



Directorate of Administration and Management
**ADMINISTRATIVE
INSTRUCTION**

NUMBER 81
November 20, 2009

ESD, WHS

SUBJECT: OSD/Joint Staff (JS) Privacy Program

References: See Enclosure 1

1. PURPOSE. In accordance with the authority in DoD Directive (DoDD) 5110.4 (Reference (a)), this Administration Instruction (AI) reissues AI 81 (Reference (b)) to update responsibilities, guidance, and procedures for the OSD/JS Privacy Program in accordance with the policy in DoDD 5400.11 and the procedures in DoD 5400.11-R (References (c) and (d)).

2. APPLICABILITY. This AI:
 - a. Applies to OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, and all other activities serviced by Washington Headquarters Services (WHS) that receive privacy program support from the OSD/JS Privacy Office, Executive Services Directorate (ESD), WHS (hereafter referred to collectively as the "WHS-Serviced Components)."

 - b. Covers systems of records maintained by the WHS-Serviced Components and governs the maintenance, access, change, and release of information contained in those systems of records, from which information about an individual is retrieved by a personal identifier.

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy in accordance with Reference (c) that:
 - a. Personal information contained in any system of records maintained by any DoD organization shall be safeguarded. To the extent authorized by the Privacy Act, section 552a of title 5, United States Code (Reference (e)), and Appendix I of Office of Management and Budget Circular No. A-130 (Reference (f)), an individual shall be permitted to know what existing records pertain to him or her consistent with Reference (c).

b. Each office maintaining records and information about individuals shall ensure that this data is protected from unauthorized collection, use, dissemination and/or disclosure of personal information. These offices shall permit individuals to access and have a copy made of all or any portion of records about them, except as provided in Chapters 3 and 5 of Reference (c). The individuals will also have an opportunity to request that such records be amended as provided by Chapter 3 of Reference (d) and the Privacy Act (Reference (e)). Individuals requesting access to their records shall receive concurrent consideration under the Freedom of Information Act, section 552 of Reference (e).

c. Necessary records of a personal nature that are individually identifiable will be maintained in a manner that complies with the law and DoD policy. Any information collected by the WHS-Serviced Components must be as accurate, relevant, timely, and complete as is reasonable to ensure fairness to the individual. Adequate safeguards must be provided to prevent misuse or unauthorized release of such information consistent with the Privacy Act (Reference (e)).

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. INFORMATION REQUIREMENTS. The DoD privacy reports supplied to the OSD/JS Privacy Office shall be licensed in accordance with DoD 8910.1-M (Reference (g)).

8. RELEASABILITY. This AI is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs.directives>.

9. EFFECTIVE DATE. This AI is effective immediately.



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Enclosures

1. References
 2. Responsibilities
 3. Procedures
 4. OSD/JS Privacy Office Processes
- Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5110.4, "Washington Headquarters Services (WHS)," October 19, 2001
- (b) Administrative Instruction 81, "Privacy Program," February 4, 1999 (hereby canceled)
- (c) DoD Directive 5400.11, "DoD Privacy Program," May 8, 2007
- (d) DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007
- (e) Section 552 and section 552a of title 5, United States Code
- (f) Appendix I of Office of Management and Budget Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," February 8, 1996
- (g) DoD 8910.1-M, "Department of Defense Procedures for Management of Information Requirements," June 30, 1998
- (h) Federal Acquisition Regulation, current edition
- (i) Defense Federal Acquisition Regulation Supplement, current edition
- (j) DoD 5400.7-R, "DoD Freedom of Information Act Program," September 4, 1998

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR, WHS. The Director, WHS, under the authority, direction, and control of the Director, Administration and Management (DA&M), shall:

- a. Direct and administer the OSD/JS Privacy Program for the WHS-Serviced Components.
- b. Ensure implementation of and compliance with standards and procedures established in References (c) and (d).
- c. Coordinate with the WHS General Counsel on all WHS-Serviced Component denials of appeals for amending records and review actions to confirm denial of access to records.
- d. Provide advice and assistance to the WHS-Serviced Components on matters pertaining to the Privacy Act (Reference (e)).
- e. Direct the OSD/JS Privacy Office to implement all aspects of Reference (c) as directed in Enclosure 4.

