

§ 21.65

confidentiality, which must be an express promise if the information was furnished after September 27, 1975. Any individual who is refused access to a record that would reveal a confidential source shall be advised in a general way that the record includes information that would reveal a confidential source.

[42 FR 15626, Mar. 22, 1977, as amended at 46 FR 8459, Jan. 27, 1981; 50 FR 52278, Dec. 23, 1985]

§ 21.65 Access to records in exempt systems.

(a) Where a Privacy Act Record System is exempt and the requested records are unavailable under § 21.61, an individual may nevertheless make a request under § 21.40 for notification concerning whether any records about him exist and request access to such records where they are retrieved by his name or other personal identifier.

(b) An individual making a request under paragraph (a) of this section;

(1) May be given access to the records where available under part 20 of this chapter (the public information regulations) or the Commissioner may, in his discretion, entertain a request under any or all of the provisions of §§ 21.40 through 21.54; and

(2) Shall be given access upon request if the records requested are subject to 5 U.S.C. 552a(k)(2) and not to 5 U.S.C. 552a(j)(2) (i.e., because they consist of investigatory material compiled for law enforcement purposes other than criminal law enforcement purposes) and maintenance of the records resulted in denial to the individual of any right, benefit, or privilege to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible. An individual given access to a record under this paragraph (b)(2) is not entitled to seek amendment under subpart E of this part. The FDA may refuse to disclose a record that would reveal the identity of a source who furnished information to the Government under a promise of confidentiality, which must be an express promise if the information was furnished on or after September 27, 1975. Any individual refused access to a record that would reveal a confidential source shall be advised in a general

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way that the record contains information that would reveal a confidential source.

(c) The Commissioner shall not make available any record that is prohibited from public disclosure under § 20.82(b) of this chapter.

(d) Discretionary disclosure of a record pursuant to paragraph (b)(1) of this section shall not set a precedent for discretionary disclosure of a similar or related record and shall not obligate the Commissioner to exercise his discretion to disclose any other record in a system that is exempt under § 21.61.

Subpart G—Disclosure of Records in Privacy Act Record Systems to Persons Other Than the Subject Individual

§ 21.70 Disclosure and intra-agency use of records in Privacy Act Record Systems; no accounting required.

(a) A record about an individual which is contained in a Privacy Act Record System may be disclosed:

(1) To the individual who is the subject of the record, or his legal guardian under § 21.75;

(2) To a third party pursuant to a written request by, or within a written consent of, the individual to whom the record pertains, or his legal guardian under § 21.75;

(3) To any person:

(i) Where the names and other identifying information are first deleted, and under circumstances in which the recipient is unlikely to know the identity of the subject of the record;

(ii) Where disclosure is required by part 20 of this chapter (the public information regulations); or

(4) Within the Department of Health and Human Services to officers and employees who have a need for the record in the performance of their duties in connection with the laws administered and enforced by the Food and Drug Administration or that govern the agency. For purposes of this section, officers or employees of the Department shall include the following categories of individuals, who shall thereafter be subject to the same restrictions with respect to disclosure as any Food and