

**FCC PRIVACY ACT MANUAL – FCCINST 1113.1**  
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Chapter 1

GENERAL PROVISIONS

- 1-1. Purpose. This directive sets forth the authorities, objectives, responsibilities, and procedures for the program to implement the *Privacy Act of 1974*, as amended, 5 U.S.C. § 552a, within the Federal Communications Commission (FCC). It supplements the requirements and procedures of FCC Privacy Act Regulations, 47 CFR §§ 0.551–0.561.
- 1-2. Background.
- (A) The primary objective of the *Privacy Act of 1974*, as amended, (the “Act”) is to achieve an appropriate balance between the Federal Government’s need for information about individuals and each individual’s right to privacy.
  - (B) The Act seeks to achieve this objective through procedures to regulate the collection, maintenance, use, and dissemination of information by the FCC and other Federal agencies.
  - (C) The Act also establishes a system of checks and balances to assure effective operation of these procedures. These checks and balances include provisions for the exercise of individual rights, public scrutiny of agency recordkeeping practices, Office of Management and Budget (OMB) and Congressional oversight of Federal agency activities, and both civil and criminal sanctions.
  - (D) The Privacy Act establishes a number of basic rights of individuals who are the subject of Federal recordkeeping. It gives individuals:
    - (1) The right to know 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.
    - (2) The **principal purpose** or purposes for which the information is intended to be used.
    - (3) The **routine uses** which may be made of the information, as published pursuant to 5 U.S.C. § 552a(e)(4)(D) of the Privacy Act.
    - (4) The **effects** on him/her, if any, of not providing all or any part of the requested information.
    - (5) The **right of access** to Commission records about them, and to Commission records of the disclosure of this information.
    - (6) The **right to request amendment, correction, or expungement** of records about them.

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- (7) The **right to appeal** an adverse decision regarding amendment of records to a higher authority in the Commission.
- (8) The **right to sue** an agency in U.S. District Court to gain access to or amendment of records, or to obtain damages for violation of the Privacy Act which result in an injury to the individual subject.

### 1-3. Authorities.

- (A) Public Law 93-579, the *Privacy Act of 1974*, as amended, 5 U.S.C. § 552a.
- (B) Office of Management and Budget Circular No. A-130 (Revised), *Management of Federal Information Resources*, November 30, 2000.
- (C) 47 CFR §§ 0.551-0.561. (“FCC Privacy Act Regulations”)
- (D) National Archives and Records Administration, Office of the Federal Register, *Federal Register Document Drafting Handbook*, (Oct. 1998 Revision). (“Document Drafting Handbook”)
- (E) Department of Justice, *Overview of the Privacy Act of 1974*, “Definitions,” May 2000 ed., [www.doj.gov](http://www.doj.gov).
- (F) *Final Guidance for Conducting Matching Programs*, Office of Management and Budget (54 FR 25819) June 19, 1989.
- (G) Public Law 100-503, *Computer Matching and Privacy Protection Act of 1988*, 5 U.S.C. §552a. (“Computer Matching Act”).
- (I) *Memorandum for the Senior Officials for Information Resources Management*, Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs, May 24, 1985.
- (J) *Guidance for Conducting Matching Programs*, Office of Management and Budget (47 FR 21656-21658) May 19, 1982.
- (K) *Privacy Act Guidelines*, Office of Management and Budget (40 FR 28949-28978) July 9, 1975.
- (L) Memorandum M-03-22, *OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002* (September 26, 2003).
- (M) *E-Government Act of 2002* (Public Law 107-347, 44 U.S.C. Ch 36).

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1-4. Definitions. For the purposes of this directive, the following definitions shall apply:

- (A) **Access Request** means a request by an individual or authorized representative to see or receive a copy of a record in a particular system of records of which he/she is the subject. The request must show dependence on the Privacy Act. This is also called a **Privacy Act Request**.
- (B) **Agency** includes any executive or military department, Government corporation, Government controlled corporation, or other establishment of the executive branch of the Government, or any independent regulatory agency.
- (C) **Disclosure** means giving information from a system of records, by any means, to any person other than the individual to whom the record pertains. This includes the transfer or divulging of a record to another agency.
- (D) **Individual** means a citizen of the United States or an alien lawfully admitted for permanent residence.
  - (1) 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.
  - (2) The deceased, nonresident aliens, corporations and organizations, and third parties have no rights under the Privacy Act.
- (E) **Maintain** means to maintain, collect, use, or disseminate records.
- (F) **Record** means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history, and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to an individual, such as a finger or voice print, or photograph.

A record in a system of records must contain two elements: a personal identifier and at least one item of personal information.
- (G) **Routine Use** means, with respect to disclosure of a record outside the Commission, the use of such record for a purpose, which is compatible with the purpose for which the record was collected. The term encompasses not only common and ordinary uses, but also all proper and necessary uses, even if they are infrequent. Routine uses must be shown in the system(s) notice, which is published in the *Federal Register*.
- (H) **System of Records** means any group of records under the control of the FCC or other Federal 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, *i.e.*, a name or Social Security Number (SSN):

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- (1) A file or grouping of records that is arranged chronologically, or by subject or other means, and which is not retrieved by an individual identifier, is not a system of records under the Act.
  - (2) If retrieval by individual identifier is possible but not actually done, or if it depends on memory, the group is not a system of records.
  - (3) However, creating a retrieval system or cross-index, arranged by personal identifier, for records that are filed randomly or by non-personal symbols makes that collection a system of records.
- (I) **System Manager** means the Commission official responsible for the storage, maintenance, safekeeping, and disposal of a system of records.

The system manager does not have to have physical custody of the records; however, he/she must be able to exercise effective controls for operating and safeguarding the system.

### 1-5. Policies and Objectives. It is Commission policy to:

- (A) Implement the *Privacy Act of 1974*, 5 U.S.C. § 552a, as amended, and to protect the rights of individuals in the accuracy and privacy of information concerning him/her which is contained in Commission records.
- (B) Collect, maintain, and use information in systems of records only in support of programs authorized by law or Executive Order of the President.
- (C) Ensure that records in these systems are timely, accurate, complete, and relevant, and to amend upon the individual's request any record that does not meet these standards.
- (D) Permit an individual to know about, review, and have copies of agency records pertaining to him/her, except where they are covered by a published exemption from such disclosure, or were created in anticipation of a civil action or proceeding.
- (E) Safeguard records in systems of records from unauthorized disclosure and access.
- (F) Provide for review of a decision to deny an individual's request for access to, or amendment of, records of which he/she is a subject.
- (G) Keep records for the minimum time required to protect the rights and provide for the needs of the individual and the U.S. Government. This includes permitting individuals to review the accounting of disclosures made of their records. [Exhibit 2: Record of Disclosures Under Provisions of the Privacy Act]

### 1-6. Responsibilities.

- (A) The Chairman of the FCC has delegated jurisdiction for the interpretation of the Privacy Act statutes and legal requirements to the Office of the General Counsel (OGC).

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Questions about the Privacy Act's legal requirements should be directed to the Privacy Legal Advisor in OGC.

- (B) The Chairman of the FCC has delegated responsibility for the administration and management of the Privacy Act's routine activities to the Managing Director. The Privacy Officer and the Privacy Analyst in the Performance Evaluation and Records Management (PERM) division of the Office of the Managing Director (OMD) carry out the day-to-day responsibilities on behalf of the Managing Director.
- (C) The Privacy Officer:
  - (1) Supervises the Commission's response(s) to public inquiries about information contained in the FCC's system of records;
  - (2) Supervises the Privacy Analyst's responsibilities for the Commission's systems of records; and
  - (3) Coordinates the meetings of the Data Integrity Board as Board Chairman.
- (D) The Privacy Analyst is responsible for:
  - (1) Administering the system of records;
  - (2) Responding to public inquiries about information contained in the FCC's systems of records;
  - (3) Working with the Privacy Legal Advisor in OGC to answer the B/O questions;
  - (4) Working with the Privacy Officer on matters related to the Data Integrity Board; and
  - (5) Participating with the Privacy Legal Advisor and Privacy Officer in the Commission's liaison with the Office of Management and Budget (and other Federal agencies).