2. HEADS OF THE WHS-SERVICED COMPONENTS. The Heads of the WHS-Serviced Components shall:

- a. Designate an individual in writing as the point of contact for Privacy Act matters and advise the Chief, OSD/JS Privacy Office, of names of officials so designated.
- b. Designate an official in writing to deny official requests for access to an individual's record or changes to records and advise the Chief, OSD/JS Privacy Office, of names of officials so designated.
- c. Provide opportunities for appointed personnel to attend periodic Privacy Act training.
- d. Report any new record system, or changes to an existing system, to the Chief, OSD/JS Privacy Office, at least 90 days before the intended use of the system.
- e. Formally review each system of records notice on a biennial basis and update as necessary.
- f. In accordance with Reference (d), include appropriate Federal Acquisition Regulation (FAR) (Reference (h)) and Defense Federal Acquisition Regulation Supplement (DFARS) (Reference (i)) clauses (FAR 24.1 and 24.2, and DFARS 52.224-1 and/or 52.224-2) in all contracts that provide for contractor personnel to access WHS-Serviced Component records systems covered by the Privacy Act (Reference (e)).

g. Review all implementing guidance prepared by their Components as well as all forms or other methods used to collect information about individuals to ensure compliance with Reference (d).

h. Establish administrative processes in their Component organizations to comply with the procedures in this AI and Reference (d).

i. Coordinate with the WHS General Counsel on all proposed denials of access to records.

j. Provide justification to the OSD/JS Privacy Office when access to a record is denied in whole or in part.

k. Provide the record to the OSD/JS Privacy Office when the initial denial of a request for access to such record has been appealed by the requester or at the time of initial denial if an appeal seems likely.

l. Maintain an accurate administrative record documenting the actions resulting in a denial for access to a record or for the correction of a record. The administrative record should be maintained so it can be relied upon and submitted as a complete record of proceedings if litigation occurs in accordance with Reference (d).

m. Ensure all personnel are aware of the requirement to take appropriate Privacy Act training as required by Reference (d) and the Privacy Act (Reference (e)).

n. Forward all requests for access to records received directly from an individual to the OSD/JS Freedom of Information Act Requester Service Center, for processing under Reference (d) and DoD 5400.7-R (Reference (j)).

o. Maintain a record of each disclosure of information (other than routine use) from a system of records as required by Reference (d).

ENCLOSURE 3

PROCEDURES

1. PUBLICATION OF NOTICE IN THE FEDERAL REGISTER

a. A notice shall be published in the Federal Register of any record system meeting the definition of a system of records in Reference (d).

b. The Heads of the WHS-Serviced Components shall submit notices for new or revised systems of records to the Chief, OSD/JS Privacy Office, for review at least 90 days prior to desired implementation.

c. The Chief, OSD/JS Privacy Office, shall forward completed notices to the Defense Privacy Office (DPO) for review and publication in the Federal Register in accordance with Reference (d). Publication in the Federal Register starts a 30-day comment window that provides the public an opportunity to submit written data, views, or arguments to the DPO for consideration before a system of record is established or modified.

2. ACCESS TO SYSTEMS OF RECORDS INFORMATION

a. As provided by the Privacy Act (Reference (e)), records shall be disclosed only to the individual they pertain to and under whose individual name or identifier they are filed, unless exempted by the provisions in Reference (d). If an individual is accompanied by a third party, the individual shall be required to furnish a signed access authorization granting the third party access conditions according to Chapter 3 of Reference (d).

b. Individuals seeking access to records that pertain to themselves, and that are filed by name or other personal identifier, may submit the request in person or by mail, in accordance with these procedures:

(1) Any individual making a request for access to records in person shall provide personal identification to the appropriate system owner, as identified in the system of records notice published in the Federal Register, to verify his or her identity according to Chapter 3 of Reference (d).

(2) Any individual making a request for access to records by mail shall address such request to the OSD/JS Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Pentagon, Washington, DC 20301-1155. To verify his or her identity, the requester shall include either a signed notarized statement or an unsworn declaration in the format specified by Reference (j).

