arising out of its handling of records pertaining to the plaintiffs, but the individual defendants could not be sued under that statute. *Gonzalez v. Leonard*, D.C.Conn.1980, 497 F.Supp. 1058. Records 🔑 31

The Privacy Act provides a cause of action against government agencies, not individuals. *Peterson v. Tomaselli*, S.D.N.Y.2003, 2003 WL 22213125, Unreported. Records 🔑 31

260. Military personnel, civil remedies

Feres doctrine that government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service, does not extend to Privacy Act lawsuits brought by military personnel against the military departments. *Cummings v. Department of the Navy*, C.A.D.C.2002, 279 F.3d 1051, 350 U.S.App.D.C. 68.

Naval aviator's Privacy Act claim arising from the Navy's alleged "unilateral release" to a civilian author of a report evaluating the aviator's flying abilities took place incident to aviator's service in the Navy, so that her Privacy Act claim was barred by the *Feres* doctrine; aviator was on active duty at the relevant time, the activity giving rise to injury took place on a military base, and her case was reliant on the premise that a factfinder could infer from the Navy's control and custody of her record that Navy personnel released her record, so that the release, to an author already granted a considerable amount of access to training operations at the base, was a military decision, regardless of how unlikely or outrageous the decision might appear to a casual observer and regardless of whether it was permitted under the Privacy Act or military regulations. *Cummings v. Department of Navy*, D.D.C.2000, 116 F.Supp.2d 76, reversed 279 F.3d 1051, 350 U.S.App.D.C. 68. Records 🔑 31

261. Jurisdiction of district court, civil remedies

Information in forms sent to tax shelter investors explaining denial of tax deduction and stating that investment counselors who sold tax shelter had been convicted of operating fraudulent tax scheme was at very least indirectly used by Internal Revenue Service in connection with determination of existence or possible existence of federal income tax liability, and thus, district court lacked subject matter jurisdiction over Privacy Act claims brought by investment counselors. *Mallas v. Kolak*, M.D.N.C.1989, 721 F.Supp. 748, vacated in part on other grounds 993 F.2d 1111. Records 🔑 31

District Court had jurisdiction of action for damages under this section for Federal Bureau of Investigation's improper release of records to third party pursuant to section 552 of this title, where under plaintiff's view, jurisdiction was appropriate once a violation had been established and plaintiff was aggrieved by it, and plaintiff properly pleaded allegations of an adverse effect upon him, and if plaintiff was required to show intentional and willful conduct as a threshold jurisdictional requirement, plaintiff adequately pleaded a colorable claim. *South v. Federal Bureau of Investigation*, N.D.Ill.1981, 508 F.Supp. 1104. Federal Courts 🔑 192

District court did not have federal question jurisdiction over insured's claims that insurer violated the ADA and the Privacy Act by maliciously delaying resolution of uninsured motorist claim for medical expenses arising from automobile accident after insured refused to provide insurer with access to his medical records; insured's case had no basis under ADA, which prohibited discrimination against person with disability in employment, or Privacy Act, which prohibited federal agencies from disclosing personal information about an individual without written consent. *Ankus v. Geico Ins. Co.*, C.A.7 (Ill.) 2003, 69 Fed.Appx. 770, 2003 WL 21461849, Unreported. Civil Rights 🔑 1042; Federal Courts 🔑 192; Federal Courts 🔑 225; Records 🔑 31

262. Jurisdiction of appellate courts, civil remedies

By appealing from final appealable order dismissing his pro se complaint seeking correction of three presentence reports (PSR), federal prisoner brought before Court of Appeals interlocutory order dismissing all defendants except the Bureau of Prisons (BOP) and construing his complaint to raise claims under the Privacy Act and Freedom of Information Act (FOIA). *Martinez v. Bureau of Prisons*, C.A.D.C.2006, 444 F.3d 620, 370 U.S.App.D.C. 275. Criminal Law 🔑 1134(10)

Appellate jurisdiction over former armed servicemember's action seeking review of United States Army's refusal to change his discharge status rested exclusively in Federal Circuit, even though servicemember based claims in part on Administrative Procedure Act (APA) and Privacy Act, and he conceded his Little Tucker Act claim for purposes of appeal, where district court's jurisdiction was based at least partially on Little Tucker Act. *Jarrett v. White*, C.A.3 (Del.) 2003, 57 Fed.Appx. 87, 2003 WL 202506, Unreported. Federal Courts 🔑 1139

263. Jurisdiction of Court of Federal Claims, civil remedies

The Court of Federal Claims does not have jurisdiction to adjudicate claims arising under the Privacy Act. *Doe v. U.S.*, Fed.Cl.2006, 74 Fed.Cl. 794. Federal Courts 🔑 1073.1

Court of Federal Claims does not have jurisdiction to adjudicate claims under the Privacy Act. *Bernard v. U.S.*, Fed.Cl.2004, 59 Fed.Cl. 497, affirmed 98 Fed.Appx. 860, 2004 WL 842679, rehearing denied. Federal Courts 🔑 1073.1

264. Exhaustion of administrative remedies, civil remedies--Generally

Applicant's failure to present request that comported with applicable Privacy Act regulations constituted failure to exhaust administrative remedies because, as technical matter, IRS never denied properly framed request for access to records. *Taylor v. U.S. Treasury Dept.*, C.A.5 (Tex.) 1997, 127 F.3d 470. Records 🔑 31

Persons allegedly adversely affected by disclosure of information in violation of the Privacy Act had not exhausted their administrative remedies, so were not entitled to relief on request for purging of files; Privacy Act set forth detailed set of requirements by which agency must permit individual to request amendment of record pertaining to that individual, permit individual to request review of agency's refusal to make such amendment, and notify individual of right to seek judicial review of that refusal, but there was no indication that allegedly adversely affected persons had ever requested that agency amend or expunge its records. *Quinn v. Stone*, C.A.3 (Pa.) 1992, 978 F.2d 126, 121 A.L.R. Fed. 745, rehearing denied. Records 🔑 31

Service member, who sought amendment of his military records under Privacy Act and to contest Army's interpretation of its regulations, failed to exhaust administrative remedies by proceeding before Army Board for Correction of Military Records, thus warranting dismissal of Privacy Act claim. *Cargill v. Marsh*, C.A.D.C.1990, 902 F.2d 1006, 284 U.S.App.D.C. 180. Records 🔑 31

Causes of action under Privacy Act for agency's refusal to amend individual's record in accordance with his request and for agency's improper refusal to permit individual access to his records incorporate exhaustion requirements; in both cases, plaintiff must initially seek amendment or access from agency and even seek review within agency before coming to court. *Haase v. Sessions*, C.A.D.C.1990, 893 F.2d 370, 282 U.S.App.D.C. 163. Records 🔑 31

Former officer was not required to exhaust his administrative remedies any further before asserting in federal court Privacy Act claim for amendment of Army records as result of Army's failure to abide by expedited review procedures mandated by Act. *Diederich v. Department of Army*, C.A.2 (N.Y.) 1989, 878 F.2d 646. Administrative Law And Procedure 🔑 229; Records 🔑 31

Inmate had not exhausted administrative remedies provided by Drug Enforcement Administration under Privacy Act before filing action against that agency to amend or expunge records on file; agency's delay of at most 15

days in acknowledging receipt of request to amend its files, followed by prompt response thereto, did not cause any adverse effects on inmate and thus did not allow for civil remedy. *Reyes v. Supervisor of Drug Enforcement Admin.*, C.A.1 (Puerto Rico) 1987, 834 F.2d 1093. Administrative Law And Procedure 🔑 229; Records 🔑 31

Former government employee who never sought higher administrative review of his request to have items removed from his file maintained by the Office of Personnel Management had not exhausted administrative remedies and thus was not entitled to injunctive relief, despite claim that pursuit of administrative remedies would have been futile because he received an untimely response to his request from the Office of Personnel Management and because his file had been improperly released to another government agency. *Dickson v. Office of Personnel Management*, C.A.D.C.1987, 828 F.2d 32, 264 U.S.App.D.C. 182, on remand. Records 🔑 35

Even if certain records were "agency records" within meaning of Privacy Act, civilian air force employee failed to exhaust his administrative remedies prior to bringing his claims seeking to have his records amended, and proffered insufficient evidence to support his damages claim. *Hill v. U.S. Air Force*, C.A.D.C.1986, 795 F.2d 1067, 254 U.S.App.D.C. 171. Records 🔑 31

Former Veterans Administration physician was required to exhaust administrative remedies in attempting to have unfavorable material in his personnel file eliminated as prerequisite to bringing action in district court under the Privacy Act, despite physician's failure to obtain desired relief from VA when he raised objections to comments included in earlier proficiency report. *Hewitt v. Grabicki*, C.A.9 (Wash.) 1986, 794 F.2d 1373. Records 🔑 31


Exhaustion of administrative remedies is prerequisite to bringing civil suit under this section to compel amendment of records maintained by federal agency on grounds that they are not accurate, relevant, timely or complete. *Nagel v. U.S. Dept. of Health, Educ. and Welfare*, C.A.D.C.1984, 725 F.2d 1438, 233 U.S.App.D.C. 332. Records 🔑 35


Agency employee failed to exhaust administrative remedies established by employer's Privacy Act regulations, as required to bring claim that agency's failure to provide access to records concerning investigation of employee violated Privacy Act, and thus federal district court did not have subject matter jurisdiction to hear claim. *Mulhern v. Gates*, D.D.C.2007, 525 F.Supp.2d 174. Records 🔑 31



Prison inmate failed to exhaust his administrative remedies with regard to claims, under the Privacy Act, against the Bureau of Prisons (BOP), the FBI, and the Executive Office for United States Attorneys (EOUSA), alleging that they willfully and knowingly maintained inaccurate records about him; inmate failed to take the initial steps of notifying those agencies about the alleged false information and requesting amendment of the records. *DeMartino v. F.B.I.*, D.D.C.2007, 511 F.Supp.2d 146. Records 🔑 62


Federal employee exhausted administrative remedies under Privacy Act for his claim seeking to have his private medical information contained in decision of Employee Compensation Appeals Board (ECAB) removed from publicly available materials and Internet when employee requested, by letter, that all references to his case and ECAB's decision be removed from Internet, all publicly accessible databases, and in bound form immediately, then communicated his disagreement with ECAB's refusal through e-mail to which agency replied, again refusing request, notwithstanding contention that employee's communications sought broader relief than his complaint and thus did not exhaust administrative remedies, inasmuch as ECAB had opportunity to consider redacting employee's private medical information, his identity, or both from its decision, and court had discretion to


grant such relief. *Doe v. U.S. Dept. of Labor*, D.D.C.2006, 451 F.Supp.2d 156. Records  35


Administrative exhaustion requirement applied to Central Intelligence Agency (CIA) contract employee's action for injunctive relief to enforce Privacy Act section providing for amendment of agency records pertaining to her; failure to pursue agency appeal process did not trigger "catchall" judicial review provision, but even if it had, that provision afforded no exemption from exhaustion requirements. *Leighton v. C.I.A.*, D.D.C.2006, 412 F.Supp.2d 30. Records  31


Requirement that plaintiff exhaust administrative remedies before filing suit under the Privacy Act is not a jurisdictional requirement but a practical requirement meant to provide courts with the benefit of an agency's expertise, and serve judicial economy by having the administrative agency compile the factual record. *Duke v. U.S.*, E.D.Pa.2004, 305 F.Supp.2d 478. Records  31


Former Air Force member constructively exhausted administrative remedies prior to bringing Freedom of Information Act (FOIA) and Privacy Act suit against Secretary of Air Force, as required to establish subject matter jurisdiction of FOIA and Privacy Act claims; Air Force member filed requests with Secretary, responded to Secretary's requests for additional information by reiterating the same requests, and filing appeal after Secretary failed to respond to supplemental submission within FOIA time limits and failed to notify Air Force member of appeal rights. *Nurse v. Secretary of Air Force*, D.D.C.2002, 231 F.Supp.2d 323. Records  31; Records  63

Government worker's Privacy Act claims were not foreclosed by any failure to exhaust administrative remedies in response to Department of Labor's provision of only redacted investigation file, where redacted file was not accompanied by response letter as required by agency regulations, such that worker may have been unaware that he could appeal agency's partial disclosure. *Mumme v. U.S. Dept. of Labor*, D.Me.2001, 150 F.Supp.2d 162. Records  31

Former federal employees were required to exhaust administrative remedies as prerequisite to bringing civil suit under Privacy Act to compel agency to amend their personnel records. *M.K. v. Tenet*, D.D.C.2000, 99 F.Supp.2d 12, reconsideration granted in part 196 F.Supp.2d 8. Records  31

Privacy Act plaintiff's letters to Inspector General (IG) and his invocation of IG grievance procedures did not constitute Privacy Act requests for amendment or review of his personnel file by Central Intelligence Agency (CIA), and thus, plaintiff had not exhausted his administrative remedies as to any amendment claims referenced in his complaints to IG; specific CIA procedures set forth in regulations required plaintiff to send letter to Privacy Act Coordinator. *Blazy v. Tenet*, D.D.C.1997, 979 F.Supp. 10, affirmed 1998 WL 315583. Records  31

Any Privacy Act claims against Air Force for refusal of access and refusal to amend or correct records were subject to dismissal for failure to exhaust administrative remedies, absent evidence that former member had sought review from Air Force. *Hass v. U.S. Air Force*, D.Kan.1994, 848 F.Supp. 926. Records  31

Former government employee complied with Privacy Act's exhaustion requirement as to her claim against Secret Service; letter indicated that employee had requested that Secret Service amend her records, and that request was denied. *Mittleman v. U.S. Treasury*, D.D.C.1991, 773 F.Supp. 442. Records  31

Former Army officer's Privacy Act action seeking order amending record of his service in Army was not re-

quired to be dismissed for failure to exhaust administrative remedies, as, when officer filed his complaint, his appeal had been pending before Army Appeals Board for eight months and no final decision on that appeal had been rendered; although that period of time for processing appeal may not have been excessive according to Army's own regulations, Privacy Act ostensibly contemplated swifter action. *Frobish v. U.S. Army*, D.Kan.1991, 766 F.Supp. 919. Records 🔑 31

Although neither the Freedom of Information Act (FOIA) nor the Privacy Act specifically requires claimant to exhaust administrative remedies before bringing suit, such a requirement is imposed as general principle of administrative law. *Hammie v. Social Sec. Admin.*, E.D.Pa.1991, 765 F.Supp. 1224. Records 🔑 31; Records 🔑 63

Plaintiff who never requested that his records be amended had not exhausted administrative remedies required before bringing action under the Privacy Act. *Whittle v. Moschella*, D.D.C.1991, 756 F.Supp. 589. Records 🔑 35

Taxpayers, in requesting information from Internal Revenue Service under this section, failed to comply with Service regulation governing identification applicable to such request; therefore, they failed to exhaust administrative remedies, precluding claim under this section against district director of Service. *Lilienthal v. Parks*, E.D.Ark.1983, 574 F.Supp. 14. Records 🔑 63

Claim that plaintiffs presented request to defense contract audit agency to correct allegedly inaccurate statements contained in audit memorandum relating to several contracts corporation and its officers entered into with agencies of United States was insufficient to establish that plaintiffs had exhausted their administrative remedies under Federal Tort Claims Act, sections 1346(b) and 2671 et seq. of Title 28 or under this section. *Metadure Corp. v. U.S.*, E.D.N.Y.1983, 569 F.Supp. 1496. United States 🔑 113

Former employee of the Postal Service was not entitled to relief from the Postal Service's denial of his application for reinstatement based on the Postal Service's alleged violation of his rights under this section, where he had not exhausted his administrative remedies under this section and where the uncontroverted facts revealed that the Postal Service acted no worse than negligently in retaining incorrect and untimely data in the former employee's personnel folder. *Ross v. U.S. Postal Service*, N.D.Ala.1983, 556 F.Supp. 729. Postal Service 🔑 5

Plaintiff, an employee of United States Military Academy who orally requested custodian of his personnel records to delete certain portions of his employee record and whose request was refused, exhausted administrative prerequisite to Privacy Act suit. *Liguori v. Alexander*, S.D.N.Y.1980, 495 F.Supp. 641. Records 🔑 31

Plaintiff who did not allege that he had exhausted his administrative remedies with respect to particular defendants under this section failed to meet prerequisite to bring an action in federal district court. *Metadure Corp. v. U. S.*, S.D.N.Y.1980, 490 F.Supp. 1368. Records 🔑 31

Where disappointed applicant for federal employment was seeking access to unfavorable evaluations in government files under this section, not § 552 of this title, he was not required to seek documents from "information center" or to request review within agency of denial of request, as provided by regulations of Department of Health, Education, and Welfare. *Mervin v. Bonfanti*, D.C.D.C.1976, 410 F.Supp. 1205. Records 🔑 60

Exceptional circumstances of requester's case alleging violations of Freedom of Information Act (FOIA) and Privacy Act and due diligence exercised by United States Marshals Service in responding to requester's disclos-

ure requests warranted requiring requester to exhaust his administrative remedies with respect to issues raised by Service's second disclosure of records, which were discovered in additional search conducted based on information revealed during summary judgment briefing in requester's action, with district court retaining jurisdiction and staying proceeding pending completion of administrative appeals process. *Lee v. U.S. Department of Justice*, W.D.Pa.2006, 235 F.R.D. 274. Records 🔑 63

Federal inmate failed to exhaust administrative remedies for Bivens claim alleging violation of Privacy Act, warranting dismissal of claim without prejudice, when inmate filed three official grievances, in addition to requests improperly filed directly with regional director, concerning his classification as member of white supremacist organization, but none of those grievances mentioned aspect of Privacy Act claim that his classification information had been leaked to other inmates. *McGee v. Federal Bureau of Prisons*, C.A.10 (Colo.) 2004, 118 Fed.Appx. 471, 2004 WL 2931365, Unreported. United States 🔑 50.10(3)

Federal inmate alleging that prison officials improperly made decisions regarding his security classification based on inaccurate information contained in his presentence investigation report was required to exhaust his administrative remedies before filing suit pursuant to Privacy Act. *Williams v. Bezy*, C.A.6 (Ohio) 2004, 97 Fed.Appx. 573, 2004 WL 959730, Unreported. Records 🔑 31

265. ---- Damages, exhaustion of administrative remedies, civil remedies

Applicant for federal agency position was not required to exhaust administrative remedies before bringing Privacy Act claim for damages on allegedly inaccurate passover document. *Hubbard v. U.S. E.P.A. Adm'r*, C.A.D.C.1986, 809 F.2d 1, 257 U.S.App.D.C. 305, on rehearing 859 F.2d 223, 273 U.S.App.D.C. 247, on remand 735 F.Supp. 435. Administrative Law And Procedure 🔑 230; Records 🔑 31

Demand for damages under Federal Tort Claims Act (FTCA) is not request for record amendment under Privacy Act and, thus, does not satisfy requirement that plaintiff exhaust administrative remedies prior to bringing suit under Privacy Act to amend agency's records. *Murphy v. U.S.*, D.D.C.2000, 121 F.Supp.2d 21, affirmed 64 Fed.Appx. 250, 2003 WL 21242533. Records 🔑 31

Former federal employees were not required to exhaust administrative remedies as prerequisite to bringing civil suit under Privacy Act against agency for monetary damages for adverse personnel determinations based on inaccurate records. *M.K. v. Tenet*, D.D.C.2000, 99 F.Supp.2d 12, reconsideration granted in part 196 F.Supp.2d 8. Records 🔑 31

Former government employee, who sued agency and agency officials for allegedly disclosing information about him in violation of Privacy Act, did not have to exhaust administrative remedies prior to suing for money damages. *Pope v. Bond*, D.D.C.1986, 641 F.Supp. 489. Records 🔑 31

266. Accurate disclosure, civil remedies

Accurate disclosure to enlisted member that Air Force no longer maintained a file on member's complaint of sex discrimination fulfilled the Air Force's obligations under the Privacy Act. *Tufts v. Department of Air Force*, C.A.10 (Kan.) 1986, 793 F.2d 259. Records 🔑 34