### 1-7. Computer Matching and Data Integrity Board.

- (A) The *Computer Matching and Privacy Protection Act of 1988*, 5 U.S.C. § 552a, as amended by Section 2(b)(1) of the *Privacy Act of 1974*, requires the head of each Federal agency that participates in a computer matching program to establish a **Data Integrity Board** to oversee and coordinate the matching program:
  - (1) The Data Integrity Board is to be comprised of senior officials within the agency. It will evaluate and approve any request(s) to engage in computer matching program(s). The Data Integrity Board's responsibilities for matching agreements are explained fully in Chapter 9.
  - (2) The Data Integrity Board also acts as an advisory board for the Commission:

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- (a) On matters related to the agency's Data Quality Act implementation; and
  - (b) On the collection and utilization of data in the agency's performance reporting systems.
- (B) Members of the Data Integrity Board are appointed by the Managing Director. They include:
  - (1) Associate Managing Director/PERM – Privacy Officer and Board Chairman
  - (2) A representative from WTB, WCB, IB, CGB, EB, MB, and OET
  - (3) A representative from the Chief Information Officer's staff
  - (4) OGC counsel for Administrative Law – Privacy Legal Advisor
  - (5) OMD Privacy Analyst (Board Coordinator)
- (C) The **Board Chairman** has responsibility for oversight and coordination among the various components of the Commission. The Board Chairman shall:
  - (1) Schedule and convene meetings of the Board, as necessary;
  - (2) Preside over all meetings of the Board;
  - (3) Survey all matching activities and identify those that may be subject to the *Computer Matching Act*;
  - (4) Notify the Office of Management and Budget (OMB) of any appeals to proposed matching agreements; and
  - (5) Notify the head of the agency and Congress if a matching program has been disapproved.
- (D) Other members of the Board shall serve as Board experts in matters concerning data matching, data quality, and data collection and utilization. Additionally they shall ensure that the Bureaus and Offices they represent comply with the Commission's Data Quality Guidelines.

### 1-8. Criminal Penalties.

- (A) **Unauthorized Disclosure:** Any officer or employee of the FCC, who by virtue of his/her employment or official position, has possession of, or access to, Commission records which contain individually identifiable information the disclosure of which is prohibited by this section, 5 U.S.C. § 552a(i), or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited,

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willfully discloses the material in any matter to any person or Federal agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Information in a system of records can only be disclosed with the prior written consent of the individual subject or for the reasons for nonconsensual disclosure.

- (B) **Failure to Publish a System Notice:** Any officer or employee of the FCC who willfully maintains a system of records without meeting the notice requirements under 5 U.S.C. § 552a(e)(4) of the *Privacy Act of 1974*, as amended, shall be guilty of a **misdemeanor** and fined not more than **\$5,000**.

**Note:** The public notice requirements are set out in Chapter 6.

- (C) **Obtaining Records Under False Pretenses:** Any person who knowingly and willfully requests or obtains any record concerning an individual from the FCC or other Federal agency under false pretenses shall be guilty of a **misdemeanor** and fined not more than **\$5,000**. This applies to anyone inside or outside the Commission.

### 1-9. Biennial Privacy Act Report.

- (A) Under 5 U.S.C. §552a(s) of the *Privacy Act of 1974*, as amended, the President is required to submit biennially to the Speaker of the House of Representatives and the President pro tempore of the Senate a report:
- (1) Describing the actions of the Director of the Office of Management and Budget pursuant to 5 U.S.C. §552a(s) of the Privacy Act during the preceding 2 years;
  - (2) Describing the exercise of individual rights of access and amendment under this section during such years;
  - (3) Identifying changes in or additions to systems of records; and
  - (4) Containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act.
- (B) FCC and other federal agencies are required to provide input to the report, and OMB establishes the timing and format for Federal agency input to the report. PERM, because of its delegated authority from the Managing Director to carry out the administrative aspects of the Privacy Act, will prepare and submit the Commission's *Biennial Privacy Act Report* for the calendar years covered by the reporting period to OMB. [Exhibit 11: *Biennial Privacy Act Report*]



Chapter 2

COLLECTING PERSONAL INFORMATION

2-1. Policies and Agency Requirements. Under the *Privacy Act of 1974*, as amended, 5 U.S.C. § 552a(e), the FCC and other Federal agencies that maintain a system of records shall:

- (A) Maintain in its records only that information about an individual as is relevant and necessary to accomplish a purpose of the Commission required to be accomplished by statute or Executive Order of the President.
- (B) 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.
- (C) Provide a **Privacy Act Statement** that informs each individual whom the Commission asks to supply information on the form, which the Commission will use to collect the information, or on a separate form, which can be retained by the individual.

**Note:** The Privacy Act Statement is explained in Section 2-2.

- (D) Subject to the provisions of 5 U.S.C. § 552a(e)(11), publish in the *Federal Register*, upon establishment or revision, a notice of the existence and character of the system of records, as described in Section 2-1(K).

**Note:** A detailed description of the requirements for new or altered/revised systems of records, including publication in the *Federal Register*, are found in Chapter 6.

- (E) Maintain all records that are used by the Commission 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.
- (F) Prior to disseminating any records about an individual to any person other than a Federal agency, unless the dissemination is made pursuant to the *Freedom of Information Act* (FOIA), U.S.C. § 552a(b)(2), make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Commission purposes. The Commission's FOIA regulations and policies are explained on the FCC Internet website at <http://www.fcc.gov/foia>.
- (G) 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.

**Note:** This requirement also includes information on an individual's political and religious activities.

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- (H) 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.
- (I) 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.
- (J) 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 that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.
- (K) At least 30 days prior to publication of information under 5 U.S.C. § 552a(e)(4)(D), publish in the *Federal Register* a notice of any new use or intended use of the information in a system of records, and provide an opportunity for interested persons to submit written data, views, or arguments to the Commission. See also Section 2-1(D).

This notice must follow the form and content prescribed by the Privacy Act, 5 U.S.C. § 552a(e)(4)(D), and the guidelines of the Office of the Federal Register and OMB Circular A-130, as outlined in Chapter 6.

- (L) Publish a notice in the *Federal Register* to note the establishment or revision of a matching agreement in which the Commission is a recipient agency or a source agency in a matching program with a non-Federal agency. This notice must appear at least 30 days prior to the commencement of the matching program by the Commission.

2-2. Privacy Act Statement. When personal information is requested from individuals in connection with FCC programs, they will be provided with a Privacy Act Statement, which permits them to make an informed decision on the nature of the request and whether or not to provide the information. Privacy Act Statements shall normally appear on forms and webpages, but they may also be read to individuals or appear in directives.

The **Privacy Act Statement** must include the following:

- (A) The **authority** (whether granted by Federal 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 use(s)** which may be made of the information, as published pursuant to 5 U.S.C § 552a(e)(4)(D). These are the disclosures, if any, which will be made outside of the FCC.

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- (D) Whether the **disclosure** is voluntary or mandatory. Furnishing the information is mandatory only if there is a specific penalty under law, Executive Order, or regulation for not doing so.
- (E) The effects on the individual, if any, of not providing all or any part of the requested information. For instance, it may be impossible to issue a license without the requested information.

### 2-3. Collecting the Social Security Number.

- (A) Individuals will not be denied any lawful right, benefit, or privilege if they refuse to provide their social security number (SSN) unless the disclosure of the SSN is required by Federal statute or regulation in effect before January 1, 1975.
- (B) When collecting the SSN, individuals must receive a statement listing:
  - (1) Whether disclosing the SSN is mandatory or voluntary. A disclosure is voluntary unless a specific legal penalty exists for not providing it.
  - (2) The Federal law or Executive Order that established the program or office needing the record.
    - (a) The purpose—what use FCC will make of the number.
    - (b) What disclosures of the number will be made outside the FCC.
    - (c) The effect, if any, of not providing the SSN.
  - (3) The SSN statement may be combined with the Privacy Act statement.

