

Office of Communications
Reference Series
June 2005



SAMHSA Overview

Regulations for the Freedom of Information Act and Privacy Act

A Life
in the
Community
for
Everyone



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
www.samhsa.gov



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SAMHSA, a public health agency within the U.S. Department of Health and Human Services, is the lead Federal agency for improving the quality and availability of substance abuse prevention, addiction treatment, and mental health services in the United States.

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Introduction

This manual was developed to provide SAMHSA staff and contractors with an overview of the Freedom of Information Act and Privacy Act. This document outlines key principles and information that will provide you with a better understanding of the regulations as mandated by the U.S. Department of Health and Human Services (HHS).

Should you find that there are situations not addressed in this document, please contact the SAMHSA Office of Communications at 240-276-2130, and together we will work to develop an appropriate solution. All information hereafter will be available to view and download from the SAMHSA Intranet at <http://intranet.samhsa.gov>.

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What is the Freedom of Information Act (FOIA)?

FOIA is a federal access law that allows individuals to inspect public records held by government agencies. Originally passed by Congress in 1966, and later amended, the FOIA is a dynamic and evolving law and regulation. The FOIA is a successful method that increases the understanding of the operations of the Federal Government by its citizens. The administration of the FOIA by government agencies can be complex and few “across the board” guidelines apply.

The U.S. Department of Health and Human Services (HHS) provides responses to requests through each of its Operating Divisions. The FOIA Officer for each operating division has the sole responsibility and authority to make release determinations related to records of the agency requested under the FOIA.

Like all Federal agencies, HHS is required under the FOIA to disclose records requested in writing by any person. However, HHS is precluded from releasing information that falls within the nine exemptions and three exclusions contained in the statute and regulations. The FOIA applies only to Federal agencies and does not create a right of access to records held by Congress, the courts, or by state or local government agencies. Each state has its own public access laws that should be consulted for access to state and local records.

What is the HHS policy regarding FOIA?

In accordance with the Freedom of Information Act (FOIA) and the HHS Freedom of Information Regulations (45 CFR Part 5), the HHS policy is to answer all requests as accurately and completely as possible from existing records. In order to accomplish this most efficiently we require all requests to be submitted in writing, by postal service, facsimile, or messenger; requests must contain the requestor's postal address and the name of the person responsible for paying any fees that may be charged. A phone number where we can reach the requester to get clarification of the request or resolve other issues concerning the request is strongly recommended. Providing the request in writing assures that all the rights provided by the FOIA and these regulations are protected (for example, the right to administratively appeal any denials we may make and the right to have our decisions reviewed in Federal court).

What is the Privacy Act?

The Privacy Act of 1974 provides safeguards against an invasion of privacy through the misuse of records by Federal agencies. In general, the act allows a citizen to learn how records are collected, maintained, used, and disseminated by the Federal Government. The act also permits an individual to gain access to most personal information maintained by Federal agencies and to seek amendment of any inaccurate, incomplete, untimely, or irrelevant information.

The Privacy Act applies to personal information maintained by agencies in the executive branch of the Federal Government. The executive branch includes cabinet departments, military departments, government corporations, government controlled corporations, independent regulatory agencies, and other establishments in the executive branch. Agencies subject to the Freedom of Information Act are also subject to the Privacy Act. The Privacy Act does not generally apply to records maintained by State and local governments or private companies or organizations.

The Privacy Act only grants rights to U.S. citizens and to aliens lawfully admitted for permanent residence. As a result, a nonresident foreign national cannot use the act's provisions. However, a nonresident foreign national may use the FOIA to request records about himself or herself. In general, the only records subject to the Privacy Act are records that are maintained in a system of records. The idea of a "system of records" is unique to the Privacy Act and requires explanation.

The act defines a "record" to include most personal information maintained by an agency about an individual. A record contains individually identifiable information, including but not limited to information about education, financial transactions, medical history, criminal history, or employment history. A "system of records" is a group of records from which information is actually retrieved by name, Social Security number, or other identifying symbol assigned to an individual.

Some personal information is not kept in a system of records. This information is not subject to the provisions of the Privacy Act, although access may be requested under the FOIA. Most personal information in government files is subject to the Privacy Act.

The Privacy Act also establishes general records management requirements for Federal agencies. In summary, there are five basic requirements that are most relevant to individuals.

1. Each agency must establish procedures allowing individuals to see and copy records about themselves. An individual may also seek to amend any information that is not accurate, relevant, timely, or complete. The rights to inspect and to correct records are the most important provisions of the Privacy Act.
2. Each agency must publish notices describing all systems of records. The notices include a complete description of personal data recordkeeping policies, practices, and systems. This requirement prevents the maintenance of secret record systems.

3. Each agency must make reasonable efforts to maintain accurate, relevant, timely, and complete records about individuals. Agencies are prohibited from maintaining information about how individuals exercise rights guaranteed by the first amendment to the U.S. Constitution unless maintenance of the information is specifically authorized by statute or by the individual or relates to an authorized law enforcement activity.
4. The act establishes rules governing the use and disclosure of personal information. The act specifies that information collected for one purpose may not be used for another purpose without notice to or the consent of the subject of the record. The act also requires that each agency keep a record of some disclosures of personal information.
5. The act provides legal remedies that permit an individual to seek enforcement of the rights granted under the act. In addition, Federal employees who fail to comply with the act's provisions may be subjected to criminal penalties.

What is the HHS policy regarding privacy?

It is the policy of the Department to protect the privacy of individuals to the fullest extent possible while nonetheless permitting the exchange of records required to fulfill the administrative and program responsibilities of the Department, and responsibilities of the Department for disclosing records which the general public is entitled to have under the Freedom of Information Act, 5 U.S.C. 552, (45 CFR Part 5b—HHS Privacy Act Regulations).

How To Request Information

To obtain information, please address your request to the Freedom of Information Officer of the HHS OPDIV listed below that is most likely to have the records you want.

FOIA Offices within HHS

Administration for Children & Families (ACF)

Freedom of Information Officer
Room 645-F, Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201
Phone: 202-690-7453

Agency for Healthcare Research and Quality (AHRQ)

Freedom of Information Officer
Suite 501
2101 East Jefferson Street
Rockville, Maryland 20852
Phone: 301-594-6391

Administration on Aging (AOA)

Freedom of Information Officer
Washington, D.C. 20201
Phone: 202-357-3540

Centers for Disease Control and Prevention (CDC) and/or Agency for Toxic Substances and Disease Registry (ATSDA)

Freedom of Information Officer
1600 Clifton Road, N.E.
Atlanta, Georgia 30333
Phone: 404-639-7270

Centers for Medicare & Medicaid Services (CMS)

Freedom of Information Officer
North Building, Room N2-20-06
7500 Security Boulevard
Baltimore, Maryland 21244
Phone: 410-786-5353

Food and Drug Administration (FDA)

Freedom of Information Officer
Room 12A-16, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857
Phone: 301-827-6500

Health Resources and Services Administration (HRSA)

Freedom of Information Officer
Room 14-15, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857
Phone: 301-443-2865

Indian Health Service (IHS)

Freedom of Information Officer
Suite 450
12300 Twinbrook Parkway
Rockville, Maryland 20852
Phone: 301-443-1116

National Institutes of Health (NIH)

Freedom of Information Officer
Room 5B35, Building 31
9000 Rockville Pike
Bethesda, Maryland 20892
Phone: 301-496-5633

Office of Public Health and Science (OPHS)

Freedom of Information Officer
Room 17A-46 Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857
Phone: 301-443-5252

Program Support Center (PSC)

Freedom of Information Officer
Room 17A-18, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857
Phone: 301-443-1494

Substance Abuse and Mental Health Services Administration (SAMHSA)

Freedom of Information Officer
Room 8-1042
1 Choke Cherry Road
Rockville, Maryland 20857
Phone: 240-276-2130

If you are unsure of the HHS OPDIV office that can address your needs, send the request to:

U.S. Department of Health and Human Services
HHS Freedom of Information Officer
Room 645-F, Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Write the words "Freedom of Information Act Request" on the envelope and on the letter.

Your letter should include all the details possible in order to help us identify and locate the records you want. In addition to having the potential to be very costly in terms of fees, "all the records you have on" types of requests tend to require a great deal of search time, even if few or no records are found on the subject you are interested in. If you are not sure how to write your request or what details to include, contact a Freedom of Information Officer.

Only Freedom of Information Officers have the authority to release or deny records, or to waive or reduce fees. If the records you seek include records addressed to, sent from, or created by an official or office of the Office of the Secretary, including its staff offices, or of any Regional Director's Office; or if the records you seek include any records of the Administration for Children and Families, including its regional offices; or any unit of the HHS not specifically identified below; or if the records you seek involve the Office of the Secretary and any of the organizational units listed below; or if you seek records which cross HHS organizational lines, other than those involving more than one of the Public Health and Science (PHS) components (see asterisks below), only the HHS Freedom of Information Officer may determine whether to release or deny those records, or to waive or reduce fees associated with responding to your request.

If the records you seek are exclusively records of the Office of Public Health and Science or involve more than one of the Department's Public Health and Science components, including records in the regional offices, only the PHS Freedom of Information Officer may determine whether to release or deny those records or waive or reduce fees associated with responding to your FOIA request.

Operating Divisions, Programs, Publications, and Clearinghouses

Each of the 12 HHS Operating Divisions has its own contact for its publications. Submit your request for information directly to the appropriate office. Further detail on HHS is available in the current United States Government Manual, available on-line. See the "Government Manual" database on the Web: www.access.gpo.gov/su_docs/aces/aaces002.html.

Office of the Secretary (OS)—www.hhs.gov—202-690-6343

The Secretary of Health and Human Services advises the President on health, welfare, and income security plans, policies, and programs of the Federal Government. The Secretary directs Department staff in carrying out the approved programs and activities of the Department and promotes general public understanding of the Department's goals, programs, and objectives. The Secretary administers these functions through the Office of the Secretary and the 12 operating divisions.

Inspector General Hotline: Individuals wishing to report fraud, waste, or abuse against HHS programs should write to:

Office of Inspector General, HHS-TIPS Hotline
P.O. Box 23489
L'Enfant Plaza Station
Washington, DC 20026-3489,

or E-mail at htips@os.dhhs.gov.

