

National Archives and Records Administration

Transmittal Memo

DATE:

TO: All Staff

SUBJECT: NARA 1603, Access to Records Under the Privacy Act

Purpose: This directive establishes procedures for processing requests for access to records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), and implements guidance from the Office of Management and Budget in Circular A-108.

Significant changes: This directive has been updated to implement changes made to OMB Circular No. A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act," dated December 23, 2016. Other changes include establishing additional reviews when NARA creates a new system of record notice (SORN) and providing for the periodic review of existing SORNs for accuracy.

Available forms: None

Cancelled policy: NARA 1603, Access to Records Under the Privacy Act, dated June 23, 2006.

Related policy:

- NARA 108, Information Collection.
- NARA 1602, Access to Records Under the Freedom of Information Act (FOIA),

Effective date: This policy is effective on date of signature.

Contact information: For questions about this policy, please contact Hannah Bergman, Office of General Counsel (NGC), at 301-837-0344 or [by email](#).

DEBRA STEIDEL WALL
Deputy Archivist of the United States

Attachment

National Archives and Records Administration

NARA 1603

[DATE]

SUBJECT: Access to Records Under the Privacy Act

1603.1 Policy.

- a. NARA protects information the agency collects and maintains about individuals to ensure the information is accurate, timely and correct. NARA also allows individuals to access and amend information about themselves if they believe it is inaccurate.
- b. NARA processes requests for access to records and for amendments of records subject to those provisions of the Privacy Act. Any citizen or permanent resident of the United States may request access to or an amendment to records about themselves. In general, an individual may request access to Privacy Act records about someone else only with the written consent of the person who is the subject of the record.
- c. NARA provides access to Privacy Act-protected records as expeditiously as possible. If possible, NARA responds to requests for access within 10 workdays of receipt of the request. When a request for access is denied, NARA responds to appeal requests within 30 workdays from receipt of the appeal.

1603.2 Scope and applicability.

- a. This policy applies to NARA operational records (records used in current NARA business) and to non-accessioned records of any defunct Executive Branch agency, if those records are stored in a NARA records center and they are explicitly covered by the defunct agency's Privacy Act systems of records.
- b. Records subject to this policy include any information about an individual that is maintained by NARA and that contains the individual's name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph, which is retrieved by a unique personal identifier.
- c. This directive does not apply to:
 - (1) Archival records. Accessioned archival records are excluded from many provisions of the Privacy Act.
 - (2) Congressional and legislative branch records, judicial branch records, presidential records covered by the Presidential Records Act, records covered by the Presidential Recordings and Materials Preservation Act, and donated historical materials. The Privacy Act only applies to the Executive branch.
 - (3) Records of other agencies that are stored in Federal records centers are governed by the Privacy Act rules of the originating agency.

d. The Inspector General (OIG) processes Privacy Act requests for access and requests for amendments to all OIG records. For OIG records and systems of records, the OIG fulfills the roles assigned to the Privacy Act Officer and systems manager in this policy.

1603.3 Collecting information.

a. NARA collects information directly from the individual to the greatest extent possible, to ensure that information maintained on individuals is accurate, timely and correct.

b. The system manager is the NARA official who is responsible for maintaining a Privacy Act system of records. System managers are responsible for collecting information provided by individuals, and in a manner that complies with the Privacy Act, the Paperwork Reduction Act, and with requirements set forth by the Office of Management and Budget (OMB), including the requirement to get approval before collecting information from the public (see NARA 108, Information Collection). NGC advises system managers on how to comply with laws applicable to proper management and collection of information.

c. Once OMB grants appropriate clearance for an information collection, system managers or designated agency employees must provide each individual with a Privacy Act statement when collecting information about her or him. The statement must include the following elements:

- (1) The authority (e.g., statute or Executive Order) that authorizes the agency to request the information, and whether it is mandatory or voluntary for the individual to disclose it;
- (2) The principal purpose(s) for which the information will be used;
- (3) The routine uses that may be made of the information. The “routine use” is the reason that NARA is collecting the information. The routine uses disclosed to individuals must be the same as the routine uses listed in the system of records notice published in the *Federal Register* (see paragraph 1603.4b). System managers can verify published routine uses by consulting the Privacy Act Officer; and
- (4) The effects on the individual who supplies the information, if any, for not providing all or any part of the requested information.