267. Amendment of record, civil remedies--Generally

Parole Commission did not flagrantly disregard federal inmate's Privacy Act rights, required for inmate to pro-

ceed with money damages claim for Commission's alleged failure to correct records, when Commission supplemented inmate's file with rebuttal to quantity of drugs attributed to inmate in presentence investigation report and offered inmate hearing concerning accuracy of disputed report; Commission was not required to correct alleged inaccurate record before making parole determination. *Deters v. U.S. Parole Com'n*, C.A.D.C.1996, 85 F.3d 655, 318 U.S.App.D.C. 89. Records 🔑 31

Though language of subsec. (d)(1) of this section expressly limits its applicability to records contained within system of records, other subsections are not subject to such restrictions, and thus at least with respect to violations of subsec. (e)(7) qualifiedly prohibiting agency from maintaining record describing how any individual exercises right under U.S.C.A. Const. Amend. 1, plaintiff may be entitled to have offending records amended or expunged even if records are not maintained within agency's system of records. *Clarkson v. I. R. S.*, C.A.11 (Ga.) 1982, 678 F.2d 1368. Records 🔑 31

Bureau of Prisons (BOP) was under no obligation to amend federal inmate's medical records upon his request, and thus BOP's refusal to obtain inmate's pre-incarceration medical records did not constitute intentional or willful violation of Privacy Act, as required to maintain claim for damages, where BOP had promulgated regulations to exempt its Inmate Physical and Mental Health Record System from Privacy Act's amendment provision, and there was no evidence that BOP made adverse determination with respect to inmate in reliance on allegedly inaccurate or incomplete medical records. *Elliott v. Federal Bureau of Prisons*, D.D.C.2007, 521 F.Supp.2d 41. Records 🔑 31

Amendment of copy of inmate's presentence investigation report (PSI) in Bureau of Prisons (BOP) files was not an available remedy in his action alleging that inaccuracies in that PSI constituted a Privacy Act violation; BOP's Central Records System was exempt by regulation in Privacy Act claims. *Conklin v. U.S. Bureau of Prisons*, D.D.C.2007, 514 F.Supp.2d 1. Records 🔑 10

Record of investigation (ROI) of automobile accident, which occurred in Germany, involving military dependent and German citizen who died as result of accident, contained information that was not sufficiently accurate or complete so as to ensure its fairness to dependent, as would support amendment of ROI pursuant to Privacy Act; ROI's subject block contained dependent's full name, birth date, address, and notations "Fatal Traffic Accident" and "Negligent Homicide" without further explanation that dependent was never found guilty of the offense, and such information was subject to dissemination. *Holz v. Westphal*, D.D.C.2002, 217 F.Supp.2d 50. Records 🔑 31

Veteran, who had been discharged for psychiatric reasons, was authorized under this section to seek amendment of both inaccurate biographic data and unsupported diagnostic conclusions relating to his hospitalization precipitating his discharge from the service. *R. R. v. Department of Army*, D.C.D.C.1980, 482 F.Supp. 770. Records 🔑 10

268. ---- Expungement from record, amendment of record, civil remedies

Former Veterans Administration physician was not entitled under Privacy Act to have critical remarks expunged from proficiency report evaluating his performance at VA hospital, absent showing of a substantial controversy regarding factual assertions or historical fact statements included in the report. *Hewitt v. Grabicki*, C.A.9 (Wash.) 1986, 794 F.2d 1373. Records 🔑 31

Expungement of records compiled by members of intelligence organizations regarding activities of opponents of

Viet Nam war or proponents of racial justice would not be precluded on remand by fact that files were necessary for purposes of civil rights action. *Hobson v. Wilson*, C.A.D.C.1984, 737 F.2d 1, 237 U.S.App.D.C. 219, certiorari denied 105 S.Ct. 1843, 470 U.S. 1084, 85 L.Ed.2d 142, on remand 646 F.Supp. 884. Records 🔑 22

Federal courts are empowered to order the expungement of government records where necessary to vindicate rights secured by the Constitution or by statute. *Chastain v. Kelley*, C.A.D.C.1975, 510 F.2d 1232, 167 U.S.App.D.C. 11. Records 🔑 22

Statements that Central Intelligence Agency (CIA) contract employee sought to have expunged from her agency file, to effect that she had disclosed sensitive or confidential information to the media, consisted of opinions and were not "facts" subject to expungement under the Privacy Act; employee was entitled to no more than agency offered, namely, that she be permitted to place a statement in her file explaining her point of view on her security clearance revocation. *Leighton v. C.I.A.*, D.D.C.2006, 412 F.Supp.2d 30. Records 🔑 31

Army's report of investigation (ROI) of military dependent, following motor vehicle accident in which 18-year-old dependent was a driver and German citizen was killed, was not connected to possible security risk or violation of federal law, as would support Army's denial of dependant's request for amendment of record to eliminate his name; the ROI itself expressly acknowledged that the Criminal Investigation Divisions (CID) lacked authority to investigate the accident, as dependent was civilian and no federal criminal statutes were violated. *Holz v. Westphal*, D.D.C.2002, 217 F.Supp.2d 50. Armed Services 🔑 4

Under this section, an agency may not refuse a request to revise or expunge prior professional judgments once all facts underlying such judgments have been thoroughly discredited. *R. R. v. Department of Army*, D.C.D.C.1980, 482 F.Supp. 770. Records 🔑 10; Records 🔑 11


Allegations that Georgia Department of Public Safety's official Georgia Firearms License (GFL) application form demanded employment information, that county probate court also demanded employment information, and that applicant, in applying for his GFL, refused to provide his Social Security Number (SSN) but complied with all other requests of county probate court and the application, stated claim under the Privacy Act and state law for expungement of records containing his employment information. *Camp v. Cason*, C.A.11 (Ga.) 2007, 220 Fed.Appx. 976, 2007 WL 869050, Unreported. Records 🔑 31


269. ---- Burden of proof, amendment of record, civil remedies


This section having contained no provision allocating burden of proof with respect to request to amend allegedly inaccurate records, and legislative history and reported decisions having shed no light on question, ordinary rule enforcing burden of proof on plaintiff would apply. *Mervin v. F. T. C.*, C.A.D.C.1978, 591 F.2d 821, 192 U.S.App.D.C. 212. Records 🔑 65


270. ---- Attorney fees, amendment of record, civil remedies

It was not reasonable for Army to refuse to make amendment of records generated during United States Army Criminal Investigation Division (CID) investigation of fatal traffic accident to remove military dependent's name from title of investigative reports, and thus dependent was entitled under Privacy Act to award of attorney fees and costs incurred in his successful action against Army, even if Army's refusal was based on Army and Department of Defense regulations, where dependent was never found guilty of negligent homicide, dependent was civilian not subject to Uniform Code of Military Justice, there were no violations of federal criminal statutes with


which dependent could have been charged, and there was no other Army interest. *Holz v. Westphal*, D.D.C.2004, 360 F.Supp.2d 133, appeal dismissed 2004 WL 2272259. Records  34


Those Black Lung claimants who initiated additional lawsuits to stop Secretary of Labor intentional and willful act of including Social Security Numbers (SSNs) on hearing notices after initial plaintiff had secured court-approved agreement to stop practice, but who failed to show that they suffered an adverse effect because of practice, were not entitled to attorney fees under Privacy Act. *Doe v. Chao*, W.D.Va.2004, 346 F.Supp.2d 840, affirmed in part, reversed in part and remanded 435 F.3d 492, on remand 2006 WL 2038442. Labor And Employment  2698


Provision of this section that a court may assess reasonable attorney fees and litigation costs against United States is limited to those fees incurred in civil litigation and does not encompass fees for administrative proceedings. *Kennedy v. Andrus*, D.C.D.C.1978, 459 F.Supp. 240. Records  68


In action brought by applicant for a Georgia Firearms License (GFL) against county probate judge and the Commissioner of the Georgia Department of Public Safety, alleging that his application was denied because he refused to disclose his Social Security Number (SSN), and asserting violations of the Privacy Act and state law claims, consideration of applicant's attorney's fees appeal was premature, where District Court erroneously dismissed portion of applicant's complaint as moot. *Camp v. Cason*, C.A.11 (Ga.) 2007, 220 Fed.Appx. 976, 2007 WL 869050, Unreported. Federal Courts  659

271. Damages, civil remedies

Plaintiff could recover damages under the Privacy Act for agency's accounting failures regarding disclosures only to the extent those disclosures involved materials in his records, rather than records of some other person. *Sussman v. U.S. Marshals Service*, C.A.D.C.2007, 2007 WL 2176117. Records  31

Agency employee who sought damages under the Privacy Act from Department of Defense based on supervisor's disclosure of information pertaining to internal investigation to subsequent employer was required to offer specific evidence that he was entitled to money damages as a result of the asserted harm to his reputation or professional status. *Mulhern v. Gates*, D.D.C.2007, 525 F.Supp.2d 174. Records  31

Damages were not available remedy in inmate's action alleging that inaccuracies in copy of his presentence investigation report (PSI) in Bureau of Prisons files constituted a Privacy Act violation; BOP's Central Records System was exempt by regulation in Privacy Act claims. *Conklin v. U.S. Bureau of Prisons*, D.D.C.2007, 514 F.Supp.2d 1. Records  10

Bureau of Prisons (BOP) did not act unlawfully and did not disregard prisoner's rights under the Privacy Act (PA) in responding to prisoner's challenge to the accuracy of information contained in his presentence investigation report (PSI) that allegedly was relied upon by BOP in making its custody determinations, as required for prisoner to recover monetary damages under the PA; within two weeks of prisoner's complaint to his case manager about the alleged inaccuracies in his PSI, a BOP unit manager wrote the appropriate probation officer for "review and disposition" of prisoner's accusations, and in less than two weeks the probation officer sent response explaining why she would not change the PSI. *Lopez v. Huff*, D.D.C.2007, 508 F.Supp.2d 71. Records  31

Department of Veterans Affairs (DVA) violation of its internal agency regulations relating to disclosure of in-

formation about veteran, standing alone, could not sustain claim for damages under the Privacy Act, where terms of Act, itself, were not violated. *Wiley v. Department of Veterans Affairs*, E.D.Mich.2001, 176 F.Supp.2d 747. Records 🔑 31

Even if the Postmaster General's maintenance of the allegedly "secret files" on employees was in violation of the Privacy Act, the plaintiff employee's claimed damages, "extreme mental anguish and mental concern and worry," were not recoverable under the Privacy Act. *Risch v. Henderson*, E.D.Mich.1999, 128 F.Supp.2d 437, affirmed 244 F.3d 510. Damages 🔑 57.58; Records 🔑 31

Damages for noneconomic losses were available in action against Federal Bureau of Investigation (FBI) under Privacy Act. *Alexander v. F.B.I.*, D.D.C.1997, 971 F.Supp. 603, 150 A.L.R. Fed. 733. Records 🔑 31

Federal Bureau of Investigation (FBI) agent could not recover emotional damages as result of Privacy Act violation occurring when FBI, Department of Justice and United States Attorney allegedly disclosed information concerning agent to the press. *DiMura v. F.B.I.*, D.Mass.1993, 823 F.Supp. 45. Damages 🔑 57.58; Records 🔑 31

Ranchers' alleged emotional injuries, of anger, dismay, anxiety, and fear about the release to an environmental group of their personal financial information that was submitted to the United States Forest Service, in connection with their permits for grazing on public lands, were insufficient to establish that ranchers suffered actual damages, as required under the Privacy Act, regardless of whether non-pecuniary harm could qualify as actual damages, absent showing that the emotional injuries produced any physical manifestation, or that ranchers were required to seek medical or psychological treatment. *Rice v. U.S.*, D.D.C.2007, 245 F.R.D. 3. Records 🔑 31

Former assistant United States attorney's claims that she experienced adverse consequences as the result of information in her personnel file were merely speculative and thus insufficient to prove actual damages sustained as a result of refusal or failure to provide documents, as required for individual to recover under Privacy Act (PA). *Brown v. U.S. Dept. of Justice*, C.A.11 (Ala.) 2006, 169 Fed.Appx. 537, 2006 WL 509074, Unreported, rehearing and rehearing en banc denied 179 Fed.Appx. 686, 2006 WL 1173160. Records 🔑 31


272. Injunction, civil remedies


Injunctive relief was not available under section of Privacy Act requiring that agency maintain its records accurately. *Risley v. Hawk*, C.A.D.C.1997, 108 F.3d 1396, 323 U.S.App.D.C. 367, rehearing denied. Records 🔑 10


Violations of Privacy Act, as incorporated into veterans' records statute, through release and disclosure of veteran's medical records in response to grand jury subpoena, did not authorize entry of injunctive relief requiring return of medical records to veteran, exclusion of the information from grand jury, or ban on disclosure by United States Attorney and his staff; violation was not one for which injunctive relief was specifically permitted by the Act. *Doe v. Stephens*, C.A.D.C.1988, 851 F.2d 1457, 271 U.S.App.D.C. 230. Records 🔑 31


Though this section expressly provides for injunctive relief for two types of agency misconduct, i.e., wrongful withholding of documents and wrongful refusal to amend record, remedy for violations of all other provisions of this section is limited to recovery of damages upon showing that agency acted in intentional or willful manner. *Clarkson v. I. R. S.*, C.A.11 (Ga.) 1982, 678 F.2d 1368. Records 🔑 31


This section authorizes courts to issue injunctions only to amend, i.e., correct individual's record and to order


agency to produce agency records improperly withheld from individual, and no broad right to injunctive relief was to be implied. *Edison v. Department of the Army*, C.A.11 (Ga.) 1982, 672 F.2d 840. Records  31


In action by class of union officers and officials for alleged violations of this section with respect to transfer of certain records from Department of Labor to Justice Department and subsequent subpoena of these records by grand jury, injunctive relief sought by plaintiffs was precluded under this section by failure of Congress to provide for such relief. *Hanley v. U. S. Dept. of Justice*, C.A.6 (Ohio) 1980, 623 F.2d 1138. Records  67


In view of subsec. (g) of this section authorizing court to issue injunctions in only two instances, to amend record and to order agency to produce agency records improperly withheld, and in view of failure of this section, to authorize injunctive relief against other violations of this section, plaintiffs were not entitled to injunctive relief under Privacy Act. *Parks v. U. S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677. Records  35

Employee of National Security Agency (NSA) was not entitled to temporary restraining order to force agency to immediately comply with his Freedom of Information Act and Privacy Act requests in order to permit him to defend his continued right of access to highly classified information at upcoming administrative appellate proceeding, even if failure to obtain reports before hearing endangered his continued employment, where employee had not yet suffered any actual injury, and there was possibility of further administrative review. *Wiedenhoeft v. U.S.*, D.Md.2002, 189 F.Supp.2d 295. Injunction  150

Public employees' challenge to question on required employment questionnaire regarding public employees' use of drugs during last seven years which stated that neither employee's truthful responses nor information derived from responses could be used against employee in criminal proceeding did not provide basis for injunctive relief under Privacy Act. *American Federation of Government Employees, AFL-CIO, Nat. Council of HUD Locals v. U.S. Dept. of Housing and Urban Development*, D.D.C.1996, 924 F.Supp. 225, reversed 118 F.3d 786, 326 U.S.App.D.C. 185. Records  31

Privacy Act could not be used to order disposal of records compiled by FBI in course of investigation for alleged terrorist activity pursuant to tip by paid informant who was later determined to be untrustworthy. *Committee In Solidarity with People of El Salvador (CISPES) v. Sessions*, D.D.C.1990, 738 F.Supp. 544, affirmed 929 F.2d 742, 289 U.S.App.D.C. 149. Records  35

Socialist Workers Party was not entitled to declaratory and injunctive relief under section of Privacy Act prohibiting government agencies from maintaining records regarding individual exercise of First Amendment rights, where records in question were accumulated by government agencies prior to Act's effective date. *Socialist Workers Party v. Attorney General of U.S.*, S.D.N.Y.1986, 642 F.Supp. 1357. Records  31

Under this section, injunctive relief is available only to order agency to amend incorrect record or allow individual to inspect his record. *Houston v. U. S. Dept. of Treasury*, D.C.D.C.1979, 494 F.Supp. 24. Records  35

273. Collateral attack, civil remedies

Privacy Act was not proper means for federal prisoner, who alleged that sentencing court improperly relied on juvenile conviction erroneously included in his presentence investigation report (PSR), resulting in imposition of 36 additional months' imprisonment, to collaterally attack his sentence. *Brown v. Bureau of Prisons*,

D.D.C.2007, 498 F.Supp.2d 298. Records 🔑 31

Former federal employee could maintain claims that Department of Army published untrue and unproven private information about him in violation of Privacy Act, notwithstanding claim that Privacy Act claims were essentially collateral attacks upon federal personnel employment actions against him, where former employee alleged that actions were taken in intentional or willful manner in failing to maintain accurate records, entitling him to award of actual damages caused by adverse determinations based upon such records. *Hay v. Secretary of Army*, S.D.Ga.1990, 739 F.Supp. 609. Records 🔑 31

District court lacked jurisdiction over Privacy Act claim arising from records upon which agency relied in denying employees' application for reinstatement, where employees, in essence, were seeking review of agency's determination denying reinstatement. *Henderson v. Social Sec. Admin.*, D.Kan.1989, 716 F.Supp. 15, affirmed 908 F.2d 559. *Officers And Public Employees* 🔑 72.41(1)

Former employee of Army and Air Force Exchange Service could not collaterally attack the correctness of his discharge decision by bringing a Privacy Act challenge against records that supported that decision where employee was provided sufficient opportunity to challenge the determination that he had committed a dischargeable offense. *Castella v. Long*, N.D.Tex.1988, 701 F.Supp. 578, affirmed 862 F.2d 872, certiorari denied 110 S.Ct. 330, 493 U.S. 936, 107 L.Ed.2d 319. Records 🔑 31

Both record reflecting medical diagnosis of employee and report of employee's supervisor were among most relevant records evaluated by Office of Workers' Compensation Programs in making disability award determination, and therefore, reports were not subject to collateral attack and could not be amended under Privacy Act. *Rogers v. U.S. Dept. of Labor*, N.D.Cal.1985, 607 F.Supp. 697. Records 🔑 31

274. Habeas corpus, civil remedies

Federal prisoner's Privacy Act claim that his loss of good time credit and postponement of his parole eligibility were based on absence of FBI report and addition of "intent to distribute" to drug possession charge was challenge to duration of custody, for which habeas corpus was exclusive remedy, even though claim's impact on custody was only probabilistic. *Razzoli v. Federal Bureau of Prisons*, C.A.D.C.2000, 230 F.3d 371, 343 U.S.App.D.C. 357. Habeas Corpus 🔑 277; Habeas Corpus 🔑 279; Pardon And Parole 🔑 62; Prisons 🔑 15(7)

Petition for writ of habeas corpus was exclusive remedy for pro se parolee in federal custody to challenge United States Parole Commission's denial of parole, which was allegedly done arbitrarily and capriciously by use of unduly harsh standard regarding his eligibility in violation of the Administrative Procedure Act (APA) and in reliance on false information in violation of his rights under Privacy Act; parolee's challenge to standard relied on by Commission, and his request for an order compelling the agency to expunge information from its file regarding him, were both subject to recourse under habeas corpus because the claims could have a probabilistic impact on the duration of his custody. *Forrester v. U.S. Parole Com'n.*, D.D.C.2004, 310 F.Supp.2d 162. Habeas Corpus 🔑 279; Pardon And Parole 🔑 62

275. Limitations period, civil remedies--Generally

Publication of same private information previously disclosed on Internet without consent, but at different uniform resource locator (URL) address, constituted separate and distinct publication, for purpose of application of

two year statute of limitations to federal employee's claim against employer under Privacy Act. *Oja v. U.S. Army Corps of Engineers*, C.A.9 (Or.) 2006, 440 F.3d 1122. Limitation Of Actions 🔑 58(1)

The Privacy Act provides a two year statute of limitations. *Rose v. U.S.*, C.A.9 (Cal.) 1990, 905 F.2d 1257.