Phone (toll-free): 800-HHS-TIPS (800-447-8477) or 800-377-4950 (TTY)

Facsimile (FAX): 800-223-8164

Administration on Aging (AoA)—www.aoa.gov—202-401-4634

AoA administers a program of formula grants to States to establish State and community programs for older persons and administers a program of grants to American Indians, Alaskan Natives, and Native Hawaiians to establish programs for older Native Americans.

Publications—AOA: Copies of publications are available free of charge by contacting the Office of the Executive Secretariat, 202-619-0724. For information on services available to elderly persons in any community in the Nation, call the Elder Care Locator, 800-677-1116.

Administration for Children and Families (ACF)—www.acf.dhhs.gov— 202-401-9200

ACF is headed by the Assistant Secretary for Children and Families who also serves as the Director of Child Support Enforcement. 370 L'Enfant Promenade, S.W., Washington, DC 20447.

Mental Retardation: Call or write the President's Committee on Mental Retardation, ACF, for information on HHS mental retardation programs. 202-619-0634.

- **Administration on Children, Youth, and Families (ACYF):** Administers State grant programs to assist States in providing independent living, child welfare services, foster care, and adoption assistance; child care programs; and State grant programs to improve and increase child abuse prevention and treatment activities and develop family preservation and family support services. Administers the Head Start Program; services for runaway and homeless youth and their families; the Youth Gang Drug Prevention Program; child welfare services research, demonstration and training programs, the Adoption Opportunities Program, and other discretionary child welfare services programs; child abuse and neglect research and demonstration programs; and the Community Schools Youth Services and Supervision Grant Program. 202-205-8347 or 202-401-2337.
- **Administration on Developmental Disabilities (ADD):** 202-690-6590
- **Administration for Native Americans (ANA):** Promotes the goal of social and economic self-sufficiency of American Indians, Alaskan Natives, Native Hawaiians, and other Native American Pacific Islanders, including Natives of Samoa, Guam, Palau, and the Northern Marianas. 202-690-7776.
- **Child Support Enforcement (CSE):** The Office assists States in establishing adequate reporting procedures and in maintaining records. It operates the Federal Parent Locator Service, including the National New Hire Directory; certifies to the Secretary of the Treasury amounts of overdue child support that require collection in specific instances; works with States to automate their child support enforcement programs; and reviews State applications for use of U.S. courts to enforce child support orders. 202-401-9373.
- **Community Services:** Responsible for administering programs that serve low-income and needy. Administers the Community Services Block Grant, Social Services Block Grant, and the Low-Income Home Energy Assistance program. Develops new and innovative approaches to reduce welfare dependency. 202-401-9333.
- **Refugee Resettlement:** Policies/programs refugee resettlement, immigration, and repatriation. 202-401-9246.
- **Office of Family Assistance:** Public assistance and economic self-sufficiency programs. Administers the following programs nationwide: Temporary Assistance for Needy Families (TANF); Aid to the Aged, Blind, and Disabled in Guam, Puerto Rico, and The Virgin Islands; the Emergency Assistance Program.

Publications—ACF: Contact the Office of Public Affairs, 7th Floor, Aerospace Building, 370 L'Enfant Promenade S.W., Washington, DC 20744. 202-401-9215.

**Agency for Healthcare Research and Quality (AHRQ)—www.ahrq.gov—
301-594-1364**

AHRQ is the Federal Government's focal point for health services research and the only Federal agency charged with producing and disseminating scientific and policy-relevant information about the quality, medical effectiveness, and cost of health care.

AHRQ supports and conducts research and evaluation projects in the areas of consumer choice; clinical improvement; health care cost, financing, and access; health information technology; outcomes and effectiveness of health care; health care organization and delivery; quality measurement and improvement; and technology assessment.

Publications—AHRQ: Single copies of most publications produced by the Agency are available free of charge from the AHRQ Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907. Phone: (toll-free) 800-358-9295.

**Agency for Toxic Substances and Disease Registry (ATSDR)—
www.atsdr.cdc.gov—404-639-0501**

ATSDR's mission is to prevent exposure and adverse human health effects and diminished quality of life associated with exposure to **hazardous substances** from **waste sites**, unplanned releases, and other sources of **pollution** present in the environment.

For further information, contact the Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry, 1300 Clifton Road NE., MS E-60, Atlanta, GA 30333. Fax: 404-639-0522.

**Centers for Disease Control and Prevention (CDC)—www.cdc.gov—
404-639-3286**

CDC is the Federal agency charged with protecting the public health of the Nation by providing leadership and direction in the prevention and control of diseases and other preventable conditions and responding to public health emergencies. CDC administers national programs for the prevention and control of communicable and vector-borne diseases, injury, and other preventable conditions. It develops and implements programs in chronic disease prevention and control, including consultation with State and local health departments. It develops and implements programs to deal with environmental health problems, including responding to environmental, chemical, and radiation emergencies. CDC directs and enforces foreign quarantine activities and regulations; provides consultation and assistance in upgrading the performance of public health and clinical laboratories; and organizes and implements a National Health Promotion Program, including a nationwide program of research, information, and education in the field of smoking and health. It also collects, maintains, analyzes, and disseminates national data on health status and health services.

CDC participates with international agencies and provides consultation in the control or eradication of communicable or preventable diseases. It is composed of 11 major operating components: Epidemiology Program Office, International Health Program Office, National Immunization Program Office, Public Health Practice Program Office, National Center for Prevention Services, National Center for Environmental Health, National Center for Injury Prevention and Control, National Institute for Occupational Safety and Health, National Center for Chronic Disease Prevention and Health Promotion, National Center for Infectious Diseases, and the National Center for Health Statistics.

Publications—CDC: Single copies of most publications are available free of charge from the Management Analysis and Services Office, Centers for Disease Control and Prevention. Phone, 404-639-3534. Bulk quantities of publications may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Centers for Medicare & Medicaid Services (CMS)(formerly HCFA)— cms.hhs.gov—410-786-3151

CMS provides under one administration the oversight of the Medicare program, the Federal portion of the Medicaid program, and related quality assurance activities. CMS serves millions of elderly, disabled, and poor Americans.

Publications—CMS: Contact the Distribution Management Branch, Division of Printing and Distribution Services. Phone, 410-786-7892. For the Centers for Medicare & Medicaid Services (CMS), "Information on Availability of Medicare/Medicaid Manuals" (CMS-Pub 02192), contact CMS at 410-786-7860, Office of Administrative Services.

Food and Drug Administration (FDA)—www.fda.gov—301-443-1544

FDA protects the health of the Nation against impure and unsafe foods, drugs and cosmetics, and other potential hazards. Works to develop an AIDS vaccine and AIDS diagnostic tests, and conducts other AIDS-related activities; develops and administers programs with regard to the safety, effectiveness, and labeling of all drug products and all medical devices for human use; develops and administers programs with regard to the safety, composition, quality (including nutrition) , and labeling of foods, food additives, colors, and cosmetics; develops and administers programs with regard to the safety and effectiveness of animal drugs, feeds, feed additives, veterinary medical devices (medical devices for animal use), and other veterinary medical products. Regional field offices: 301-827-3101

- Center for Drug Evaluation and Research: 301-594-6740
- Center for Biologics Evaluation and Research: 301-827-0372
- Center for Food Safety and Applied Nutrition: 202-205-4057
- Center for Veterinary Medicine: 301-594-1755
- Center for Devices and Radiological Health: 301-443-4690
- National Center for Toxicological Research: 501-543-7000

Publications—FDA: FDA Consumer, FDA's official magazine, is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Phone, 202-512-1800.

Health Resources and Services Administration (HRSA)—www.hrsa.gov—301-443-2086

HRSA is the principal primary health care service agency of the Federal Government. Its mission is to make essential primary health care services accessible to the poor, uninsured, and geographically isolated -- populations severely under served by the private health care system. HRSA programs bolster training for primary care physicians, physician assistants, and advanced practice nurses; place qualified primary care providers in communities certified to be health professional shortage areas through the National Health Service Corps; assist health providers that serve the underserved in keeping pace with changes in health care, including managed care; track the adequacy of the supply and preparation of primary care providers and record the malpractice and disciplinary actions taken against physicians and dentists through the National Practitioner Databank.

- Bureau of Primary Health Care: 301-594-4148
- Bureau of Health Professions: 301-443-1590
- HIV/AIDS Bureau 301-443-0791
- Maternal and Child Health Bureau: 301-443-0205

Publications—HRSA: Single copies of most publications are available free of charge from the HRSA Information Center by calling 1-888-Ask-HRSA (1-888-275-4772) or through the Information Center web site at www.ask.hrsa.gov. Additional information may be obtained from the HRSA Office of Communications, Room 14-45, Parklawn Bldg. (301) 443-5630.

Indian Health Service (IHS)—www.ihs.gov—301-443-3593

IHS provides a comprehensive health services delivery system for American Indians and Alaska Natives, with opportunity for maximum tribal involvement, in developing and managing programs to meet their health needs. Assists Indian tribes in developing their health programs; facilitates and assists Indian tribes in coordinating health planning, in obtaining and utilizing health resources available through Federal, State, and local programs, in operating comprehensive health programs, and in health program evaluation.

Publications—IHS: Single copies of publications describing the Indian Health Service and the health status of American Indians and Alaska Natives are available free of charge from the Communications Office, Room 6-35. Phone, 301-443-3593.

National Institutes of Health (NIH)—www.nih.gov—301-496-4000

NIH is the principal biomedical research agency of the Federal Government tasked to employ science in the pursuit of knowledge to improve human health conditions. It supports biomedical and behavioral research domestically and abroad, conducts research in its own laboratories and clinics, trains promising young researchers, and promotes acquiring and distributing medical knowledge.