1603.4 Privacy Act systems of records.

a. A system of records is a group of records under the control of NARA from which information is retrieved by the name of the individual or by some identifying number,

symbol, or other identifier assigned to that individual. Records about individuals are not part of a system of records if they are maintained chronologically or in another filing scheme not based on retrieval by personal identifier.

- b. Establishing a new or revised Privacy Act system of records.
 - (1) A proposal for a new or revised system of records must be sent through the Executive or Staff Director to the Privacy Act Officer at least 180 days before any new or revised system of records can go into effect. The proposal must include a complete description of and justification for each new or altered records system.
 - (2) The Privacy Act Officer, in collaboration with the system manager, NGC, and the Strategy and Performance Division (MP), prepares the Privacy Act system of records notice (SORN) in accordance with OMB Circular A-108 and Admin. 201, Chapter 3, External Directives.
 - (3) OMB and Congress must review proposed new and revised systems of records, and NARA must publish the SORN in the *Federal Register* before the systems can go into effect. The SORN must include the routine uses of the information that will be collected and stored in the system of records.
 - (4) Once the SORN is effective, the Privacy Act Officer will notify the system manager that the new or revised system or records can be implemented.
- c. The system manager must implement and maintain the system of records with appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records. Paper records must be maintained in areas accessible only to authorized NARA personnel. Electronic records must be accessible only through information systems with appropriate security controls as identified in system security plans.
- d. The Chief Acquisition Officer ensures that Privacy Act clauses are included in all contracts and statements of work that require a contractor to operate a system of records. Privacy Act clauses require the contractor to ensure compliance with all applicable requirements of the Privacy Act; 32 CFR 2002, Controlled Unclassified Information; and OMB policies.
- e. Under limited circumstances, it may be appropriate to exempt a system of records from some Privacy Act provisions. No NARA official can exempt a system of records from any Privacy Act provisions unless NARA has received approval from OMB and published a rule making in the *Federal Register*.

1603.5 Requesting and accessing Privacy Act records.

- a. Any citizen of the United States or an alien lawfully admitted for permanent residence can file a request for access to records about herself or himself under the Privacy Act.
- b. All requests for records contained in a NARA Privacy Act system of records must be made in writing and sent to the Privacy Act Officer. The Privacy Act Officer ensures that the request includes the information required by 36 CFR 1202.40 (for access by subject individuals) and 36 CFR 1202.62 (for disclosure to third parties).
- c. The subject of a record can authorize another individual to have access to his or her records. The subject individual's request must identify the authorized third party and be accompanied by proof of identity as outlined in 36 CFR 1202.40.
- d. NARA will not disclose a record in a system of records to any person or any agency without the express written consent of the subject individual, unless the disclosure meets one of the conditions for disclosure without consent as outlined in the Privacy Act, at 5 U.S.C. § 552a(b):
 - (1) Disclosure to a NARA employee who has a need for the information in the performance of her or his official duties.
 - (2) Disclosure required under the Freedom of Information Act (FOIA, 5 U.S.C. § 552).
 - (3) Disclosure in accordance with a published routine use.
 - (4) Disclosure to the Bureau of the Census for uses described in Title 13, United States Code.
 - (5) Disclosure to a requester who has provided NARA with written assurance that the records will be used solely as a statistical research or reporting record and living individuals will not be identifiable.
 - (6) Disclosure to NARA, if a record has sufficient historical or other value to warrant its permanent preservation.
 - (7) Disclosure to another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity. NARA will disclose a record under these circumstances only if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to NARA specifying the particular portion desired and the law enforcement activity for which the record is sought.

- (8) Disclosure to a person showing compelling circumstances affecting the health or safety of an individual. Upon such disclosure, a notification must be sent to the last known address of the subject individual.
- (9) Disclosure to either house of Congress or to a subcommittee or committee (joint or of either house, to the extent that the subject matter falls within its jurisdiction).
- (10) Disclosure to the Comptroller General or any authorized representatives in the course of the performance of the duties of the Government Accountability Office.
- (11) Disclosure to a consumer reporting agency (credit bureau) when trying to collect a claim of the Government in accordance with 31 U.S.C. 3711(e).
- (12) Disclosure is required by the order of court of competent jurisdiction.

