

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed routine use; request for public comment.

SUMMARY: The FTC proposes to adopt a new routine use that would permit disclosure of FTC records governed by the Privacy Act when reasonably necessary to respond and prevent, minimize, or remedy harm that may result from an agency data breach or compromise.

DATES: The deadline for public comments is [INSERT DATE THAT IS THIRTY (30) DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments received after that date will be considered at the FTC's discretion.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Privacy Act of 1974; System of Records: FTC File No. P072104" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H-135 (Annex H), 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Commission is subject to delay, please consider

submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled “Confidential.”¹

Comments filed in electronic form should be submitted by following the instructions on the web-based form at <https://secure.commentworks.com/PrivacyAct1974>. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the <https://secure.commentworks.com/PrivacyAct1974> weblink. If this notice appears at www.regulations.gov, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this matter as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC website, to the extent practicable, at www.ftc.gov. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act,

¹ Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, FTC, Office of General Counsel, 600 Pennsylvania Ave. NW, Washington, DC 20580, 202-326-2447, atang@ftc.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, this document provides public notice that the FTC is proposing to adopt a new "routine use" that will apply to all FTC records systems covered by the Privacy Act of 1974. The Act applies to agency systems of records about individuals that the agency maintains and retrieves by name or other personal identifier, such as its personnel and payroll systems and certain other FTC records systems. A list of the agency's current Privacy Act records systems can be viewed on the FTC's web site at:

<http://www.ftc.gov/foia/listofpasystems.htm>. The new routine use would be added to Appendix 1, which describes routine uses that apply globally to all FTC Privacy Act records systems. See 57 FR 45678 (1992), <http://www.ftc.gov/foia/sysnot/appendix1.pdf>.

This new routine use is needed in order to allow for disclosure of records to appropriate persons and entities for purposes of response and remedial efforts in the event of a breach of data contained in the protected systems. This routine use will facilitate an effective response to a confirmed or suspected breach by allowing for disclosure to individuals affected by the breach, in cases, if any, where such disclosure is not otherwise authorized under the Act. This routine use will also authorize disclosures to others who are in a position to assist in response efforts, either by assisting in notification to affected individuals or otherwise playing a role in preventing, minimizing, or remedying harms

from the breach.

The Privacy Act authorizes the agency to adopt routine uses that are consistent with the purpose for which information is collected and subject to that Act. 5 U.S.C. 552a(b)(3); see also 5 U.S.C. 552a(a)(7). The FTC believes that it is consistent with the collection of information pertaining to such individuals to disclose Privacy Act records when, in doing so, it will help prevent, minimize or remedy a data breach or compromise that may affect such individuals. By contrast, the FTC believes that failure to take reasonable steps to help prevent, minimize the harm that may result from such a breach or compromise would jeopardize, rather than promote, the privacy of such individuals. Accordingly, the Commission concludes that it is authorized under the Privacy Act to adopt a routine use permitting disclosure of Privacy Act records for such purposes.

In accordance with the Privacy Act, see 5 U.S.C. 552a(e)(4) and (11), the FTC is publishing notice of this routine use and giving the public a 30-day period to comment before adopting it as final. The FTC is also providing at least 40 days advance notice of this proposed system notice amendment to OMB and the Congress, as required by the Act, 5 U.S.C. 552a(r), and OMB Circular A-130, Revised, Appendix I. We note that the text of this routine use is taken from the routine use that has already been published in final form by the Department of Justice after public comment. See 72 FR 3410 (Jan. 25, 2007). Similarly, after taking into account comments, if any, received by the FTC, the FTC intends to publish its proposed routine use as final after the period for OMB and Congressional review is complete, including whatever revisions may be deemed appropriate or necessary, if any.

Accordingly, the FTC hereby proposes to amend Appendix 1 of its Privacy Act system notices, as published at 57 FR 45678, by adding the following new routine use at the end of the existing routine uses set forth in that Appendix:

* * *

To appropriate agencies, entities, and persons when (1) the FTC suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the FTC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the FTC or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FTC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

By direction of the Commission.

Donald S. Clark
Secretary