Chapter 3

DISCLOSING PERSONAL RECORDS

- 3-1. General. A **disclosure** is the transfer of information by any means from a system of records to anyone other than the subject of the record or the authorized agent acting for the subject.
- (A) The Privacy Act does not require the Commission to disclose any record to any one other than the subject, except when ordered to do so by a court, or when the record is requested under the Freedom of Information Act (FOIA) and cannot be withheld under a FOIA exemption. In no case can the Act be used to deny information that is required to be disclosed under FOIA.
- Note:** Freedom of Information Act (FOIA) is found at 5 U.S.C. § 552 or on the FCC Internet FOIA webpage at [www.fcc.gov/foia](http://www.fcc.gov/foia).
- (B) FCC employees who are responsible for maintaining, collecting, using, and disseminating personal information should become equally familiar with FCCINST 1179.1, *Freedom of Information Act* (FOIA), and on the FCC Internet FOIA webpage at [www.fcc.gov/foia](http://www.fcc.gov/foia).
- 3-2. Consensual Disclosures. The FCC and other Federal agencies shall not 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 for one of the reasons set forth in Section 3-4 below.
- 3-3. Unauthorized Disclosure. Knowingly and willfully disclosing information from a system of records to any party not entitled to receive it by any officer or employee of the FCC may be subject to criminal penalties, as explained fully in Section 1-8(A).
- 3-4. Disclosures Not Requiring the Subject's Consent. Prior consent of the individual is not required if the disclosure is:
- (A) To those officers and employees of the FCC who have a need for the record in the performance of their duties.
- (B) Required under the FOIA, 5 U.S.C. § 552. If a FOIA request involves personal information, and FOIA does not require its disclosure, *i.e.*, covered by one of the FOIA exemptions, the consent of the individual must be obtained prior to disclosure unless disclosure is permitted under one of the conditions listed in this section, 5 U.S.C. § 552a(b) of the Act.
- (C) For a routine use as defined under 5 U.S.C. § 552a(a)(7) and described under 5 U.S.C. § 552a(e)(4)(D) and which has been published in a notice in the *Federal Register*.
- (D) To the Bureau of the Census for the purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13.

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- (E) To a recipient who has provided the Commission with prior, 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.
- (F) To the National Archives and Records Administration (NARA) 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.

**Note:** Records transferred to a Federal Records Center and private records storage facilities for safekeeping and storage do not fall within this category. These remain under the legal custody of the FCC.

- (G) To another Federal agency or to an instrumentality of any Federal, state, or local 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.
- (H) 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.

The affected individual need not be the subject of the record disclosed. Examples of compelling circumstances are medical emergencies, accidents, or epidemics. When such a disclosure is made, notify the individual subject at his or her last known address.

- (I) To either House of Congress, or, to the extent of the matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.
- (J) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office.
- (K) Pursuant to the order of a court of competent jurisdiction.
- (L) To a consumer reporting agency (credit bureaus) in accordance with the *Federal Claims Collection Act of 1966*, under 31 U.S.C. § 3711(e).

### 3-5. Standards and Balances Affecting Disclosure.

- (A) For all disclosures outside of the FCC, except for releases made under FOIA, system managers shall ensure that the records are accurate, timely, complete, and relevant for agency purposes.
- (B) All records must be disclosed if their release is required by the FOIA, unless they are exempted from disclosure by one of the nine FOIA exemptions. For example, FOIA

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Exemption No. 6 denies the release of most personnel, medical, or similar records when it would be a “clearly unwarranted invasion of personal privacy.”

**Note:** The FCC's Internet FOIA webpage at [www.fcc.gov/foia](http://www.fcc.gov/foia) provides a complete discussion of the Commission's FOIA policies and regulations, including the nine exemptions.

- 3-6. Federal Employee Information. Disclosures of information regarding Federal employees shall be made in accordance with the Federal Personnel Manual. Some examples of information regarding FCC employees that normally may be released without unwarranted invasion of personal privacy include:

- Name
- Present and past position titles
- Present and past grades
- Present and past salaries
- Present and past duty stations
- Current office telephone number

- 3-7. Discretionary Disclosure. Discretion is advised when making disclosures to third parties. The B/Os considering making nonconsensual disclosures, other than those disclosures “not requiring the subject's consent,” should consult the OGC for advice. A balancing test is advised for such disclosures. Thus, a disclosure, which normally would require the individual's consent, may be made if:

- (A) The disclosure would benefit the individual,
- (B) The disclosure would be in the public interest, *i.e.*, as under FOIA and the public's need to understand the operations of the government outweighs the individual's right to privacy.

Chapter 4

ACCESS, AMENDMENT, AND APPEALS BY INDIVIDUALS

This chapter outlines procedures for handling requests of individuals exercising their rights under the *Privacy Act of 1974*, as amended, 5 U.S.C. § 552a. Individuals may ask if the Commission maintains any records on them in a system of records. If such records exist, individuals have rights of access to and amendment of records, and to appeal agency decisions to deny access or amendment.

- 4-1. Access Requests, Appeals, and Amendments. Sections 4-2 through 4-7 of this chapter give detailed procedures for processing the various types of requests and appeals possible under the Privacy Act. These are:
- (A) **Access Request.** An individual's request to see or receive a copy of records about him/her in a system of records. First, the Commission must determine if the individual is a subject of a record in the specified system of records, and notify the requester whether a record exists.
  - (B) **Appeal of Denied Access.** An individual's request for administrative review of the Privacy Officer's decision to deny access to a Privacy Act record.
  - (C) **Amendment Request.** An individual's request to amend or correct records found to be in error (not accurate, timely, complete, or relevant).
  - (D) **Appeal of Denied Amendment.** This can include: (1) administrative appeal of the decision to deny amendment; and (2) challenging refusal to amend by having a statement of disagreement posted with the record.
  - (E) **Court Action.** This results from individual's suit for judicial review of agency refusal to amend or grant access to a record of which he/she is the subject.
- 4-2. Conditions for Requests.
- (A) To be considered a Privacy Act request, a request must come from the subject of a record in a system of records, or from a designated agent or legal guardian. The subject must be a **U.S. citizen** or **permanent resident alien**.
  - (B) The requester must reasonably describe the records sought:
    - (1) The Commission does not accept blanket requests for "all records about me" or "vague" requests.
    - (2) Requests must be for specific information or documents contained in one of the systems of records maintained by the FCC.
    - (3) The Privacy Analyst will try to ascertain from the requester which systems of records he/she wants the Commission to search and then forward this request to the appropriate system manager in that bureau/office.

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- (4) The system manager in the bureau/office must make the determination about whether to release the record(s) to the requester. The system manager's decision will be guided by the Commission's procedures and regulations, as explained in Section 4-8.

### 4-3. FCC's Privacy Act Systems of Records.

- (A) The Commission publishes in the *Federal Register* upon establishment or revision a notice of the existence and character (description) of the system of records, which includes **16 data elements**. These 16 data elements are explained fully in Chapter 6.
- (B) The FCC's Internet Privacy Act webpage at [www.fcc.gov/Privacy\\_Act](http://www.fcc.gov/Privacy_Act) lists the systems of records that are currently maintained by the Commission:
  - (1) A table of contents, which is alphabetized by bureau/office, precedes the description of each system of records.
  - (2) This "arrangement" allows the inquirer to identify easily any or all systems of records of interest to him/her, as described in the *Federal Register* Notice.
- (C) The FCC's Internet Privacy Act webpage at [www.fcc.gov/Privacy\\_Act](http://www.fcc.gov/Privacy_Act) also lists the citation for all publication dates of the systems of records in the *Federal Register*:
  - (1) This is in accordance with 5 U.S.C. §§ 552a(e)(3) – (e)(4) of the *Privacy Act of 1974*, as amended, and OMB regulations.
  - (2) These regulations require the FCC (and other Federal agencies) to publish a notice in the *Federal Register* to inform the public whenever the Commission proposes:
    - (a) To establish new system(s) of records;
    - (b) To make substantive changes to existing system(s) of records; and/or
    - (c) To abolish system(s) of records.

### 4-4. A Request under the Freedom of Information Act (FOIA) versus the Privacy Act of 1974.

- (A) An individual should cite or make reference to the *Privacy Act of 1974* in making his/her request, and should note on the envelope that it is a "Privacy Act Request;" otherwise the letter will be handled as ordinary mail.
- (B) Likewise, a request that only cites "FOIA" must not be treated as a Privacy Act request. Please note that an individual who requests both Privacy Act and FOIA information must indicate these dual purposes in making the request.