Allegations by employee of Central Intelligence Agency (CIA) that Board of Inquiry, which determined she was not qualified for position she held, convened after "early 1998" were sufficient to satisfy statute of limitations requirement for claim under the Privacy Act based on that determination; Board could not have made determination before it convened. *M.K. v. Tenet*, D.D.C.2001, 196 F.Supp.2d 8. Limitation Of Actions 🔑 178

Former employee knew or should have known that federal agency kept records on him that he believed to be erroneous more than two years before he brought Privacy Act action against agency, and, thus, action was untimely under two year statute of limitations governing actions brought under Privacy Act, where agency specifically told employee in letter that agency was keeping certain documents on him regarding alleged misconduct. *Farrero v. National Aeronautics And Space Admin.*, D.D.C.2001, 180 F.Supp.2d 92. Limitation Of Actions 🔑 95(3)

Two-year statute of limitations for Privacy Act claims did not bar former federal employee's claim regarding allegedly false Secret Service document which allegedly provided justification for firing her and barring her from Treasury building, where former employee did not know until two years within filing action that allegedly false Secret Service documents were contained in an administrative file accessible to the public. *Mittleman v. U.S.*, D.D.C.1998, 997 F.Supp. 1, affirmed 1998 WL 796298, affirmed 1998 WL 796300. Limitation Of Actions 🔑 95(14)

Former inmate's claim against Bureau of Prisons under Privacy Act, arising from alleged denial of her right to access and amend prison records, was barred by two-year statute of limitations; claim was brought over two and one-half years after plaintiff wrote to prison case manager that her prison file was lacking favorable information for a previous incarceration and that she wished to amend it, and complaint stated that inmate had actively sought access to her records in the eight months that followed but was unsuccessful. *Armstrong v. U.S. Bureau of Prisons*, D.D.C.1997, 976 F.Supp. 17, affirmed 1998 WL 65543. Prisons 🔑 13(10)

Claims of school instructor who resided in Germany and was employed by Department of Defense (DOD), and of instructor's husband, asserting that Department of the Army violated their rights under Privacy Act were barred by statute of limitations, as plaintiffs did not initiate action until more than two years after they became aware that their bank records had been obtained by military police. *Nwangoro v. Department of Army*, N.D.Tex.1996, 952 F.Supp. 394. Records 🔑 31

Former servicemember stated a claim under Privacy Act, although it was alleged that action was barred by Act's two-year statute of limitations, where former servicemember was not only requesting access to his records but also asserted he was harmed by errors in his records and ultimate result of former servicemember's investigation into the erroneous records were not available to him until two years within filing of suit and former servicemember also asserted that the agency materially misrepresented information required to be disclosed under the Act. *Burkins v. U.S.*, D.Colo.1994, 865 F.Supp. 1480. Records 🔑 31

276. ---- Jurisdictional nature, limitations period, civil remedies

Statute of limitations of two years for Privacy Act claims was jurisdictional prerequisite to bringing suit, and,

thus, failure to file suit within two-year period deprived district court of subject matter jurisdiction. *Diliberti v. U.S.*, C.A.7 (Ill.) 1987, 817 F.2d 1259. Records 🔑 35

Any action under Privacy Act must be brought within two years from date on which cause of action arose, and this requirement is jurisdictional. *Logan v. U.S.*, D.Kan.2003, 272 F.Supp.2d 1182. Records 🔑 31

Two-year statute of limitations for Privacy Act claims is condition of sovereign's consent to be sued, and thus failure to file suit within two years of time that plaintiff learns of violation of Act deprives federal court of subject matter jurisdiction over action. *Szymanski v. U.S. Parole Com'n*, D.D.C.1994, 870 F.Supp. 377. Records 🔑 35

277. ---- Commencement of period, limitations period, civil remedies

Former federal employee's cause of action under Privacy Act for employer's allegedly unauthorized publication of information over Internet accrued no later than when employee became aware that information had been disclosed. *Oja v. U.S. Army Corps of Engineers*, C.A.9 (Or.) 2006, 440 F.3d 1122. Limitation Of Actions 🔑 95(3)

Statute of limitations on prisoner's Privacy Act claim, alleging that errors in his presentence investigation reports caused errors in administration of his sentences, began to run when he first became aware of alleged errors in such reports, that is, when he challenged them during initial parole hearing, and limitations period was not extended either by government's subsequent actions or by prisoner's receipt of documents allegedly corroborating his assertions of error. *Harrell v. Fleming*, C.A.10 (Okla.) 2002, 285 F.3d 1292, certiorari denied 123 S.Ct. 631, 537 U.S. 1057, 154 L.Ed.2d 537. Limitation Of Actions 🔑 95(3)


The two-year limitation period provided in the Privacy Act commences when person knows or has reason to know of alleged violation. *Rose v. U.S.*, C.A.9 (Cal.) 1990, 905 F.2d 1257. Limitation Of Actions 🔑 95(4.1)


Two-year statute of limitations applicable to former employee's Privacy Act claim against employer began to run when employee learned that records pertaining to him and maintained by employer existed, rather than date on which employee gained access to records under Freedom of Information Act; more than two years before instituting suit, employee was told by former co-worker that co-worker had seen personal memos and files in supervisor's desk drawer that might relate to employee's problem of not being rehired. *Bowyer v. U.S. Dept. of Air Force*, C.A.7 (Ind.) 1989, 875 F.2d 632, rehearing denied, certiorari denied 110 S.Ct. 846, 493 U.S. 1046, 107 L.Ed.2d 840, rehearing denied 110 S.Ct. 1515, 494 U.S. 1050, 108 L.Ed.2d 651. Limitation Of Actions 🔑 95(3)


Limitations period for claim under the Privacy Act does not begin to run at time request under the Act is made, but commences at time that claimant knows or has reason to know that his request has been denied. *Englerius v. Veterans Admin.*, C.A.9 (Wash.) 1988, 837 F.2d 895. Limitation Of Actions 🔑 66(1)


Date that retired employee first learned of existence of reports on him, rather than date that employee gained access to records, was date that employee first knew or had reason to know of private records and was date that two-year statute of limitations for Privacy Act claim began to run; thus, employee's claim was barred. *Diliberti v. U.S.*, C.A.7 (Ill.) 1987, 817 F.2d 1259. Limitation Of Actions 🔑 95(3)


Former government employee's action, alleging that his employer unlawfully refused to reclassify retroactively


his earlier work positions in order to show that he should not have been temporarily removed from his employment pursuant to reduction-in-force proceedings, was barred by two-year limitations period of subsec. (g)(5) of this section, in that former employee's cause of action arose, at the latest, on October 25, 1977, when he was notified in writing that his employer could not retroactively reclassify job positions, and action was not instituted until almost five years thereafter. *Bergman v. U.S.*, C.A.10 (Colo.) 1984, 751 F.2d 314, certiorari denied 106 S.Ct. 310, 474 U.S. 945, 88 L.Ed.2d 287. Limitation Of Actions  95(14)


Two-year statute of limitations on prisoner's Privacy Act claim alleging that the Bureau of Prisons (BOP) maintained inaccurate records about his status as a career offender began to run when prisoner discovered that the erroneous career offender finding was being used by BOP to determine his custody classification. *Ingram v. Gonzales*, D.D.C.2007, 501 F.Supp.2d 180. Limitation Of Actions  95(3)


Even if plaintiff properly had brought a claim under the Privacy Act, the two-year statute of limitations on his claim, which sought damages for his lengthy imprisonment that allegedly resulted from erroneous presentence investigation report (PSR) that included actions of another individual with the same name as plaintiff, began to run when he was aware of the alleged inaccuracies in the PSR at the time of sentencing, and not when his subsequent requests to correct the PSR, made some seven years later, were denied. *Hall v. Administrative Office of U.S. Courts*, D.D.C.2007, 496 F.Supp.2d 203. Limitation Of Actions  95(3)

Privacy Act claim asserted by former employee of the United States Postal Service (USPS), which was based upon her alleged unlawful removal from the workplace, accrued, for statute of limitations purposes, on the date of the removal. *Williams v. Potter*, D.Del.2005, 384 F.Supp.2d 730. Records  31


The two-year limitations period applicable to Army reserve officer's Privacy Act claim based on alleged denial of access to officer's medical records while in hospital for psychiatric and medical evaluation commenced to run at time he knew or should have known about his ability to request his medical records, when he alleged he was denied them in the hospital. *Bernard v. U.S. Dept. of Defense*, D.D.C.2005, 362 F.Supp.2d 272. Limitation Of Actions  95(3)

Statute of limitations on former Department of Energy (DOE) employee's claim, that DOE wrongfully turned over personal records to Department of Justice (DOJ) in violation of Privacy Act, began to run when employee received response to his motion for protective order in another law suit in which he was a witness informing him that the records in question had been turned over. *Villescas v. Richardson*, D.Colo.2000, 124 F.Supp.2d 647. Limitation Of Actions  95(3)


Claim in which plaintiffs, Canadian citizens living in United States, alleged that Immigration and Naturalization Service (INS) violated Privacy Act by sharing personal information with Canadian authorities did not accrue, for statute of limitations purposes, when plaintiffs discovered violation from Canadian authorities, but when INS agent, who told plaintiffs they lacked evidence and should wait for INS to finish its own investigation before bringing suit, informed plaintiffs that their claim had been substantiated. *Lacey v. U.S.*, D.D.C.1999, 74 F.Supp.2d 13. Limitation Of Actions  95(3)


Borrower's Privacy Act claim against Secretary of Veterans Affairs (VA) accrued when VA notified national credit reporting agencies of borrower's failure to repay housing loan debt. *Donovan v. Gober*, W.D.N.Y.1998, 5 F.Supp.2d 142. Limitation Of Actions  58(1)


The two-year statute of limitations governing former Central Intelligence Agency (CIA) employee's claims un-


der Privacy Act for amendment of sexual harassment allegations in his personnel file did not begin to run until employee discovered that Federal Bureau of Investigation (FBI) never received corrective letter from CIA, prior to which time employee did not and could not have known of CIA's failure to amend his records. *Blazy v. Tenet*, D.D.C.1997, 979 F.Supp. 10, affirmed 1998 WL 315583. Limitation Of Actions  95(3)


Postal Service employee became aware of allegedly misfiled and missing records when he physically reviewed his files, which was 32 months prior to commencement of his Privacy Act litigation against United States Postal Service (USPS), and thus his Privacy Act claims regarding improper maintenance of files were time barred. *Harry v. U.S. Postal Service*, M.D.Pa.1994, 867 F.Supp. 1199, affirmed 60 F.3d 815.

Privacy Act cause of action arising from security clearance revocation accrued for statute of limitations purposes on date of letter in which plaintiff responded to Army's intended revocation of security clearance, and not subsequently when plaintiff received his military records and discovered that sources used as basis for revocation of his security clearance had not claimed confidentiality; although plaintiff may not have known for certain identity of sources developed in security clearance investigation, he clearly had sufficient knowledge by date of letter to put him on notice that errors may have existed in his military records. *Mangino v. Department of Army*, D.Kan.1993, 818 F.Supp. 1432, affirmed 17 F.3d 1437, certiorari denied 115 S.Ct. 275, 513 U.S. 908, 130 L.Ed.2d 193. Limitation Of Actions  95(3)

Cause of action for violation of Privacy Act arises at time when error was made in maintaining plaintiff's records, plaintiff was wronged by error, and plaintiff either knew or had reason to know of such error; court must examine each cause of action to ascertain what is "wrong" of which plaintiff is complaining and when plaintiff knew or should have known of that wrong. *Shannon v. General Elec. Co.*, N.D.N.Y.1993, 812 F.Supp. 308. Limitation Of Actions  95(3)

Former government employee's cause of action under Privacy Act as to Treasury Inspector General's report accrued for limitations purposes no later than time at which she told Office of Personnel Management (OPM) investigator that information in report was confusing and incorrect; two years prior to that time, she knew that she was denied access to entire report and that Treasury was claiming that report was exempt from provisions of Privacy Act, such that she could not seek amendment. *Mittleman v. U.S. Treasury*, D.D.C.1991, 773 F.Supp. 442. Limitation Of Actions  95(3)

Where Internal Revenue Service disclosed former employee's letter of resignation to his prospective employers on May 26, 1981, and his action under this section was not brought until more than two years later, action was time-barred. *National Treasury Employees Union v. I.R.S.*, D.C.D.C.1985, 601 F.Supp. 1268. Records  31

Plaintiff's cause of action against United States under Privacy Act accrued when plaintiff obtained knowledge of letter incident report that gave rise to his claim. *Smith v. U.S.*, C.A.5 (La.) 2005, 142 Fed.Appx. 209, 2005 WL 1767842, Unreported. Limitation Of Actions  95(3)

278. ---- Tolling, limitations period, civil remedies

Provision for tolling statute of limitations under Privacy Act, for materially or willfully misrepresenting information that it was required to disclose to federal employee or that such information was material to employee bringing his claim, was not implicated by employee's assertion that employer failed to inform him that it disclosed private information without consent; although employer may have acted improperly in posting employee's personal information, Privacy Act did not require employer to disclose improper posting to employee. *Oja v.*

U.S. Army Corps of Engineers, C.A.9 (Or.) 2006, 440 F.3d 1122. Limitation Of Actions ⚡ 58(1)

Rebuttable presumption in favor of equitable tolling was applicable to witness's claim against federal government, under Privacy Act, seeking recovery of damages allegedly caused by government's unwarranted disclosure of personal information, in light of similarity of claim to traditional tort claim for invasion of privacy. *Chung v. U.S. Dept. of Justice*, C.A.D.C.2003, 333 F.3d 273, 357 U.S.App.D.C. 152, rehearing and rehearing en banc denied. Limitation Of Actions ⚡ 104.5

Government failed to rebut presumption as to availability of equitable tolling doctrine in connection with claim against federal government, under Privacy Act, for damages allegedly caused by government's unwarranted disclosure of personal information, even though Act contained express tolling provision, as Act's remedies provision was phrased much like an ordinary statute of limitations, not as part of a technical timing scheme with substantive implications, and government established no threat of administrative havoc, nor any heightened need for repose; overruling *Griffin v. United States Parole Comm'n*, 192 F.3d 1081. *Chung v. U.S. Dept. of Justice*, C.A.D.C.2003, 333 F.3d 273, 357 U.S.App.D.C. 152, rehearing and rehearing en banc denied. Limitation Of Actions ⚡ 104.5

Statutory period for active duty servicemember to bring action alleging that Marine Corps' denials of his requests for correction of his records violated Privacy Act was tolled during period of his military service. *Baker v. England*, D.D.C.2005, 397 F.Supp.2d 18, affirmed 2006 WL 3836573. Armed Services ⚡ 34.11(1)

Department of Health and Human Services' (DHHS) continued dissemination of dentist's allegedly incorrect record in National Practitioners' Data Bank (NPDB) did not toll limitations period for dentist's Privacy Act claims against DHHS, where DHHS never materially and willfully misrepresented any information it had received about dentist, and DHHS changed record twice in effort to produce accurate record. *Doe v. Thompson*, D.D.C.2004, 332 F.Supp.2d 124. Limitation Of Actions ⚡ 58(1)

Administrative claim filed by owner of oil rights on federal land regarding allegedly false statements made by Department of Interior (DOI) employees did not toll limitations period for owner to bring claim against United States for damages under Privacy Act. *Christensen v. U.S. Dept. of Interior*, C.A.10 (Utah) 2004, 109 Fed.Appx. 373, 2004 WL 2106560, Unreported. Limitation Of Actions ⚡ 105(1)

279. ---- Relation back, limitations period, civil remedies

Former federal employee's Privacy Act claim for improper accounting arose out of same conduct and occurrence set forth in her original Privacy Act complaint alleging repeated disclosures of information related to employee from her personnel files and records, and, thus, improper accounting claim related back to original complaint for purposes of Privacy Act's two-year statute of limitations. *Tripp v. Department of Defense*, D.D.C.2002, 219 F.Supp.2d 85. Limitation Of Actions ⚡ 127(3)

280. Dismissal of indictment as alternate remedy, civil remedies

Even if IRS notice to defendant taxpayer did not comply with Privacy Act, proper remedy was a civil action and not dismissal of the indictment charging failure to file tax returns. *U.S. v. Bressler*, C.A.7 (Ill.) 1985, 772 F.2d 287, certiorari denied 106 S.Ct. 852, 474 U.S. 1082, 88 L.Ed.2d 892. Internal Revenue ⚡ 5261

281. Pleadings, civil remedies

Law professor was required to plead that FBI's maintenance of a file containing protected First Amendment information had an adverse effect on him in order to pursue a federal cause of action under the civil remedies provision of the Privacy Act. *Bassiouni v. F.B.I.*, C.A.7 (Ill.) 2006, 436 F.3d 712, rehearing and rehearing en banc denied, certiorari denied 127 S.Ct. 709, 166 L.Ed.2d 513, rehearing denied 127 S.Ct. 1170. Records 🔑 31

Court could not rely upon exhibits that were not part of pleadings, which indicated that employee voluntarily disclosed his medical information to third-parties, on employer's motion to dismiss for failure to state claim under Privacy Act, since court could not consider materials outside of pleadings other than documents that were referred to and were central to employee's complaint and those documents did not support employer's contention that employee voluntarily disclosed his mental health information. *Runkle v. Gonzales*, D.D.C.2005, 391 F.Supp.2d 210. Records 🔑 31

Allegations by former employee of the United States Postal Service (USPS) that she was subjected to harassment and hostile work environment, that she was blacklisted, that she was denied benefits, that the USPS failed to maintain accurate work records on her, that the USPS provided false information in her employment records to other government agencies causing employee to lose benefits, and that unauthorized individuals accessed her medical information and workers' compensation files without employee's permission, failed to give USPS fair notice of employee's claims, and failed state claim for relief against the USPS, under the Privacy Act, Title VII, the Federal Employee Compensation Act (FECA), or the Labor Management Relations Act (LMRA), absent allegations of the specific provisions of those Acts that were violated, or factual identification of specific events and conduct that violated the Acts. *Williams v. Potter*, D.Del.2005, 384 F.Supp.2d 730. Civil Rights 🔑 1532; Labor And Employment 🔑 2001; Records 🔑 31; Workers' Compensation 🔑 1319

Government worker had no Privacy Act claim against government for failure to maintain certain records concerning him and his receipt of disability benefits in accurate and complete manner in absence of factual allegations tending to support claim that records were not maintained. *Mumme v. U.S. Dept. of Labor*, D.Me.2001, 150 F.Supp.2d 162. Records 🔑 31

Allegations by employee at veterans hospital that other employees had on continuing basis intentionally and willfully altered, changed, and falsified employee's medical and personnel records at hospital were sufficient to state claim under Privacy Act with respect to alleged violations occurring less than two years prior to date on which action was brought. *Baker v. U.S.*, W.D.N.Y.1996, 943 F.Supp. 270. Records 🔑 31


Plaintiff failed to plead adequately either the "adverse effect" required by this section or the "fair notice of actual wrong" required by rule 12(b), Federal Rules of Civil Procedure, Title 28, where letters of Internal Revenue Service complained of did not contain any information about plaintiff which could reasonably be anticipated to cause an adverse inference about plaintiff or to result in his harm and plaintiff pleaded no circumstances which would support such an inference. *Harper v. U. S.*, D.C.S.C.1976, 423 F.Supp. 192. Federal Civil Procedure 🔑 691; Torts 🔑 415


