

Material Transmitted:

HHS Instruction 297-1, Privacy Procedures for Personnel Records
(all)

Material Superseded:

HHS Instruction 297-1 (all), HHS Transmittal 97.4, dated 3-7-97

Background:

This Instruction has been superseded to incorporate the input of a broader segment of the EEO community and the Office of the General Counsel (OGC). As a result of this input, the following substantive clarifications were made to section 297-1-70, entitled Relationship to Equal Employment Opportunity (EEO) Regulations, and 297-1-10, entitled References:

- At any stage in the process (informal counseling or investigative stage) the EEO Office or investigator may inform a witness who is currently an employee of HHS about the complaint only to the extent necessary to obtain information from that witness.
- There is no entitlement on the part of any witness to receive a copy of the acceptance letter which is issued to the complainant that outlines the allegations in the EEO complaint which has been accepted for processing.
- The EEO Office should not give any response to a Freedom of Information Act (FOI) request, but should refer it to the appropriate FOI Office.
- References to Office of Personnel Management (OPM) regulations have been replaced with references to Departmental regulations.

Other changes were minor and involved clarity issues.

Any reference to AOPDIV@ in this Instruction now includes AHCPR, ATSDR, CDC, FDA, HRSA, IHS, NIH, SAMHSA, the Office of the Secretary, the Program Support Center, HCFA, ACF, and AoA.

This issuance is effective immediately. Implementation under this issuance must be carried out in accordance with applicable laws and bargaining agreements.

Filing Instructions:

HHS Transmittal 97.9
Personnel Manual
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Remove superseded material and file new material. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list.

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INSTRUCTION 297-1

HHS PERSONNEL INSTRUCTION 297-1
PRIVACY PROCEDURES FOR PERSONNEL RECORDS

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297-1-00 PURPOSE

This Instruction states Department policies and requirements for the maintenance, protection, disclosure, and amendment of personnel records within the systems of records, as defined by the Privacy Act of 1974 (5 U.S. Code 552a), Public Law 93-579.

297-1-10 REFERENCES

- A. 5 U.S. Code 552 (law - public information; agency rules, opinions, orders, records, and proceedings)
- B. 5 U.S. Code 552a (law - records maintained on individuals)
- C. 5 U.S. Code 553 (law - rule making)
- D. 31 U.S. Code 3701(a)(3) (Federal Claims Collection Act of 1966)
- E. 42 U.S. Code 653 (law - Parent Locator Service)
- F. 45 CFR, Parts 5 and 5b (regulations - Freedom of Information Regulations (FOIA and the Privacy Act))
- G. 29 CFR, Part 1614 (regulations - Equal Employment Opportunity)
- H. 42 CFR, Part 2 (regulations - confidentiality of alcohol and drug abuse patient records)
- I. HHS Instruction 293-1/1614-2, Exhibit C (personnel and equal employment records disposal)
- J. HHS Procurement Manual (procurement)
- K. HHS ADP Systems Manual, Part 6 (ADP systems security)
- L. HHS Public Affairs Management Manual, Chapter 12 (Privacy Act - basic requirements and relationships)

- M. HHS Public Affairs Management Manual, Chapter 11-00 (Freedom of Information Act)
- N. HHS Records Management Manual, Appendix B (general records schedules)
- O. PHS Commissioned Corps Personnel Manual, Subchapter 26.1 (Commissioned Corps personnel records)

297-1-20 DISCLOSURE OF INFORMATION IN PERSONNEL RECORDS SYSTEMS

A. Disclosure with Subject Individual's Consent, with Exceptions

Disclosure of personal information concerning an individual may be made with the written consent of the subject individual. Exceptions to this requirement are listed in 45 CFR, Part 5b.9(b).

B. Accounting of Disclosure

- 1. A record of disclosure is required in cases where records about the individual are disclosed from an office system of records. Exceptions to this requirement are listed in 45 CFR, Part 5b.9(c)(1).
- 2. The accounting of disclosures will be retained for at least 5 years or for the life of the record, whichever is longer. 45 CFR, Part 5b.9(c)(2) states the type of information the accounting will contain.