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- (C) The Privacy Act and FOIA serve different purposes. Employees who are involved with processing public requests should become familiar with procedures under both Acts. They should observe the following guidance:
- (1) Follow FCCINST 1179.1, *Freedom of Information Act* when handling FOIA requests. The FCC's Internet FOIA webpage at [www.fcc.gov/foia](http://www.fcc.gov/foia) provides a complete discussion of the Commission's FOIA policies and regulations, including the nine exemptions.
  - (2) The Privacy Act intersects with Exemption 6 of FOIA, which protects any "personal, medical, and similar information, the disclosure of which would constitute a clearly unwarranted invasion of privacy."
  - (3) If an individual cites both the Privacy Act and the FOIA, PERM will process the request under both Acts in the manner that gives the most information and is yet consistent with the form and content of the Privacy Law provisions.
  - (4) An individual who requests access to his/her records should be allowed access to them, as required under 5 U.S.C. §§ 552a(d) and (f), except under those circumstances specified in FCC Rules under 47 CFR §§ 0.555(b) and (e), which provide guidance in determining whether the Commission may seek to deny access to all or part of a record, and as explained in Section 4-11.

### 4-5. Inquiries and Questions.

- (A) Individuals who have questions regarding the Commission's Privacy Act procedures for:
- (1) Gaining access to a particular system of records, and/or who request clarification of a *Federal Register* Notice;
  - (2) The description of specific systems of records set forth in the *Federal Register* Notice; or
  - (3) Requesting amendment of a record should write or call the Privacy Analyst/PERM. Please address these inquiries to:  
  
Privacy Analyst  
Performance Evaluation and Records Management (PERM)  
Federal Communications Commission (FCC)  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554
- (B) Individuals who request advice or assistance on procedures for amending a record and/or contesting the contents of a record, either administratively or judicially, should write or write or call the Privacy Legal Advisor in OGC. Address these inquiries to:

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Privacy Legal Advisor  
Office of the General Counsel (OGC)  
Federal Communications Commission (FCC)  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

- (C) Requests relating to official personnel records of current FCC employees, including requests to amend records, should be submitted to:

Associate Managing Director-Human Resources Management (AMD-HRM)  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

- (D) Requests related to official personnel records of former FCC employees, including requests to amend records, should be sent to:

Assistant Director for Work Force Information  
Compliance and Investigations Group  
Office of Personnel Management (OPM)  
1900 E Street, NW  
Washington, DC 20415

### 4-6. How to Make a Privacy Act Request.

- (A) Under FCC Rules, 47 CFR § 0.554, an individual may make a Privacy Act request, in one of three ways:
- (1) You may fill out the Electronic Privacy Act (E-PrivacyAct) Request Form and submit it to us;
  - (2) You may send us a Privacy Act request by regular mail; or
  - (3) You may visit the FCC Reference Information Center (RIC) to make a Privacy Act request in person (“walk-in”):
    - (a) Due to increased security following September 11, 2001, all visitors to the FCC’s headquarters must be escorted by Commission personnel:
      - (i) A requester should call the Privacy Analyst at least two days prior to the proposed visit to schedule an appointment so we can arrange for a Commission employee to escort you to the RIC.
      - (ii) The requester should also provide a telephone number where you can be reached during the day in case the appointment must be changed.

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- (b) Inspection is only allowed in the RIC between 10:00 a.m. – 3:00 p.m., Monday through Thursday, and between 8:00 a.m. – 11:00 a.m. on Friday.
- (4) The Commission will no longer transfer records to a field office for inspection.
- (B) The requester must name each system of records that he/she wishes searched to satisfy the request for information. The list of systems of records maintained by the Commission can be found on the FCC's Internet Privacy Act webpage at [www.fcc.gov/Privacy\\_Act](http://www.fcc.gov/Privacy_Act).

### 4-7. Receipt and Control.

- (A) The Commission has established a centralized administrative system under the direction of the Privacy Officer and administered by the Privacy Analyst in PERM to process Privacy Act requests, with **two exceptions**:
  - (1) Requests for official personnel records of current FCC employees are the responsibility of Human Resources Management (HRM) and should be sent to HRM. See Section 4-5(C); and
  - (2) Requests for official personnel records of former FCC employees are the responsibility of the Office of Personnel Management (OPM) and should be sent to OPM for action. See Section 4-5(D).
- (B) All letters and e-mail, including those sent via the FCC Privacy Act e-mail form and those sent by regular e-mail, that are identifiable as **PRIVACY ACT REQUESTS** are delivered to PERM for processing.
- (C) PERM staff will date stamp each Privacy Act request when it is received, assign a Privacy Act Control Number, and log-in the request to establish the Commission's date of receipt. [Exhibit 3: Control Log] This begins the **30 business day** response period to acknowledge requests and to document the handling, coordination, and completion of each Privacy Act request. A cover sheet, Form A-303, is prepared and attached to the original request.
- (D) PERM sends the request to the System Manager in the B/O that maintains the system(s) of records in question. A copy of each request is also sent to the Privacy Legal Advisor/OGC.
- (E) The Privacy Analyst will send the requester a letter acknowledging the Commission's receipt of this request within the first **ten business days** following its receipt.

**Note:** The Commission will not acknowledge receipt of the Privacy Act request if we can process the request and notify the requester within **ten business days**.

4-8. Preparing the Response.

- (A) The System Manager has responsibility for the system(s) of records covered by the Privacy Act request:
  - (1) He/she will conduct a search of all systems of records identified in the individual's request to determine if any records pertaining to the individual are contained therein.
  - (2) Once the System Manager has obtained the requested records and completed the search, he/she should notify the Privacy Analyst as to where the records are located, if they are easily accessible, and whether or not the FCC maintains information about the individual.
- (B) The System Manager must also determine whether or not the requested materials are contained in a system of records:
  - (1) That is **exempt** or **partially exempt** from disclosure under 47 CFR § 0.561;
  - (2) That is subject to the provisions of 47 CFR §§ 0.555(b) and (d), which **restrict disclosure** of some types of personal information; or
  - (3) That contains materials compiled in anticipation of a **civil action** or **proceeding**.

If the System Manager has questions about disclosing the information, he/she should discuss these concerns with the Privacy Officer, Privacy Legal Advisor/OGC, and the Privacy Analyst.

- (C) If there are no issues that may restrict disclosure, *i.e.*, difficulty verifying the requester's identity, or requesting records from a system of records that is totally or partially exempt from disclosure under 47 CFR §§ 0.555(b) or 0.561 of FCC Rules, then the System Manager will notify the Privacy Analyst and PERM as soon as the determination is made.
- (D) The system manager should bring PERM a copy of the requested materials:
  - (1) PERM staff will enter the date into the "disclosure log" [Exhibit 2: Record of Disclosures under Provisions of the *Privacy Act of 1974*, and Exhibit 3: Control Log].
  - (2) PERM will keep all documents related to this request in the Privacy Act file for long-term storage, subject to National Archives and Records Administration (NARA) regulations.
- (E) The Privacy Analyst will send a second letter to inform the individual of the results of the search, including notice of the charges and payment instructions if any. In this letter, we will ask the individual whether he/she wishes to make an appointment to come to the

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RIC to inspect the records in person, or if he/she wishes PERM to mail a copy of the requested record(s) to him/her, after we have verified the requester's identity.

[Exhibit 6: Letter Approving Access]

**Note:** The Commission has discontinued the practice of transferring materials to a Commission field office or installation near the requester's home.

- (F) Normally, a request should be processed and the individual notified of the search results within **30 business days** from the date the inquiry is received, as required by 47 CFR § 0.554(d) of the FCC Rules. However, if there are extenuating circumstances, *i.e.*, when records have to be recalled from the Federal Records Center, notification may be delayed. Should the System Manager need additional time, he/she should notify the Privacy Analyst as to the reasons for the delay.
- (G) The Privacy Analyst will write the requester to give a projected date for completing the Commission's response:
  - (1) In this letter PERM will inform the requester of the reasons for the delay and give an approximate date when the record(s) should be available for disclosure.
  - (2) If necessary, we may request additional information needed for PERM and the System Manager to locate the record(s). [Exhibit 5: Letter Acknowledging Privacy Act Request]
- (H) In circumstances where the record does not exist, the clerk will send the requester a letter informing him/her of this and file the correspondence or relevant information in PERM's Privacy Act file.
- (I) If the system manager determines that there are reasons to deny access, in whole or in part, he/she must contact the Privacy Officer and the Privacy Legal Advisor.