- *National Cancer Institute* (301-496-5585): Developed a National Cancer Program to expand existing scientific knowledge on cancer cause and prevention as well as on the diagnosis, treatment, and rehabilitation of cancer patients. Sponsors extensive programs to disseminate cancer information and supports the Cancer Information Service at 1-800-422-6237.
- *National Heart, Lung, and Blood Institute* (301-496-2411): conducts research in its laboratories and supports scientific institutions and individuals by research grants and contracts. Leads a national program in diseases of the heart, blood vessels, lung, and blood; sleep disorders; and blood resources.
- *National Library of Medicine* (301-496-6308): serves as Nation's chief medical information source and is authorized to provide medical library services and on-line bibliographic searching capabilities, such as MEDLINE, TOXLINE. Sponsors and conducts research and development in biomedical communications (e.g., telemedicine, expert systems, and advanced medical imaging).
- *National Institute of Diabetes and Digestive and Kidney Diseases* (301-496-3583): causes, prevention, diagnosis, and treatment of diabetes, endocrine, and metabolic diseases; digestive diseases and nutrition; kidney and urologic diseases; and blood diseases.
- *National Institute of Allergy and Infectious Diseases* (301-496-5717): Conducts research, training, and clinical evaluations on the cause, treatment, and prevention of a wide variety of infectious, allergic, and immunologic diseases. Among areas of special emphasis are: AIDS, asthma and allergic diseases, immunologic diseases, transplantation, sexually transmitted diseases, enteric diseases such as hepatitis, influenza, and other viral respiratory infections, tropical diseases, tuberculosis, and vaccine development.
- *National Institute of Child Health and Human Development* (301-496-5133): Conducts biomedical and behavioral research on child and maternal health; on problems of human development, with special reference to mental retardation; and on family structure, the dynamics of human population, and the reproductive process. Specific areas of research include: pediatric and maternal AIDS, genetic diseases, short stature, premature puberty, infertility, minority health, learning disabilities such as dyslexia, sexually transmitted diseases, and the causes of infant morbidity and mortality, including low birth weight, premature birth, and sudden infant death syndrome.
- *National Institute on Deafness and Other Communication Disorders* (301-496-7243): Conducts biomedical and behavioral research and research training on normal mechanisms as well as diseases and disorders of hearing, balance, smell, taste, voice, speech, and language.

- *National Institute of Dental and Craniofacial Research* (301-496-6621): Conducts research, causes, prevention, diagnosis, and treatment of craniofacial, dental and oral diseases with special emphasis on oral, pharyngeal, and esophageal cancers.
- *National Institute of Environmental Health Sciences* (919-541-3211): Conducts research on how the environment interacts with genetic factors to cause disease and dysfunction with emphasis is on disease prevention through identification and assessment of risks.
- *National Institute of General Medical Sciences* (301-496-7301): emphasizes basic biomedical science, with activities ranging from cell biology, chemistry, and biophysics, to genetics, pharmacology, and systemic response to trauma.
- *National Institute of Neurological Disorders and Stroke* (301-496-5751): research on human neurological disorders such as Parkinson's disease, epilepsy, multiple sclerosis, muscular dystrophy, head and spinal cord injuries, and stroke. The Institute also conducts and supports research on the development and function of the normal brain and nervous system.
- *National Eye Institute* (301-496-4583): causes, natural history, prevention, diagnosis, and treatment of disorders of the eye and visual system, and in related fields.
- *National Institute on Aging* (301-496-1752): to increase knowledge of the aging process and the physical, psychological, and social factors associated with aging. Alzheimer's disease, health and retirement, menopause, and frailty are among the areas of special concern.
- *National Institute of Alcohol Abuse and Alcoholism* (301-443-3885). Prevention and treatment research, strategies, and information.
- *National Institute of Arthritis and Musculoskeletal and Skin Diseases* (301-496-4353).
- *National Institute on Drug Abuse* (301-443-6480): addiction, prevention, treatment, and policy.
- *National Institute of Mental Health* (301-443-3673): Conducts research in neuroscience, genetics, molecular biology, and behavior to prevent and expand treatments available for mental illnesses such as schizophrenia, depressive disorders, severe anxiety, childhood mental disorders including autism and attention-deficit/hyperactivity disorder (AD/HD).
- *National Human Genome Research Institute* (301-496-0844): Conducts research including chromosome mapping, DNA sequencing, database development, and technology development for genome research. Studies ethical, legal, and social implications.
- *National Institute of Nursing Research* (301-496-0207): research and training, to build a scientific base for nursing practice and patient care.
- *Clinical Center* (301-496-3227): clinical studies of specific diseases and disorders. A percentage of the patients are normal volunteers—healthy persons who provide an index of normal body functions against which to measure the abnormal.

- *Fogarty International Center* (301-496-2075): international scientific cooperation. In pursuit of its mission, the Center fosters biomedical research partnership between U.S. scientists and foreign counterparts through grants, fellowships, and international agreements, and provides leadership in international science policy and research strategies.
- *Center for Information Technology* (301-496-6203): supports Institute biomedical research programs.
- *National Center for Research Resources* (301-496-5605): oversees a centralized program of intramural research resources through the planning, performance, and reporting of research projects.
- *Center for Scientific Review* (301-435-1111): Central point for all Public Health Service (PHS) competing grant applications for research and research training support. Provides scientific and technical merit review.

Publications—NIH: Publications, brochures, and reports on health and disease problems, medical research, and biomedical communications are available from the Division of Public Information, Office of Communications, National Institutes of Health, Bethesda, MD 20892. Phone, 301-496-4461. Contact this office for single copies of the following publications: Journal of National Cancer Institute; Environmental Health Perspectives; Scientific Directory and Annual Bibliography; NLM—Medline (brochure). NIH Publications List, Index Medicus, Cumulated Index Medicus Annual, and Research Grants Index may be ordered from the Government Printing Office, Washington, DC 20402. Internet: www.nih.gov.

Program Support Center (PSC)—www.psc.gov—301-443-1494

PSC provides administrative support services to the HHS components and other Federal agencies. For further information, contact the Director of Marketing, Program Support Center, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857.

PSC is comprised of:

- Administrative Operations Service: 301-443-2516
- Financial Management Service: 301-443-1478
- Human Resources Service: 301-443-1200
- Information Technology Service: 301-443-9343

**Substance Abuse and Mental Health Services Administration (SAMHSA)—
www.samhsa.gov—240-276-2130**

SAMHSA provides national leadership to ensure that knowledge, based on science and state-of-the-art practice, is effectively used for the prevention and treatment of addictive and mental disorders. It strives to improve access and reduce barriers to high-quality, effective programs and services for individuals who suffer from or are at risk for these disorders, as well as for their families and communities.

SAMHSA is comprised of:

- Center for Substance Abuse Prevention: 240-276-2420
- Center for Substance Abuse Treatment: 240-276-1660
- Center for Mental Health Services: 240-276-1310

Publications—SAMHSA: SAMHSA collects and compiles alcohol and drug abuse prevention literature and other materials, and supports the Center for Substance Abuse Prevention National Clearinghouse for Alcohol and Drug Information and the Regional Alcohol and Drug Awareness Resource Network to disseminate such materials among States, political subdivisions, educational agencies and institutions, health and drug treatment and rehabilitation networks, and the general public. It also supports a clearinghouse to serve as a focal point for information dissemination to meet the mental health service needs of professionals. Contact the Associate Administrator for Communications (240-276-2130) or write to Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, 1 Choke Cherry Road, Rockville, MD 20857.

Clearinghouses

Several HHS clearinghouses are listed below. For other sources of health and human services information, see www.healthfinder.gov accessible from the HHS Web site www.hhs.gov.

Agency for Healthcare Research and Quality Publications Clearinghouse	800-358-9295 Local/non-US:301-621-3033 TDD:888-586-6340
Alzheimer's Disease Education and Referral Center	800-438-4380
Head Start Publications Management Center	FAX:703-683-5769
Health Resources and Services Administration (HRSA) Information Center	1-888-Ask-HRSA (1-888-275-4772)
Low Income Home Energy Assistance Program Clearinghouse	888-294-8662
National Adoption Information Clearinghouse	888-251-0075
National Aging Information Center	202-619-7501 TTY:202-401-7575
National Arthritis and Musculoskeletal and Skin Diseases Information Clearinghouse	301-495-4484

National AIDS Clearinghouse	800-458-5231 TDD:800-243-7012
National Center for Complementary and Alternative Medicine Clearinghouse	888-644-6226
National Child Care Information Center	800-616-2242
National Clearinghouse for Alcohol and Drug Information	800-729-6686 TDD:800-487-4890
National Clearinghouse on Child Abuse and Neglect Information	800-394-3366
National Clearinghouse on Families and Youth	301-608-8098
National Clearinghouse for Primary Care Information	800-400-2742
National Diabetes Information Clearinghouse	301-654-3327
National Digestive Diseases Information Clearinghouse	301-654-3810
National Health Information Center	800-336-4797 Local:301-565-4167
National Institute on Deafness and Other Communication Disorders Information Clearinghouse	800-241-1044 TDD/TTY:800-241-1055
National Kidney and Urologic Diseases Information Clearinghouse	301-654-4415
National Maternal and Child Health Clearinghouse	703-524-7802
National Mental Health Services Knowledge Exchange Network	800-789-2647
National Oral Health Information Clearinghouse	301-402-7364
National Sudden Infant Death Syndrome Resource Center	703-821-8955
National Women's Health Information Center	800-994-9662 TDD:888-220-5446
Office of Minority Health Resource Center	Local:301-587-9704/5 800-444-6472 TDD:301-589-0951
Office of Population Affairs Clearinghouse	301-654-6190
Osteoporosis and Related Bone Diseases National Resource Center	800-624-2663
Weight-Control Information Network	800-946-8098

HHS Press Office News Media Contacts

HHS Headquarters

HHS Press Office

Phone: (202) 690-6343

Fax: (202) 690-6247

Web site: <http://www.hhs.gov/news>

HHS Office of Inspector General

Phone: (202) 619-1343

Web site: <http://www.oig.hhs.gov>

HHS Agencies

Administration for Children and Families

Phone: (202) 401-9215

Fax: (202) 205-9688

Web site: <http://www.acf.hhs.gov/news/index.html>

Administration on Aging

Phone: (202) 401-4541

Fax: (202) 357-3556

Web site: <http://www.aoa.gov/press/press.asp>

Agency for Healthcare Research and Quality

Phone (301) 427-1855

Fax (301) 427-1873

Web site: <http://www.ahrq.gov/news/vnewsix.htm>

Agency for Toxic Substances and Disease Registry

Phone (404) 498-0070

Fax (404) 498-0039

Web site: <http://www.atsdr.cdc.gov/#NEWS>

Centers for Disease Control and Prevention

Phone: (404) 639-3286

Fax: (404) 639-7394

Web site: <http://www.cdc.gov/od/oc/media/>

Centers for Medicare & Medicaid Services (formerly the Health Care Financing Administration)

Phone: (202) 690-6145

Fax: (202) 690-7159

Web site: <http://www.cms.hhs.gov/media/>

Food and Drug Administration

Phone: (301) 827-6250

Fax: (301) 827-1681

Web site: <http://www.fda.gov/opacom/hpwhats.html>

Health Resources and Services Administration

Phone: (301) 443-3376

Fax: (301) 443-1989

Web site: <http://newsroom.hrsa.gov/>

Indian Health Service

Phone: (301) 443-3593

Fax: (301) 443-0507

Web site: http://www.ihs.gov/PublicInfo/PressPub_index.asp

National Institutes of Health

Phone: (301) 496-5787

Fax: (301) 496-0017

Web site: <http://www.nih.gov/news/>

Substance Abuse and Mental Health Services Administration

Phone: (240) 276-2130

Fax: (240) 276-2135

Web site: <http://www.samhsa.gov/news/news.html>

Freedom of Information Act (FOIA) as Amended by Public Law 104-231

Web Resources

Freedom of Information Act (FOIA) as amended by Public Law 104-231

<http://www.hhs.gov/foia/amend.html>

Title 45, Volume 1, Parts 1 to 199

**Revised as of October 1, 1997 from the U.S. Government Printing Office
via GPO Access Cite: 45CFR5**

Subtitle A—Department of Health and Human Services

Part 5—Freedom of Information Regulations

<http://www.hhs.gov/foia/45cfr5.html>

Government Information Locator System (GILS)

http://www.access.gpo.gov/su_docs/gils/whatgils.html

Lessons Learned From FOIA Litigation

Source: Patricia M. Mantoan, Attorney, January 2005.