(3) All requests for records shall describe the record sought and provide sufficient information to enable the material to be located (e.g., identification of system of records, approximate date it was initiated, originating organization, and type of document).

(4) All requesters shall comply with the procedures in Reference (d) for inspecting and/or obtaining copies of requested records.

(5) If the requester is not satisfied with the response, he or she may file a written appeal as provided in paragraph 6.h. of this enclosure. The requester must provide proof of identity by showing a driver's license or similar credentials.

c. There is no requirement that an individual be given access to records that are not in a group of records that meet the definition of a system of records in the Privacy Act (Reference (e)). (For an explanation of the relationship between the Privacy Act and the Freedom of Information Act, and for guidelines to ensure requesters are given the maximum amount of information authorized by both Acts, see subparagraph C3.1.9. of Reference (d).)

d. Granting access to a record containing personal information shall not be conditioned upon any requirement that the individual state a reason or otherwise justify the need to gain access.

e. No verification of identity shall be required of an individual seeking access to records that are otherwise available to the public.

f. Individuals shall not be denied access to a record in a system of records about themselves because those records are exempted from disclosure under Reference (j). Individuals may only be denied access to a record in a system of records about themselves when those records are exempted from the access provisions of Chapter 5 of Reference (d).

g. Individuals shall not be denied access to their records for refusing to disclose their Social Security Number (SSN), unless disclosure of the SSN is required by statute, by regulation adopted before January 1, 1975, or if the record's filing identifier and only means of retrieval is by SSN (the Privacy Act (Reference (e)), note).

3. ACCESS TO RECORDS OR INFORMATION COMPILED FOR LAW ENFORCEMENT PURPOSES

a. Requests are processed under References (d) and (j) to give requesters a greater degree of access to records on themselves.

b. Records (including those in the custody of law enforcement activities) that have been incorporated into a system of records exempted from the access conditions of Reference (d), will be processed in accordance with subparagraph C1.5.13. and Chapter 5 of Reference (j). Individuals shall not be denied access to records solely because they are in the exempt system. They will have the same access that they would receive under Reference (j). (See also Chapter 3 of Reference (d).)

c. Records systems exempted from access conditions will be processed under Chapter 5 of Reference (d) or Reference (j), depending upon which regulation gives the greater degree of access. (See also Chapter 3 of Reference (d).)

d. Records systems exempted from access under section 2 of Chapter 5 of Reference (d) that are temporarily in the hands of a non-law enforcement element for adjudicative or personnel actions, shall be referred to the originating agency. The requester will be informed in writing of this referral.

4. ACCESS TO ILLEGIBLE, INCOMPLETE, OR PARTIALLY EXEMPT RECORDS

a. An individual shall not be denied access to a record or a copy of a record solely because the physical condition or format of the record does not make it readily available (e.g., deteriorated state or on magnetic tape). The document will be prepared as an extract, or it will be exactly recopied.

b. If a portion of the record contains information that is exempt from access, an extract or summary containing all of the information in the record that is releasable shall be prepared.

c. When the physical condition of the record makes it necessary to prepare an extract for release, the extract shall be prepared so that the requester will understand it.

d. The requester shall be informed of all deletions or changes to records.

5. ACCESS TO MEDICAL RECORDS

a. Medical records shall be disclosed to the individual and may be transmitted to a medical doctor named by the individual concerned.

b. The individual may be charged reproduction fees for copies or records as outlined in Reference (d).

6. AMENDING AND DISPUTING PERSONAL INFORMATION IN SYSTEMS OF RECORDS

a. The Head of a WHS-Serviced Component, or designated official, shall allow individuals to request amendments to their records to the extent that such records are not accurate, relevant, timely, or complete.

b. Requests shall be submitted in person or by mail to the office designated in the system of records notice. They should contain, at a minimum, identifying information to locate the record, a description of the items to be amended, and the reason for the change. Requesters shall be

required to provide verification of their identity as stated in subparagraphs 2.b.(1) and 2.b.(2) of this enclosure to ensure that they are seeking to amend records about themselves and not, inadvertently or intentionally, the records of others.

c. Requests shall not be rejected nor required to be resubmitted unless additional information is essential to process the request.