297-1-30 AMENDMENT OF RECORDS BY INDIVIDUALS

A. Requests for Amendment

- 1. Individuals may request that their records be corrected or amended, if they believe that the record is not accurate, timely, complete or relevant or necessary to accomplish a Department function.
- 2. Individuals making a request to amend their records shall address their requests to the responsible Department official in writing, unless the individual makes the request in person and the responsible Department official amends the record at that time. This request for amendment shall specify:

- a. The system of records from which the record is retrieved;
 - b. The particular record sought to be amended;
 - c. The specific wording to be deleted, substituted or added; and
 - d. A statement of the basis for the requested amendment, with all available supporting documents and materials to show why the material is inaccurate, untimely, irrelevant, incomplete or unnecessary.
3. The processing of requests submitted by mail will be facilitated if the words "Privacy Act Request" appear on the face of the envelope and on the letter of inquiry.
 4. Any request which is not properly addressed and which is not marked as specified above will be properly addressed or marked by the organization that received the request and forwarded immediately to the responsible Department official. A request not properly addressed by the individual will not be deemed to have been "received" for the purpose of measuring time periods for response until the responsible Department official receives it. In each instance when a request so forwarded is received, the responsible Department official shall notify the individual that the request was improperly addressed and the date when the request was received at the proper address.
 5. If a statutory appeal procedure or other administrative review procedure exists for changing a record, or for reviewing the decision reflected by the record, then, regardless of whether the existing procedure has or has not been used, an individual may not use the amendment procedures of the Privacy Act for these purposes. (Examples of such statutory appeal procedures or other administrative review procedures are: reconsideration of level of competence determinations, adverse action appeals, grievance procedure, etc.) Thus, individuals may not challenge the management decision or action under the Privacy Act amendment procedures, although they may challenge the fact that the decision or action has been inaccurately recorded in their records.

B. Processing Requests for Amendment

1. Within 10 work days of the receipt of a request for amendment, the responsible Department official shall acknowledge the request. Until a final agency decision is made on the request to amend the record, no disclosure should normally be made of the record nor should any determination with respect to a right, benefit, or privilege normally be made on the basis of the record. Two exceptions to these normal procedures are where the failure to disclose or to make the determination would harm the individual or would unreasonably interfere with the normal course of the agency's functions.
2. If the responsible Department official agrees that the record should be amended, the record shall be amended as promptly as possible and the individual shall be informed in writing of the action taken (see time limits in 297- 30B.6 below). The individual will be provided with a copy of the amended record at no charge. In cases where a copy cannot be provided, the individual will be informed of how the amendment was effected (e.g., erasure of information from a record maintained only in an electronic data bank).
3. If the responsible Department official determines that the disputed material is not relevant and necessary for the purpose for which it was obtained, the material shall be deleted without regard to its accuracy and the individual shall be informed in writing of the action taken.
4. If the record is amended or deleted, all previous recipients of the record for whom an accounting was made will be notified of the corrective action taken. If another agency was a recipient, the notification shall suggest that the recipient agency consider amending its own record and sending notice of the amendment to persons to whom it has disclosed the record.
5. If the responsible Department official does not deem it appropriate to amend a record, the individual shall be notified of the decision. The notification to the individual shall include:

- a. The name and title or position of the responsible Department official who is refusing the request for amendment;
 - b. The date of the refusal and the reasons for not amending the record, including citation of sections of the Act or the Civil Service regulations, where appropriate; and
 - c. The procedures by which the individual can appeal the refusal to amend the record and the name, title, and business address of the appropriate appeal authority (see 297-1-40 below).
6. A request for amendment of a record should be granted or refused within 30 work days from the receipt of the request. If the decision cannot be made within 30 days, the individual will be advised in writing of the reasons and of the estimated date by which the decision will be made.
7. When the organization detects erroneous data in an individual's personnel records or a third party source provides corrected information, the record shall be corrected and the corrected information provided to the subject individual and to all recipients of the record to the extent that it is relevant to the recipient's uses and deemed feasible to do so.