4-9. Verification of Identity. Before any documents can be disclosed to a requester, the Privacy Analyst must verify his/her identity to assure that disclosure of any information is made to the proper person. Verification can be accomplished in one of several ways:

- (A) There is no need to verify the individual's identity if the records sought are required to be disclosed to the public under FOIA, such as license files, as required by 47 CFR §§ 0.454 of FCC Rules. In this case, PERM will disclose the record as soon as possible.
- (B) If an individual makes his/her Privacy Act request in person, he/she should provide any two of the following documents to verify his/her identity [Exhibit 1: Privacy Act Request for Access to Records in Person]:

Drivers License  
Social Security Card  
Employee Identification Card  
Medicare Card  
Birth Certificate

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Alien Registration Card  
Bank Credit Card  
United States Passport

- (C) PERM will fill-out Exhibit 1: Privacy Act Request for Access to Records in Person, after examining the individual's documents and verifying them satisfactorily. Documents incorporating a picture and/or signature of the individual should be produced, if possible. Making the request in person initiates the Commission's **ten business day** notification process.
- Note:** An individual's refusal to disclose his/her Social Security Number shall not constitute cause, in and of itself, for denial of a Privacy Act request.
- (D) If the individual cannot provide suitable documentation for identification, we will ask the requester to sign an **Identity Statement**. [Exhibit 1: Privacy Act Request for Access to Records in Person"] The Identity Statement stipulates that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to **\$5,000**.
- (E) All requests for record information sent by mail must be signed by the individual requester and must include his/her printed name, current address, and telephone number (if any). PERM will mail a copy of the requested record(s) to the individual after we have verified his/her identity. We will confirm the requester's identity in one of two ways:
- (1) By comparing the individual's signature with those in the Commission's record(s); or
  - (2) By using other personal details in the request letter, an attached notarized identity statement, or attested document, if the record contains no signature.
- (F) If the record(s) contain(s) no signatures, and if positive identification cannot be made based on other information submitted, then the Privacy Officer, Privacy Legal Advisor, and System Manager will decide whether to release the record(s), based on the degree of sensitivity of the records, as explained below:
- (1) If the record contains no signature and if positive identification cannot be made based on other, suitable documentation submitted by the requester, the Privacy Officer, Privacy Legal Advisor, and System Manager, may decide to grant access if the record's content is not sensitive.

In this instance, the Commission will require the requester to sign the **Liability Statement** before releasing the record(s). [Exhibit 1: Privacy Act Request for Access to Records in Person]

- (2) If positive identification cannot be made on the basis of the information submitted by the requester, and if the content of the record is so sensitive that it would cause harm or embarrassment to the individual to whom the record

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pertains, if seen by an unauthorized person, then the Privacy Officer, Privacy Legal Advisor, and System Manager may deny the request, pending the production of better identification.

### 4-10. In-person Inspection of Documents.

- (A) When an individual, who was previously approved for a visit, arrives at FCC Headquarters to inspect the records, he/she should ask the reception desk to call the Privacy Analyst/PERM:
  - (1) After registering with the security staff, the Privacy Analyst will escort the individual to the Records Information Center (RIC) where the documents can be reviewed.
  - (2) The Clerk will also record information about this visit, *i.e.*, date, time, requester, record(s) viewed, etc., on the appropriate form. [Exhibit 2: Record of Disclosures under Provisions of the *Privacy Act of 1974*]
- (B) If the requester wants another person to accompany him/her to inspect the record(s), FCC security procedures require the requester to notify the Privacy Analyst before the scheduled visit. The second individual must:
  - (1) Bring a photo ID;
  - (2) Register with the security staff to gain admittance to FCC Headquarters; and
  - (3) Must also sign the authorization to inspect the record(s). [Exhibit 1: Privacy Act Request for Access to Records in Person]

### 4-11. Denying Access. The Privacy Officer, Privacy Legal Advisor/OGC, and System Manager are responsible for deciding whether to grant or to deny access to the subject of the record(s). In making this determination, FCC Rules under 47 CFR §§ 0.555(b) and (e) provide guidance in determining whether to deny access to all or part of a record.

- (A) Access by the individual can only be denied, to the extent permitted by the *Privacy Act of 1974*, as amended, 5 U.S.C. §§ 552a(d) and (f), for the following reasons:
  - (1) When the record is in a system of records which has an **approved exemption** from the access provisions of the Act, as noted under 47 CFR § 0.561 of FCC Rules.
  - (2) When the record was compiled in reasonable anticipation of a **civil action or proceeding**.
  - (3) When the record is **properly classified** and cannot be declassified.
  - (4) For **investigative material** compiled for law enforcement purposes.

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- (5) For **investigative material** compiled solely for determining suitability for federal employment or access to classified information.
  - (6) For certain **testing** or **examination materials**.
  - (7) For records containing **medical information** pertaining to an individual, when in the judgment of the system manager having custody of the records after consultation with a medical doctor, access to such record information could have an adverse impact on the individual. In such cases, a copy of the record will be delivered to a medical doctor named by the individual.
  - (8) To protect the identity of a **confidential source**. This applies to information collected since September 27, 1975 only if an express guarantee was made not to reveal the source's identity, and where the record, if stripped of the source's identity, would nonetheless reveal the identity of the subject.
- (B) If there is a question about denying access, the Privacy Officer, Privacy Legal Advisor/OCG, and System Manager should consider a partial denial when the exemption only applies to part of the record. The System Manager would then release the parts of the record not covered by the exemption. For example, where the exemption exists only to protect the identity of confidential sources, it may be possible to grant access to that part of the record not protected by the exemption.
  - (C) If the Privacy Act officials decide to deny full access to the record, the Privacy Analyst will send the requester a letter explaining the reasons for the denial and advising the individual of his/her right to seek administrative review. [Exhibit 4: Denial Letter]
  - (D) The Privacy Analyst will send the requester a letter acknowledging the Commission's receipt of this request within the first **ten business days** following its receipt and advising of the projected date for determining whether the Commission will grant this request for access, deny access, or grant a partial denial of this request. (Normally, a request should be processed and the individual notified of the search results or the Commission's determination of whether to grant the request within **30 business days**.) [Exhibit 5: Letter Acknowledging Privacy Act Request]
- 4-12. Appeal of Decision to Deny Access. An individual has the right to appeal the denial of his/her access to documents requested under the Privacy Act.
- (A) The individual should address his/her appeal to the Privacy Officer and state specifically why the decision should be reversed. Both the letter and envelope should be marked "PRIVACY ACT – APPEAL."
  - (B) Upon receipt of the appeal request, PERM staff will log-in the request [Exhibit 3, Privacy Act Control Log] and maintain this request and all related correspondence and documentation in the proper case file. The Commission is obligated to respond to this appeal in writing acknowledging receipt of the request, within the **ten business day** time frame established for all access requests.



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- (C) The Privacy Officer will inform the Privacy Legal Advisor/OGC of this appeal and will forward a copy of all Commission's responses and all other relevant documents as required to OGC.
- (D) The Privacy Officer, Privacy Legal Advisor/OGC, and System Manager will review the individual's appeal, as provided under 47 CFR §§ 0.555(b), 0.555(e), and 0.561 of FCC Rules and 5 U.S.C. §§552a(d)(1), 552a(f)(3), 552a(g)(1)(B), 552a(j), and 552a(k).
- (E) If the Privacy Officer, after consultation with the System Manager and Privacy Legal Advisor/OGC, refuses this appeal for access, the individual has the option to seek review by a U.S. District Court:
  - (1) Once PERM is informed that the individual intends to take legal action, this matter is transferred to the Privacy Legal Advisor and OGC.
  - (2) The Privacy Legal Advisor/OGC will notify PERM of any actions it needs to take concerning this matter.

4-13. Processing Request for Amendment or Correction. An individual subject of a Privacy Act record has a right to request that information be changed in that record.

- (A) Requests to amend a record should be addressed to the Privacy Officer and state clearly the reasons for the change:
  - (1) Both the envelope and letter should be marked "PRIVACY ACT–AMENDMENT."
  - (2) Amendment requests must be made in writing, except for very minor changes, *e.g.*, correction of typographical errors, etc.
  - (3) Notification of very minor changes may be made verbally and need not be processed under this section.
- (B) In making a request to amend or correct a file, the individual's letter should contain the following information:
  - (1) The requester's printed name, current address, and telephone number (if any), as required by 47 CFR §§ 0.554(b)(2) of FCC rules;
  - (2) A brief description of the item or items to be changed/amended and the name of the system of records which contains the record(s), so that we can locate the record(s); and
  - (3) The reason for the requested change.
- (C) The requester is required to provide sufficient information and documentation for PERM to verify his/her identity, as is required in Section 4-9.