I. FOIA Litigation

- A. Unhappy requesters have the right to file a lawsuit against the agency in United States District Court.
- B. The court has jurisdiction to forbid an agency from withholding agency records and to order the production of any agency records improperly withheld from a requester.
- C. The court has power to order the United States to pay attorney fees and costs to a requester who has substantially prevailed in litigation.
- D. In an unusual case, a federal district court in California found that even though the requester's FOIA request was properly denied, the requester had an independent claim against an agency for violating the FOIA by failing to respond to his request within the statutory time limits. *Gilmore v. United States Department of Energy*, 4 F. Supp. 2d 912, 924 (N.D. Cal. 1998). The requester claimed that the agency had a pattern and practice of late responses to FOIA requests. The requester sought declaratory judgment that the practice was unlawful and sought an order enjoining the agency from failing to process FOIA requests within the statutory period. (Final outcome of case is unknown.)

II. Role of General Law Division in FOIA Litigation

- A. We represent your agency's interests in FOIA litigation.
- B. We work with your office to gather information about the FOIA request at issue.
- C. We work with the Assistant United States Attorney to defend the case.

III. When Does Litigation Arise?

- A. After no response—The FOIA sets very tight deadlines for responding to requests (20 working days from date of receipt). Failure to comply with this deadline is a constructive exhaustion of administrative remedies, and a requester is entitled to file suit immediately.
- B. After no response to administrative appeal—The FOIA also sets a tight deadline for responding to administrative appeals (20 working days from date of receipt). Failure to comply with this deadline is a constructive exhaustion of administrative remedies, and a requester is entitled to file suit immediately.
- C. After administrative appeal—Following an administrative appeal decision, a requester may file suit.

IV. Problems that May Lead to Litigation

- A. First-in-first-out processing without any correspondence between FOIA Office and requester.
- B. Not responding in a timely manner to requests for expedited processing.
- C. Slow processing and response time due to backlog.
- D. People are bringing litigation because it moves them to the front of the queue.
- E. Adequacy of searches—Program office is not performing an adequate search for all responsive documents.

V. Effects of Litigation

- A. Judges get involved.
 - 1. Orders to process requests—If a request has not been processed, judges can order that processing be completed by a certain date.
 - 2. Orders have to be followed—Once a judge makes an order, they are binding on the parties.
 - 3. Unsympathetic—Judges do not know how difficult it is to process FOIA requests and do not appreciate your workload.
- B. Your workload is effected.
 - 1. Requests moved to the front of the queue—In cases where the request has not been processed, the judge may order that processing be completed by a certain date.
 - 2. Resources diverted to FOIA litigation—FOIA staff has to complete processing of requests that are moved to the front of the queue, be available to answer questions or provide information to OGC attorneys, and work on declarations or Vaughn Index.

VI. Motion for Stay of Litigation

- A. A motion to stay the litigation is filed when the FOIA request has not been processed. A “stay” in FOIA litigation means to put the litigation “on hold” until the request has been processed.
- B. EFOIA Amendments of 1996 made it harder to get FOIA litigation stayed—Chronic backlogs no longer justify a stay. 5 U.S.C. § 552 (a)(6)(c)(ii).
- C. How do we justify the stay?
 - 1. The agency demonstrates reasonable progress in reducing backlog.

2. A stay may be justified where the agency's initial response asserts that it cannot meet the normal time limits and offers the requester the chance to limit the request or agree to a longer processing time, and the requester refuses to do so. 5. U.S.C. § 552 (a)(6)(B)(ii), (C)(iii). We encourage your office to avail itself of this option routinely.
3. Need a paper trail, such as correspondence and memoranda of phone calls.

VII. Steps to Avoid Litigation, or At Least Be In a Better Position During Litigation

A. Improve customer relations.

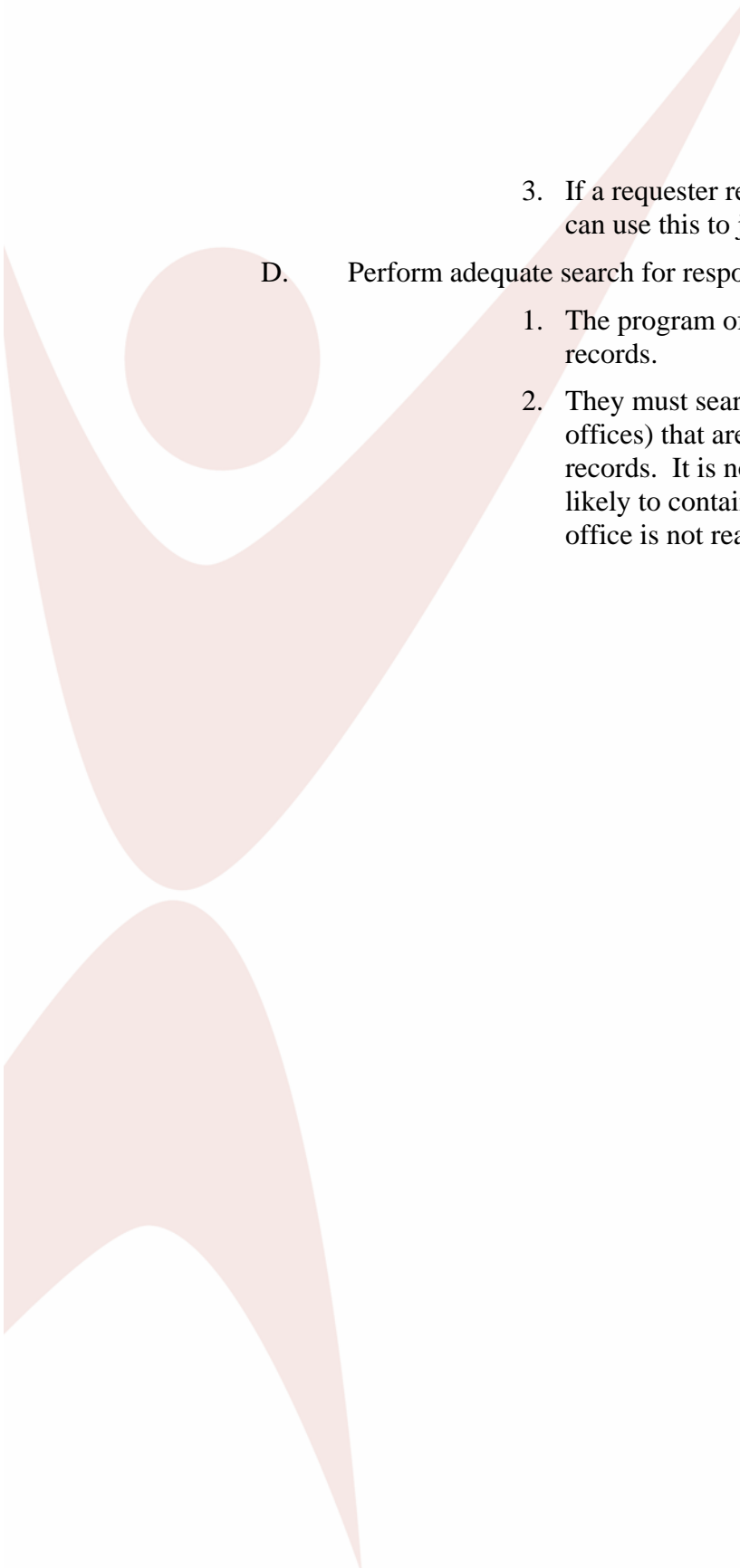
1. Let the requester know what is going on with the request. If requesters have not heard anything about their request for a while, they may think their request is being ignored by the agency and will want to file a lawsuit.
2. The FOIA Office should return phone calls or written inquiries about the status of processing within a reasonable time period. This keeps the lines of communication open and shows your good faith in processing the request. When the lines of communication break down, litigation is more likely to occur.
3. Document—Create a paper trail of your communications with the requester. It is important to have a written record because it will help us if there is litigation.

B. Attempt to narrow broad requests.

1. Sometimes requesters do not know what they are asking for and need some technical guidance. Or, they simply ask for an enormous amount of information. Either way, we can ask them to refine the request.
2. Keep a written record because it memorialized what has been said verbally and can be used as evidence in court.
3. If a requester refuses to narrow a broad request, we can use this to justify a stay of litigation.

C. Attempt to negotiate alternate time frame for processing.

1. If you know that you will not be able to process the request within 20 working days, you should try to negotiate with the requester an alternate time frame. This is an informal way of resolving this issue, without getting a court involved.
2. Keep a written record because it memorialized what has been said verbally and can be used as evidence in court.



3. If a requester refuses to negotiate an alternate time frame, we can use this to justify a stay of litigation.

D. Perform adequate search for responsive documents.

1. The program office is responsible for searching for responsive records.
2. They must search in all location (offices and files within offices) that are reasonably likely to contain responsive records. It is not enough to search merely in the location most likely to contain responsive records. Make sure the program office is not reading the request too narrowly.