297-1-40 APPEALS OF REFUSALS TO AMEND RECORDS

A. Appeal Requests

1. Individuals who disagree with a refusal to amend their records may appeal the refusal in writing, within 30 days after the date of the refusal. The individual's request for review of the refusal should include:
 - a. A copy of the original request for amendment;
 - b. A copy of the initial refusal;
 - c. A statement of the reasons why the initial refusal is believed to be in error; and
 - d. The signature of the individual.

2. The processing of requests will be facilitated if the words "Privacy Act Request" appear on both the envelope and the top of the appeal letter.
3. Any appeal which is not properly addressed and which is not marked "Privacy Act Request" will be properly addressed or marked by the organization that received the appeal and forwarded immediately to the appropriate appeal authority. A request not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until the appeal authority has received it. In each instance when a request so forwarded is received, the appeal authority shall notify the individual that the request was improperly addressed and the date when the request was received at the proper address.

B. Appeal Authorities

Appeals shall be made to the following appeal authorities:

1. For personnel records in a system of records under the authority of the Office of Personnel Management, the appeal authority is the Assistant Director for Workforce Information, Office of Personnel Management, 1900 E Street, N. W., Washington, D. C. 20415.
2. For records under the authority of the Department, appeal authorities are the following (or their designees, or successors in function):
 - a. Assistant Secretary for Management and Budget for records of the Office of the Secretary (including records covered by the Office of the Secretary Privacy Act records systems notices) or where the initial refusal to amend was made by another HHS appeal authority. The appeal authority for an initial refusal by the Assistant Secretary for Management and Budget is the Deputy Secretary.
 - b. Operating Division (OPDIV) Heads for records of the respective OPDIVs.

C. Processing Appeals

1. The responsible Department officials who issued the initial refusal will supply the appeal authority with the record that the individual requests be amended and any other pertinent material requested by the appeal authority. The subject individual's request to amend the record, the responsible Department official's refusal to amend, and any other pertinent material relating to the appeal will be reviewed. No hearing will be held.
2. An appeal will be completed within 30 work days from its receipt by the appeal authority, except that the appeal authority may for good cause extend this period for up to an additional 30 work days. If the appeal period is extended, the individual will be informed in writing of the extension and the circumstances of the delay.
3. If the appeal authority agrees with the requester that the record should be amended, the record will be amended and the individual will be informed in writing of the amendment. The individual will be provided with a copy of the amended record at no charge or will be informed of how the amendment was effected if a copy cannot be provided (e.g., erasure of information from a record maintained only in an electronic data bank). Previous recipients of the record will be notified in accordance with 297-1-30B.4 above.
4. If the appeal authority denies the appeal, the denial shall be in writing, and the requester will be informed:
 - a. Of the reasons for the denial;
 - b. Of the right to seek judicial review of the denial;
and
 - c. That he/she may submit a concise statement of the reasons for disagreeing with the denial.
5. If the individual submits a statement under 297-1-40C.4.c., the agency must, whenever it discloses the contested portion of the record, note the disagreement and provide a copy of the statement. It can also include a concise statement of the reasons for denying the amendment.

297-1-50 FEES

Policy

Fees for copying records will be charged in accordance with 45 CFR, Part 5b.13.