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- (D) When PERM receives this amendment request, we will date stamp the request, assign a Privacy Act Control Number, and log-in the request to establish the Commission's date of receipt. [Exhibit 3: Control Log]
- (1) This begins the **ten business day** response period to acknowledge the amendment request.
  - (2) The Commission has **30 business days** to document the handling, coordination, and completion of the Privacy Act Amendment Request.
  - (3) A cover sheet, Form A-303, is prepared and attached to the request.
  - (4) PERM staff maintains documentation of these actions in the Privacy Act case file.
- (E) The Privacy Analyst will notify the Privacy Officer, Privacy Legal Advisor, and System Manager ("Privacy Act officials") for this system of records of the request to change/amend the record(s).
- (F) While the Privacy Act officials review the amendment request, the Privacy Analyst will send the requester a letter acknowledging receipt of his/her request in which we may request additional information needed to make a determination on this request. [Exhibit 8: Letter Acknowledging Amendment Request]
- Note:** The Commission will not send a letter acknowledging receipt of this change/amendment request if the request can be reviewed, processed, and the individual notified of compliance or denial within **ten business days**.
- (G) Should the Commission determine that it may take longer than **30 business days** to decide whether to amend/correct a record, the Privacy Analyst must send a second letter requesting an extension of time to complete this process.
- (H) The Privacy Act officials should be guided by 47 CFR § 0.556(d) in determining whether to amend the record. If they so determine to amend the record(s), the Privacy Analyst will notify the individual in writing and alter the record(s) as specified.
- (I) PERM staff must notify all previous recipients of the information outside the FCC in writing that this record has been corrected [Exhibit 9: Letter Notifying Recipients of an Amendment to a Record] and document this action. [Exhibit 2: Record of Disclosures under Provisions of the *Privacy Act of 1974*]
- (J) If the Privacy Act officials decide to deny the amendment, PERM staff will notify the individual of the refusal and the reasons for it. In this letter, the Commission will advise the individual requester of his/her right to request administrative review of the decision and of the procedures for such a review under 47 CFR §§ 0.556(c) and 0.557 of FCC Rules.

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4-14. Processing Appeal of Amendment Denial. Should the Privacy Act officials decide to deny a request to amend or correct a record in a system of records, the requester has the right to appeal this decision to the full Commission.

- (A) An individual has **30 business days** from the date the Privacy Officer, Privacy Legal Advisor, and System Manager denied his/her appeal to amend a record to seek further administrative review by the full Commission.
- (B) The individual should send his/her request for appeal in writing to the Commission. PERM staff will log in the request [Exhibit 3: Control Log] and forward the appeal to the Privacy Legal Advisor/OGC for administrative review.
- (C) OGC will review the appeal and prepare a response, as required by 47 CFR §§ 0.555(b), 0.557, and 0.561 of FCC Rules.
- (D) Final administrative review of the appeal must be completed within **30 business days** from the date of the individual's request, unless the Chairman of the FCC determines that the Commission requires more time to review the request. In such case, the Commission will notify the individual in writing of the delay and approximately when the review should be completed.
- (E) OGC will inform the individual of the Commission's decision in writing and forward a copy of the response to the Privacy Officer and System Manager.
- (F) If the Commission determines that the record(s) should be amended, OGC will:
  - (1) Instruct the system manager how the record should be amended; and
  - (2) Direct the Privacy Analyst to notify all previous recipients of the information outside the FCC of the amendment.

The Privacy Analyst will document this action. [Exhibit 2: Record of Disclosures under Provisions of the *Privacy Act of 1974*]

- (G) If the Commission, upon review, decides not to amend the record(s), in whole or in part, the Commission will:
  - (1) Notify the individual in writing of the Commission's refusal and the reasons therefore;
  - (2) Advise the individual that he/she may file a concise **statement of disagreement** stating the reasons for disagreeing with the Commission's decision.
    - (a) The statement of disagreement should be signed and addressed to the System Manager having custody of the record in question;

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- (b) This statement of disagreement must appear every time the record(s) is disclosed together with, at the Commission's discretion, a summary of the reasons the Commission has refused to amend the record; and
    - (c) The Commission will provide prior recipients of the record(s) with a copy of the statement of disagreement to the extent that an accounting of such disclosures is maintained.
  - (3) Inform the individual that he/she may seek judicial review of the Commission's decision in a U.S. District Court.
  - (4) The Privacy Officer must notify the Privacy Legal Advisor/OGC if the Commission is notified that the individual intends to take court action.
- 4-15. Processing Court Order to Amend or Grant Access. OGC will litigate any case brought by a requester in court, and the Privacy Legal Advisor will inform the PERM staff of the court's verdict. OGC is responsible for all administrative matters concerning the court order. OGC will also direct the Privacy Act officials, the System Manager, and the B/O as to what procedural actions they must take:
- (A) When amendment of the record is involved, OGC will advise the Privacy Officer/PERM as to how to amend the record(s) and to carry out the court's direction.
  - (B) PERM is also required, as directed by OGC, to notify all previous recipients of the information outside the FCC of the amendment, to document this action [Exhibit 3: Record of Disclosures Under Provisions of the *Privacy Act of 1974*], and to retain the information in PERM's Privacy Act case file.
  - (C) When the court grants the requester access to the record(s), the Privacy Officer will grant access as advised by OGC and maintain documentation of action in PERM's Privacy Act case file.
- 4-16. Charges.
- (A) Copies of records made available via a Privacy Act request are **free** of charge for up to **25 pages**:
    - (1) Privacy Act requests that exceed 25 pages will be charged a copying fee per page. For the current rate, please refer to the FCC's Internet FOIA webpage at <http://www.fcc.gov/foia/>; and
    - (2) When the copies exceed 25 pages, the Privacy Officer may withhold transmittal of the copies until the Commission receives payment from the requester. [Exhibit 7: Letter Transmitting Copy of Record to Individual]
  - (B) Individuals making requests under the Act must not be charged for search time or for the time spent evaluating records.

Chapter 5

PRIVACY ACT EXEMPTIONS

The Commission can exempt systems of records from certain parts of the Privacy Act. This chapter provides guidance on determining and obtaining approval of exemptions for systems of records.

- 5-1. **Purpose.** The main purpose of exemptions is to withhold access from the record subject where disclosure would:
- (A) Divulge classified information,
  - (B) Reveal a confidential source,
  - (C) Impair law enforcement investigative functions, or
  - (D) Compromise the objectivity of tests and examinations.
- 5-2. **General Exemption.** The Chairman of the FCC may promulgate rules, in accordance with the requirements (including general notice) of 5 U.S.C. §§ 553(b)(1), 553(b)(2), and 553(b)(3), 553(c), and 553(e) to exempt any system of records within the Commission from any part of 5 U.S.C. § 552a except subsections 552a(b), 552a(c)(1) and (2), 552a(e)(4)(A) – (F), (e)(6), (7), (9), (10), and (11), and 552a(i), if the system of records is:
- (A) **Classified Information.** Maintained by the Central Intelligence Agency, *i.e.*, classified information, where the record is currently and properly classified secret in the interest of national defense or foreign policy and cannot be declassified; or
  - (B) **Law Enforcement Records.** Maintained by an agency or component thereof which performs as its principle 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:
    - (1) 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;
    - (2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or
    - (3) 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.

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At the time rules are adopted under 5 U.S.C. § 552a(j), the FCC shall include in the statement required under 5 U.S.C. § 553(c), the reasons why the system of records is to be exempted from a provision of this section.

5-3. Specific Exemption. The Chairman of the FCC, may promulgate rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553(b)(1), (2), and (3), 553(c), and 553(e) to exempt any system of records within the Commission from 5 U.S.C. §§ 552a(c)(3), 552a(d), 552a(e)(1), 552a(e)(4)(G), (4)(H), and (4)(I), and 552a(f) if the system of records is:

- (A) **FCC Officials.** Officers and employees in the Commission's Bureau or Office, which maintains the record, may have access if they have a need for the record in the performance of their duties, as allowed by the provisions of 5 U.S.C. §552a(b)(1).
- (B) **Law Enforcement Records.** Investigatory material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. § 552a(j)(2), which covers the "general exemption" noted above, provided, however, that if any individual is denied any right, privilege, or benefit, 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.
- (C) **Protecting the President.** Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18.
- (D) **Statistical Records Required by Law.** Required by statute to be maintained and used solely as statistical records.

**Note:** This exemption applies when the data are only used for statistics and not to make decisions on the rights, benefits, or entitlement of individuals.