Title 45, Volume 1, Parts 1 to 199

Revised as of October 1, 1997

**From the U.S. Government Printing Office via
GPO Access Cite: 45CFR5**

Subtitle A—U.S. Department of Health and Human Services

Part 5—Freedom of Information Regulations

Subpart A—Basic Policy

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- 5.2 Policy.
- 5.3 Scope.
- 5.4 Relationship between the FOIA and the Privacy Act of 1974.
- 5.5 Definitions.

Subpart B—Obtaining a Record

- 5.21 How to request records.
- 5.22 Requests not handled under the FOIA.
- 5.23 Referral of requests outside the Department.
- 5.24 Responding to your request.

Subpart C—Release and Denial of Records

- 5.31 Designation of authorized officials.
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5.69 Exemptions 8 and 9: Records on financial institutions; records on wells.

Authority: 5 U.S.C. 552, 18 U.S.C. 1905, 31 U.S.C. 9701, 42 U.S.C. 1306(c), E.O. 12600.

Source: 53 FR 47700, Nov. 25, 1988, unless otherwise noted.

Subpart A—Basic Policy

Sec. 5.1 Purpose.

This part contains the rules that the Department of Health and Human Services (HHS) follows in handling requests for records under the Freedom of Information Act (FOIA). It describes how to make a FOIA request; who can release records and who can decide not to release; how much time it should take to make a determination regarding release; what fees may be charged; what records are available for public inspection; why some records are not released; and your right to appeal and then go to court if we refuse to release records.

Sec. 5.2 Policy.

As a general policy, HHS follows a balanced approach in administering FOIA. We not only recognize the right of public access to information in the possession of the Department, but also protect the integrity of internal processes. In addition, we recognize the legitimate interests of organizations or persons who have submitted records to the Department or who would otherwise be affected by release of records. For example, we have no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. This policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized in the Freedom of Information Act.

Sec. 5.3 Scope.

These rules apply to all components of the Department. Some units may establish additional rules because of unique program requirements, but such rules must be consistent with these rules and must have the concurrence of the Assistant Secretary for Public Affairs. Existing implementing rules remain in effect to the extent that they are consistent with the new Departmental regulation. If additional rules are issued, they will be published in the Federal Register, and you may get copies from our Freedom of information Officers.

Sec. 5.4 Relationship between the FOIA and the Privacy Act of 1974.

- a. **Coverage.** The FOIA and this rule apply to all HHS records. The Privacy Act, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records. ``Individuals" and ``system of records" are defined in the Privacy Act and in our Privacy Act regulation, part 5b of this title.
- b. **Requesting your own records.** If you are an individual and request records, then to the extent you are requesting your own records in a system of records, we will handle your request under the Privacy Act and part 5b. If there is any record that we need not release to you under those provisions, we will also consider your request under the FOIA and this rule, and we will release the record to you if the FOIA requires it.
- c. **Requesting another individual's record.** Whether or not you are an individual, if you request records that are about an individual (other than yourself) and that are in a system of records, we will handle your request under the FOIA and this rule. (However, if our disclosure in response to your request would be permitted by the Privacy Act's disclosure provision, 5 U.S.C. 552a(b), for reasons other than the requirements of the FOIA, and if we decide to make the disclosure, then we will not handle your request under the FOIA and this rule. For example, when we make routine use

disclosures pursuant to requests, we do not handle them under the FOIA and this rule. ``Routine use" is defined in the Privacy Act and in Part 5b). If we handle your request under the FOIA and this rule and the FOIA does not require releasing the record to you, then the Privacy Act may prohibit the release and remove our discretion to release.

Sec. 5.5 Definitions.

As used in this part, *Agency* means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, HHS is an agency. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession or under the control of HHS or its agents, such as Medicare health insurance carriers and intermediaries.

Commercial use means, when referring to a request, that the request is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put; the identity of the requester (individual, non-profit corporation, for-profit corporation), on the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

Department or *HHS* means the Department of Health and Human Services. It includes Medicare health insurance carriers and intermediaries to the extent they are performing functions under agreements entered into under sections 1816 and 1842 of the Social Security Act, 42 U.S.C. 1395h, 1395u.

Duplication means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microform, audio-visual materials, and magnetic tapes, cards, and discs.

Educational institution means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program of scholarly research.

Freedom of Information Act or *FOIA* means section 552 of Title 5, United States Code, as amended.

Freedom of Information Officer means an HHS official who has been delegated the authority to release or withhold records and assess, waive, or reduce fees in response to FOIA requests.

Non-commercial scientific institution means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

Records means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards; magnetic tapes, cards, or discs; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures). It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials. Nor does it include books, magazines, pamphlets, or other reference material in formally organized and officially designated HHS libraries, where such materials are available under the rules of the particular library.

Representative of the news media means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). We will treat freelance journalists as representatives of a new media entity if they can show a likelihood of publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

Request means asking for records, whether or not you refer specifically to the Freedom of Information Act. Requests from Federal agencies and court orders for documents are not included within this definition. Subpoenas are requests only to the extent provided by Part 2 of this title.

Review means, when used in connection with processing records for a commercial use request, examining the records to determine what portions, if any, may be withheld, and any other processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include examination done in the appeal stage with respect to an exemption that was applied at the initial request stage. However, if we initially withhold a record under one exemption, and on appeal we determine that that exemption does not apply, then examining the record in the appeal stage for the purpose of determining whether a different exemption applies is included in review. It does not include the process of researching or resolving general legal or policy issues regarding exemptions.

Search means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

Subpart B—Obtaining a Record

Sec. 5.21 How to request records.

- a. **General.** Our policy is to answer all requests, both oral and written, for records. However, in order to have the rights given you by the FOIA and by this regulation (for example, the right to appeal if we deny your request and the right to have our decisions reviewed in court), you must either make your request in writing or make it orally to a Freedom of Information Officer. Freedom of Information Officers and their staffs may put in writing any oral requests they receive directly.
- b. **Addressing requests.** It will help us to handle your request sooner if you address it to the Freedom of Information Officer in the HHS unit that is most likely to have the records you want. (See Sec. 5.31 of this Part for a list of Freedom of Information Officers.) If you cannot determine this, send the request to: HHS Freedom of Information Officer, 645-F, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Write the words "Freedom of Information Act Request" on the envelope and letter.
- c. **Details in the letter.** You should provide details that will help us identify and find the records you are requesting. If there is insufficient information, we will ask you for more. Include your telephone number(s) to help us reach you if we have questions. If you are not sure how to write your request or what details to include, communicate with a Freedom of Information Officer.

Sec. 5.22 Requests not handled under the FOIA.

- a. We will not handle your request under the FOIA and this regulation to the extent it asks for records that are currently available, either from HHS or from another part of the Federal Government, under a statute that provides for charging fees for those records. For example, we will not handle your request under the FOIA and this regulation to the extent it asks for detailed earnings statements under the Social Security program, or records currently available from the Government Printing Office of the National Technical Information Service.
- b. We will not handle your request under the FOIA and this regulation to the extent it asks for records that are distributed by an HHS program office as part of its regular program activity, for example, health education brochures distributed by the Public Health Service or public information leaflets distributed by the Social Security Administration.

Sec. 5.23 Referral of requests outside the Department.

If you request records that were created by, or provided to us by, another Federal agency, and if that agency asserts control over the records, we may refer the records and your request to that agency. We may likewise refer requests for classified records to the agency that classified them. In these cases, the other agency will process and respond to your request, to the extent it concerns those records, under that agency's regulation, and you need not make a separate request to that agency. We will notify you when we refer your request to another agency.

Sec. 5.24 Responding to your request.

- a. **Retrieving records.** The Department is required to furnish copies of records only when they are in our possession or we can retrieve them from storage. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records in the Records Disposal Act of 1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101-11.4; the General Records Schedules of the National Archives and Records Administration; and in the HHS Handbook: Files Maintenance and Records Disposition.
- b. **Furnishing records.** The requirement is that we furnish copies only of records that we have or can retrieve. We are not compelled to create new records. For example, we are not required to write a

new program so that a computer will print information in the format you prefer. However, if the requested information is maintained in computerized form, but we can, with minimal computer instructions, produce the information on paper, we will do this if it is the only way to respond to a request. Nor are we required to perform research for you. On the other hand, we may decide to conserve government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. Moreover, we are required to furnish only one copy of a record and usually impose that limit. If information exists in different forms, we will provide the record in the form that best conserves government resources. For example, if it requires less time and expense to provide a computer record as a paper printout rather than in an electronic medium, we will provide the printout.

Subpart C—Release and Denial of Records

Sec. 5.31 Designation of authorized officials.

- a. **Freedom of Information Officers.** To provide coordination and consistency in responding to FOIA requests, only Freedom of Information Officers have the authority to release or deny records. These same officials determine fees.
 1. **HHS Freedom of Information Officer.** Only the HHS Freedom of Information Officer may determine whether to release or deny records in any of the following situations:
 - i. The records you seek include records addressed to or sent from an official or office of the Office of the Secretary, including its staff offices, or of any Regional Director's Office;
 - ii. The records you seek include any records of the Office of Human Development Services, the Family Support Administration, or any organizational unit of HHS not specifically identified below; or
 - iii. The records include records of more than one of the major units identified below (PHS, HCFA, and SSA) either at headquarters or in a Regional Office.
 2. **PHS Freedom of Information Officer.** If the records you seek are exclusively records of the Public Health Service or if the records you seek involve more than one health agency of the Public Health Service, including its records in the regions, only the Deputy Assistant Secretary for Health (Communications), who also is the PHS Freedom of Information Officer, may determine whether to release or deny the records, except as follows:
 - i. **CDC and ATSDR Freedom of Information Officer.** If the records you seek are exclusively records of the Centers for Disease Control and/or the Agency for Toxic Substances and Disease Registry, only the Director, Office of Public Affairs, CDC, who also is the CDC and ATSDR Freedom of Information Officer, may determine whether to release or deny the records.
 - ii. **FDA Freedom of Information Officer.** If the records you seek are exclusively records of the Food and Drug Administration, only the Associate Commissioner for Public Affairs, FDA, who also is the FDA Freedom of Information Officer, may determine whether to release or deny the records.
 - iii. **NIH Freedom of Information Officer.** If the records you seek are exclusively records of the National Institutes of Health, only the Associate Director of Communications, NIH, who also is the NIH Freedom of Information Officer, may determine whether to release or deny the records.
 - iv. **HRSA Freedom of Information Officer.** If the records you seek are exclusively records of the Health Resources and Services Administration, only the Associate Administrator for Communications, HRSA, who also is the HRSA Freedom of Information Officer, may determine whether to release or deny the records.
 - v. **ADAMHA Freedom of Information Officer.** If the records you seek are exclusively records of the Alcohol, Drug Abuse and Mental Health Administration, only the Associate Administrator for Communications and Public Affairs, ADAMHA, who is also the ADAMHA Freedom of Information Officer, may determine whether to release or deny the records.

