



# United States Department of the Interior

## OFFICE OF THE SECRETARY

Office of Civil Rights  
Washington, D.C. 20240

**UUL 28 2008**

EQUAL EMPLOYMENT OPPORTUNITY DIRECTIVE 2008-01

To: Bureau Equal Employment Opportunity Officers

From: Sharon D. Eller, Director, Office of Civil Rights *Sharon D. Eller*

Subject: Disclosure of Equal Employment Opportunity Complaint Records

This Directive provides guidance on the Department of the Interior's policy regarding disclosure of information from Equal Employment Opportunity (EEO) complaint files.

When an employee or applicant contacts an EEO counselor, or files a complaint, any resulting information or documents are placed in a system of records belonging to the Equal Employment Opportunity Commission (EEOC), but located at the agency where the complaint was filed. Any determination regarding the release of these complaint records must be in accordance with any instructions from the EEOC and consistent with the Privacy Act.

The Privacy Act prohibits disclosure of records from the EEOC system of records (or disclosure of information from these records) without the complainant's prior written consent, unless an exception applies. Under the "need to know" exception, records may be disclosed to managers without prior written consent if the manager has a need for that record (or information from a record) in performing his or her official duties. The Privacy Act provides that such records may be disclosed ". . . to those officers and employees of the agency, which maintains the record, who have a need for the record in the performance of their duties."

Under the need to know exception, an EEO counselor is authorized to disclose a limited amount of information from the file to the alleged responsible management official (RMO) to gain information about what happened, or to hear the RMO's side of the events at issue. However, this exception is not generally broad enough to include a wholesale disclosure of the complaint file. Any additional request for information from the complaint file by an RMO (without the complainant's prior written consent) must be denied as barred by the Privacy Act. The Office of the Solicitor, not the RMO, represents the Department in matters before the EEOC and the Merit Systems Protection Board; the RMO has no independent need to know for the file.

Pursuant to Management Directive 110, agencies may disclose information and documents to a witness who is a federal employee where the **investigator** determines that the disclosure of the information or documents is necessary to obtain information from the witness, e.g., to explain the claims in a complaint or to explain a manager's articulated reason for an action in order to develop evidence bearing on that reason.

Moreover, disclosing the Reports of Investigation (ROIs) to RMOs places the Department in jeopardy for future discrimination complaints of reprisal from complainants and witnesses to complaints. Managers reviewing ROIs could conceivably take reprisal actions against those employees who provide affidavits and statements on behalf of complainants.

In the event you receive a request from a management official who believes that he or she has a right to the information in a complaint file, please instruct the official to submit the request to the Director, Office of Civil Rights, and cite the authority that provides the entitlement. Such a request must be made from management at a level above that of the RMO, and the need to know would have to be compelling before disclosure would be authorized.

Distribution: Bureau EEO Officers, Bureau EEO Complaint Managers, Regional and Field EEO Managers

Inquiries: John W. Burden, Deputy Director, Office of Civil Rights, (202) 208-5693

Expiration: When superseded