282. Supplemental pleadings, civil remedies



Veterans Administration (VA) employees who brought class action against the VA under the Privacy Act were not entitled to supplement their complaint to allege actual damages after Supreme Court ruled that such damages were required to recover statutory damages under the Act; plaintiffs knew of the supplemental allegations but chose not to add them to their complaint despite uncertainty in the law as to whether they were required to show actual damages. *Schmidt v. U.S. Dept. of Veterans Affairs*, E.D.Wis.2004, 222 F.R.D. 592. Federal Civil Pro-


cedure  864.1


283. Discovery, civil remedies


Department of Veterans Affairs (VA) employee was not entitled to additional discovery in Privacy Act case to determine whether Inspector General's reports about employee were within any other systems of records maintained by other units of the VA, other than the Office of the Inspector General; employee directed her request for access to and amendment of the Inspector General's Reports to the Office of the Inspector General and appealed that request, and discovery as to the activities of other parts of the VA was thus irrelevant as employee had not exhausted administrative remedies with respect to any other request. *McCready v. Nicholson*, C.A.D.C.2006, 465 F.3d 1, 373 U.S.App.D.C. 236. Federal Civil Procedure  2553

Executive Office of the President (EOP) was not entitled to mandamus relief regarding discovery order in Privacy Act suit, based on contention that district court committed significant legal error in concluding that the President committed a criminal violation by acting inconsistently with district court's nonbinding statement of the law; though it was inappropriate for the district court gratuitously to invoke sweeping pronouncements on alleged criminal activity that extended well beyond what was necessary to decide the matters at hand, its observations on alleged criminal activity were entirely superfluous, and were not binding on a subsequent court. In re Executive Office of President, C.A.D.C.2000, 215 F.3d 20, 342 U.S.App.D.C. 20. Mandamus  32

Party can invoke discovery of materials protected by Privacy Act through normal discovery process and according to usual discovery standards, and test of discoverability is relevance standards of the federal rules; disagreeing with *Perry v. State Farm Fire & Casualty Co.*, 734 F.2d 1441 (11th Cir.). *Laxalt v. McClatchy*, C.A.D.C.1987, 809 F.2d 885, 258 U.S.App.D.C. 44. Federal Civil Procedure  1572; Federal Civil Procedure  1593

Since fire insurer, which could have utilized normal discovery procedures to obtain information about termination date of insured's social security benefits and which had an opportunity to ask insured when her benefits were officially terminated but did not do so, had no real need for Social Security Administration's testimony as to when insured's benefits were terminated, trial court did not err in denying insurer's motion to order production of such information by the Social Security Administration in suit in which insured sought to recover under a homeowner's insurance policy following destruction of her home by fire. *Perry v. State Farm Fire & Cas. Co.*, C.A.11 (Ga.) 1984, 734 F.2d 1441, certiorari denied 105 S.Ct. 784, 469 U.S. 1108, 83 L.Ed.2d 778. Federal Civil Procedure  1554

This section did not enlarge scope of discovery available to defendant under rule 16, Federal Rules of Criminal Procedure, Title 18. *U. S. v. Murdock*, C.A.5 (Ala.) 1977, 548 F.2d 599. Federal Civil Procedure  1272.1

Privacy Act, in restricting agency disclosure of records except with the prior written consent of the individual to whom the record pertains or pursuant to the order of a court of competent jurisdiction, does not create qualified discovery privilege or create any other kind of privilege or bar that requires a party to show actual need as a prerequisite to invoking discovery. *Johnson v. Folina*, E.D.Pa.2007, 2007 WL 4333330. Witnesses  216(1)

Further discovery was not required for court to address, on motion for summary judgment in Privacy Act action, whether the Department of Veterans Affairs (VA) offices set out in the distribution lists for audit reports prepared by the Inspector General (IG), which concerned the activities of the Deputy Assistant Secretary (PDAS) for the Office of Congressional Affairs (OCA), maintained these reports within a system of records within the

meaning of the Privacy Act; VA submitted declarations and supplemental declarations from individuals in these offices which addressed the maintenance of these reports in the various offices. *McCready v. Nicholson*, D.D.C.2007, 509 F.Supp.2d 22. Records 🔑 31

Target of federal criminal investigation satisfied both prongs of the *Zerilli* guidelines necessary to defeat the reporters' qualified First Amendment privilege in Privacy Act suit, and therefore was entitled to further testimony from the reporters regarding identity of Department of Justice (DOJ) and FBI sources of information leaked to reporters; information sought would be an integral component of target's attempt to prove the requisite agency mens rea and was thus central to his Privacy Act claims, and target, who had sought to obtain the identity of the leakers through other means of discovery, had exhausted all reasonable alternative means of acquiring the sources who leaked the information that was the subject of the litigation. *Hatfill v. Gonzales*, D.D.C.2007, 505 F.Supp.2d 33. Constitutional Law 🔑 2074

Information sought by scientist from reporter, as to identity of confidential sources for articles about alleged security failures at Los Alamos National Laboratory, was central to scientist's Privacy Act suit accusing government agencies of "leaking" information about him to news media, as required for scientist to overcome reporter's First Amendment qualified reporter's privilege, notwithstanding that scientist failed to mention two of reporter's articles in his complaint, that other journalists may have published scientist's name before reporter did, and that information was disclosed to reporter by both governmental and non-governmental sources. *Lee v. Department of Justice*, D.D.C.2005, 401 F.Supp.2d 123. Constitutional Law 🔑 2073; Witnesses 🔑 196.1

Any variation between Central Intelligence Agency's (CIA) handling of journalist's request, under Freedom of Information Act (FOIA) and Privacy Act, for information on himself in CIA records, and the CIA's release of information in another case, did not warrant order of discovery as to basis for CIA's position that it could not be required either to confirm or deny the existence or nonexistence of responsive records, as well as the procedures by which CIA arrived at that position; requestor did not show bad faith on CIA's part or any substantive difference in CIA's handling of the two FOIA requests such that bad faith should be inferred. *Wheeler v. C.I.A.*, D.D.C.2003, 271 F.Supp.2d 132. Federal Civil Procedure 🔑 1264


Since plaintiff seeking damages under this section for Federal Bureau of Investigation's improper release of records to third party pursuant to section 552 of this title pleaded a colorable claim, plaintiff could not be foreclosed from seeking discovery to sustain it solely because of defendant's sworn denials. *South v. Federal Bureau of Investigation*, N.D.Ill.1981, 508 F.Supp. 1104. Federal Civil Procedure 🔑 1269.1

In action against government officials for violating this section by releasing wiretap logs of conversations of plaintiffs to newspaper which published articles concerning the conversations, plaintiffs were not entitled to order compelling reporter to disclose sources which provided access to copies of wiretap logs, where plaintiffs failed to depose individuals named in defendants' answer to interrogatories as having greatest knowledge of the logs, so that plaintiffs failed to show that only practical access to crucial information necessary for development of their case was through newsman's sources. *Zerilli v. Bell*, D.C.D.C.1978, 458 F.Supp. 26. Federal Civil Procedure 🔑 1600(1)


Former federal employee who asserted that immediate supervisor disclosed records in violation of the Privacy Act was not entitled to depose immediate supervisor and her supervisor to discover all communications immediate supervisor might have had about him with others, as exploration of all communications could not possibly be relevant to Privacy Act claim. *Krieger v. Fadely*, D.D.C.2001, 199 F.R.D. 10. Federal Civil Procedure 🔑


1403


284. Protective orders, civil remedies


Class counsel, in action alleging that United States Department of Agriculture (USDA) systematically discriminated against African-American farmers on basis of their race in administration of credit and benefit programs, violated Privacy Act protective order entered after establishment of settlement fund by releasing to pro bono counsel several hundred claims files, even though pro bono counsel were authorized under order to receive files relating to 16 cases in which they served as plaintiffs' counsel, where only government was authorized under protective order to release files to pro bono counsel. *Pigford v. Veneman*, D.D.C.2002, 182 F.Supp.2d 53. Records  31


285. Res judicata, civil remedies

Federal prisoner's Privacy Act (PA) action challenging the accuracy of information contained in his presentence investigation report (PSI) that allegedly was relied upon by the Bureau of Prisons (BOP) in making its custody determinations was not barred, under doctrine of res judicata, as a result of prior proceeding in which prisoner sought, pursuant to the Freedom of Information Act (FOIA), records from the United States Attorney pertaining to the allegedly inaccurate information, since FOIA and the PA created distinct causes of action. *Lopez v. Huff*, D.D.C.2007, 508 F.Supp.2d 71. Judgment  585(3)

Taxpayers' claims against district director of Internal Revenue Service for alleged violations of this section and rights under U.S.C.A. Const. Amend. 1 were barred by the doctrine of res judicata, since judgment against taxpayers had been entered in taxpayers' previous suit against the Internal Revenue Service based on the same claims, taxpayers had chosen the forum in the first action, court had grasped the technical litigation theories in the first action, taxpayers had not been deprived of the use of evidence in the first action, and district court's sense of equity favored the application of res judicata to taxpayers' claims. *Heritage Hills Fellowship v. Plouff*, E.D.Mich.1983, 555 F.Supp. 1290. Judgment  707

Notwithstanding fact that employee discharged from postal service cited the Federal Tort Claims Act, sections 1346(b) and 2671 et seq. of Title 28, as jurisdictional basis for his suit for reinstatement and money damages, where allegations in instant complaint that he was removed because he filed a lawsuit under this section and lost were same allegations raised by him and rejected in his administrative hearing before the Civil Service Commission and the federal district court, which allegations were rejected, doctrine of res judicata would bar subject suit. *Wham v. U. S.*, D.C.S.C.1978, 458 F.Supp. 147. Judgment  589(1)

To the extent plaintiff sought to relitigate claims relating to his prior lawsuit against same defendants regarding alleged violations of Privacy Act, Military Whistleblowers Protection Act, Corrections Board statute, and Soldiers and Sailors' Civil Relief Act, and *Bivens* and claims of negligence, defamation, and infliction of emotional distress, action was barred by doctrine of res judicata. *Marin v. Department of Defense, Secretary*, C.A.3 (Pa.) 2005, 145 Fed.Appx. 754, 2005 WL 2009027, Unreported. Judgment  584

Failure of pro se plaintiff to argue in his brief that district court erred in dismissing his Privacy Act action against Federal Bureau of Investigations (FBI) as barred by doctrine of res judicata resulted in waiver of only issue arguably raised on appeal. *Richardson v. F.B.I.*, C.A.5 (La.) 2004, 101 Fed.Appx. 977, 2004 WL 1427067, Unreported, certiorari denied 125 S.Ct. 1310, 543 U.S. 1158, 161 L.Ed.2d 126, rehearing denied, rehearing denied 125 S.Ct. 2248, 544 U.S. 1045, 161 L.Ed.2d 1082. Federal Courts  915

286. Estoppel, civil remedies

Failure of individual, who had agreed to cooperate with government investigation in exchange for leniency in individual's own sentencing, to allege any specific act or misleading statement by government precluded application of equitable estoppel doctrine to individual's untimely Privacy Act claim against government alleging unwarranted disclosure of personal information, though claim of equitable tolling might still be available. *Chung v. U.S. Dept. of Justice*, C.A.D.C.2003, 333 F.3d 273, 357 U.S.App.D.C. 152, rehearing and rehearing en banc denied. Limitation Of Actions 🔑 13

Plaintiff who had twice before brought actions in an attempt to prove that he had a service-connected disability and who had been determined not to have been denied access to the records of the Veterans' Administration pertaining to him and which he was entitled to inspect and copy was collaterally estopped from relitigating those issues in a suit under this section. *Nolen v. Roudebush*, C.A.5 (Ga.) 1977, 549 F.2d 341, rehearing denied 551 F.2d 863. Judgment 🔑 589(1)

Government was judicially estopped, in action alleging improper release to lessees of names and addresses of owners of allotments on Indian reservation, from arguing that information it released was not a record contained within a system of records and thus not protected under Privacy Act; earlier in same action Government had stated, in response to owners' initial claims under Freedom of Information Act (FOIA), that the information was protected by the Privacy Act, Court had relied on that statement, and owners would be prejudiced if Government was not estopped. *Fort Hall Landowners Alliance, Inc. v. Bureau of Indian Affairs*, D.Idaho 2006, 407 F.Supp.2d 1220. Estoppel 🔑 68(2)


Allegation that director of Indian Health Service (IHS) disclosed medical records without authorization was within scope of Privacy Act complaint brought against IHS, even though director was not specifically named in complaint; complaint could only be brought against agency, and IHS was not precluded from arguing that director's actions were taken outside scope of his employment. *Buckles v. Indian Health Service*, D.N.D.2004, 305 F.Supp.2d 1108. Records 🔑 31



Where plaintiff, an employee of United States Military Academy, pursued grievance process in reliance on and at express direction of personnel officer, governmental defendants in suit under this section were estopped to claim that the procedure was incorrect. *Liguori v. Alexander*, S.D.N.Y.1980, 495 F.Supp. 641. Estoppel 🔑 62.2(3)

Arbitrator's decision in proceeding brought under Veterans Administration (VA) employees' collective bargaining agreement (CBA) that the VA violated a right-to-privacy provision in the CBA, which prohibited the same practices outlawed in the Privacy Act of 1974, did not have collateral estoppel or res judicata effect on district court, in putative class action against the VA by VA employees alleging that the VA violated the employees' rights under the Privacy Act by disclosing their Social Security numbers (SSN) on a VA computer system, on issue whether the VA violated the Privacy Act. *Schmidt v. U.S. Dept. of Veterans Affairs*, E.D.Wis.2003, 218 F.R.D. 619, amended on reconsideration in part 222 F.R.D. 592. Records 🔑 31


287. Burden of proof, civil remedies


In suit upon allegations of violations of accuracy of records portion of this section, traditional rule imposing burden of proof on plaintiff was applicable. *Edison v. Department of the Army*, C.A.11 (Ga.) 1982, 672 F.2d 840. Records 🔑 31

Agency employee who brought Privacy Act claim against Department of Defense was required to offer evidence that supervisor's disclosure of information regarding internal investigation to former supervisor who worked for subsequent employer was willful and intentional. *Mulhern v. Gates*, D.D.C.2007, 525 F.Supp.2d 174. Records  31


This section places the burden of proof on the agency to sustain its actions when material is exempted. *Gerash v. Smith*, D.C.Colo.1984, 580 F.Supp. 808. Records  31; Records  65


288. Summary judgment, civil remedies--Generally

Genuine issues of material fact on whether: (1) federal agency maintained system of records of workers' compensation files, (2) employees at meeting needed to know divulged medical information about co-worker, and (3) division chief acted intentionally, precluded summary judgment for agency on federal employee's Privacy Act claim; affidavit of chief of occupational medical office stated that agency maintained system of records, employees at meeting did not need to know divulged information, and division chief compelled him to discuss the information, and plaintiff alleged that information was divulged in retaliation for contradicting division chief about asbestos problems at worksite. *Henson v. National Aeronautics and Space Admin.*, C.A.6 (Ohio) 1994, 14 F.3d 1143, opinion corrected on rehearing 23 F.3d 990. Federal Civil Procedure  2509.8


Courts apply the same summary judgment standard in Freedom of Information Act (FOIA) and Privacy Act suits as in any other type of case. *Pipko v. C.I.A.*, D.N.J.2004, 312 F.Supp.2d 669. Federal Civil Procedure  2509.8

289. ---- Causal relationship between violation and adverse effect, summary judgment, civil remedies

Genuine issues of material fact as to whether disclosure by a Social Security Administration (SSA) employee of confidential medical information about the subject of a child abuse investigation caused the subject to experience an adverse effect or actual damages precluded summary judgment for the subject in her action under the Privacy Act. *Stafford v. Social Sec. Admin.*, N.D.Cal.2006, 437 F.Supp.2d 1113. Federal Civil Procedure  2509.8


Whether United States Postal Service employee's disclosure to job applicant's employer that applicant had applied for employment with Postal Service was proximate cause of applicant's termination from his employment was question of fact precluding summary judgment for Postal Service on applicant's Privacy Act claim. *Sullivan v. U.S. Postal Service*, W.D.N.Y.1996, 944 F.Supp. 191. Federal Civil Procedure  2509.8

290. ---- Intentional or willful acts, summary judgment, civil remedies


Genuine issue of material fact as to whether Bureau of Prisons' (BOP) maintenance of duplicate photographs of prisoners taken pursuant to inmate photography program was willful violation of the Privacy Act precluded summary judgment on issue of damages in inmates' Privacy Act action. *Maydak v. U.S.*, C.A.D.C.2004, 363 F.3d 512, 361 U.S.App.D.C. 76, rehearing denied. Federal Civil Procedure  2509.8


Genuine issues of material fact as to whether disclosure by a Social Security Administration (SSA) employee of confidential medical information about the subject of a child abuse investigation was willful or intentional precluded summary judgment for the subject in her action under the Privacy Act; while some facts might have supported a finding of willfulness, others indicated only negligence. *Stafford v. Social Sec. Admin.*, N.D.Cal.2006,

437 F.Supp.2d 1113. Federal Civil Procedure  2509.8


Whether action of employee of the Interstate Commerce Commission in disclosing 1975 press release issued concerning plaintiff four years earlier, allegedly in violation of this section was intentional or willful was a question of fact, precluding summary judgment on claim for damages under this section for such disclosure. *Zeller v. U. S.*, E.D.N.Y.1979, 467 F.Supp. 487. Federal Civil Procedure  2515


291. ---- Need for record, summary judgment, civil remedies

Genuine issues of material fact, as to whether Internal Revenue Service (IRS) employee sustained actual harm from her first-line supervisor's disclosure of employee's rebuttal statement to performance evaluation to others in office, and whether that disclosure was for reasons offered by IRS, precluded summary judgment for agency on employee's Privacy Act claim on basis of "need to know" exception. *Boyd v. Snow*, D.D.C.2004, 335 F.Supp.2d 28. Federal Civil Procedure  2509.8


Genuine issues of material fact existed, precluding summary judgment for Department of Education, on whether letter stating reasons for public employee's dismissal had to be released to chairman of Intergovernmental Advisory Council on Education in order for him to perform job-related duties for purposes of determining whether release of letter violated Privacy Act. *McGregor v. Greer*, D.D.C.1990, 748 F.Supp. 881. Federal Civil Procedure  2509.8

292. ---- System of records, summary judgment, civil remedies

Department of Veterans Affairs (VA) was not entitled to summary judgment in Privacy Act suit on the ground that memorandum about plaintiff, Principal Deputy Secretary for the Office of Congressional Affairs, was not retrievable from computer database by individual identifier and that the memo was thus not in system of records; the VA's argument that the memorandum was neither retrieved nor retrievable using a unique personal identifier was in conflict with the record of an entry "PDAS for OCA" in a field labeled "Subject/Keyword," and plaintiff attested that she was the only person to have held the title PDAS for OCA. *McCready v. Nicholson*, C.A.D.C.2006, 465 F.3d 1, 373 U.S.App.D.C. 236. Federal Civil Procedure  2509.8

Genuine issue of material fact as to whether Bureau of Prisons' (BOP) maintenance of duplicate photographs of prisoners visiting with family, friends, and associates, which were taken pursuant to inmate photography program, was a "system of records" within meaning of Privacy Act precluded summary judgment on inmates' Privacy Act claims. *Maydak v. U.S.*, C.A.D.C.2004, 363 F.3d 512, 361 U.S.App.D.C. 76, rehearing denied. Federal Civil Procedure  2509.8

293. ---- Particular motions for summary judgment, civil remedies

Terminated Central Intelligence Agency (CIA) employee's claim, that CIA violated Privacy Act by failing to consider her affidavit in reviewing termination decision, was speculative, and thus could not create genuine issue of material fact at summary judgment stage, where CIA official wrote to employee that "the information you sent to me did arrive," and official's failure to list documents she received did not cast doubt on whether affidavit arrived. *Hutchinson v. C.I.A.*, C.A.D.C.2005, 393 F.3d 226, 364 U.S.App.D.C. 203. Federal Civil Procedure  2497.1

Genuine issues of material fact as to whether Postal Service employee's management-level supervisor told co-

workers about employee's HIV status and whether supervisor learned of that status from employee's Family and Medical Leave Act (FMLA) form precluded summary judgment on employee's Privacy Act claim against the Postal Service. *Doe v. U.S. Postal Service*, C.A.D.C.2003, 317 F.3d 339, 354 U.S.App.D.C. 437.