- vi. **IHS Freedom of Information Officer.** If the records you seek are exclusively records of the Indian Health Service, only the Director of Communications, IHS, who also is the IHS Freedom of Information Officer, may determine whether to release or deny the records.
- 3. **SSA Freedom of Information Officer.** If the records you seek are exclusively records of the Social Security Administration, including its records in the regions, only the Director, Office of Public Inquiries, SSA, who also is the SSA Freedom of Information Officer, may determine whether to release or deny the records.
- 4. **HCFA Freedom of Information Officer.** If the records you seek are exclusively records of the Health Care Financing Administration, including its records in the regions, only the Director, Office of Public Affairs, HCFA, who also is the HCFA Freedom of Information Officer, may determine whether to release or deny the records.
- b. **Delegations.** Any of the above Freedom of Information Officers may delegate his or her authority to release or deny records and to determine fees. Any such delegation requires the concurrence of the Assistant Secretary for Public Affairs.
- c. **Addresses and telephone numbers.** The addresses and telephone numbers of the Freedom of Information Officers are listed below.

Freedom of Information Officers

HHS Freedom of Information Officer, Room 645-F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Tel: (202) 472-7453

SSA Freedom of Information Officer, Room 4-H-8, Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Tel: (301) 965-3962

HCFA Freedom of Information Officer, Room 100, Professional Building, Office of Public Affairs, 6660 Security Boulevard, Baltimore, Maryland 21207, Tel: (301) 966-5352

PHS Freedom of Information Officer, Room 13-C-24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Tel: (301) 443-5252

FDA Freedom of Information Officer, HFW-35, Room 12A16, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, Tel: (301) 443-1813

NIH Freedom of Information Officer, National Institutes of Health, Building 31, Room 2B39, 9000 Rockville Pike, Bethesda, Maryland 20892, Tel: (301) 496-5633

CDC Freedom of Information Officer, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Tel: (404) 329-3286

HRSA Freedom of Information Officer, Room 14-43, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Tel: (301) 443-2086

ADAMHA Freedom of Information Officer, Room 12-C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Tel: (301) 443-3783

IHS Freedom of Information Officer, Room 5-A-39, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, Tel: (301) 443-1397.

Sec. 5.32 Release of records.

- a. **Records previously released.** If we have released a record, or a part of a record, to others in the past, we will ordinarily release it to you also. However, we will not release it to you if a statute forbids this disclosure, and we will not necessarily release it to you if an exemption applies in your situation and did not apply, or applied differently, in the previous situations.
- b. **Unauthorized disclosure.** The principle stated in paragraph (a) of this section, does not apply if the previous release was unauthorized.
- c. **Poor copy.** If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note its poor quality in our reply.

Sec. 5.33 Denial of requests.

- a. **Information furnished.** All denials are in writing and describe in general terms the material withheld; state the reasons for the denial, including, as applicable, a reference to the specific exemption of the FOIA authorizing the withholding or deletion; explain your right to appeal the decision and identify the official to whom you should send the appeal; and are signed by the person who made the decision to deny all or part of the request.
- b. **Unproductive searches.** We make a diligent search for records to satisfy your request. Nevertheless, we may not be able always to find the records you want using the information you provided, or they may not exist. If we advise you that we have been unable to find the records despite a diligent search, this does not constitute a denial of your request.

Sec. 5.34 Appeal of denials.

- a. **Right of appeal.** You have the right to appeal a partial or full denial of your FOIA request. To do so, you must put your appeal in writing and send it to the review official identified in the denial letter. You must send your appeal within 30 days from the date you receive that letter or from the date you receive the records released as a partial grant of your request, whichever is later.
- b. **Letter of appeal.** The appeal letter should state reasons why you believe that the FOIA exemption(s) we cited do not apply to the records that you requested, or give reasons why they should be released regardless of whether the exemption(s) apply. Because we have some discretionary authority in deciding whether to release or withhold records, you may strengthen your request by explaining your reasons for wanting the records. However, you are not required to give any explanation.
- c. **Review process.** Before making a decision on an appeal of a denial, the designated review official will consult with the General Counsel to ensure that the rights and interests of all parties affected by the request are protected. Also, the concurrence of the Assistant Secretary for Public Affairs is required in all appeal decisions, including those on fees. When the review official responds to an appeal, that constitutes the Department's final action on the request. If the review official grants your appeal, we will send the records to you promptly or let you inspect them, or else we will explain the reason for any delay and the approximate date you will receive copies or be allowed to inspect the records. If the decision is to deny your appeal, the official will state the reasons for the decision in writing and inform you of the FOIA provision for judicial review.

Sec. 5.35 Time limits.

- a. **General.** FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet the deadlines, you may proceed as if we had denied your request or your appeal. We will try diligently to comply with the time limits, but if it appears that processing your request may take longer than we would wish, we will acknowledge your request and tell you its status. Since requests may be misaddressed or misrouted, you should call or write to confirm that we have the request and to learn its status if you have not heard from us in a reasonable time.
- b. **Time allowed.**
 1. We will decide whether to release records within 10 working days after your request reaches the appropriate FOI office, as identified in Sec. 5.31 of this part. When we decide to release records,

- we will actually provide the records, or let you inspect them, as soon as possible after that decision.
2. We will decide an appeal within 20 working days after the appeal reaches the appropriate review official
- c. **Extension of time limits.** FOI Officers of review officials may extend the time limits in unusual circumstances. Extension at the request stage and at the appeal stage may total up to 10 working days. We will notify you in writing of any extension. "Unusual circumstances" include situations when we:
1. Search for and collect records from field facilities, archives, or locations other than the office processing the request.
 2. Search for, collect, or examine a great many records in response to a single request.
 3. Consult with another office or agency that has substantial interest in the determination of the request.
 4. Conduct negotiations with submitters and requesters of information to determine the nature and extent of non-disclosable proprietary materials.

Subpart D—Fees

Sec. 5.41 Fees to be charged -- categories of requests.

The paragraphs below state, for each category of request, the type of fees that we will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given in Secs. 5.42 through 5.45 or for other reasons.

- a. **Commercial use request.** If your request is for a commercial use, HHS will charge you the costs of search, review, and duplication.
- b. **Educational and scientific institutions and news media.** If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, HHS will charge you only for the duplication of documents. Also, HHS will not charge you the copying costs for the first 100 pages of duplication.
- c. **Other requesters.** If your request is not the kind described by paragraph (a) or (b) of this section, then HHS will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time or for the copying costs of the first 100 pages of duplication.

Sec. 5.42 Fees to be charged -- general provisions.

- a. We may charge search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.
- b. If we are not charging you for the first two hours of search time, under Sec. 5.41(c), and those two hours are spent on a computer search, then the two free hours are the first two hours of the operator's own operation. If the operator spends less than two hours on the search, we will reduce the total search fees by the average hourly rate for the operator's time, multiplied by two.
- c. If we are not charging you for the first 100 pages of duplication, under Sec. 5.41 (b) or (c), then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout. If we cannot use this method to calculate the fee reduction, then we will reduce your total duplication fee by the normal charge for photocopying a standard size page, multiplied by 100.
- d. We will not charge you any fee at all if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. As of May 1987, such costs among the units HHS ranged between \$6.00 and \$12.50.
- e. If we determine that you (acting either alone or together with others) are breaking down a single request into a series of requests in order to avoid (or reduce) the fees charged, we may aggregate all these requests for purposes of calculating the fees charged.

- f. We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. We will use the provisions of Part 30 of this Title in assessing interest, administrative costs, and penalties and in taking actions to encourage payment.
- g. This subpart does not apply to requests for Social Security program records on Social Security number holders, wage earners, employers, and claimants, where the requests are governed by section 1106 of the Social Security Act, 42 U.S.C. 1306(c), and by 20 CFR 442.441.

Sec. 5.43 Fee schedule.

HHS charges the following fees:

- a. **Manual searching for or reviewing of records** -- when the search or review is performed by employees at grade GS-1 through GS-8, an hourly rate based on the salary of a GS-5, step 7, employee; when done by a GS-9 through GS-14, an hourly rate based on the salary of a GS-12, step 4, employee; and when done by a GS-15 or above, an hourly rate based on the salary of a GS-15, step 7, employee. In each case, the hourly rate will be computed by taking the current hourly rate for the specified grade and step, adding 16% of that rate to cover benefits, and rounding to the nearest whole dollar. As of November 25, 1988, these rates were \$10, \$20, and \$37 respectively. When a search involves employees at more than one of these levels, we will charge the rate appropriate for each.
- b. **Computer searching and printing** -- the actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.
- c. **Photocopying standard size pages** -- \$0.10 per page. FOI Officers may charge lower fees for particular documents where --
 - 1. The document has already been printed in large numbers,
 - 2. The program office determines that using existing stock to answer this request, and any other anticipated FOI requests, will not interfere with program requirements, and
 - 3. The FOI Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.
- d. **Photocopying odd-size documents** (such as punchcards or blueprints), **or reproducing other records** (such as tapes) -- the actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.
- e. **Certifying that records are true copies.** This service is not required by the FOIA. If we agree to provide it, we will charge \$10 per certification.
- f. **Sending records by express mail, certified mail, or other special methods.** This service is not required by the FOIA. If we agree to provide it, we will charge our actual costs.
- g. **Performing any other special service that you request and we agree to** -- actual costs of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (a) of this section.

Sec. 5.44 Procedures for assessing and collecting fees.

- a. **Agreement to pay.** We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevertheless want us to proceed with the search.
- b. **Advance payment.** If you have failed to pay previous bills in a timely fashion, or if our initial review of your request indicates that we will charge you fees exceeding \$250, we will require you to pay your past due fees and/or the estimated fees, or a deposit, before we start searching for the records you want. If so, we will let you know promptly upon receiving your request. In such cases, the administrative time limits prescribed in Sec. 5.35 of the part (i.e., ten working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible

extensions of these time limits) will begin only after we come to an agreement with you over payment of fees, or decide that fee waiver or reduction is appropriate.