- (E) **Data to Determine Suitability, Eligibility, or Qualifications for Civil Service Employment.** 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.
- (F) **Qualifying Tests for Civil Service Appointment or Promotion.** 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.

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- (G) **Data to Determine Armed Forces Promotability.** 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 Commission shall include in the statement required under 5 U.S.C. § 553(c), the reasons why the system of records is to be exempted from a provision of this section.

- 5-4. Effect of Exemptions. The exemptions cited above may free a system of records from any of the following parts of the Act:

- (A) 5 U.S.C. § 552a(c)(3): Access to disclosure of accounting records.
- (B) 5 U.S.C. § 552a(d): Individual access and amendment of records, review of refusal to amend, posting individual statement of disagreement with content of record, and access in anticipation of civil action or proceeding.
- (C) 5 U.S.C. § 552a(e)(1): Restrictions on collecting information directly from the subject.
- (D) 5 U.S.C. § 552a(e)(4)(G), (H), and I: Notification procedures, access procedures, and sources of records in the system of records notice.
- (E) 5 U.S.C. § 552a(f): Agency rules on access/amendment, under 47 CFR §§ 0.554 – 0.557 of FCC Rules.

- 5-5. Obtaining Exemptions. Bureaus and Offices wanting to obtain exemptions for all or part of a system of records shall:

- (A) Determine the specific exemption that applies to the system.
- (B) Request review and approval of the exemption in writing from the OGC. If the exemption is warranted, OGC will obtain a written statement from the Managing Director approving the exemption.
- (C) Establish through informal rulemaking pursuant to the Administrative Procedures Act, a rule exempting a system of records under 5 U.S.C. §§ 552a(j) and 552a(k). This process generally requires publication of a proposed rule, a public comment period, publication of a final rule, and adoption of the final rule.
- (D) Once the Commission has adopted the final rule exempting all or part of a system of records:

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- (1) Work with the system manager for the database(s) covered by the system of records and the Privacy Analyst to prepare a draft of the *Federal Register* Notice for the Privacy Legal Advisor to review and approve;
  - (2) After the Privacy Legal Advisor has approved the draft, the Privacy Analyst will submit the draft notice to the Office of the Secretary for publication in the *Federal Register*, which begins the **30 day** public review period.
- (E) Work with the Privacy Analyst and the Privacy Legal Advisor to prepare the necessary documents for submission to the Director of OMB and the Senate and House Committees having responsibility for the Privacy Act. The document package includes:
- (1) The Transmittal Letter and the Narrative Statement;
  - (2) A copy of the altered/revised system of records containing the exemption; and
  - (3) A copy of the draft *Federal Register* Notice requesting public comment on the exemption.
- (F) The exemption must not be used until such time as:
- (1) The **30 day** public review period has ended following the notice in the *Federal Register* announcing the creation of this new exemption or the alteration of an existing exemption pertaining to the system of records. See Chapter 6, especially Section 6-4(a) and 6-4(e); and
  - (2) The **40 day** review period has ended for approval by OMB and Congress.
- Note:** The two review periods may run concurrently.
- (G) Agencies may not withhold records under an exemption until all of these requirements have been met.

5-6. FCC Exempted Systems of Records. The following FCC systems of records are totally or partially exempt from exempt from 5 U.S.C. §§ 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act and from 47 CFR §§ 0.554 – 0.557 of FCC Rules.

- (A) System Name: **FCC/WTB-1, “Radio Operator Records.”** Parts of this system of records are exempt pursuant to 5 U.S.C. § 552a(k)(2) of the Privacy Act because they contain investigatory materials compiled solely for law enforcement purposes.
- (B) System Name: **FCC/WTB-2, “Violators File”** (records kept on individuals who have been subjects of FCC field enforcement actions). Parts of this system of records are exempt because they are maintained as a protective service for individuals described in Section 3056 of title 18, and because they are necessary for Commission employees to perform their duties, pursuant to 5 U.S.C. §§ 552a(k)(1), (2), and (3) of the Privacy Act.



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- (C) System Name: **FCC/OGC-2, “Attorney Misconduct Files.”** This system of records is exempt pursuant to 5 U.S.C. §§ 552a(k)(2) and (3) of the Privacy Act because it is maintained for law enforcement.
- (D) System Name: **FCC/WTB-5, “Application Review List for Present or Former Licensees, Operators, or Unlicensed Persons Operating Radio Equipment Improperly.”** Parts of this system of records are exempt pursuant to 5 U.S.C. §§ 552a(k)(2) and (3) of the Privacy Act because they embody investigatory materials compiled solely for law enforcement purposes.
- (E) System Name: **FCC/Central-6, “Personnel Investigation Records.”** Parts of this system of records are exempt because they embody investigatory materials pursuant to 5 U.S.C. §§ 552a(k)(2), (3), and (5) of the Privacy Act as applicable.
- (F) System Name: **FCC/OIG-1, “Criminal Investigative Files.”** Compiled for the purpose of criminal investigations. This system of records is exempt pursuant to 5 U.S.C. § 552a(j)(2) of the Privacy Act because the records contain investigatory material composed for criminal law enforcement purposes.
- (G) System Name: **FCC/OIG-2, “General Investigative Files.”** Compiled for law enforcement purposes. This system of records is exempt pursuant to 5 U.S.C. § 552a(k)(2) of the Privacy Act because the records contain investigatory material composed for criminal law enforcement purposes.

**EXHIBIT 1 PRIVACY ACT REQUEST FOR ACCESS TO RECORDS IN PERSON**

The Commission will request the following information when individuals appear in person to ask if they are the subject of a record in a system of records, or to inspect such records, pursuant to 47 CFR §§ 0.554-0.555 of FCC Rules.

**1. REQUESTER:**

Request Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Telephone Number: \_\_\_\_\_

**2. SYSTEM OF RECORDS IDENTIFICATION:**

System Number	System Name	Description of Specific Records

**3. VERIFICATION OF REQUESTER'S IDENTITY.**

The requester may furnish **two identification cards** (photograph preferred).<sup>1</sup> The receiving official will check the appropriate box(es), initial, and date:

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<sup>1</sup> The Commission does not have to verify the requester's identity when the information is subject to public disclosure requirements of the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

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	<b>Item</b>	<b>Initial</b>	<b>Date</b>
	Driver's License		
	Employee Identification Card		
	Bank Credit Card		
	Social Security Card		
	Medicare Card		
	Birth Certificate		
	Alien Registration Card		
	Other (specify)		

**4. LIABILITY STATEMENT.**

When positive identification is not determined by any of the documents listed above, the requester is required to sign the following statement:<sup>2</sup>

I am the requester identified above, and I understand that knowingly or willfully seeking to obtain access to records about another person under false pretenses is punishable by a fine of up to \$5,000, pursuant to 47 CFR § 0.554(b)(1) of FCC Rules.

\_\_\_\_\_

Requester Signature \_\_\_\_\_  
Date

**5. Statement when the requester chooses to have another person accompany him/her, pursuant to 47 CFR § 0.555(a)(1) of FCC Rules:**

I authorize disclosure and discussion of the record(s) described above in the presence of

\_\_\_\_\_ .  
(Name)

\_\_\_\_\_

Requester Signature \_\_\_\_\_  
Date

<sup>2</sup> If the record content is sensitive as described in 47 CFR § 0.554(b)(3) of FCC Rules, the system manager may deny access pending production of better identification.

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**EXHIBIT 2 RECORD OF DISCLOSURES UNDER PROVISIONS OF THE PRIVACY ACT**

**INSTRUCTIONS:** Except for disclosure made under the *Freedom of Information Act* (FOIA), 5 U.S.C. § 552, or within the Federal Communications Commission, use the format below to maintain an accounting of all disclosures for each system of records, pursuant to 5 U.S.C. § 552a(c) of the *Privacy Act of 1974*, as amended. The Commission will retain this record for 5 years or in accordance with the approved records disposition schedule for the related subject individual record, whichever is longer.

**NUMBER AND NAME OF SYSTEM OF RECORDS:** \_\_\_\_\_

\_\_\_\_\_

<b>Date of Disclosure</b>	<b>Nature of Disclosure</b>	<b>Purpose of Disclosure</b>	<b>Disclosure Made To: Agency / Requester's Name and Address. Name of Accompanying Person, if any:</b>

**EXHIBIT 3 CONTROL LOG**

**Purpose:** To ensure that Privacy Act requests, 5 U.S.C. §§ 552a(c), and 552a(f), and are acknowledged within required time frame of 10 working days, pursuant to 47 CFR § 0.554(d) of FCC Rules.