District court improperly granted summary judgment in Privacy Act action after ex parte, in camera hearing, no effort having been made to disclose government's evidence and positions to federal employee to greatest extent consistent with valid government privileges; employee sought expungement or amendment of memoranda stating that she failed to obtain necessary clearances before giving foreign officials document containing sensitive national security information. *Strang v. U.S. Arms Control and Disarmament Agency*, C.A.D.C.1990, 920 F.2d 30, 287 U.S.App.D.C. 99. Federal Civil Procedure 🔑 2509.8

Government agencies' motions for summary judgment were premature in action seeking damages for alleged violations of the Privacy Act, where the parties had not engaged in any discovery whatsoever, and the plaintiffs' submissions amply detailed the need for some development of the factual record. *Scarborough v. Harvey*, D.D.C.2007, 2007 WL 1721962. Federal Civil Procedure 🔑 2553

Existence of fact issues as to date on which prisoner knew or had reason to know of allegedly incorrect statements in copy of his presentence investigation report (PSI) in Bureau of Prisons' (BOP) files precluded dismissal, as untimely, of prisoner's action alleging Privacy Act violations. *Conklin v. U.S. Bureau of Prisons*, D.D.C.2007, 514 F.Supp.2d 1. Federal Civil Procedure 🔑 1831


Genuine issues of material fact existed as to how many improper disclosures Government made of the names and addresses of owners of allotments on Indian reservation, precluding summary judgment for either party as to improper disclosure element required in action alleging Privacy Act violations; Government admitted making some improper disclosures but not as many as argued by owners. *Fort Hall Landowners Alliance, Inc. v. Bureau of Indian Affairs*, D.Idaho 2006, 407 F.Supp.2d 1220. Federal Civil Procedure 🔑 2509.8

Issue of material fact as to whether Indian Health Service (IHS) employees disclosed confidential medical information to members of tribal council precluded summary judgment on patients' Privacy Act claim. *Buckles v. Indian Health Service*, D.N.D.2004, 305 F.Supp.2d 1108. Federal Civil Procedure 🔑 2509.8



Genuine issue of material fact existed as to whether Department of Energy violated Privacy Act by releasing to private employer charged with operating government-owned nuclear research laboratory reports on investigation of employee's allegation that he had been demoted in retaliation for submitting report critical of health and safety conditions at laboratory, thus precluding summary judgment for Department; neither employee nor Department had opportunity to engage in any discovery and Department may have been entitled to "routine use" exception to Privacy Act or may have established necessary procedures to maintain security of documents at issue. *Shannon v. General Elec. Co.*, N.D.N.Y.1993, 812 F.Supp. 308. Federal Civil Procedure 🔑 2509.8


Material issues of fact existed as to whether request for records under Freedom of Information Act (FOIA) and Privacy Act was sent to and received by Bureau of Prisons (BOP), precluding summary judgment for government on requester's claim for alleged violations of FOIA and Privacy Act arising from BOP's failure to respond in timely manner to purported request. *Lee v. U.S. Department of Justice*, W.D.Pa.2006, 235 F.R.D. 274. Federal Civil Procedure 🔑 2509.8

Genuine issue of material fact existed as to whether Veterans Administration (VA) employees suffered an adverse effect as a result of the VA's alleged violation of Privacy Act provision requiring an agency that maintains


a system of records to protect the security, confidentiality, and integrity of the records, precluding summary judgment in employees' action against the VA for violation of that provision by disclosing their Social Security numbers (SSN) on a VA computer system. *Schmidt v. U.S. Dept. of Veterans Affairs*, E.D.Wis.2003, 218 F.R.D. 619, amended on reconsideration in part 222 F.R.D. 592. Federal Civil Procedure  2509.8


294. Affidavits, civil remedies


Government's declaration of justification for claimed exemption from disclosure requirements of Freedom of Information Act, section 552 of this title, and this section, with respect to Drug Enforcement Administration file in which name of party seeking disclosure appeared but which primarily concerned an Administration investigation of a third person not a party to suit was sufficiently detailed to enable district court to determine that party seeking disclosure had received all of information to which he was entitled. *Gerash v. Smith*, D.C.Colo.1984, 580 F.Supp. 808. Records  31; Records  62


Affidavits by two officials of United States Department of Labor, Office of Workers' Compensation Programs (OWCP), stating that they had reviewed official files and that no documents had been withheld from workers' compensation claimant, established that the documents requested by claimant were not in the possession of OWCP, and thus, claimant could not maintain an action for release of the documents under the Freedom of Information Act (FOIA) and the Privacy Act. *Sneed v. U.S. Dept. of Labor*, C.A.6 (Ohio) 2001, 14 Fed.Appx. 343, 2001 WL 856974, Unreported, certiorari denied 122 S.Ct. 1173, 534 U.S. 1162, 152 L.Ed.2d 117. Records  62

295. In camera review, civil remedies

In action seeking access to Central Intelligence Agency document under this section, plaintiff's bare assertion that Agency affidavit, which stated that document was exempt from disclosure, was conclusory did not require district court to examine document in camera prior to granting summary judgment for Agency. *Alford v. Central Intelligence Agency*, C.A.5 (La.) 1980, 610 F.2d 348, certiorari denied 101 S.Ct. 150, 449 U.S. 854, 66 L.Ed.2d 68, rehearing denied 101 S.Ct. 597, 449 U.S. 1027, 66 L.Ed.2d 488. Records  34

Office of Personnel Management (OPM) and Federal Bureau of Investigation (FBI) met their burden of justifying exemption they claimed under Freedom of Information Act (FOIA) and Privacy Act, and because justifications given were not contradicted by record and there was no evidence of bad faith, in camera review of document was not necessary. *Makky v. Chertoff*, D.N.J.2007, 489 F.Supp.2d 421. Records  66

An in camera investigation by the court to check the accuracy of the extract or summary provided the individual of material compiled during an employment investigation would be refused in that such an investigation both demeaned the judicial system and distended an already cloyed review of an essentially meaningless document. *Lorenz v. U. S. Nuclear Regulatory Commission*, D.C.Colo.1981, 516 F.Supp. 1151. Records  66

Upon a showing that an agency has denied a valid request for disclosure of records maintained in a system of records as defined by this section, it is appropriate for the court to review the documents in question to determine whether this section requires disclosure. *Abramsky v. U.S. Consumer Products Safety Commission*, S.D.N.Y.1979, 478 F.Supp. 1040. Records  66

In action by disappointed applicant for federal employment to obtain, under this section, unfavorable evaluations of himself contained in government files, court would exercise its power to examine such evaluations in camera before determining whether they were subject to exemption under this section as investigatory material compiled

solely for purpose of determining suitability, eligibility or qualifications for federal civilian employment. *Mervin v. Bonfanti*, D.C.D.C.1976, 410 F.Supp. 1205. Records 🔑 60

296. Weight and sufficiency of evidence, civil remedies

Civilian Air Force employee failed to prove that the United States Air Force violated his rights under the Privacy Act, despite evidence that a private corporation was able to produce documents that the employee asserted may have come from a file protected under the Act; employee asserted only his own unsubstantiated belief that the documents were contained in the file, and there was no evidence as to how the documents were allegedly disclosed. *Whyde v. Rockwell Intern. Corp.*, C.A.6 (Ohio) 2004, 101 Fed.Appx. 997, 2004 WL 1380075, Unreported. Records 🔑 31

297. Attorney fees, civil remedies

Enlisted sailor in United States Naval Reserve was not entitled to award of attorney fees under this section for obtaining release of medical file where, even though release was delayed for four years, sailor's complaint pending on date of release contained only prayer for damages and not prayer for release of file and thus no causal nexus existed between sailor's lawsuit and release of file. *Sweatt v. U. S. Navy*, C.A.D.C.1982, 683 F.2d 420, 221 U.S.App.D.C. 101. Records 🔑 34

Where employing organization, union, compensated lawyers who represented union member at rate well below going value of attorney services on open market, and union, not attorneys, was to receive award of attorney fees, and no compelling reason existed to disregard ethical considerations concerning splitting fees with layman or lay organizations, or helping such organizations engage in unauthorized practice of law, and in allowing organization which pays attorney fees to derive profit from rendition of legal services, allowance of above-cost fees, in action stemming from violation of this section, was inappropriate. *National Treasury Emp. Union v. U. S. Dept. of Treasury*, C.A.D.C.1981, 656 F.2d 848, 211 U.S.App.D.C. 259. Federal Civil Procedure 🔑 2737.11

Where plaintiff substantially prevailed in his suit under this section, where plaintiff's attorneys were salaried employees of union and where all court-awarded attorney fees would go to union through attorneys, attorney fee award could not exceed expenses incurred by union in terms of attorneys' salaries and other out-of-pocket expenses. *Anderson v. U. S. Dept. of Treasury, Internal Revenue Service*, C.A.D.C.1979, 648 F.2d 1, 208 U.S.App.D.C. 261. Records 🔑 35

Purpose of the attorney fee award provisions of this section and section 552 of this title is to remove the often insurmountable financial barriers which the average citizen faces when attempting to force government compliance with the Acts; purpose is not to provide an award to any plaintiff who successfully forces the government to disclose requested information. *Lovell v. Alderete*, C.A.5 (Ga.) 1980, 630 F.2d 428. Records 🔑 35; Records 🔑 68

Black Lung claimant who was adversely effected as result of Secretary of Labor's willful and intention violation of Privacy Act by placing Social Security Numbers (SSNs) on hearing notices was entitled to recovery reasonable attorney fees at hourly rates ranging from \$250 an hour to \$75 for work in developing and pursuing claimant's claim, but not for their work on unsuccessful claims of other claimants, their motions to intervene, consolidate claims, to certify class, or to hold Secretary in contempt. *Doe v. Chao*, W.D.Va.2004, 346 F.Supp.2d 840, affirmed in part, reversed in part and remanded 435 F.3d 492, on remand 2006 WL 2038442. Labor And Employment 🔑 2698

There was no requirement that Black Lung claimant show he substantially prevailed in order to obtain award of attorney fees under Privacy Act as result of showing that Secretary of Labor willfully and intentionally violated Act by including claimant's Social Security Number on hearing notice and that violation had adverse effect on claimant. *Doe v. Chao*, W.D.Va.2004, 346 F.Supp.2d 840, affirmed in part, reversed in part and remanded 435 F.3d 492, on remand 2006 WL 2038442. Labor And Employment 🔑 2698

Because government agency decided to release documents prior to filing of suit under the Freedom of Information Act, section 552 of this title, by employee, and because it determined within 30 days that search fee had been improperly imposed, employee's suit was not necessary to obtain desired information and he was not entitled to attorney fees under either this section or the Freedom of Information Act, section 552 of this title, nor was he entitled to minimum award of \$1,000. *Gordon v. National Aeronautics and Space Admin.*, D.C.D.C.1984, 582 F.Supp. 274, affirmed 750 F.2d 1093, 243 U.S.App.D.C. 17, certiorari denied 105 S.Ct. 2707, 472 U.S. 1010, 86 L.Ed.2d 722. Records 🔑 68

Where, because of large number of requests, there was no way that plaintiff's request for documents could have been processed on a more expedited basis and where government official who finally provided the documents was not aware, at the time he provided them, that Freedom of Information Act, section 552 of this title and this section suit had been filed, plaintiff had not substantially prevailed in his action, as the production of the records was not related to the filing of the action, and plaintiff thus was not entitled to award of attorney fees. *Crooker v. Federal Bureau of Prisons*, D.C.D.C.1984, 579 F.Supp. 309. Records 🔑 68

298. Costs, civil remedies


Requester was not entitled to recover costs incurred in bringing action against Internal Revenue Service (IRS) under Freedom of Information Act (FOIA) and Privacy Act, even though some of requested information was not delivered to requester until after suit was commenced, where IRS had responded to some requests before requester filed action, IRS had already searched for other requested records and was in process of identifying, locating, and providing documents at issue when she filed action, and benefit to public was minimal. *Johnson v. C.I.R.*, W.D.Wash.2002, 239 F.Supp.2d 1125, motion to vacate denied 2002 WL 31958735, reconsideration denied, affirmed 68 Fed.Appx. 839, 2003 WL 21500036. Records 🔑 34; Records 🔑 68

Prosecution of requester's action against the Internal Revenue Service (IRS) for declaratory and injunctive relief under the Freedom of Information Act (FOIA) and the Privacy Act was not necessary to obtain the information he sought, and thus, he was not entitled to award of costs, where IRS searched for responsive documents for number of months after the request was made, was preparing to release them when requester filed his complaint, and provided the documents six days after the complaint was filed. *Chourre v. I.R.S.*, W.D.Wash.2002, 203 F.Supp.2d 1196. Records 🔑 68

299. Review, civil remedies

Under Privacy Act, court should be very hesitant to second guess subjective evaluations and observations by employee's superiors where such matters are within competence and experience of those superiors; trial court should, however, carefully review record to eliminate clear mistakes of fact, inaccurate opinions based solely upon such erroneous facts, and plainly irresponsible judgments of performance or character. *Hewitt v. Grabicki*, C.A.9 (Wash.) 1986, 794 F.2d 1373. Records 🔑 31

By failing to challenge admissibility of affidavit in district court, administrative law judge waived right to raise

on appeal issue of whether affidavit concerning methods used to retrieve any complaints filed against him was inadequate to prove that Social Security Administration (SSA) did not maintain Privacy Act “system of records” due to affiant's lack of personal knowledge of retrieval of documents. *Butler v. Social Sec. Admin., C.A.5 (La.)* 2005, 146 Fed.Appx. 752, 2005 WL 2055928, Unreported. Records  31

VI. EXEMPTIONS

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321. Construction, exemptions

Disclosure mandated by Privacy Act cannot be totally and absolutely avoided by simple expedient of having personnel evaluations completed in handwritten form; exemptions from individual's right of access under Privacy Act must be narrowly construed. *May v. Department of Air Force*, C.A.5 (Miss.) 1986, 800 F.2d 1402. Records 🔑 31

Exemptions from individual's right of access under this section must be narrowly construed and their requirements must be strictly met. *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402. Records 🔑 55

322. Promulgation of rules, exemptions

Given that principal function of the Drug Enforcement Administration is law enforcement, agency's records system is compiled for purpose of criminal investigation, and agency promulgated regulations exempting system of records, agency was not required to prepare index of requested documents, specifying in detail which portions of document were disclosable and which exempt, in response to Privacy Act request triggering exemption from disclosure of information compiled for purposes of criminal investigation. *Shapiro v. Drug Enforcement Admin.*, C.A.7 (Wis.) 1983, 721 F.2d 215, certiorari granted 104 S.Ct. 1706, 466 U.S. 926, 80 L.Ed.2d 179, 80 L.Ed.2d 180, vacated on other grounds 105 S.Ct. 413, 469 U.S. 14, 83 L.Ed.2d 242, on remand 755 F.2d 922, on remand 762 F.2d 611. Records 🔑 34

To exempt a system of records from an individual's right of disclosure properly under this section, an agency must promulgate rules which exempt a system of records from a provision of the section and state the reasons, in the rule itself, as to why the system of records is to be exempt from a provision of this section. *Ryan v. Department of Justice*, C.A.4 (Va.) 1979, 595 F.2d 954. Records 🔑 57

Disclosure was not required of identifying information redacted from FBI investigative files under Privacy Act section allowing individuals to inspect records pertaining to themselves where files were contained in FBI central records system that was subject of agency rule that specifically exempted investigative files and that was authorized by Privacy Act. *Baez v. F.B.I.*, E.D.Pa.2006, 443 F.Supp.2d 717. Records 🔑 60

Contents of criminal case file were not subject to disclosure under Privacy Act; Attorney General had promulgated rules exempting those records from Privacy Act's access provisions. *Hatcher v. U.S. Dept. of Justice Office of Information and Privacy Act*, D.D.C.1995, 910 F.Supp. 1. Records 🔑 31

323. Central Intelligence Agency records, exemptions

Requestor of documents regarding himself from Central Intelligence Agency (CIA) under Freedom of Information Act (FOIA) and Privacy Act was not entitled to *Vaughn* index, a list of dates, numbers, and general subject of documents that satisfied request, as index would reveal details about intelligence gathering methods which was classified information; list of documents could show clusters of dates that could reveal when CIA acquired the information and knowing which documents entered files, and when, could permit an astute inference of how the information came to the CIA's attention. *Bassiouni v. C.I.A.*, C.A.7 (Ill.) 2004, 392 F.3d 244, rehearing and rehearing en banc denied, certiorari denied 125 S.Ct. 2945, 545 U.S. 1129, 162 L.Ed.2d 868. Records 🔑 62

Central Intelligence Agency document sought by plaintiff fell within Agency regulation exempting documents from access provisions of this section. *Alford v. Central Intelligence Agency*, C.A.5 (La.) 1980, 610 F.2d 348,

certiorari denied 101 S.Ct. 150, 449 U.S. 854, 66 L.Ed.2d 68, rehearing denied 101 S.Ct. 597, 449 U.S. 1027, 66 L.Ed.2d 488. Records 🔑 31

Information on certain individual requested from Central Intelligence Agency (CIA) was exempt from disclosure under Freedom of Information Act's (FOIA) national security exemption and Privacy Act provision allowing agency head to exempt records subject to such exemption, where CIA official had made determination, pursuant to Executive Order, that unauthorized disclosure of whether such information existed could damage national security. *Pipko v. C.I.A.*, D.N.J.2004, 312 F.Supp.2d 669. Records 🔑 56

Central Intelligence Agency (CIA) properly invoked Freedom of Information Act (FOIA) exemption for classified information, and therefore was justified in refusing to confirm or deny the existence or nonexistence of records responsive to journalist's request, under FOIA and Privacy Act, for information on himself in CIA records; CIA officer's affidavit detailed reasons for CIA's position, and CIA's decisions were entitled to great deference given the magnitude of the national security interests and the potential risks at stake. *Wheeler v. C.I.A.*, D.D.C.2003, 271 F.Supp.2d 132. Records 🔑 31; Records 🔑 56

Central Intelligence Agency properly invoked Freedom of Information Act (FOIA) exemption for information specifically exempted from disclosure by statute, and therefore was justified in refusing to confirm or deny the existence or nonexistence of records responsive to journalist's request, under FOIA and Privacy Act, for information on himself in CIA records; National Security Act mandated protection of intelligence sources and methods from unauthorized disclosure, CIA officer's affidavit detailed reasons for CIA's position, and CIA's decisions were entitled to great deference. *Wheeler v. C.I.A.*, D.D.C.2003, 271 F.Supp.2d 132. Records 🔑 31; Records 🔑 55

Information withheld from former Central Intelligence Agency (CIA) employee seeking access to information in his personnel files pertained to intelligence sources and methods and/or facts about organization, its functions and personnel, and thus, was exempt from disclosure under Privacy Act exemption for records pertaining to intelligence sources and methods, and Freedom of Information Act (FOIA) sections exempting properly classified records and records specifically exempted from disclosure by statute, in this case, the Central Intelligence Agency Act. *Blazy v. Tenet*, D.D.C.1997, 979 F.Supp. 10, affirmed 1998 WL 315583. Records 🔑 55; Records 🔑 56

324. Law enforcement agency records generally, exemptions

Complaint filed with Air Force Systems Command Inspector General (AFSCIG) alleging that Air Force officer had committed acts of fraud, waste, and abuse, in violation of military and federal law, was investigatory material compiled for law enforcement purposes, to which Privacy Act did not apply, and thus, officer did not have cause of action under Privacy Act to require Air Force to amend record containing complaint or attach statement of disagreement; Air Force had promulgated regulation to exempt Inspector General records from disclosure, and complaint was catalyst of Inspector General's ensuing investigation. *Gowan v. U.S. Dept. of Air Force*, C.A.10 (N.M.) 1998, 148 F.3d 1182, certiorari denied 119 S.Ct. 593, 525 U.S. 1042, 142 L.Ed.2d 535. Records 🔑 31