1603.6 Processing requests for access to Privacy Act-protected information.

- a. The Privacy Act Officer is the point of contact for all Privacy Act requests, ensures each request contains all required information, logs the request, and forwards each request to the appropriate system manager(s) for processing. The system manager consults with the Privacy Act Officer to determine whether the requested records may be disclosed, in accordance with the Privacy Act and the applicable system of records notice. When an office receives a Privacy Act request directly from a requester, the office must notify the Privacy Act Officer before taking any action.
- b. The Privacy Act Officer must respond to the requester within 10 workdays of receiving a Privacy Act request. The Privacy Act Officer will respond in one of the following ways:
 - (1) Send copies of the records to the requester or send notice to the requester that they may view the records at a NARA location;
 - (2) Send notice to the requester that more time is needed to process their request; or
 - (3) Send notice to the requester that their request is denied.
- c. The system manager helps the Privacy Act Officer to meet the 10 workday processing deadline by locating the requested records and determining if they can be released. The system manager prepares the requested records, and the Privacy Act Officer makes them available by sending copies to the requester by mail or email, or by arranging for the requester to view the requested records during normal business hours at the NARA facility where the records are located. If the requester views or picks up the copies in person, she or he will be required to provide proof of identity, as described in 36 CFR

1202.40. When Privacy Act records are sent through the mail or email, the proof of identity furnished with the request serves as verification of the identity of the requester.

d. The system manager must keep an accurate accounting of each disclosure under the Privacy Act, except for disclosures made to NARA employees in the course of performing their official duties or in response to FOIA requests,

- (1) The system manager must record the following information:
 - (a) Date of disclosure;
 - (b) Nature and purpose of each disclosure;
 - (c) Name and address of the person or agency to which the information was disclosed;
 - (d) A full statement of the justification for the disclosure;
 - (e) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and
 - (f) Evidence of written consent by the individual subject to a disclosure, if applicable.
- (2) The system manager's accounting of disclosures will be made available to the subject individual upon request, except for disclosures made to a law enforcement entity or for disclosures made from an exempt system.
- (3) The system manager must retain the accounting of disclosure for five years after the disclosure or for the life of the record, whichever is longer.

e. NARA may charge fees for copies of records provided in response to Privacy Act requests, but NARA generally waives the fees for the first 100 pages copied; after the first 100 pages, NARA applies the FOIA reproduction fees schedule at 36 CFR 1250.53. NARA does not charge search or review fees in conjunction with Privacy Act requests. Fees for reproductions of Privacy Act records can be paid by check or money order made payable to the National Archives and Records Administration and submitted to the Privacy Act Officer in NGC.

f. Denying a Privacy Act request.

- (1) A system manager may deny a valid request that conforms to all standards in this policy only if:
 - (a) NARA has published rules in the *Federal Register* exempting the pertinent system of records from the access requirement; and

- (b) The record is exempt from disclosure under FOIA.
 - (2) When NARA receives a request for access to a record that is contained in a system of records that is exempt from the Privacy Act, the system manager, with appropriate coordination with the Privacy Act Officer, must:
 - (a) Review the record to determine if all or part of the record must be withheld; and
 - (b) Provide access to the releasable portions of the record.
 - (3) If the system manager denies a Privacy Act request in whole or in part, she or he must inform the requester in writing of which Privacy Act and FOIA exemptions apply and of the requester's appeal rights. The system manager must also send an informational copy of the denial letter to the Privacy Act Officer.
- g. Special procedures for disclosing records to a third party.
 - (1) NARA treats all third party requests for Privacy Act records as FOIA requests and applies appropriate FOIA exemptions before applying Privacy Act provisions. See NARA 1602, "Access to Records Under the Freedom of Information Act (FOIA)," for additional information on applying FOIA exemptions.
 - (2) System managers must not disclose a record in a system of records to any person or agency without the express written consent of the subject individual unless the disclosure meets one of the conditions listed in paragraph 1603.5d, above.
 - (3) System managers should consult with the Privacy Act Officer to determine if the requested disclosure is one of the published routine uses for the specific system of records.
- h. Special procedures for a disclosure to conduct statistical research among Privacy Act protected records.
 - (1) NARA may consider requests for the sole purpose of conducting statistical research. If the requester wants access for statistical research, the written request must include the following information:
 - (a) A statement of the purpose of the record request; and