297-1-60 RELATIONSHIP TO FREEDOM OF INFORMATION ACT

- A. The Privacy Act is intended to prevent invasions of the privacy of individuals. It permits individuals to have some control over the accuracy and disclosure of records pertaining to them maintained by Federal agencies. On the other hand, the Freedom of Information (FOI) Act is intended to permit the general public to be informed on the activities undertaken by its government. The FOI Act provides that all records maintained by Government agencies, excluding nine exemptions, are to be made available to the public. One of these exemptions is for records the disclosure of which would constitute a clear unwarranted invasion of privacy. In exercising this exemption, agencies must balance the public interest in disclosure against the privacy interests of the individual to whom the record pertains. The FOI Act does not protect the individual from all invasions of privacy but only those which are clearly unwarranted. The Privacy Act maintains this concept and allows disclosure without the consent of the subject individual when the record is required to be made available under the FOI Act. In addition to the information below, see the HHS Public Affairs Management Manual, Chapter 12-00-40 for further discussion of the relationship between the Privacy Act and the Freedom of Information Act.
- B. The FOI Act is contained in Title 5 U.S. Code 552. The applicable regulations are in 45 CFR, Part 5. Department policies and procedures on the FOI Act are contained in Chapter 11-00 of the HHS Public Affairs Management Manual. These references contain information on the time limits for response to an FOI request, the officials authorized to deny an FOI request, the officials to whom the denial of an FOI request may be appealed, etc.
- C. If an individual requests information about himself/herself and the information is in a system of records about that person (and retrieved by his/her identifier), all such records must be released to the individual except those the

Department could withhold under both statutes. This is so whether the requester mentions the Privacy Act, the FOI Act, both, or neither. Also, this paragraph applies to requests by a parent or guardian for information about a minor or incompetent. Fees for such a request will be charged as provided by the Privacy Act and 297-1-50. Such requests will be processed under the procedures of the Privacy Act, the Department's Privacy Act regulation (45 CFR, Part 5b), and 297-1-20. If a request cites the Freedom of Information Act but should be processed under the Privacy Act, for reasons stated above, the office receiving it should forward it to the appropriate Privacy Act system of records manager.

- D. If a person requests information that would come from a system of records, but the requester is not an individual, or the information is not in a record about the requester, then FOI Act procedures will apply to the request. The only records that may be released are those for which disclosure is required under the FOI Act or otherwise allowed by 297-1-20A.

297-1-70 RELATIONSHIP TO EQUAL EMPLOYMENT OPPORTUNITY (EEO)
REGULATIONS

- A. Discrimination complaint files, containing correspondence and investigatory material on EEO complaints, are retrieved by either the name of the complainant or the Complaint File Number only, and the complainants are the only subjects of the files.
- B. If a witness cites the FOI Act as a basis for his/her request to see any portion of the EEO file, whether he/she makes the request during the EEO process or after a final decision on the complaint, the EEO Office should not respond to the request except to indicate that the request has been referred to the appropriate FOI Office.
 - 1. At any stage in the process (informal counseling or investigative stage), the EEO Office or investigator may inform a witness who is currently an employee of HHS about the complaint only to the extent necessary to obtain information from that witness. Likewise, at any stage of the process, the EEO Office or investigator may show such a witness documents that are from the complaint file or are pertinent to the complaint only to the extent

necessary to obtain from that witness information needed for the EEO Process.

2. When showing documents to a witness, the EEO Office or investigator may delete information identifying individuals. In making determinations whether to delete information and, if so, what information to delete, the EEO Office or investigator should consider both the individuals' privacies and the extent to which deletion would diminish the witness's ability to provide information needed for the EEO process.
 3. The EEO Office should show appropriate management officials those portions of the file that management needs to make decisions about possible settlement of the case or about other appropriate management actions relating to the matters at issue in the case.
- C. Following issuance of a final decision on the discrimination complaint, the witness has a right of access to portions of the EEO file, only if, as a result of a final agency decision, adverse or disciplinary action is proposed by his/her supervisor or manager. Also, the witness (and now subject of a proposed adverse action) may have a right of discovery, to the extent allowed by the routine use in the EEO system.
- D. Other requesters, such as the public or the media, may request access to EEO files under the FOI Act. Any request should be referred to the appropriate FOI Office, which will determine how to respond.

297-1-80 RELATIONSHIP TO PARENT LOCATOR SERVICE REGULATIONS

42 U.S. Code 653 states that upon receipt of a proper, official request, the Department employees who have custody of relevant records must turn over to the Parent Locator Service the address and place of employment of any absent parent if that information is in their records or can be obtained by them.