

regarding buildings or places of employment); and

(6) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

(b) The Office or agency will generally not disclose information where the data sought is a list of names, present or past position titles, grades, salaries, performance standards, and/or duty stations of Federal employees which, as determined by the official responsible for custody of the information:

(1) Is selected in such a way that would reveal more about the employee on whom information is sought than the six enumerated items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of the FOIA.

(c) In addition to the information described in paragraph (a) of this section, a Government official may provide other information from these records (or automated equivalents) of an employee, to others outside of the agency, under a summons, warrant, subpoena, or other legal process; as provided by the Privacy Act (5 U.S.C. 552a(b)(4) through (b)(11)), under those Privacy Act routine uses promulgated by the Office, and as required by the FOIA.

#### **Subpart D—Employee Performance File System Records**

**AUTHORITY:** 5 U.S.C. 552a and 5 U.S.C. 4305 and 4315; E.O. 12107 (December 28, 1978); 5 U.S.C. 1103, 1104, and 1302; 3 CFR 1954-1958 Compilation; 5 CFR 7.2; E.O. 9830, 3 CFR 1943-1948 Compilation.

**SOURCE:** 47 FR 3080, Jan. 22, 1982, unless otherwise noted.

#### **§ 293.401 Applicability of regulations.**

This subpart applies to Executive agencies as defined in sections 105, 3132(a)(1) and 4301(1) of title 5, U.S. Code, including Military Departments (but not non-appropriated fund employees) as defined in section 102 of title 5, U.S. Code, and independent establishments as defined in section 104 of title 5, U.S. Code. Within those agencies, the requirements of this subpart apply to all employees occupying positions subject to civil service rules and regulations, including Senior Executive Service positions as defined in 5 U.S.C. 3132(a)(2).

#### **§ 293.402 Establishment of separate employee performance record system.**

(a) Copies of employees' performance ratings of record, including the performance plans on which the ratings are based, must be placed in either the employee's Official Personnel Folder (OPF) or in the Employee Performance File (EPF). However, other performance-related documents may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF, and removed whenever the OPF (except as required in § 293.404(b)) is transferred to another agency. Performance ratings of record, including the performance plans on which the ratings are based, shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (long term) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by § 293.404(b)).

(b) Except for performance records maintained in the OPF consistent with paragraph (a) of this section, each agency having employees occupying a position described in § 293.401 shall provide for maintenance of performance-related records for such employees in this EPF system. The agency may elect to retain records in a separate file that is located in the same office with the OPF, or in an envelope kept in the OPF itself. If the agency determines that a separate EPF is cost-effective, such a file may be located in another designated agency office (as

specified in the agency's performance appraisal plan) including with supervisors or managers (hereinafter referred to as rating officials) or with Performance Review Boards. Any supporting documents that the agency may prescribe as necessary for agency officials in performance of their duties shall be kept in these files.

(c)(1) Agencies shall provide their employees access to their performance files (automated and manual). Such a request for access shall be processed in accordance with established agency procedures, consistent with Office of Personnel Management regulations regarding access to records contained in part 297 of this chapter. Such access shall be provided to the employee or to the employee's designated representative, and such records may also be disclosed to other officials of the agency who have a need for the documents in the performance of their duties.

(2) All other requests for performance documents made to agency officials (e.g., Freedom of Information Act requests or requests made under the "routine use" provisions of the Privacy Act) shall be processed by the responsible agency official in accordance with agency procedures consistent with Office of Personnel Management regulations regarding disclosures of such records contained in parts 293 and 297 of this chapter.

(3) Privacy Act requests for amendment of records maintained in this system shall be processed by the responsible agency official in accordance with agency procedures consistent with Office of Personnel Management regulations regarding amendment of records contained in part 297 of this chapter.

(d) Agencies maintaining the EPF in an automated or microform system shall issue instructions that contain necessary procedures to ensure that the same requirements as in paragraph (c) of this section, relating to all manual records, are met.

[47 FR 3080, Jan. 22, 1982, as amended at 51 FR 8410, Mar. 11, 1986]

**§ 293.403 Contents of employee performance files.**

(a) A decision on what constitutes a performance-related document within the meaning of this subpart rests with

the agency. Agency implementing instructions, for both incumbents of the Senior Executive Service and other positions, shall provide specific written guidance of the description of what constitutes the agency's official performance-related forms and documents.

(b) Agency implementing instructions describing such records shall indicate where and for how long they are retained and how and when they are to be destroyed. Such instructions shall also describe what records are considered to be performance-related (as specifically as is feasible) and shall include all performance-related records maintained as a system of records within the meaning of the Privacy Act. Such records would generally include:

(1) Any form or other document which records the performance appraisal, including appraisals leading to merit pay determinations.

(2) Any form or other document used by rating officials to recommend a personnel action affecting an employee (including a request for personnel action document, but only when the action is not effected) when the basis for the action (e.g., removal, reassignment, demotion, promotion, or merit pay or other performance award) is performance-related.

(3) Recommendations for training that are performance-related.

(4) Any form or other document furnished in support of recommended actions such as those listed in paragraph (b)(2) of this section and the agency's final decision on the matter (e.g., a recommendation for merit pay or an agency decision to grant only one-half the comparability pay adjustment).

(5) Any form or other document which the rating official is required by the agency to keep during an appraisal period (e.g., quality control records, production records, or similar records used to track employee performance during the appraisal period.)

(6) Any form or other document regarding Performance Review Board decisions, including supporting documentation and any transcript of hearings or testimony from witnesses.

(7) Any form or other document regarding decisions or recommendations of agency Executive Resources Boards