- (b) A written assurance to NARA that the records will be used for statistical purposes.
- (2) The system manager, in consultation with the Privacy Act Officer, will determine whether to disclose records for the statistical research project within 10 workdays and will provide access to the records within 30 workdays, unless NARA notifies the requester of a delay in processing.
- (3) If the system manager decides to deny the request, she or he will notify the requester in writing and inform them of their appeal rights.
- (4) If the system manager approves the request to disclose for a statistical research project, the system manager must ensure that all personal identifying information is deleted from any records released for statistical purposes and that the identity of individuals cannot reasonably be deduced by combining various statistical records.

1603.7 Appeals

- a. A requester who is denied access in whole or in part to a record subject to the Privacy Act has the right to file an appeal of that denial. The appeal letter must be postmarked no later than 35 calendar days after the date on the denial letter from NARA. The NARA Privacy Act appeal official adjudicates appeals; in most cases, the Deputy Archivist fulfils this role.
- b. Upon receipt of a Privacy Act appeal, the NARA Privacy Act appeal official consults with the system manager, NGC, and other NARA officials as appropriate. If the appeal official determines that the requested records are not exempt from disclosure, then the official directs the system manager to release the records and notifies the requester of the disclosure in writing.
- c. If, after appropriate consultation, the NARA Privacy Act appeal official determines that the records are not appropriate for disclosure, the appeal official notifies the requester in writing of that determination. The letter must include:
 - (1) The reason for denying the appeal; and
 - (2) Notice of the right to seek judicial review of NARA's final determination.
- d. The Privacy Act appeal official will make the final determination within 30 workdays from the date on which she or he receives the appeal. If the appeal official cannot make a decision within the designated time limit, she or he will notify the requester in writing and provide an explanation for the delay.
- e. This procedure applies to all appeals of all denials, including third party requests and requests for access for the purpose of statistical research.

1603.8 Amending Privacy Act records

- a. An individual has the right to request that NARA amend her or his record if she or he believes it is inaccurate. The Privacy Act requires that agencies maintain records that are accurate, timely, relevant, and complete. This right to amend does not apply to archival records in the National Archives.
- b. Requests for amendments must be sent to the Privacy Act Officer. Requests to amend records should provide as much information, documentation, or other evidence as needed to support the request. Requests to amend records should contain the identifying information outlined in 36 CFR 1202.40.
- c. Current NARA employees who wish to amend records in their official personnel folders must write to the Chief Human Capital Officer (H).
- d. The Privacy Act Officer, in coordination with the system manager, processes requests to amend a record. Within 10 workdays of receiving a request, the Privacy Act Officer must send a response letter conveying the system manager's determination to either amend the record or deny the request.
- e. If the Privacy Act Officer approves the amendment request, then she or he will direct the system manager to make the necessary amendment to the record and will send a copy of the amendment to the subject of the record.
- f. The Privacy Act Officer must inform all previous recipients of the record, using the accounting of disclosures, that the record has been amended and must describe the substance of the amendment. The Privacy Act Officer may provide copies of the amended records where practicable.
- g. If the Privacy Act Officer or system manager denies a request to amend a record or determines that the record should be amended in a manner other than requested by the subject, the Privacy Act Officer must inform the requester of that decision in writing. The denial letter must include:
 - (1) The reason for denying the request to amend;
 - (2) Proposed alternative amendments, if appropriate;
 - (3) The subject's right to appeal; and
 - (4) The procedures for appealing.
- h. Requester's options if NARA denies the request to amend a record.
 - (1) If the requester agrees to accept an amendment to a Privacy Act record other than the amendment proposed in the request, the requester must

notify the Privacy Act Officer in writing. Upon confirmation, the Privacy Act Officer makes the necessary amendments to the record.