- c. **Billing and payment.** We will normally require you to pay all fees before we furnish the records to you. We may, at our discretion, send you a bill along with or following the furnishing of the records. For example, we may do this if you have a history of prompt payment. We may also, at our discretion, aggregate the charges for certain time periods in order to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters. For example, we might send a bill to such a requester once a month. Fees should be paid in accordance with the instructions furnished by the person who responds to your requests.

Sec. 5.45 Waiver or reduction of fees.

- a. **Standard.** We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both of the following tests:
 - i. It is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and
 - ii. It is not primarily in the commercial interest of the requester.

These two tests are explained in paragraphs (b) and (c) of this section.

- b. **Public interest.** The disclosure passes the first test only if it furthers the specific public interest of being likely to contribute significantly to public understanding of government operations or activities, regardless of any other public interest it may further. In analyzing this question, we will consider the following factors.
 - i. How, if at all, do the records to be disclosed pertain to the operations or activities of the Federal Government?
 - ii. Would disclosure of the records reveal any meaningful information about government operations or activities? Can one learn from these records anything about such operations that is not already public knowledge?
 - iii. Will the disclosure advance the understanding of the general public as distinguished from a narrow segment of interested persons? Under this factor we may consider whether the requester is in a position to contribute to public understanding. For example, we may consider whether the requester has such knowledge or expertise as may be necessary to understand the information, and whether the requester's intended use of the information would be likely to disseminate the information among the public. An unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence.
 - iv. Will the contribution to public understanding be a significant one? Will the public's understanding of the government's operations be substantially greater as a result of the disclosure?
- c. **Not primarily in the requester's commercial interest.** If the disclosure passes the test of furthering the specific public interest described in paragraph (b) of this section, we will determine whether it also furthers the requester's commercial interest and, if so, whether this effect outweighs the advancement of that public interest. In applying this second test, we will consider the following factors:
 - i. Would the disclosure further a commercial interest of the requester, or of someone on whose behalf the requester is acting? "Commercial interests" include interests relating to business, trade, and profit. Not only profit-making corporations have commercial interests--so do gateway.html corporations, individuals, unions, and other associations. The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.
 - ii. If disclosure would further a commercial interest of the requester, would that effect outweigh the advancement of the public interest defined in paragraph (b) of this section? Which effect is primary?

- d. **Deciding between waiver and reduction.** If the disclosure passes both tests, we will normally waive fees. However, in some cases we may decide only to reduce the fees. For example, we may do this when disclosure of some but not all of the requested records passes the tests.
- e. **Procedure for requesting a waiver or reduction.** You must make your request for a waiver or reduction at the same time you make your request for records. You should explain why you believe a waiver or reduction is proper under the analysis in paragraphs (a) through (d) of this section. Only FOI Officers may make the decision whether to waive, or reduce, the fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate a review official. You may appeal the denial to that official. In your appeal letter, you should discuss whatever reasons are given in our denial letter. The process prescribed in Sec. 5.34(c) of this part will also apply to these appeals.

Subpart E—Records Available for Public Inspection

Sec. 5.51 Records available.

- a. **Records of general interest.** We will make the following records of general interest available for your inspection and copying. Before releasing them, however, we may delete the names of people, or information that would identify them, if release would invade their personal privacy to a clearly unwarranted degree. (See Sec. 5.67 of this part.)
 - 1. Orders and final opinions, including concurring and dissenting opinions in adjudications, such as Letters of Finding issued by the Office for Civil Rights in civil rights complaints, and Social Security Rulings. (See Sec. 5.66 of this part for availability of internal memoranda, including attorney opinions and advice.)
 - 2. Statements of policy and interpretations that we have adopted but have not published in the Federal Register.
 - 3. Administrative staff manuals and instructions to staff that affect the public. (We will not make available, however, manuals or instructions that reveal investigative or audit procedures as described in Secs. 5.63 and 5.68 of this part.)
- b. **Other records.** In addition to such records as those described in paragraph (a) of this section, we will make available to any person a copy of all other agency records, unless we determine that such records should be withheld from disclosure under subsection (b) of the Act and Subpart F of this regulation.

Sec. 5.52 Indexes of records.

- a. **Inspection and copying.** We will maintain and provide for your inspection and copying current indexes of the records described in Sec. 5.51(a). We will also publish and distribute copies of the indexes unless we announce in the Federal Register that it is unnecessary or impracticable to do so. For assistance in locating indexes maintained in the Department, you may contact the HHS Freedom of Information Officer at the address and telephone number in Sec. 5.31(c).
- b. **Record citation as precedent.** We will not use or cite any record described in Sec. 5.51(a) as a precedent for an action against a person unless we have indexed the record and published it or made it available, or unless the person has timely notice of the record.

Subpart F -- Reasons for Withholding Some Records

Sec. 5.61 General.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. We describe these exemptions below and explain how this Department applies them to disclosure determinations. (In some cases more than one exemption may apply to the same document.) Information obtained by the Department from any individual or organization, furnished in reliance on a provision for

confidentiality authorized by applicable statute or regulation, will not be disclosed, to the extent it can be withheld under one of these exemptions. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Department.

Sec. 5.62 Exemption one: National defense and foreign policy.

We are not required to release records that, as provided by FOIA, are "(a) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive Order." Executive Order No. 12356 (1982) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials of those countries or officials of the Department of State. Also, we may on occasion have in our possession records classified by some other agency. We may refer your request for such records to the agency that classified them and notify you that we have done so, as explained in Sec. 5.23.

Sec. 5.63 Exemption two: Internal personnel rules and practices.

We are not required to release records that are "related solely to the internal personnel rules and practices of an agency." Under this exemption, we may withhold routine internal agency practices and procedures. For example, we may withhold guard schedules and rules governing parking facilities or lunch periods. Also under this exemption, we may withhold internal records whose release would help some persons circumvent the law or agency regulations. For example, we ordinarily do not disclose manuals that instruct our investigators or auditors how to investigate possible violations of law, to the extent that this release would help some persons circumvent the law.

Sec. 5.64 Exemption three: Records exempted by other statutes.

We are not required to release records if another statute specifically allows us to withhold them. We may use another statute to justify withholding only if it absolutely prohibits disclosure or if it sets forth criteria to guide our decision on releasing or identifies particular types of material to be withheld.

Sec. 5.65 Exemption four: Trade secrets and confidential commercial or financial information.

We will withhold trade secrets and commercial or financial information that is obtained from a person and is privileged or confidential.

- a. **Trade secrets.** A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.
- b. **Commercial or financial information.** We will not disclose records whose information is "commercial or financial," is obtained from a person, and is "privileged or confidential."
 1. Information is "commercial or financial" if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances). We interpret this category broadly.

2. Information is "obtained from a person" if HHS or another agency has obtained it from someone outside the Federal Government or from someone within the Government who has a commercial or financial interest in the information. "Person" includes an individual, partnership, corporation, association, state or foreign government, or other organization. Information is not "obtained from a person" if it is generated by HHS or another federal agency. However, information is "obtained from a person" if it is provided by someone, including but not limited to an agency employee, who retains a commercial or financial interest in the information.
3. Information is "privileged" if it would ordinarily be protected from disclosure in civil discovery by a recognized evidentiary privilege, such as the attorney-client privilege or the work product privilege. Information may be privileged for this purpose under a privilege belonging to a person outside the government, unless the providing of the information to the government rendered the information no longer protectable in civil discovery.
4. Information is "confidential" if it meets one of the following tests:
 - i. Disclosure may impair the government's ability to obtain necessary information in the future;
 - ii. Disclosure would substantially harm the competitive position of the person who submitted the information;
 - iii. Disclosure would impair other government interests, such as program effectiveness and compliance; or
 - iv. Disclosure would impair other private interests, such as an interest in controlling availability of intrinsically valuable records, which are sold in the market by their owner.

The following questions may be relevant in analyzing whether a record meets one or more of the above tests: Is the information of a type customarily held in strict confidence and not disclosed to the public by the person to whom it belongs? What is the general custom or usage with respect to such information in the relevant occupation or business? How many, and what types of, individuals have access to the information? What kind and degree of financial injury can be expected if the information is disclosed?

- c. **Designation of certain confidential information.** A person who submits records to the government may designate part or all of the information in such records as exempt from disclosure under Exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. Where a legend is required by a request for proposals or request for quotations, pursuant to 48 CFR 352.215-12, then that legend is necessary for this purpose. Any such designation will expire ten years after the records were submitted to the government.
- d. **Predisclosure notification.** The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (c) of this section. They also apply to records that were submitted to the government where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption 4. Certain exceptions to these procedures are stated in paragraph (e) of this section.
 1. When we receive a request for such records, and we determine that we may be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.
 2. The submitter has five working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.
 3. We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records, we will notify the submitter in writing. This notice will briefly explain why we did not sustain its objections. We will include with the notice a copy of the records about which the submitter objected, as we propose to disclose them. The notice will state that we intend to disclose the records five working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

4. When a requester files suit under the FOIA to obtain records covered by this paragraph, we will promptly notify the submitter.
 5. Whenever we send a notice to a submitter under paragraph (d)(1) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object. Whenever we send a notice to a submitter under paragraph (d)(3) of this section, we will notify the requester of this fact.
- e. **Exceptions to predisclosure notification.** The notice requirements in paragraph (d) of this section do not apply in the following situations:
1. We decided not to disclose the records;
 2. The information has previously been published or made generally available;
 3. Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the FOIA, but in this case a submitter may still designate records as described in paragraph (c) of this section, and in exceptional cases, we may, at our discretion, follow the notice procedures in paragraph (d) of this section; or
 4. The designation appears to be obviously frivolous, but in this case we will still give the submitter the written notice required by paragraph (d)(3) of this section (although this notice need not explain our decision or include a copy of the records), and we will notify the requester as described in paragraph (d)(5) of this section.

Sec. 5.66 Exemption five: Internal memoranda.

This exemption covers internal government communications and notes that fall within a generally recognized evidentiary privilege. Internal government communications include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most-commonly applicable privileges are described in the following paragraphs.