d. The appropriate system manager shall mail a written acknowledgment to an individual's request to amend a record within 10 workdays after receipt. Such acknowledgment shall identify the request and may, if necessary, request any additional information needed to make a determination. No acknowledgment is necessary if the request can be reviewed and processed and if the individual can be notified of compliance or denial within the 10-day period. Whenever practical, the decision shall be made within 30 working days. For requests presented in person, written acknowledgment may be provided at the time the request is presented.

e. The Head of a WHS-Serviced Component, or designated official, shall promptly take one of three actions on requests to amend records:

(1) If the WHS-Serviced Component official agrees with any portion or all of an individual's request, he or she will proceed to amend the records in accordance with existing statutes, regulations, or administrative procedures and inform the requester of the action taken in accordance with Reference (d). The WHS-Serviced Component official shall also notify all previous holders of the record that the amendment has been made and shall explain the substance of the correction.

(2) If the WHS-Serviced Component official disagrees with all or any portion of a request, the individual shall be informed promptly of the refusal to amend a record, the reason for the refusal, and the procedure to submit an appeal as described in paragraph 6.h. of this enclosure.

(3) If the request for an amendment pertains to a record controlled and maintained by another Federal agency, the request shall be referred to the appropriate agency and the requester advised of this.

f. When personal information has been disputed by the requester, the Head of a WHS-Serviced Component, or designated official, shall:

(1) Determine whether the requester has adequately supported his or her claim that the record is inaccurate, irrelevant, untimely, or incomplete.

(2) Limit the review of a record to those items of information that clearly bear on any determination to amend the record, and ensure that all those elements are present before a determination is made.

g. If the Head of a WHS-Serviced Component, or designated official, after an initial review of a request to amend a record, disagrees with all or any portion of the request to amend a record, he or she shall:

- (1) Advise the individual of the denial and the reason for it.
- (2) Inform the individual that he or she may appeal the denial.
- (3) Describe the procedures for appealing the denial, including the name and address of the official to whom the appeal should be directed. The procedures should be as brief and simple as possible.
- (4) Furnish a copy of the justification of any denial to amend a record to the OSD/JS Privacy Office.

h. If an individual disagrees with the initial WHS-Serviced Component determination, he or she may file an appeal. If the record is created and maintained by a WHS-Serviced Component, the appeal should be sent to the Chief, OSD/JS Privacy Office, WHS, 1155 Defense Pentagon, Washington, DC 20301-1155.

i. If, after review, the Chief, OSD/JS Privacy Office, determines the system of records should not be amended as requested, the Chief, OSD/JS Privacy Office, shall provide a copy of any statement of disagreement to the extent that disclosure accounting is maintained in accordance with Chapter 4 of Reference (d), and shall advise the individual:

- (1) Of the reason and authority for the denial.
- (2) Of his or her right to file a statement of the reason for disagreeing with the OSD/JS Privacy Office decision.
- (3) Of the procedures for filing a statement of disagreement.
- (4) That the statement filed shall be made available to anyone the record is disclosed to, together with a brief statement by the WHS-Serviced Component summarizing the reasons for refusing to amend the records.

j. If the Chief, OSD/JS Privacy Office, determines that the record should be amended in accordance with the individual's request, the WHS-Serviced Component shall amend the record, advise the individual, and inform previous recipients where a disclosure accounting has been maintained in accordance with Chapter 4 of Reference (d).

k. All appeals should be processed within 30 workdays after receipt by the proper office. If the Chief, OSD/JS Privacy Office, determines that a fair and equitable review cannot be made within that time, the individual shall be informed in writing of the reasons for the delay and of the approximate date the review is expected to be completed.

7. DISCLOSURE OF DISPUTED INFORMATION

a. If the OSD/JS Privacy Office determines the record should not be amended and the individual has filed a statement of disagreement under paragraph 6.i. of this enclosure, the WHS-Serviced Component shall annotate the disputed record so it is apparent to any person to whom the record is disclosed that a statement has been filed. Where feasible, the notation itself shall be integral to the record. Where disclosure accounting has been made, the WHS-Serviced Component shall advise previous recipients that the record has been disputed and shall provide a copy of the individual's statement of disagreement in accordance with Chapter 4 of Reference (d).