Regulation implementing Privacy Act exemption for disclosure of information compiled for purposes of criminal investigation contains explanation sufficiently specific to satisfy requirement that such regulation include reasons why records system is to be exempted, namely, that access to such records would alert subject to existence of investigation and thereby impede law enforcement efforts. *Shapiro v. Drug Enforcement Admin.*, C.A.7

(Wis.) 1983, 721 F.2d 215, certiorari granted 104 S.Ct. 1706, 466 U.S. 926, 80 L.Ed.2d 179, 80 L.Ed.2d 180, vacated on other grounds 105 S.Ct. 413, 469 U.S. 14, 83 L.Ed.2d 242, on remand 755 F.2d 922, on remand 762 F.2d 611. Records 🔑 31

United States Secret Service records which requester sought to be amended were exempt from Privacy Act's amendment and accuracy provisions and from damages remedy, and Secret Service did not waive these exemptions, given that it invoked them at the administrative level. *Arnold v. U.S. Secret Service*, D.D.C.2007, 524 F.Supp.2d 65. Records 🔑 31

Records sought from Secret Service by federal prisoner, contained in Protective Intelligence file located in Secret Service's Protection Information Systems, were subject to Privacy Act's (PA) exemption for system of records by agency performing as its principal function any activity pertaining to enforcement of criminal laws. *Dorsett v. U.S. Dept. of Treasury*, D.D.C.2004, 307 F.Supp.2d 28. Records 🔑 60

Drug Enforcement Administration's records on traveler, sought by traveler after he was subjected to multiple intrusive border searches, were exempt from disclosure under Privacy Act; DEA was principally involved in criminal law enforcement and agency had passed regulations exempting its records from disclosure. *Amro v. U.S. Customs Service*, E.D.Pa.2001, 128 F.Supp.2d 776. Records 🔑 31

Although final report of inquiry into fraud, waste, and abuse complaint against Air Force colonel was compiled for law enforcement purpose within meaning of Privacy Act's "law enforcement" exemption, report fell within exception to exemption such that colonel was entitled to copy of unredacted report; report was relied on in retiring colonel approximately four years before his mandatory retirement date, active duty pay was greater than retirement pay, and retirement pay was lower than it would have been had colonel retired four years later. *Viotti v. U.S. Air Force*, D.Colo.1995, 902 F.Supp. 1331. Records 🔑 31

To qualify for exemption from disclosure under Privacy Act exemption for system of records maintained by law enforcement agency, system of records must be compiled for purpose of criminal investigation, must be exempted by duly promulgated regulations issued by agency claiming exemption, and must be maintained by agency or component of agency which performs as its principal function any activity pertaining to enforcement of criminal laws. *Stimac v. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*, N.D.Ill.1984, 586 F.Supp. 34. Records 🔑 31

325. Civil liability of law enforcement agencies, exemptions

Cause of action under Privacy Act's civil remedies provision for agency's denial of request to amend records cannot lie with regard to records that agency has properly exempted from Act's amendment requirements. *Doe v. F.B.I.*, C.A.D.C.1991, 936 F.2d 1346, 290 U.S.App.D.C. 289, rehearing denied. Records 🔑 31

Statute, which permits agency to exempt system of records from requirements set out in other provisions of Privacy Act, did not permit Veterans Administration to exempt itself from civil liability provisions of Act; declining to follow *Kimberlin v. Dept. of Justice*, 788 F.2d 434 (7th Cir.); *Ryan v. Dept. of Justice*, 595 F.2d 954 (4th Cir.). *Tijerina v. Walters*, C.A.D.C.1987, 821 F.2d 789, 261 U.S.App.D.C. 301. Records 🔑 31

Department of Justice could not exempt itself from civil remedies provision of Privacy Act, even though general exemption provision did not prohibit exemption from civil remedies provision, and even though general exemption provision prohibited exemption from criminal liability provision. *Nakash v. U.S. Dept. of Justice*,

S.D.N.Y.1988, 708 F.Supp. 1354. Records 🔑 31

326. Federal Bureau of Investigation records, exemptions

The FBI had a legitimate law enforcement purpose for maintaining an FBI file on law professor, which contained records that pertained to professor's First Amendment rights, and thus the file was exempt from expungement under Privacy Act's authorized law enforcement activity exemption; although a public declaration by an FBI special agent acknowledged that the agency had determined that the professor was not a member of a terrorist organization and claimed that the exact relevance of professor's records was classified, the declaration also noted the FBI's ongoing investigations into the threats posed by terrorist groups, specifically those originating in the Middle East, and explained that because of the nature of the investigative activities, and the breadth of professor's contacts with the Middle East, the FBI anticipated that it would continue to receive information about the professor and that the file would provide context for evaluating that new information. *Bassiouni v. F.B.I.*, C.A.7 (Ill.) 2006, 436 F.3d 712, rehearing and rehearing en banc denied, certiorari denied 127 S.Ct. 709, 166 L.Ed.2d 513, rehearing denied 127 S.Ct. 1170. Records 🔑 22; Records 🔑 31

FBI document created for criminal law enforcement purpose and consisting almost entirely of statements of confidential source was exempt from disclosure under Privacy Act and Freedom of Information Act (FOIA), even though *Vaughn* index submitted to district court did not establish requisite "nexus" between investigation and possible violation of federal law. *Simon v. Department of Justice*, C.A.D.C.1992, 980 F.2d 782, 299 U.S.App.D.C. 1. Records 🔑 31; Records 🔑 60; Records 🔑 62

Subject of FBI record was barred from taking advantage of civil remedies afforded by Privacy Act, to bring action against federal Government which, he alleged, was negligent in failing to remove from his record information that he believed state court had ordered expunged, where identification division of FBI maintained record and Department of Justice had promulgated rules exempting record system of that division from Privacy Act. *Alexander v. U.S.*, C.A.9 (Cal.) 1986, 787 F.2d 1349. Records 🔑 31


Criminal investigatory files located within the Federal Bureau of Investigation central records system have been properly exempted from disclosure under this section. *Exner v. Federal Bureau of Investigation*, C.A.9 (Cal.) 1980, 612 F.2d 1202. Records 🔑 31


Court would not compel production of names that had been redacted from FBI investigative report produced in response to habeas petitioner's subpoena for information about allegedly corrupt relationship between local police and witness who had testified against petitioner, given unlikelihood that individuals named in the report, which did not even mention witness and dealt with local officer's report of contact with drug dealer, had any connection to witness or would know anything about witness's relationship with the police. *Johnson v. Folina*, E.D.Pa.2007, 2007 WL 4333330. Witnesses 🔑 16


National Instant Criminal Background Check System (NICS), a part of the Federal Bureau of Investigation (FBI), is exempted from the Privacy Act. *Richardson v. F.B.I.*, W.D.La.2000, 124 F.Supp.2d 429, affirmed 264 F.3d 1141, certiorari denied 122 S.Ct. 912, 534 U.S. 1108, 151 L.Ed.2d 878, rehearing denied 122 S.Ct. 1599, 535 U.S. 1013, 152 L.Ed.2d 514. Records 🔑 31


Records maintained in criminal case file system and FBI central records system documents were exempt from disclosure under Privacy Act pursuant to section allowing agency to promulgate rules to exempt from disclosure certain systems of records maintained by law enforcement agencies. *Watson v. U.S. Dept. of Justice*,


D.D.C.1992, 799 F.Supp. 193. Records  31

Materials requested from Federal Bureau of Investigation (FBI) by death row inmate pursuant to Privacy Act, including his rap sheet and all other information in his file, as well as information pertaining to victims of violent crimes he allegedly committed, were wholly exempted from disclosure by Privacy Act segment allowing head of law enforcement agency to promulgate rules to exempt from disclosure “any system of records” consisting of “information compiled for the purpose of a criminal investigation, including reports of informants or investigators, and associated with an identifiable individual”; that segment incorporated inquiry undertaken in evaluating applicability of Freedom of Information Act (FOIA) exemption for investigatory records compiled for law enforcement purposes. *Rojem v. U.S. Dept. of Justice*, D.D.C.1991, 775 F.Supp. 6. Records  31


Federal Bureau of Investigation's (FBI's) central record system records are only exempt from disclosure of the Privacy Act to the extent that their contents are protected by an explicit exemption. *Whittle v. Moschella*, D.D.C.1991, 756 F.Supp. 589. Records  31

FBI failed to demonstrate that its records on elementary school student who wrote to foreign governments as part of elementary school project were compiled specifically for purposes of criminal investigation and thus, FBI could not contend that Privacy Act claim by student was barred by FBI's regulation exempting central record system from civil remedy provision of Privacy Act. *Patterson v. F.B.I.*, D.N.J.1989, 705 F.Supp. 1033, affirmed 893 F.2d 595, rehearing denied, certiorari denied 111 S.Ct. 48, 498 U.S. 812, 112 L.Ed.2d 24. Records  31


Federal Bureau of Investigation records maintained on plaintiff for purpose of criminal investigation were exempt from disclosure under this section. *Stimac v. F.B.I.*, N.D.Ill.1984, 577 F.Supp. 923. Records  60

Plaintiff was not entitled to amendment of Federal Bureau of Investigation's file so as to delete information claimed to be false and untrue since information maintained in the FBI central record system has been exempted from the correction and amendment provisions of this section. *Varona Pacheco v. Federal Bureau of Investigation*, D.C.Puerto Rico 1978, 456 F.Supp. 1024. Records  66

327. Library reference materials, exemptions

Database files maintained by National Institute of Health (NIH), indicating that data relied on in support of specified papers published in biomedical journals was to be reanalyzed in light of scientific misconduct, were not exempt from Privacy Act by virtue of being library reference materials; that status did not preclude files from being considered “records” within meaning of Privacy Act. *Fisher v. National Institutes of Health*, D.D.C.1996, 934 F.Supp. 464, affirmed 107 F.3d 922, 323 U.S.App.D.C. 289. Records  31

328. Military criminal investigation records, exemptions

Refusal of Army Criminal Investigation Division (CID) to amend report of investigation of charges that Reserve Officer had sexually molested children did not give rise to civil action under Privacy Act; files were criminal investigation records exempt by virtue of Army rule exempting CID's system of records. *Aquino v. Stone*, C.A.4 (Va.) 1992, 957 F.2d 139. Records  31

329. Pardon records, exemptions

Pardon Attorney's investigation and assessment of pardon application is protected from disclosure under this

section as information compiled for the purpose of a criminal investigation. *Binion v. U.S. Dept. of Justice*, C.A.9 (Nev.) 1983, 695 F.2d 1189. Records 🔑 31

330. Prison records, exemptions--Generally

Prisons constitute "law enforcement agencies" for purposes of this section, hence, records compiled by prison authorities during investigation of possible violation of criminal laws and prison regulations are not outside scope of this section. *Duffin v. Carlson*, C.A.D.C.1980, 636 F.2d 709, 205 U.S.App.D.C. 1. Records 🔑 31

Federal prisoner was barred from obtaining any remedy under the Privacy Act, including damages, for Bureau of Prisons (BOP) alleged failure to maintain records pertaining to him with the requisite level of accuracy, since BOP had promulgated regulations exempting its inmate central records system from Privacy Act's requirement that an agency maintain records used by agency in making determination about any individual with such accuracy, relevance, timeliness, and completeness as reasonably necessary to assure fairness. *Brown v. Bureau of Prisons*, D.D.C.2007, 498 F.Supp.2d 298. Records 🔑 31

Bureau of Prisons (BOP) is "law enforcement agency" for purpose of Privacy Act such that BOP may promulgate regulations exempting certain records from enforcement of Act. *Kellett v. U.S.*, D.N.H.1994, 856 F.Supp. 65, affirmed 66 F.3d 306. Records 🔑 31

Inmate Central Record System was exempted from the provisions of the Privacy Act under which federal prisoner sought injunctive relief and money damages based on alleged failure of Bureau of Prisons to maintain accurate records, expunge false information from his prison file, and amend alleged inaccuracy in his file. *Scaff-Martinez v. Federal Bureau of Prisons*, C.A.11 (Ala.) 2005, 160 Fed.Appx. 955, 2005 WL 3556035, Unreported. Prisons 🔑 4(6)

331. ---- Classification studies, prison records, exemptions

Federal prisoner was not entitled under Privacy Act to amendment of his custody classification form, since Federal Bureau of Prisons (BOP) regulations exempted such form from Privacy Act's amendment requirements. *Meyer v. Federal Bureau of Prisons*, D.D.C.1996, 940 F.Supp. 9. Records 🔑 10

Since subsection of administrative regulations established by Bureau of Prisons contained justification for exemption of inmate's classification study, study was exempt from disclosure to inmate. *Turner v. Ralston*, W.D.Mo.1983, 567 F.Supp. 606. Records 🔑 54

332. ---- Commissary accounts, prison records, exemptions

Rule exempting records from Privacy Act if principal function of agency relates to enforcement of criminal laws, including activities of correctional, probation, pardon or parole authorities or if records consist of reports identifiable to individual compiled at any stage of process of enforcement of criminal laws from arrest or indictment for relief from supervision did not exempt records of inmate's prison commissary account for purposes of inmate's action challenging disclosure of information concerning the account. *Kimberlin v. U.S. Dept. of Justice*, N.D.Ill.1985, 605 F.Supp. 79, affirmed 788 F.2d 434, certiorari denied 106 S.Ct. 3306, 478 U.S. 1009, 92 L.Ed.2d 719. Records 🔑 31

333. ---- Prisoner's medical records, prison records, exemptions

On remand, government was not free to claim that inmate's medical records fell within statutory exemptions of Privacy Act, where Bureau of Prisons had contended throughout administrative and litigation proceedings that none of inmate's medical records were exempt, and government is not entitled to raise defenses to request for information seriatim until it finds theory that court will accept, but must bring all defenses at once before district court. *Benavides v. U.S. Bureau of Prisons*, C.A.D.C.1993, 995 F.2d 269, 301 U.S.App.D.C. 369. Records 🔑 31

334. ---- Parole records, prison records, exemptions

Even if the Bureau of Prisons (BOP) had waived exemption of its inmate records from the Privacy Act's accuracy provisions, BOP provided a reasonable explanation for its refusal to correct its records as federal prisoner requested, where BOP contacted the United States Parole Commission (USPC) and the United States Probation Office (USPO) and was advised that the BOP's records regarding prisoner were accurate. *Martinez v. Bureau of Prisons*, C.A.D.C.2006, 444 F.3d 620, 370 U.S.App.D.C. 275. Records 🔑 31

Prisoner seeking parole was not entitled to bring civil action against the Parole Commission to correct alleged inaccuracies in presentence reports under the Privacy Act, 5 U.S.C.A. § 552a(j)(2)(C), which exempts from the Act reports identifiable to individual compiled at any stage of process of enforcement of criminal laws, since the Commission has promulgated rules implementing such exemption. *Fendler v. U.S. Parole Com'n*, C.A.9 (Cal.) 1985, 774 F.2d 975. Records 🔑 63

Form prepared by assistant United States Attorney informing United States Parole Commission of prosecutor's opinion regarding prisoner and propriety of granting him parole was exempt from both disclosure and amendment provisions of Privacy Act [5 U.S.C.A. §§ 552a, 552a(j)(2)]. *Wentz v. Department of Justice*, C.A.7 (Wis.) 1985, 772 F.2d 335, certiorari denied 106 S.Ct. 1470, 475 U.S. 1086, 89 L.Ed.2d 726. Records 🔑 31



335. Sentencing reports, exemptions


Privacy Act section giving an individual right to request amendment of his records did not permit federal prisoner to seek amendment of his presentence report. *White v. U.S. Probation Office*, C.A.D.C.1998, 148 F.3d 1124, 331 U.S.App.D.C. 270. Records 🔑 31


To the extent that federal prisoner's Privacy Act (PA) claims against Department of Justice (DOJ) sought to have his presentence investigation report (PSI) amended, such relief was not available because the Bureau of Prisons (BOP) had properly exempted its inmate central files, where such documents were kept, from the PA's amendment requirements. *Lopez v. Huff*, D.D.C.2007, 508 F.Supp.2d 71. Records 🔑 31

Allegedly erroneous presentence investigation report (PSR) maintained in the Bureau of Prisons' (BOP) Inmate Central Records System was exempt from the Privacy Act's amendment, accuracy and damages provisions. *Ingram v. Gonzales*, D.D.C.2007, 501 F.Supp.2d 180. Records 🔑 31


Federal prisoner was precluded from seeking, pursuant to the Privacy Act, removal from his presentence investigation report (PSR) of a juvenile kidnapping conviction he alleged was erroneously included in the PSR, since Bureau of Prisons (BOP) had promulgated regulations to exempt its inmate central records system, which included prisoner's PSR, from the Privacy Act's amendment and remedies provisions. *Brown v. Bureau of Prisons*, D.D.C.2007, 498 F.Supp.2d 298. Records 🔑 31

Presentence Investigation Report (PSI) created by United States Department of Probation was a court document exempt from disclosure under the Privacy Act and the Freedom of Information Act (FOIA). *U.S. v. Chandler*, E.D.N.Y.2002, 220 F.Supp.2d 165. Records  31; Records  60


Presentencing report in federal prisoner's central file was exempt from disclosure under provision in Privacy Act authorizing head of agency involved with law enforcement activities to promulgate rules to exempt system of records from disclosure requirements where Attorney General had promulgated rules exempting from disclosure certain records of federal inmates pertaining to sentencing and parole. *Rosenberg v. Meese*, S.D.N.Y.1985, 622 F.Supp. 1451. Records  31


Under regulations promulgated by Bureau of Prisons (BOP) pursuant to Privacy Act, inmate records systems were exempt from Act's amendment provision, and therefore federal inmate was barred from seeking amendment of his presentence investigation report. *Griffin v. Ashcroft*, C.A.D.C.2003, 2003 WL 22097940, Unreported. Records  31



336. United States attorney records, exemptions

Prisoner could not receive records under Privacy Act pertaining to homicide for which he was convicted since information prisoner requested was contained in criminal law enforcement records and such information was exempt under Act. *Durham v. U.S. Dept. of Justice*, D.D.C.1993, 829 F.Supp. 428, appeal dismissed 1994 WL 704043. Records  31


337. Investigatory material for law enforcement purposes, exemptions--Generally


“*Pratt test*” for evaluating applicability of Exemption 7 of Freedom of Information Act (FOIA) to law enforcement agency records could be applied to determine whether Federal Bureau of Investigation (FBI) records were exempt from Privacy Act's amendment requirements; under test, investigatory activities that gave rise to records had to be related to enforcement of federal laws or to maintenance of national security and nexus between investigation and one of FBI's law enforcement duties had to be based on information sufficient to support at least colorable claim of its rationality, and requesting party bore burden of producing evidence that asserted law enforcement rationale for investigation was pretextual. *Doe v. F.B.I.*, C.A.D.C.1991, 936 F.2d 1346, 290 U.S.App.D.C. 289, rehearing denied. Records  31


Under this section, agency could promulgate regulations exempting investigatory material compiled for law enforcement purposes, and none of additional conditions found in exemption under Freedom of Information Act, section 552 of this title, such as disclosure of confidential source, need be met before exemption under this section applied; thus, where Department of Justice had promulgated necessary regulations to exempt FBI records, this section added nothing to citizen's rights rights under Freedom of Information Act to obtain such records. *Irons v. Bell*, C.A.1 (Mass.) 1979, 596 F.2d 468. Records  60


Individual background investigation files on Indian casino employees, compiled by Enforcement Division of National Indian Gaming Commission (NIGC), were exempt, pursuant to the exemption for law enforcement records whose disclosure would amount to a clearly unwarranted invasion of privacy, from disclosure in response to request, under the Freedom of Information Act (FOIA), for records containing details of investigations into alleged misuse of tribal gaming revenues, and therefore a Privacy Act waiver would be necessary before NIGC could confirm that it had responsive files or release such documents. *Citizens For Responsibility and Ethics in Washington v. National Indian Gaming Com'n*, D.D.C.2006, 467 F.Supp.2d 40. Records  58; Records 