- a. **Deliberative process privilege.** This privilege protects predecisional deliberative communications. A communication is protected under this privilege if it was made before a final decision was reached on some question of policy and if it expressed recommendations or opinions on that question. The purpose of the privilege is to prevent injury to the quality of the agency decision making process encouraging open and frank internal policy discussions, by avoiding premature disclosure of policies not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. Purely factual material in a deliberative document is within this privilege only if it is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, if it would reveal the nature of the deliberative portions, or if its disclosure would in some other way make possible an intrusion into the decisionmaking process. We will release purely factual material in a deliberative document unless that material is otherwise exempt. The privilege continues to protect predecisional documents even after a decision is made.
- b. **Attorney work product privilege.** This privilege protects documents prepared by or for an agency, or by or for its representative (typically, HHS attorneys) in anticipation of litigation or for trial. It includes documents prepared for purposes of administrative adjudications as well as court litigation. It includes documents prepared by program offices as well as by attorneys. It includes factual material in such documents as well as material revealing opinions and tactics. Finally, the privilege continues to protect the documents even after the litigation is closed.
- c. **Attorney-client communication privilege.** This privilege protects confidential communications between a lawyer and an employee or agent of the government where there is an attorney-client relationship between them (typically, where the lawyer is acting as attorney for the agency and the employee is communicating on behalf of the agency) and where the employee has communicated information to the attorney in confidence in order to obtain legal advice or assistance.

Sec. 5.67 Exemption six: Clearly unwarranted invasion of personal privacy.

- a. **Documents affected.** We may withhold records about individuals if disclosure would constitute a clearly unwarranted invasion of their personal privacy.
- b. **Balancing test.** In deciding whether to release records to you that contain personal or private information about someone else, we weigh the foreseeable harm of invading that person's privacy against the public benefit that would result from the release. If you were seeking information for a purely commercial venture, for example, we might not think that disclosure would primarily benefit the public and we would deny your request. On the other hand, we would be more inclined to release information if you were working on a research project that gave promise of providing valuable information to a wide audience. However, in our evaluation of requests for records we attempt to guard against the release of information that might involve a violation of personal privacy because of a requester being able to "read between the lines" or piece together items that would constitute information that normally would be exempt from mandatory disclosure under Exemption Six.
- c. **Examples.** Some of the information that we frequently withhold under Exemption Six is: Home addresses, ages, and minority group status of our employees or former employees; social security numbers; medical information about individuals participating in clinical research studies; names and addresses of individual beneficiaries of our programs, or benefits such individuals receive; earning records, claim files, and other personal information maintained by the Social Security Administration, the Public Health Service, and the Health Care Financing Administration.

Sec. 5.68 Exemption seven: Law enforcement.

We are not required to disclose information or records that the government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

- a. **Enforcement proceedings.** We may withhold information whose release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases--such as when a fraud investigation is likely--we may refuse to confirm or deny the existence of records that relate to the violations in order not to disclose that an investigation is in progress, or may be conducted.
- b. **Fair trial or impartial adjudication.** We may withhold records whose release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.
- c. **Personal privacy.** We are careful not to disclose information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, and retaliation.
- d. **Confidential sources and information.** We may withhold records whose release could reasonably be expected to disclose the identity of a confidential source of information. A confidential source may be an individual; a state, local, or foreign government agency; or any private organization. The exemption applies whether the source provides information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. Also, where the record, or information in it, has been compiled by a criminal law enforcement authority conducting a criminal investigation, or by an agency conducting a lawful national security investigation, the exemption also protects all information supplied by a confidential source. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.
- e. **Techniques and procedures.** We may withhold records reflecting special techniques or procedures of investigation or prosecution, not otherwise generally known to the public. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. We may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.
- f. **Life and physical safety.** We may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment as well as to physical violence.

Privacy Act of 1974 [5 U.S.C. Section 552A, 1988]

Web Resources

Privacy Act of 1974 (5 U.S.C. Section 552A, 1988)

<http://www.usdoj.gov/foia/privstat.htm>

THE PRIVACY ACT OF 1974

5 U.S.C. § 552a

As Amended

§ 552a. Records maintained on individuals

(a) Definitions

For purposes of this section--

(1) the term "agency" means agency as defined in section 552(f) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use or disseminate;

(4) 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;

(5) 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;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program"--

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of--

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include--

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches--

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986; or

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. § 402(x)(3), § 1382(e)(1));

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of disclosure

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

- (1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;
- (2) required under section 552 of this title;
- (3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;
- (4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;
- (5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;
- (6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;
- (7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;
- (8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;
- (9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;
- (10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;
- (11) pursuant to the order of a court of competent jurisdiction; or
- (12) to a consumer reporting agency in accordance with section 3711(e) of Title 31.

(c) Accounting of Certain Disclosures

Each agency, with respect to each system of records under its control, shall--

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of--

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to records

Each agency that maintains a system of records shall--

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and--

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either--

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency requirements

Each agency that maintains a system of records shall--

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual--

(A) the authority (whether granted by statute, or by Executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include--

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this

section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency rules

In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall--

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil remedies

Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of--

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of legal guardians

For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal penalties

Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) General exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and

(i) if the system of records is--

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is--

- (1) subject to the provisions of section 552(b)(1) of this title;
- (2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;
- (3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18;
- (4) required by statute to be maintained and used solely as statistical records;
- (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;
- (6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or
- (7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(1) Archival records

(1) Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of Title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) Government contractors

(1) 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.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of Title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing lists

An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching agreements

(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying--

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to--

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall--

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if--

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and Opportunity to Contest Findings

(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until--

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that--

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of--

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) Sanctions

(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement

entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless--

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on new systems and matching programs

Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) [Biennial report] Repealed by the Federal Reports Elimination and Sunset Act of 1995, Pub. L. No. 104-66, § 3003, 109 Stat. 707, 734-36 (1995), amended by Pub. L. No. 106-113, § 236, 113 Stat. 1501, 1501A-302 (1999) (changing effective date to May 15, 2000).

(t) Effect of other laws

(1) No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards

(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board--

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including--

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that--

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget Responsibilities

The Director of the Office of Management and Budget shall--

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

The following section originally was part of the Privacy Act but was not codified; it may be found at § 552a (note).

Sec. 7(a)

(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to--

(A) any disclosure which is required by Federal statute, or

(B) any disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

The following sections originally were part of P.L. 100-503, the Computer Matching and Privacy Protection Act of 1988; they may be found at § 552a (note).

Sec. 6 Functions of the Director of the Office of Management and Budget.

(b) Implementation Guidance for Amendments -- The Director shall, pursuant to section 552a(v) of Title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act not later than 8 months after the date of enactment of this Act.

Sec. 9 Rules of Construction.

Nothing in the amendments made by this Act shall be construed to authorize--

- (1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;
- (2) the direct linking of computerized systems of records maintained by Federal agencies;
- (3) the computer matching of records not otherwise authorized by law; or
- (4) the disclosure of records for computer matching except to a Federal, State, or local agency.

Sec. 10 Effective Dates.

(a) In General -- Except as provided in subsection (b), the amendments made by this Act shall take effect 9 months after the date of enactment of this Act.

(b) Exceptions -- The amendment made by sections 3(b) [Notice of Matching Programs -- Report to Congress and the Office of Management and Budget], 6 [Functions of the Director of the Office of Management and Budget], 7 [Compilation of Rules and Notices], and 8 [Annual Report] of this Act shall take effect upon enactment.

HHS Electronic Reading Rooms

Resources

The FOIA reading rooms make available for public inspection and copying specific agency policy statements contained in HHS Memoranda and administrative staff manuals that affect the public. These records are available in both hard copy and electronic form. In addition, the agency's reading rooms now have certain records that the public frequently requests under section (a)(3) of FOIA.

For more information, visit the HHS hard copy or electronic reading rooms listed below.

Administration on Aging

Administration on Aging (AoA)
Freedom of Information Officer, Room 4742
Wilbur J. Cohen Federal Building
330 Independence Avenue, S.W.
Washington, DC 20201

<http://www.aoa.gov/siteutil/foia.asp>

Center for Medicare and Medicaid Services

CMS Library
2nd Floor, Central Building
7500 Security Boulevard
Baltimore, MD 21244
Monday through Friday, 8:00 a.m. to 4:00 p.m.

<http://www.cms.hhs.gov/foia/rdgroom.asp>

Food and Drug Administration

Division of Freedom of Information
5600 Fishers Lane, Room 12A-30
Rockville, MD 20857

Division of Dockets Management
5630 Fishers Lane, Room 1061, Mail Stop HFA-305
Rockville, MD 20852
Monday through Friday, 9:00 a.m. to 4:00 p.m.

<http://www.fda.gov/foi/foia2.htm>



Health Resources and Services Administration

HRSA Freedom of Information Office
5600 Fishers Lane, Room 14-15
Rockville, MD 20857
Monday through Friday, 8:00 a.m. to 4:30 p.m.

<http://newsroom.hrsa.gov/efoia.htm>

National Institutes of Health

NIH FOIA Reading Room
Building 31, Room 5B-35
9000 Rockville Pike
Bethesda, Maryland 20892
Monday through Friday, 10:00 a.m. to 4:00 p.m.

<http://www.nih.gov/icd/od/foia/index.htm#electronic>

EFOIA Amendments of 1996

Electronic Record Provisions

- Definition of "record" -- subsection (f) (2)
- Format of disclosure -- subsection (a) (3) (B)
- Electronic searches -- subsections (a) (3) (C) (D)
- Electronic reading room -- subsections (A) (2)-- applies to records created on or after 11/1/96
- Reading room treatment for selected FOIA-disclosed records -- subsections (a) (2) (D) (E)
- Computer redaction/deletion specification -- subsection (b)

Time Limit/Backlog Provisions

- Initial time limit -- subsection (a) (6) (A) (i)
- Multi-track processing -- subsection (a) (6) (D)
- Unusual circumstances -- subsection (a) (6) (B)
- Exceptional circumstances -- subsection (a) (6) (C)
- Expedited processing -- subsection (a) (6) (E)

Reports and Reference Guide

- Annual reports -- subsection (e) -- changed to fiscal year timetable, as of report for fiscal year 1998, due 2/1/99
- Reference materials and guides -- subsection (g)

Implementation Dates

- General effective date -- 180 days after enactment (3/31/97)
- Effective date for time limit/backlog provisions -- one year after enactment (10/2/97)
- Annual reports -- shift to new fiscal year timetable and new form for FY 1998 report (due 2/1/99)
- Reading room records created on or after 11/1/96 -- must be available electronically as of 11/1/97
- Index of selected FOIA-disclosed records must be on-line by 12/31/99