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PRIVACY ACT OF 1974

This article explains the requirements of the Privacy Act for NIH contractors.

A N N O U N C E M E N T

President Ford signed the Privacy Act (Public Law 93-579) into law on December 31, 1974. The Act became effective on September 27, 1975, and states that its primary purpose is to provide safeguards for individuals against invasions of personal privacy. The Act requires Federal agencies to:

- permit individuals to determine what records pertaining to them the agency collects, maintains, uses, or disseminates;
- permit individuals to prevent records pertaining to them obtained for a particular purpose from being used or made available for another purpose without their consent;
- permit individuals to gain access to information pertaining to them in Federal agency records, to have a copy made of their records, and to correct or amend their records;
- collect, maintain, use, or disseminate records 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 information;
- be subject to civil suit for damages which occur as a result of willful or intentional actions which violate any individual's rights under the Act.

In addition, subsection (i) of section 3 of the Act states that employees of an agency maintaining a system of records shall be subject to criminal penalties for willful or intentional actions which violate any individual's rights under the Act.

The Act provides several definitions. The following are of particular interest:

- the term "individual" means a living citizen of the United States or an alien lawfully admitted for permanent residence.

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Supplements, printed on yellow paper, are published by the respective awarding units concerning new projects, solicitations of sources, and requests for proposals.

It does not include persons such as sole proprietorships, partnerships, or corporations. A business firm which is identified by the name of one or more persons is not an individual within the meaning of the Act;

- the term "maintain" includes maintain, collect, use, or disseminate;
- 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;
- 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.
- The Department of Health, Education, and Welfare for the purpose of the Privacy Act is defined as an "Agency".

The Act applies not only to systems of records maintained by Federal agencies, but also to those systems of records maintained by Federal contractors to accomplish an Agency function. Specifically, subsection (m) of section 3 of the Act states:

"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."

The Act does not apply to records maintained by National Institutes of Health (NIH) grantees or to records maintained by NIH contractors which are incidental to the performance of the contract, e.g. employee records maintained by the contractor. NIH is required by HEW regulations, 45 CFR, Part 5b.12 (*Federal Register*, October 8, 1975, Vol. 40, No. 196) to review all active contracts and to amend those contracts which require the contractor to maintain a system of records to accomplish an NIH function. This review is made by the contracting officer of the awarding NIH component, in conjunction with other officials, e.g. project officer. If a determination is made that the contract requires the maintenance of a system of records to accomplish an NIH function, the contracting officer shall be responsible for including in the contract appropriate language to apply the provisions of the Act and HEW regulations to the

system of records. In addition, the contract shall specifically identify the system of records and delineate the contractor's responsibility.

A summary of the contractor's responsibilities with respect to each system of records identified in the contract and maintained by the contractor are as follows:

1. to establish appropriate administrative, technical, and physical safeguards in accordance with HEW standards and National Bureau of Standards guidelines to insure the security and confidentiality of such records and to prevent the unauthorized disclosure thereof;
2. to establish rules of conduct for all of its employees involved in the design, development, operation, or maintenance of any such system of records, or in maintaining any record in such system, and to instruct each such employee with respect to such rules and requirements of the Act and HEW regulations and with respect to the penalties for noncompliance;
3. to report promptly and directly to the appropriate NIH system manager all requests (a) by any person or agency other than NIH for disclosure of any record which is contained in each system of records, (b) by any individual to gain access to his or her record or to any information pertaining to him or her which is contained in such system of records, or (c) by any individual to amend a record pertaining to him or her;
4. to refrain from disclosing any record which is contained in each system of records by any means of communication to any person or to any agency other than the National Institutes of Health, except to the extent directed and authorized by the appropriate NIH system manager;
5. to provide for access by individuals to records pertaining to themselves and for opportunity for such individuals to amend such records only upon such terms and conditions expressly authorized by the appropriate NIH system manager;
6. to keep an accurate accounting, containing as a minimum the information required by subsection (c)(1) of the Act, of each disclosure of any record to any person or to any agency other than the National Institutes of Health, and to maintain or deliver such accounting as directed by the appropriate NIH system manager; and
7. to make such additional reports regarding the maintenance and operation of each system of records as required by the terms of the contract or as otherwise required by law.

In addition to the foregoing, with respect to each system of records on individuals, maintained on behalf of NIH pursuant to the terms of the contract, which is to be collected and developed directly by the contractor, the contractor must agree:

1. to furnish promptly and directly to the appropriate NIH system manager such information as may be needed to permit publication in the *Federal Register* of the notice of the existence and character of the system of records as required by subsection (e)(4) of the Act, and such other information needed by the appropriate NIH system manager in order to comply with the Act;
2. to refrain from operating or collecting information for such system until the expiration of a period of thirty (30) days after the date of publication in the *Federal Register* of the notice referred to in 1. above;
3. to maintain in such system of records only such information about an individual as is relevant and necessary to accomplish the purposes of the contract;
4. to collect information to the greatest extent practicable directly from the subject individual; and
5. to inform each individual whom it asks to supply information, on the form used to collect the information or on a separate form that can be retained by the individual, of;
 - a. the principal purpose or purposes for which the information is intended to be used, including the purposes of the contract, which shall be identified specifically on such form,
 - b. the routine uses which may be made of the information, which shall be consistent with the notice published in accordance with 1. above and which notice shall be identified specifically on such form, and
 - c. the effects on the individual, if any, of not providing all or any part of the requested information.

Questions concerning specific contracts: Questions from NIH contractors concerning the applicability of requirements of the Privacy Act of 1974 to specific contracts should be directed to the appropriate Institute contracting officer.

General questions concerning Privacy Act: General questions concerning the Privacy Act of 1974 may be directed to the NIH Privacy Act Officer, Division of Management Policy, Room 209, Building 1, National Institutes of Health, Bethesda, Maryland 20014, telephone (301) 496-2461.