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Records sought from Secret Service by federal prisoner were subject to Privacy Act's (PA) exemption for investigatory material compiled for law enforcement purposes, as there were regulations exempting records from disclosure, and, although prisoner alleged that application of exemption would deny him right to which he would otherwise be entitled, he failed to identify the right. *Dorsett v. U.S. Dept. of Treasury*, D.D.C.2004, 307 F.Supp.2d 28. Records  60

Inmate failed to show that documents withheld from him by the Federal Bureau of Investigation (FBI) were not exempt under section of the Privacy Act permitting an agency to exempt any of its record systems from the Act's access provision, where he did not overcome presumption of good faith created by FBI's declaration that records at issue were exempt since they had been placed in its central records system as part of an FBI criminal investigation. *Shores v. F.B.I.*, D.D.C.2002, 185 F.Supp.2d 77. Records  60


Internal Revenue Service did not violate Privacy Act by maintaining, in employee's files, newspaper article and "notice of potential class action complaint" both of which allegedly supported allegations that employee was white supremacist, since copies were released to requester pursuant to Freedom of Information Act and Privacy Act, documents were relevant to and pertinent to authorized law enforcement activities, employer had right to maintain records for possible disciplinary activity, and employee did not demonstrate adverse affect or willful or intentional conduct by agency. *Abernethy v. I.R.S.*, N.D.Ga.1995, 909 F.Supp. 1562, affirmed 108 F.3d 343, rehearing and suggestion for rehearing en banc denied 116 F.3d 494. Records  31

Background check into applicant's suitability for employment by Justice Department had law enforcement purpose, as required for Freedom of Information Act (FOIA), where check was conducted pursuant to executive order authorizing such checks as the result of its finding that interests of national security required that government employees be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty. *Doe v. U.S. Dept. of Justice*, D.D.C.1992, 790 F.Supp. 17. Records  60

In view of fact that affidavit established that records were generated as a result of official investigation of special agents' complaints and grievances conducted to determine if any administrative action should be taken, they clearly qualified as investigative records compiled for law enforcement purposes and were exempt from disclosure under this section. *Frank v. U. S. Dept. of Justice*, D.C.D.C.1979, 480 F.Supp. 596. Records  60

Federal Bureau of Investigation (FBI) properly invoked Privacy Act exemption providing for withholding of investigatory material compiled for law enforcement reasons to withhold information that would have revealed identities of individuals who provided information in connection with preemployment investigation of requester, a former FBI agent. *Putnam v. U.S. Dept. of Justice*, D.D.C.1995, 873 F.Supp. 705, 141 A.L.R. Fed. 759. Records  55

338. ---- Identity of source, investigatory material for law enforcement purposes, exemptions

Privacy Act subsection stating that investigatory material compiled for law enforcement purposes may be exempted from Act subsection, which provides that agencies must generally allow any person to gain access to his own records, does not prohibit agencies from releasing material that would reveal identity of confidential source but, rather, allows agencies to promulgate rules excepting certain types of documents from mandatory disclosure under other portions of the Act. *Bechhoefer v. U.S. Dept. of Justice, Drug Enforcement Admin.*, W.D.N.Y.1996, 934 F.Supp. 535, vacated 209 F.3d 57, on remand 179 F.Supp.2d 93. Records  31

Although Drug Enforcement Administration (DEA) issued rules exempting certain materials pursuant to Privacy Act subsection stating that investigatory material compiled for law enforcement purposes may be exempted from subsection providing that agencies must generally allow any person to gain access to his own records, effect of rules was simply to relieve DEA of any obligation to release those materials upon request of person who would otherwise be entitled to see them, and rules do not state that information from confidential informant cannot be released under any circumstances. *Bechhoefer v. U.S. Dept. of Justice, Drug Enforcement Admin.*, W.D.N.Y.1996, 934 F.Supp. 535, vacated 209 F.3d 57, on remand 179 F.Supp.2d 93. Records 🔑 31

Inmate seeking damages for disclosure of record pursuant to another inmate's Freedom of Information Act request, stated cause of action against government for violation of Privacy Act, even though record did not contain "personal information" about him and was not retrieved through search of indices bearing his name or other identifying characteristics; record contained information inmate had given under promise of confidentiality, and thus disclosure may have violated Privacy Act. *Sterling v. U.S.*, D.D.C.1992, 798 F.Supp. 47, affirmed. United States 🔑 78(5.1)

Justice Department's response to job applicant's Privacy Act request for records developed during background investigation of him was proper, insofar as Department withheld only those portions of documents that would reveal identity of source who specifically requested confidentiality. *Doe v. U.S. Dept. of Justice*, D.D.C.1992, 790 F.Supp. 17. Records 🔑 34

339. Investigatory material for federal employment, exemptions--Generally

Where Air Force officer had access to the Nation's most sensitive secrets, his immediate supervisor had a continuing duty to determine whether he should be retained in his sensitive duties on the Joint Chiefs of Staff, within meaning of Department of Defense regulation allowing access to personnel files on that ground, so that supervisor's examining officer's personnel security file in response to allegations of misconduct did not violate the Privacy Act, though supervisor was not a "commander" within meaning of regulation on revoking or suspending security clearances. *Bigelow v. Department of Defense*, C.A.D.C.2000, 217 F.3d 875, 342 U.S.App.D.C. 369, certiorari denied 121 S.Ct. 1600, 532 U.S. 971, 149 L.Ed.2d 467. Records 🔑 31


Where agency has properly exempted its records from access and amendment under Privacy Act, agency no longer has any obligation to disclose those records, irrespective of underlying motives of agency or impact of records on parties. *Nolan v. U.S. Dept. of Justice*, C.A.10 (Colo.) 1992, 973 F.2d 843. Records 🔑 54


Information contained in document qualifying for exemption under Privacy Act as law enforcement record does not lose its exempt status when recompiled in nonlaw enforcement record if purposes underlying exemption of original document pertain to recompilation as well. *Doe v. F.B.I.*, C.A.D.C.1991, 936 F.2d 1346, 290 U.S.App.D.C. 289, rehearing denied. Records 🔑 31


Exemption under this section from access requirements for investigatory material compiled solely for determining "suitability, eligibility, or qualifications for Federal civilian employment" is not limited to investigations for determining advisability of hiring employees, as opposed to advisability of their continued employment. *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402. Records 🔑 60


The confidentiality exemption found under this section is applicable to suits seeking access to agency records. *Doe v. U.S. Civil Service Commission*, S.D.N.Y.1980, 483 F.Supp. 539. Records 🔑 54


340. ---- Identity of source, investigatory material for federal employment, exemptions


National Science Foundation (NSF) grant agreement included essential elements of a contract and established what would commonly be regarded as a contractual relationship between the government and the grantee and thus, NSF grant agreement was a "contract" within meaning of Privacy Act exemption protecting identity of confidential sources who provide agencies with information regarding suitability or qualifications of applicants for federal "contracts." *Henke v. U.S. Dept. of Commerce*, C.A.D.C.1996, 83 F.3d 1445, 317 U.S.App.D.C. 397. Records  31


Records compiled by FBI on applicant for federal positions pursuant to statute requiring "loyalty check" and pursuant to executive order did not fall within law enforcement records exemption from amendment provisions Privacy Act; the only exemption applicable to records was that for investigatory material compiled for purpose of determining suitability or qualifications for federal service, and were thus only exempt to extent that disclosure would reveal identity of source who furnished information under express promise that identity would be held in confidence. *Vymetalik v. F.B.I.*, C.A.D.C.1986, 785 F.2d 1090, 251 U.S.App.D.C. 402. Records  31

It is main rule under this section that individual shall have access to federal agency records pertaining to him or her, and an exception, shielding informants' identities, is tightly contained for investigations conducted after effective date of this section, though exception is less strict for investigations antedating this section. *Londrigan v. F.B.I.*, C.A.D.C.1983, 722 F.2d 840, 232 U.S.App.D.C. 354. Records  31



Finding that witnesses had been "given assurances" that their statements would be kept as secret as possible was sufficient finding of "express promise" that identity would be held in confidence, for purposes of exemption under this section as to investigatory material compiled solely for determining "suitability, eligibility or qualifications for federal civilian employment." *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402. Records  60


In action challenging the Federal Bureau of Investigation's refusal to disclose to plaintiff portions of Bureau file compiled during the course of an investigation of plaintiff's qualifications for federal employment, substantial fact issue existed as to whether persons interviewed in connection with the investigation were impliedly assured of confidentiality so as to fall within the exemption under subsec. (k)(5) for investigatory material compiled prior to the effective date of this section under an implied promise that the identity of the source of the information would be held in confidence, precluding summary judgment. *Londrigan v. Federal Bureau of Investigation*, C.A.D.C.1981, 670 F.2d 1164, 216 U.S.App.D.C. 345. Federal Civil Procedure  2509.8


This section's exception relating to investigatory material compiled solely for the purpose of determining suitability for federal employment exempted disclosure of those portions of a document containing information obtained under proper promise of confidentiality even though source of information was known. *Volz v. U. S. Dept. of Justice*, C.A.10 (Okla.) 1980, 619 F.2d 49, certiorari denied 101 S.Ct. 397, 449 U.S. 982, 66 L.Ed.2d 244. Records  57


Implicit in regulation authorizing granting of confidentiality under exception to this section's general requirement that government agencies permit an individual access to agency's records containing information about him is a required finding of good cause; also, pledges of confidentiality may not be assumed. *Larry v. Lawler*, C.A.7 (Ill.) 1978, 605 F.2d 954. Records  58


Documents in the possession of defense investigative service containing identities of individuals who gave in-


formation with desire to remain anonymous is exempt from release under Freedom of Information Act and Privacy Act. *Savada v. U.S. Dept. of Defense*, D.D.C.1991, 755 F.Supp. 6. Records  31; Records  57

Information in applicant's personnel file which concerned investigation into applicant's character, reputation, and background by Federal Bureau of Investigation and which would identify source, even if source's name were redacted, was exempt from disclosure pursuant to statute which exempts information that would reveal identity of source. *Voelker v. F.B.I.*, E.D.Mo.1986, 638 F.Supp. 571. Records  60


Government was properly allowed to delete from documents sought by university professor relating to government surveillance of academicians during McCarthy era portions of five documents pursuant to subsec. (k)(5) of this section allowing an agency to withhold investigatory material compiled solely for purpose of determining suitability, eligibility, or qualifications for federal civilian employment in that persons interviewed logically assumed their identities and cooperation would be kept confidential and affidavit filed by agency explained that cooperation from law enforcement agencies and commercial institutions in processing background information provided unemployment applications would have been impeded if assumed confidences were not honored. *Diamond v. Federal Bureau of Investigation*, S.D.N.Y.1981, 532 F.Supp. 216, affirmed 707 F.2d 75, certiorari denied 104 S.Ct. 995, 465 U.S. 1004, 79 L.Ed.2d 228. Records  66

Regulation which was promulgated by government agency pursuant to this section and which allowed material compiled during employment investigations to be extracted or summarized in a manner which protected identity of a confidential source was not invalid for failure to comply with requirement that a statement of "basis and purpose" be included therein where requirement was satisfied by publication of such a statement in the Federal Register. *Lorenz v. U. S. Nuclear Regulatory Commission*, D.C.Colo.1981, 516 F.Supp. 1151. Records  31

Identities of sources who made derogatory statements to Civil Service Commission investigators concerning applicant for the noncompetitive service were exempt from disclosure under this section where the sources, who provided information used to determine the applicant's suitability for federal employment, were promised that their names would not be disclosed and where disclosure of the sources' identities was not critical to a fair determination of issues actually remaining in the case. *Doe v. U.S. Civil Service Commission*, S.D.N.Y.1980, 483 F.Supp. 539. Records  58

To justify withholding information identifying sources of investigatory material compiled for purpose of determining suitability, eligibility, or qualifications for federal civilian employment, furnished under promise of confidentiality, agency must meet the requirements of exemption with respect to such materials, and cannot rely on "privacy" exemptions of section 552 of this title. *Nemetz v. Department of Treasury*, N.D.Ill.1978, 446 F.Supp. 102. Records  60

341. Evaluation material for employment, exemptions

Privacy Act exemption for testing or examination materials used to determine suitability for employment if disclosure would compromise the fairness or objectivity of the testing or examination process did not provide grounds for withholding records pertaining to inmate's psychological and psychiatric test results, consultation reports, or other records; inmate was not a Federal service employee and did not take the test in connection with any prison job. *Maydak v. U.S. Dept. of Justice*, D.D.C.2003, 254 F.Supp.2d 23. Records  31

Information concerning postal service's evaluation of applicant's employment application was exempt from disclosure under the Privacy Act pursuant to the exemption for testing or examination materials used to determine

suitability for employment if disclosure would compromise the fairness or objectivity of the testing or examination process, where postal service had already told applicant that his traffic violation and lack of recent tractor-trailer experience contributed to his low evaluation, and applicant wanted to see how much postal service reduced his application score because of the traffic violation, which was just the type of information that could compromise the agency's evaluation process. *Robinett v. U.S. Postal Service*, E.D.La.2002, 2002 WL 1728582, Unreported. Records 🔑 31

342. Evaluation material for promotions, exemptions

Air Force promotion recommendation reports were not exempt from disclosure under Privacy Act on grounds that reports were handwritten and would thus reveal raters' identities, where Air Force could prepare special copy of requested form, either typewritten or in third party's handwriting. *May v. Department of Air Force*, C.A.5 (Miss.) 1986, 800 F.2d 1402. Records 🔑 31

343. Attorney-client privilege, exemptions

Bureau of Prisons' (BOP) waived attorney-client privilege with respect to e-mail between prison physician and BOP attorney, where BOP employee inadvertently placed e-mail in inmate's medical file, and inmate reviewed e-mail when he saw it in his medical file. *Elliott v. Federal Bureau of Prisons*, D.D.C.2007, 521 F.Supp.2d 41. Witnesses 🔑 219(3)

Crime-fraud exception to attorney-client privilege was applicable to attorneys' discussions regarding agency's disclosure of certain letters; discussions were in furtherance of a criminal violation of the Privacy Act, in that the letters were "records" contained within a "system of records," the disclosure was willful or intentional, and the lawyers were consulted for the purpose of violating the Privacy Act. *Alexander v. F.B.I.*, D.D.C.2000, 193 F.R.D. 1, mandamus dismissed 215 F.3d 20, 342 U.S.App.D.C. 20. Witnesses 🔑 201(2)

344. Deliberative process privilege, exemptions

Deliberative process privilege was not applicable to protect attorneys' discussions regarding agency's disclosure of certain letters, where disclosure of the letters constituted a criminal violation of the Privacy Act. *Alexander v. F.B.I.*, D.D.C.2000, 193 F.R.D. 1, mandamus dismissed 215 F.3d 20, 342 U.S.App.D.C. 20. Witnesses 🔑 216(1)

345. Journalistic sources privilege, exemptions

Target of federal criminal investigation did not satisfy both prongs of the *Zerilli* guidelines necessary to defeat non-party media companies' qualified First Amendment privilege in Privacy Act suit, and therefore target was not entitled to compel media companies to disclose information regarding identity of Department of Justice (DOJ) and FBI sources of information leaked to companies' reporters; although the information sought was central to target's Privacy Act claims, target, who did not seek discovery from media companies, had not exhausted all reasonable alternative means of acquiring the information, which court was compelling from specific reporters. *Hatfill v. Gonzales*, D.D.C.2007, 505 F.Supp.2d 33. Witnesses 🔑 196.1

Scientist exhausted every reasonable source of information as to identity of confidential sources for articles about alleged security failures at Los Alamos National Laboratory, as required for scientist to overcome reporter's First Amendment privilege in his Privacy Act suit accusing government agencies of "leaking" information

about him to news media, notwithstanding that he did not depose every individual suspected of providing information to reporter, where he deposed 20 government officials concerning identities of persons who allegedly "leaked" information. *Lee v. Department of Justice*, D.D.C.2005, 401 F.Supp.2d 123. Constitutional Law 2073; Witnesses 196.1

Journalists' First Amendment interest in protecting their confidential news sources was outweighed by engineer's interest in compelling disclosure of those sources in his action against government for allegedly violating the Privacy Act by revealing information about him to journalists during its investigation into suspected espionage at nuclear laboratory where engineer worked; evidence sought by engineer was of central importance to his case against government, and engineer had exhausted all reasonable alternative sources of evidence before seeking to compel disclosure of journalist's sources. *Lee v. U.S. Dept. of Justice*, D.D.C.2003, 287 F.Supp.2d 15, appeal dismissed 2003 WL 22890063, affirmed 413 F.3d 53, 367 U.S.App.D.C. 53, rehearing en banc denied 428 F.3d 299, 368 U.S.App.D.C. 220, certiorari denied 126 S.Ct. 2351, 165 L.Ed.2d 294, certiorari denied 126 S.Ct. 2372, 165 L.Ed.2d 277, certiorari denied 126 S.Ct. 2373, 165 L.Ed.2d 294. Constitutional Law 2075; Witnesses 196.1

5 U.S.C.A. § 552a, 5 USCA § 552a

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5 USCA § 552a
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Prior Version's Validity Called into Doubt by

1 Peterson v. City of Detroit, 76 Fed.Appx. 601, 601+ (6th Cir.(Mich.) Aug 05, 2003) (NO. 03-1122)

Proposed Legislation

- 1 2007 CONG US HR 2082, 110th CONGRESS, 1st Session, (Feb 27, 2008), Enrolled Bill, PROPOSED ACTION: Amended.
- 2 2007 CONG US S 2554, 110th CONGRESS, 2d Session, (Jan 24, 2008), Introduced in Senate, PROPOSED ACTION: Amended.
- 3 2007 CONG US HR 5129, 110th CONGRESS, 2d Session, (Jan 23, 2008), Introduced in House, PROPOSED ACTION: Amended.
- 4 2007 CONG US HR 2764, 110th CONGRESS, 1st Session, (Dec 31, 2007), Enrolled Bill, PROPOSED ACTION: Note Amended.
- 5 2007 CONG US HR 2764, 110th CONGRESS, 1st Session, (Dec 18, 2007), Engrossed Amendment House, PROPOSED ACTION: Note Amended.
- 6 2007 CONG US HR 2082, 110th CONGRESS, 1st Session, (Oct 04, 2007), Engrossed Amendment Senate, PROPOSED ACTION: Amended.
- 7 2007 CONG US S 1814+, 110th CONGRESS, 1st Session, (Jul 17, 2007), Introduced in Senate, PROPOSED ACTION: Amended.
- 8 2007 CONG US S 1538, 110th CONGRESS, 1st Session, (Jun 26, 2007), Reported in Senate, PROPOSED ACTION: Amended.
- 9 2007 CONG US S 1538, 110th CONGRESS, 1st Session, (Jun 04, 2007), Referral Instructions Senate, PROPOSED ACTION: Amended.
- 10 2007 CONG US S 1538, 110th CONGRESS, 1st Session, (May 31, 2007), Placed on Calendar Senate, PROPOSED ACTION: Amended.
- 11 2007 CONG US HR 1656, 110th CONGRESS, 1st Session, (Mar 22, 2007), Introduced in House, PROPOSED ACTION: Amended.
- 12 2007 CONG US S 372, 110th CONGRESS, 1st Session, (Feb 08, 2007), Reported in Senate, PROPOSED ACTION: Amended.