- (2) For former NARA employees, if the request to amend concerned a record maintained in the employee's Official Personnel Folder or in another government-wide system used by NARA but maintained by another agency, then the Privacy Act Officer will provide the employee with the name and address of the appropriate appeal official in that agency.
- (3) If the requester disagrees with the denial of a request to amend a record, he or she may file an appeal following the procedure in paragraph 1603.7.
- (4) If a requester is not satisfied with the result of an appeal, she or he may:
 - (a) Seek judicial review; or
 - (b) File a statement of disagreement with the appropriate system manager. The statement of disagreement must include an explanation of why the requestor believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager will maintain the statement of disagreement in conjunction with the pertinent record. If applicable, the system manager will send a copy of the statement of disagreement to any person or agency to whom the record has been disclosed.

1603.9 Responsibilities.

In addition to the authorities delegated in NARA 101, NARA Organization and Delegation of Authority, the following responsibilities are assigned to effectively implement this policy.

- a. Privacy Act system managers:
 - (1) In conjunction with the NARA Privacy Act Officer, process requests for access to and amendments of records that are subject to the Privacy Act;
 - (2) Ensure that the appropriate administrative, technical, and physical safeguards are in place to assure the security and confidentiality of records that are subject to the Privacy Act;
 - (3) Ensure any disclosures are made only as allowed by the routine uses outlined in the system of records from which the records were retrieved and in accordance with this directive; and
 - (4) Maintain an accurate accounting of disclosures of Privacy Act records.
- b. The Privacy Act Officer:

- (1) Serves as the point of contact to the public on Privacy Act requests and information;
 - (2) Maintains the log of Privacy Act requests received by NARA;
 - (3) Ensures that all NARA employees and contractors involved in the design, development, operation, or maintenance of any system of records review the requirements of the Privacy Act and its implementing regulations; and
 - (4) Periodically reviews systems of records to ensure the SORNs are accurate.
- c. The Privacy Act Appeal Officer:
- (1) The Archivist of the United States is NARA's appeal official for all access and amendment requests under the Privacy Act denied by the Inspector General (OIG) (see 36 CFR 1202.56(a)(1) and 1202.80(a)(2)).
 - (2) The Deputy Archivist of the United States is NARA's appeal official for all access and amendment requests under the Privacy Act denied by other NARA offices (see 36 CFR 1202.56(a)(2) and 1202.08(a)(1)).
- d. The Chief Privacy Officer
- (1) Prepares the annual Senior Agency Official for Privacy report to the Office of Management and Budget
 - (2) Ensures archives.gov/privacy contains a list of all NARA systems of records, with citations and links to the appropriate *Federal Register* notices, as well as a list of all accessioned records that were subject to the Privacy Act before transfer to NARA.
- e. Research Services:
- (1) Ensures that an agency indicates, at the time of legal transfer to the National Archives of the United States, whether the records were subject to the Privacy Act when they were maintained by the agency, the agency system of records name/number, and the Federal Register citation for the applicable system of records notice.
 - (2) On at least an annual basis, provides to NGC a list of accessioned records that were subject to the Privacy Act when they were maintained by the creating agency so that NGC can make the list available in accordance with 5 U.S.C. § 552a(1).

1603.10 Authorities.

- a. 5 U.S.C. § 552a, as amended (“The Privacy Act”), requires Federal agencies to carefully control how they gather, manage, and release information gathered on individuals, and allows individuals to see and amend information pertaining to themselves.
- b. 44 U.S.C. § 2104(a) authorizes the Archivist of the United States to create NARA regulations and policies.
- c. 36 CFR part 1202 describes how NARA internally implements the Privacy Act.

1603.11 Public release.

Unlimited. This directive is approved for public release.

1603.12 Records management.

Records created by the processes for protecting personal data are generally covered by [General Records Schedule \[GRS\] 4.2](#), Information Access and Protection Records with the exception of the process for exempting a system of record from the Privacy Act. In that instance, the records are covered by [General Records Schedule \[GRS\] 6.6](#), Rulemaking Records. Contact Corporate Records Management (CM) with any questions regarding the management of these records.