**CONTROL LOG – PRIVACY ACT REQUESTS**

<b>Date Received</b>	<b>Name of Requester</b>	<b>Date Person Notified</b>	<b>Control Number</b>

**EXHIBIT 4 DENIAL LETTER**

**Purpose:** To notify individual that his/her request for access to records has been denied, either (1) full denial, or (2) partial denial, under 5 U.S.C. §§ 552a(d) and 552a(f) of the *Privacy Act of 1974*, as amended, and FCC Rules at 47 CFR §§ 0.555 and 0.561.

**1. FULL DENIAL**

- (a) Consider in response:
  - (1) Acknowledge receipt of request within 10 working days when response cannot be made within 10 working days, pursuant to 47 CFR § 0.554(d). [Exhibit 5: Letter Acknowledging Privacy Act Request.]
  - (2) Indicate that the request for (access to) / (a copy of) a record is denied, and describe reason(s) why. This may include a citation of FCC Rules which establishes the exemption(s) under 47 CFR §§ 0.555 and 0.561.
  - (3) Describe individual's right to request a review of this denial – either an appeal to the Bureau/Office involved or to the district court of the United States, pursuant to 47 CFR §§ 0.555(e) – 0.557 of FCC Rules.
- (b) Related operations:
  - (1) Clear decision to deny access with Office of the General Counsel before notifying the individual of denial.
  - (2) Prepare denial letter:
    - (i) Forward original to individual.
    - (ii) Forward copy to Office of the General Counsel.
    - (iii) Attach request to file copy of denial and file in Bureau/Office Privacy Act case file.

**2. PARTIAL DENIAL**

Consider in response:

- (a) Same information as in “(a)” and “(b)” above, but directed to material covered by partial denial.
- (b) Same information as in “(a)” and “(b)” of Exhibit 6: Letter Approving Access, but directed to material approved for access.

**EXHIBIT 5 LETTER ACKNOWLEDGING PRIVACY ACT REQUEST**

**Purpose:** To acknowledge receipt of an individual’s request for access to personal records within 10 working days, when acknowledgement cannot be included in a complete response within 10 working days, under 47 CFR § 0.554(d) of FCC Rules.

**A. Consider in Response:**

- (1) Acknowledge receipt of request for access to personal record(s).
- (2) Advise of action that requester may expect.

**B. Examples:**

- (1) If requester wants copies by mail, pursuant to 47 CFR §§ 0.554(b) and 0.555(a)(3) of FCC Rules:

“This acknowledges your Privacy Act request dated \_\_\_\_\_, \_\_\_\_\_.

We are proceeding to search for your record and will be in touch with you within an estimated \_\_\_\_\_ ( X weeks or days) \_\_\_\_\_.

(Date should not exceed 30 working days from receiving request.)

- (2) If requester wants to inspect records in person, pursuant to 47 CFR § 0.555(a) of FCC Rules:

“This acknowledges your Privacy Act request dated \_\_\_\_\_, \_\_\_\_\_.

You will be notified soon whether your request to examine the record you describe will be approved, and if approved, when and where it will be available for your inspection.”

**EXHIBIT 6 LETTER APPROVING ACCESS**

**A. Consider in Response:**

- (1) Acknowledge receipt of request within 10 working days when response cannot be completed within 10 working days, pursuant to 47 CFR § 0.554(d) of FCC Rules. [Exhibit 5: Letter Acknowledging Privacy Act Request]
- (2) Advise:
  - (a) Access approved, under 47 CFR §§ 0.554–0.555 of FCC Rules.
  - (b) Where and when to appear to inspect records, under 47 CFR §§ 0.555(a) of FCC Rules.
  - (c) Of the reasonable time limitation on keeping requested record out and available for access under 47 CFR §§ 0.554(c) and 0.555(a) of FCC Rules. (Mention only if holding record out imposes an administrative burden on the custodian of the records.)
  - (d) Identification required prior to providing access, under 47 CFR § 0.555(b) of FCC Rules.
  - (e) When the individual mentioned having another person present to inspect the records, that written authorization by the individual is required, as noted under 47 CFR § 0.555(a)(1) of FCC Rules
  - (f) To bring a copy of the correspondence with him/her to assist in more easily identifying material set aside for access, under 47 CFR § 0.554(a) of FCC Rules.
  - (g) When the request is for copies by mail and no personal appearance is involved, and positive identification of the requester cannot be made on the basis of identity cards or content of letter, the written request for records must be accompanied by a signed statement acknowledging that gaining access to personal records under false pretenses is punishable by a fine, pursuant to 47 CFR §§ 0.554(b) and 0.555(a) of FCC Rules. [Exhibit 1: Privacy Act Request for Access to Records in Person]

**B. Related Operations:**

- (1) Forward letter to requester.
- (2) Attach request to file copy of letter and file in Bureau/Office Privacy Act file, pending response or appearance by requester, as required under 47 CFR § 0.554(c) of FCC Rules and 5 U.S.C. § 552a(c) of the *Privacy Act of 1974*, as amended.



**EXHIBIT 7 LETTER TRANSMITTING COPY OF RECORD TO INDIVIDUAL**

**A. Consider in Response:**

- (1) Only send material to the individual or his/her legally authorized representative, as specified by individual, as required by 47 CFR §§ 0.554(b)(2) and 0.555(a)(3) of FCC Rules.
- (2) Acknowledge receipt of request within 10 working days when response cannot be completed within 10 working days, pursuant to 47 CFR §§ 0.554(d). [Exhibit 5: Letter Acknowledging Privacy Act Request]
- (3) Indicate action taken, under 47 CFR §§ 0.554(d) of FCC Rules.  
Example: “A copy of the record you requested is enclosed (or being forwarded separately).”
- (4) When copies exceed 25 pages, Bureau/Office may withhold transmittal of material until payment is received. If charges apply, see Section 4-6, and inform the requester of charges and payment instructions. Include the address of copy contractor, 47 CFR §§ 0.456(a) and 0.555(c).

**B. Related Operations:**

- (1) Forward letter and copy of record to requester, 47 CFR §§ 0.554(b)(2) and 0.555(a)(3).
- (2) Attach request to file copy of letter and file in Bureau/Office Privacy Act file, 5 U.S.C. § 552a(c) of the *Privacy Act of 1974*, as amended.

**EXHIBIT 8 LETTER ACKNOWLEDGING AMENDMENT REQUEST**

**Purpose:** To acknowledge receipt of individual's request to correct or to amend personal records within 10 working days (when acknowledgement cannot be included in a complete response within 10 working days), 47 CFR §§ 0.556(b).

**A. Consider in Response:**

- (1) Acknowledge receipt of amendment request, 47 CFR §§ 0.556(b).
- (2) Advise of action that requester may expect, 47 CFR § 0.556(c).

**B. Example:**

“This acknowledges your Privacy Act request dated \_\_\_\_\_, \_\_\_\_\_ to amend your record in the FCC's system of records entitled, \_\_\_\_\_.

You will be notified soon of the decision made on your request.”

(Notification shall be made within 30 working days, as required under 47 CFR § 0.556(c) of FCC Rules.)

**EXHIBIT 9 LETTER NOTIFYING RECIPIENTS OF AN AMENDMENT TO A RECORD**

**Purpose:** To inform previous recipients of a personal record that it has been amended or corrected, and the exact nature of the change, pursuant to 47 CFR § 0.556(c)(1)(iii) of FCC Rules.

**A. Example of Text:**

This is in regard to a record the Federal Communications Commission furnished to you on

(date) \_\_\_\_\_, \_\_\_\_\_ which pertained to

Mr/Ms \_\_\_\_\_. (If appropriate, include subject matter or type of record.)

You are hereby advised that the record has been corrected or amended as follows:

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(Or if appropriate: A copy of the corrected or amended recorded is enclosed. Please destroy the previously provided material.)

**B. Related Operations:**

- (1) Advise individual subject of record of the change, 47 CFR § 0.556(c)(1)(i).
- (2) Advise all previous recipients of the record of the charge, as in the text above, 47 CFR § 0.556(c)(1)(iii).
- (3) Enter disclosure information on Disclosure Accounting record as required under 5 U.S.C. § 552a(c) of the *Privacy Act of 1974*, as amended.