(1) This statement shall be maintained to permit ready retrieval whenever the disputed portion of the record is disclosed.

(2) When information that is the subject of a statement of disagreement is subsequently disclosed, the WHS-Serviced Component designated official shall note which information is disputed and provide a copy of the individual's statement.

b. The WHS-Serviced Component shall include a brief summary of its reasons for not making a correction when disclosing disputed information. Such statement shall normally be limited to the reasons given to the individual for not amending the record.

c. Copies of the WHS-Serviced Component summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedure outlined in paragraph 3.c. of this enclosure.

8. PENALTIES

a. Civil Action. An individual may file a civil suit against the WHS-Serviced Component or its employees if the individual feels certain provisions of the Privacy Act (Reference (e)) have been violated.

b. Criminal Action

(1) Criminal penalties may be imposed against an officer or employee of a WHS-Serviced Component for the offenses listed in subsection (i) of the Privacy Act (Reference (e)): willful unauthorized disclosure of protected information in the records; failure to publish a notice of the existence of a record system in the Federal Register; requesting or gaining access to the individual's record under false pretenses.

(2) An officer or employee of a WHS-Serviced Component may be fined up to \$5,000 for a violation as outlined in subparagraph 8.b.(1) of this enclosure.

9. LITIGATION STATUS SHEET. Whenever a complaint citing the Privacy Act (Reference (e)) is filed in a U.S. District Court against the Department of Defense, a WHS-Serviced Component, or any employee of a WHS-Serviced Component, the responsible system manager shall promptly notify the OSD/JS Privacy Office, which shall notify the DPO. The litigation status sheet in Appendix 8 of Reference (d) provides a standard format for this notification. (The initial litigation status sheet shall, as a minimum, provide the information required by items 1 through 6.) A revised litigation status sheet shall be provided at each stage of the litigation. When a court renders a formal opinion or judgment, copies of the judgment or opinion shall be provided to the OSD/JS Privacy Office with the litigation status sheet reporting that judgment or opinion.

10. COMPUTER MATCHING PROGRAMS. Chapter 11 of Reference (d) prescribes that all requests for participation in a matching program (either as a matching agency or a source agency) shall be submitted to the DPO for review and compliance. The WHS-Serviced Components shall submit a courtesy copy to the OSD/JS Privacy Office at the time of transmittal to the DPO.

ENCLOSURE 4

OSD/JS PRIVACY OFFICE PROCESSES

The OSD/JS Privacy Office shall:

- a. Exercise oversight and administrative control of the OSD/JS Privacy Program for the WHS-Serviced Components.
- b. Provide guidance and training to the WHS-Serviced Components as required by References (c) and (d).
- c. Collect and consolidate data from the WHS-Serviced Components and submit reports to the DPO as required by Reference (d) or otherwise requested by the DPO.
- d. Coordinate and consolidate information for reporting all record systems, as well as changes to approved systems, to the DPO for final processing to the Office of Management and Budget, the Congress, and the Federal Register, as required by Reference (d).
- e. In coordination with the DPO, serve as the appellate authority for the WHS-Serviced Components when a requester appeals a denial for access as well as when a requester appeals a denial for amendment or initiates legal action to correct a record.
- f. Refer all matters about amendments of records and general and specific exemptions under Reference (d) to the proper WHS-Serviced Components.

GLOSSARY

DEFINITIONS

Unless otherwise indicated, these definitions are for the purpose of this AI.

access. Defined in Reference (d).

computer matching program. A program that matches the personal records in computerized databases of two or more Federal agencies.

disclosure. Defined in Reference (d).

individual. Defined in Reference (d).

individual access. Defined in Reference (d).

maintain. Defined in Reference (d).

personal information. Defined in Reference (d).

record. Defined in Reference (d).

system manager. A WHS-Serviced Component official who has overall responsibility for a system of records. The system manager may serve at any level in the WHS-Serviced Component. System managers are indicated in the published system of records notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (i.e., for local records, at the local activity).

system of records. Defined in Reference (d).