Bill Drafts

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- 1 2003 CONG US HR 4818+, 108th CONGRESS, 2d Session, Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2005, and for other purposes., (Dec 07, 2004), Enrolled Bill, ACTION: Referenced. Updating Legislation: **PL 108-447, December 8, 2004, 118 Stat 2809 (Production, Processing, and Marketi**

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P.L. 93-579, PRIVACY ACT OF 1974, S. REP. 93-1183, September 26, 1974

→ § 552a. Records maintained on individuals**CREDIT(S)**

(Added Pub.L. 93-579, § 3, Dec. 31, 1974, 88 Stat. 1897, and amended Pub.L. 94-183, § 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub.L. 97-365, § 2, Oct. 25, 1982, 96 Stat. 1749; Pub.L. 97-375, Title II, § 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub.L. 97-452, § 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub.L. 98-477, § 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub.L. 98-497, Title I, § 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub.L. 100-503, §§ 2 to 6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507 to 2514; Pub.L. 101-508, Title VII, § 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334; Pub.L. 103-66, Title XIII, § 13581(c), Aug. 10, 1993, 107 Stat. 611; Pub.L. 104-193, Title I, § 110(w), Aug. 22, 1996, 110 Stat. 2175; Pub.L. 104-226, § 1(b)(3), Oct. 2, 1996, 110 Stat. 3033; Pub.L. 104-316, Title I, § 115(g)(2)(B), Oct. 19, 1996, 110 Stat. 3835; Pub.L. 105-34, Title X, § 1026(b)(2), Aug. 5, 1997, 111 Stat. 925; Pub.L. 105-362, Title XIII, § 1301(d), Nov. 10, 1998, 112 Stat. 3293; Pub.L. 106-170, Title IV, § 402(a)(2), Dec. 17, 1999, 113 Stat. 1908; Pub.L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1974 Acts. Senate Report No. 93-1183, see 1974 U.S. Code Cong. and Adm. News, p. 6916.

1975 Acts. Senate Report No. 94-540, see 1975 U.S. Code Cong. and Adm. News, p. 2141.

1982 Acts. Senate Report Nos. 97-378 and 97-287, see 1982 U.S. Code Cong. and Adm. News, p. 3377.

House Report No. 97-804, see 1982 U.S. Code Cong. and Adm. News, p. 3435.

1983 Acts. Detailed Explanation prepared by the Office of the Law Revision Counsel, see 1982 U.S. Code Cong. and Adm. News, p. 4301.

1984 Acts. House Report No. 98-726(Parts I and II), see 1984 U.S. Code Cong. and Adm. News, p. 3741.

Senate Report No. 98-373 and House Conference Report No. 98-1124, see 1984 U.S. Code Cong. and Adm. News, p. 3865.

1988 Acts. House Report No. 100-802, see 1988 U.S. Code Cong. and Adm. News, p. 3107.

1990 Acts. House Report No. 101-881, House Conference Report No. 101-964, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 2017.

1993 Acts. House Report No. 103-111 and House Conference Report No. 103-213, see 1993 U.S. Code Cong.

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and Adm. News, p. 378.

1996 Acts. House Report No. 104-394, see 1996 U.S. Code Cong. and Adm. News, p. 3432.

House Report No. 104-651 and House Conference Report No. 104-725, see 1996 U.S. Code Cong. and Adm. News, p. 2183.

1997 Acts. House Report No. 105-148, Senate Report No. 105-33, House Conference Report No. 105-220, and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 678.

1999 Acts. Statement by President, see 1999 U.S. Code Cong. and Adm. News, p. 332.

References in Text

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub.L. 99-570.

Section 6103 of such Code, referred to in subsec. (a)(8)(B)(iv), is section 6103 of the Internal Revenue Code of 1986, which is classified to section 6103 of Title 26.

Sections 404, 464, and 1137 of the Social Security Act, referred to in subsec. (a)(8)(B)(iv), are classified to sections 604, 664, and 1320b-7, respectively, of Title 42.

For effective date of this section, referred to in subsecs. (k)(2), (5), (7), (l)(2), (3), and (m), see Effective Date of 1974 Acts note under this section.

Section 6 of the Privacy Act of 1974, referred to in subsec. (s)(1), is section 6 of Pub.L. 93-579, which was set out as a note under this section and was repealed by section 6(c) of Pub.L. 100-503.

For classification of the Privacy Act of 1974, referred to in subsec. (s)(4), see Short Title of 1974 Acts note under this section.

Amendments

2004 Amendments. Subsec. (b)(10). Pub.L. 108-271, § 8(b), substituted "Government Accountability Office" for "General Accounting Office".

1999 Amendments. Subsec. (a)(8)(B)(vi) to (viii). Pub.L. 106-170, § 402(a), struck out "or" at the end of cl. (vi), inserted "or" at the end of cl. (vii), and added cl. (viii).

1998 Amendments. Subsec. (u)(6). Pub.L. 105-362, § 1301(d)(1), struck out former par. (6), which read: "The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver."

Subsec. (u)(6), (7). Pub.L. 105-362, § 1301(d)(2), redesignated former par. (7) as par. (6), and in redesignated

par. (6), struck out "paragraphs (3)(D) and (6)" and inserted "paragraph (3)(D)".

1997 Amendments. Subsec. (a)(8)(B)(v). Pub.L. 105-34, § 1026(b)(2), struck out "or" at the end of cl. (v).

Subsec. (a)(8)(B)(vi). Pub.L. 105-34, § 1026(b)(2), inserted "or" at the end of cl. (vi).

Subsec. (a)(8)(B)(vii). Pub.L. 105-34, § 1026(b)(2), added cl. (vii).

1996 Amendments. Subsec. (a)(8)(B)(iv)(III). Pub.L. 104-193, § 110(w), substituted "section 404(e), 464, or 1137 of the Social Security Act" for "section 464 or 1137 of the Social Security Act".

Subsec. (a)(8)(B)(vii). Pub.L. 104-226, § 1(b)(3), struck out cl. (vii) which had provided that the term "matching program" did not include matches performed pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act.

Subsec. (b)(12). Pub.L. 104-316, § 115(g)(2)(B), substituted "section 3711(e)" for "section 3711(f)".

Subsec. (m)(2). Pub.L. 104-316, § 115(g)(2)(B), substituted "section 3711(e)" for "section 3711(f)".

1993 Amendments. Subsec. (a)(8)(B)(vii). Pub.L. 103-66, § 13581(c), added cl. (vii).

1990 Amendments. Subsec. (p)(1). Pub.L. 101-508 substituted "In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until--

"(A)(i) the agency has independently verified the information; or

"(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that--

"(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

"(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

"(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

"(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

"(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual"

for

"In order to protect any individual whose records are used in matching programs, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs, until an officer or employee of such agency has independently verified such information. Such independent verification may be satisfied by verification in accordance with (A) the requirements of paragraph (2); and (B) any additional requirements governing verification under such Federal benefit program."

Subsec. (p)(2). Pub.L. 101-508 substituted "Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of--

"(A) the amount of any asset or income involved;

"(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

"(C) the period or periods when the individual actually had such asset or income"

for

"Independent verification referred to in paragraph (1) requires independent investigation and confirmation of any information used as a basis for an adverse action against an individual including, where applicable--

"(A) the amount of the asset or income involved,

"(B) whether such individual actually has or had access to such asset or income for such individual's own use, and

"(C) the period or periods when the individual actually had such asset or income".

Subsec. (p)(3). Pub.L. 101-508 substituted "Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph." for "No recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to any individual described in paragraph (1), or take other adverse action against such individual as a result of information produced by a matching program, (A) unless such individual has received notice from such agency containing a statement of its findings and informing the individual of the opportunity to contest such findings, and (B) until the subsequent expiration of any notice period provided by the program's law or regulations, or 30 days, whichever is later. Such opportunity to contest may be satisfied by notice, hearing, and appeal rights governing such Federal benefit program. The exercise of any such rights shall not affect any rights available under this section".

Subsec. (p)(4). Pub.L. 101-508 struck out par. (4) which read "Notwithstanding paragraph (3), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during the notice period required by such paragraph".

1988 Amendments. Subsec. (a)(8) to (13). Pub.L. 100-503, § 5, added pars. (8) through (13).

Subsec. (e)(12). Pub.L. 100-503, § 3(a), added par. (12).

Subsec. (f). Pub.L. 100-503, § 7, directed that rules and agency notices be compiled and published biennially instead of annually.

Subsecs. (o) to (q). Pub.L. 100-503, § 2, added subsecs. (o) through (q). Former subsecs. (o) through (q) were redesignated as (r) through (t), respectively.

Subsec. (r). Pub.L. 100-503, § 3(b), inserted reference to matching programs in heading, and in text substituted provisions requiring each agency proposing to establish or change a system of records or matching program to provide notice to certain Congressional committees and to the Office of Management and Budget in order to evaluate effect of such proposal on privacy or other individual rights, for provisions requiring each agency to provide notice to Congress and the Office of Management and Budget of any proposal to establish or alter a system of records in order to evaluate effect of such proposal on privacy or other individual rights and its effect on principles of federalism and separation of powers.

Pub.L. 100-503, § 2(1), redesignated former subsec. (o) as (r).

Subsec. (s). Pub.L. 100-503, § 8, substituted "Biennial" for "Annual" in heading, "biennially submit" for "annually submit" in introductory provisions, "preceding 2 years" for "preceding year" in par. (1), and "such years" for "such year" in par. (2).

Pub.L. 100-503, § 2(1), redesignated former subsec. (p) as (s).

Subsec. (t). Pub.L. 100-503, § 2(1), redesignated former subsec. (q) as (t).

Subsec. (u). Pub.L. 100-503, § 4, added subsec. (u).

Subsec. (v). Pub.L. 100-503, § 6(a), added subsec. (v).

1984 Amendments. Subsec. (b)(6). Pub.L. 98-497, § 107(g)(1), substituted "and Records Administration" for "of the United States" after "National Archives" and further substituted "Archivist of the United States or the designee of the Archivist" for "Administrator of General Services or his designee".

Subsec. (l)(1). Pub.L. 98-497, § 107(g)(2), substituted "Archivist of the United States" for "Administrator of General Services" wherever appearing.

Subsec. (q)(1). Pub.L. 98-477, § 2(c)(1), redesignated provisions designated as subsec. (q) as subsec. (q)(1).

Subsec. (q)(2). Pub.L. 98-477, § 2(c)(2), added subsec. (q)(2).

1983 Amendments. Subsec. (b)(12). Pub.L. 97-452 substituted "section 3711(f) of title 31" for "section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))".

Subsec. (m)(2). Pub.L. 97-452 substituted "section 3711(f) of title 31" for "section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))".

1982 Amendments. Subsec. (b)(12). Pub.L. 97-365, § 2(a), added par. (12).

Subsec. (e)(4). Pub.L. 97-375, § 201(a), substituted "upon establishment or revision" for "at least annually" after "Federal Register".

Subsec. (m). Pub.L. 97-365, § 2(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub.L. 97-375, § 201(b), substituted provisions requiring the annual submission of a report by the President to the Speaker of the House and President pro tempore of the Senate relating to the Director of the Office of Management and Budget, individual rights of access, changes or additions to systems of records, and other necessary or useful information, for provisions which had directed the President to 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 indicated efforts to administer fully this section.

1975 Amendments. Subsec. (g)(5). Pub.L. 94-183 substituted "to September 27, 1975" for "to the effective date of this section".

Effective and Applicability Provisions

1999 Acts. Amendment by section 402(a)(2) of Pub.L. 106-170 shall apply to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after December 1999, see section 402(a)(4) of Pub.L. 106-170, set out as a note under section 402 of Title 42.

1997 Acts. Amendment by Pub.L. 105-34 to apply to levies issued after Aug. 5, 1997, see section 1026(c) of Pub.L. 105-34, set out as a note under section 6103 of Title 26, Internal Revenue Code.

1996 Acts. Amendment of subsec. (a)(8)(B)(iv)(III) by Pub.L. 104-193 is effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub.L. 104-193, set out as a note under section 601 of this title.

Amendment by Pub.L. 104-316 effective Oct. 19, 1996, see section 101(e) of Pub.L. 104-316, set out as a note under section 130c of Title 2, The Congress.

1993 Acts. Amendment by Pub.L. 103-66 effective Jan. 1, 1994, see section 13581(d) of Pub.L. 103-66, set out as a note under section 1395y of Title 42, The Public Health and Welfare.

1990 Acts. Pub.L. 101-366, Title II, § 206(d), Aug. 15, 1990, 104 Stat. 442, provided that:

"(1) In the case of computer matching programs between the Department of Veterans Affairs and the Department of Defense in the administration of education benefits programs under chapters 30 and 32 of title 38 [section 1401 et seq. and section 1601 et seq. of Title 38, Veterans Benefits, respectively] and chapter 106 of title 10, United States Code [section 2131 et seq. of Title 10, Armed Forces], the amendments made to section

552a of title 5, United States Code, by the Computer Matching and Privacy Protection Act of 1988 [Pub.L. 100-503] (other than the amendments made by section 10(b) of that Act) [see Effective Date of 1988 Acts note under this section] shall take effect on October 1, 1990.

"(2) For purposes of this subsection, the term 'matching program' has the same meaning provided in section 552a(a)(8) of title 5, United States Code [subsec. (a)(8) of this section]."

1988 Acts. Section 10 of Pub.L. 100-503, as amended Pub.L. 101-56, § 2, July 19, 1989, 103 Stat. 149, provided that:

"(a) **In general.**--Except as provided in subsections (b) and (c), the amendments made by this Act [amending this section and repealing provisions set out as a note under this section] shall take effect 9 months after the date of enactment of this Act [Oct. 18, 1988].

"(b) **Exceptions.**--The amendment made by sections 3(b), 6, 7, and 8 of this Act [amending this section and repealing provisions set out as a note under this section] shall take effect upon enactment.

"(c) **Effective date delayed for existing programs.**--In the case of any matching program (as defined in section 552a(a)(8) of title 5, United States Code [subsec. (a)(8) of this section], as added by section 5 of this Act) in operation before June 1, 1989, the amendments made by this Act (other than the amendments described in subsection (b)) shall take effect January 1, 1990, if--

"(1) such matching program is identified by an agency as being in operation before June 1, 1989; and

"(2) such identification is--

"(A) submitted by the agency to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget before August 1, 1989, in a report which contains a schedule showing the dates on which the agency expects to have such matching program in compliance with the amendments made by this Act, and

"(B) published by the Office of Management and Budget in the Federal Register, before September 15, 1989."

[Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Government Operations of the House of Representatives treated as referring to the Committee on Government Reform and Oversight of the House of Representatives, except that any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Government Operations of the House of Representatives treated as referring to the Committee on the Budget of the House of Representatives in the case of a provision of law relating to the establishment, extension, and enforcement of special controls over the Federal budget, see section 1(a)(6) and (c)(2) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.]

1984 Acts. Amendment by Pub.L. 98-497 effective April 1, 1985, see section 301 of Pub.L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

Amendment by Pub.L. 98-477, effective Oct. 15, 1984 and applicable with respect to any request for records, whether or not such request was made prior to Oct. 15, 1984, and applicable to all civil actions not commenced prior to February 7, 1984, see section 4 of Pub.L. 98-477, set out as a note under section 431 of Title 50, War and National Defense.

1974 Acts. Section 8 of Pub.L. 93-579 provided that: "The provisions of this Act [enacting this section and provisions set out as notes under this section] shall be effective on and after the date of enactment [Dec. 31, 1974], except that the amendments made by sections 3 and 4 [enacting this section and amending analysis preceding section 500 of this title] shall become effective 270 days following the day on which this Act is enacted."

Termination of Reporting Requirements

For termination of reporting provisions of subsec. (r) of this section, effective May 15, 2000, see Pub.L. 104-66, § 3003, as amended, set out as a note under 31 U.S.C.A. § 1113, and the 20th item on page 151 of House Document No. 103-7.

For termination, effective May 15, 2000, of provisions in subsec. (s) of this section, see Pub.L. 104-66, § 3003, as amended, set out as a note under 31 U.S.C.A. § 1113 and page 31 of House Document No. 103-7.

Change of Name

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by Pub.L. 104-14, § 1(a), set out as a note preceding 2 U.S.C.A. § 21. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Delegation of Functions

Functions of Director of Office of Management and Budget under this section delegated to Administrator for Office of Information and Regulatory Affairs by section 3 of Pub.L. 96-511, Dec. 11, 1980, 94 Stat. 2825, set out as a note under section 3503 of Title 44, Public Printing and Documents.

Short Title

1990 Amendments. Section 7201(a) of Pub.L. 101-508 provided that: "This section [amending this section and enacting provisions set out as notes under this section] may be cited as the 'Computer Matching and Privacy Protection Amendments of 1990'."

1989 Amendments. Pub.L. 101-56, § 1, July 19, 1989, 103 Stat. 149, provided that: "This Act [amending section 10 of Pub.L. 100-503, set out as a note under this section] may be cited as the 'Computer Matching and Privacy Protection Act Amendments of 1989'."

1988 Amendments. Section 1 of Pub.L. 100-503 provided that: "This Act [amending this section, enacting provisions set out as notes under this section and repealing provisions set out as a note under this section] may be cited as the 'Computer Matching and Privacy Protection Act of 1988'."

1974 Acts. Section 1 of Pub.L. 93-579 provided: "That this Act [enacting this section and provisions set out as notes under this section] may be cited as the 'Privacy Act of 1974'."

Privacy and Data Protection Procedures

Pub.L. 108-447, Div. H, Title V, § 522, Dec. 8, 2004, 118 Stat. 3268, relating to privacy and data protection procedures, was editorially redesignated 42 U.S.C.A. § 2000ee-2.

Classified National Security Information

For provisions relating to a response to a request for information under this section when the fact of its existence or nonexistence is itself classified or when it was originally classified by another agency, see Ex. Ord. No. 12958, § 3.7, April 17, 1995, 60 F.R. 19835, set out as a note under section 435 of Title 50.

Authorization of Appropriations to Privacy Protection Study Commission

Section 9 of Pub.L. 93-579, as amended by Pub.L. 94-394, Sept. 3, 1976, 90 Stat. 1198, authorized appropriations for the period beginning July 1, 1975, and ending on September 30, 1977.

Congressional Findings and Statement of Purpose

Section 2 of Pub.L. 93-579 provided that:

"(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 [enacting this section and provisions set out as notes under this section] 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."

Construction of 1988 Amendments

Section 9 of Pub.L. 100-503 provided that: "Nothing in the amendments made by this Act [amending this section and repealing provisions set out as a note under this section] shall be construed to authorize--

"(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;

"(2) the direct linking of computerized systems of records maintained by Federal agencies;

"(3) the computer matching of records not otherwise authorized by law; or

"(4) the disclosure of records for computer matching except to a Federal, State, or local agency."

Disclosure of Social Security Number

Section 7 of Pub.L. 93-579 provided that:

"(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 [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."

Guidelines and Regulations for Maintenance of Privacy and Protection of Records of Individuals

Section 6 of Pub.L. 93-579, which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub.L. 100-503, § 6(c), Oct. 18, 1988, 102 Stat. 2513.

Implementation Guidance for 1988 Amendments

Section 6(b) of Pub.L. 100-503 provided that: "The Director shall, pursuant to section 552a(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act [amending this section and repealing provisions set out as a note under this section] not later than 8 months after the date of enactment of this Act [Oct. 18, 1988]."

Limitation on Application of Verification Requirement

Section 7201(c) of Pub.L. 101-508 provided that: "Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code [subsec. (p)(1)(A)(ii)(II) of this section], as amended by section 2 [probably means section 7201(b)(1) of Pub.L. 101-508], shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b- 7), until the earlier of--

"(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

"(2) 30 days after the date of publication of guidance under section 2(b) [probably means section 7201(b)(2) of Pub.L. 101-508, set out as a note under this section]."

Privacy Protection Study Commission

Section 5 of Pub.L. 93-579, as amended by Pub.L. 95-38, June 1, 1977, 91 Stat. 179, which established the Privacy Protection Study Commission and provided that the Commission study data banks, automated data processing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1977, pursuant to section 5(g) of Pub.L. 93- 579.

Publication of Guidance Under Subsection (p)(1)(A)(ii)

Section 7201(b)(2) of Pub.L. 101-508 provided that: "Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code [subsec. (p)(1)(A)(ii) of this section], as amended by this Act."

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