

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF SPECIAL COUNSEL

### 5 CFR Part 1830

#### Privacy Act of 1974; Implementation

**AGENCY:** U.S. Office of Special Counsel.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Office of Special Counsel (OSC) proposes to revise its regulations at 5 C.F.R. Part 1830, dealing with the agency's implementation of the Privacy Act, at 5 U.S.C. 552a. The regulation, as revised, would provide additional information about access to OSC records under the Privacy Act.

**DATES:** Comments on the proposed rule must be received by September 13, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Kathryn Stackhouse, General Law Counsel, in writing at: U.S. Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, N.W., Suite 218, Washington, DC 20036-4505; by telephone at (202) 254-3690; or by facsimile at (202) 653-5151.

**SUPPLEMENTARY INFORMATION:** OSC proposes to revise its regulations governing implementation of the Privacy Act, primarily by: (1) revising and updating contact information for requests and appeals to OSC, adding fax delivery as a means by which they may be sent, and specifying the OSC point of receipt for such matters; (2) modifying the description of information needed for effective processing of requests and appeals; (3) revising the description of proof of identity information needed by OSC (including by deletion of the requirement that all requests must include a date and place of birth and a Social Security number, while retaining the option for OSC to request some or all of that data if needed to confirm a requester's identity); (4) clarifying that Privacy Act requests for records may also be processed under the Freedom of Information Act; (5) extending the appeal period for requests and revising the description of the response time for appeals; (6) clarifying that exempt

material in OSC case files includes all matters within OSC's jurisdiction (including alleged violations of the Uniformed Services Employment and Reemployment Rights Act) and information included in background investigations conducted for OSC employees and others; (7) adding two new sections (on general provisions and other rights and services), moving updated information about fees to a new section, and revising section headings throughout the regulation.

#### Procedural Determinations

*Congressional Review Act (CRA):* OSC has determined that these revisions are non-major under the Congressional Review Act, and will submit a report on this final rule to Congress and the Government Accountability Office pursuant to the act.

*Regulatory Flexibility Act (RFA) Certification (5 U.S.C. 605):* I certify that this regulation will not have a significant economic impact on a substantial number of small entities. The OSC primarily handles matters involving individuals who are current or former Federal government employees, applicants for federal employment, certain state or local government employees, and representatives of these individuals. These revised regulations affect only the implementation of the Privacy Act at OSC. These proposed revisions will not cause significant additional impact.

*Unfunded Mandates Reform Act (UMRA):* This proposed revision does not impose any Federal mandates on State, local, or tribal governments, or on the private sector within the meaning of the UMRA.

*Paperwork Reduction Act (PRA):* This revision does not impose any new recordkeeping, reporting or other information collection requirements on the public.

*Executive Order 12866 (Regulatory Planning and Review):* While OSC is not required to do so, OSC has reviewed this revision under Executive Order 12866 and anticipates that the economic impact of this revision will be insignificant. Thus this proposed revision is not a significant regulatory action under §3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under § 6(a)(3) of the order.

*Executive Order 13132 (Federalism):* This proposed revision does not have

new federalism implications under Executive Order 13132. The Hatch Act, at title 5 of the U.S. Code, chapter 15, prohibits certain political activities of covered state and local government employees. OSC has jurisdiction to issue advisory opinions on political activity by those employees, and to bring an enforcement action before the Merit Systems Protection Board for prohibited activity by a covered state or local government employee. These revised regulations affect only the implementation of the Privacy Act at OSC and do not significantly change the rights of state and local government employees.

*Executive Order 12988 (Civil Justice Reform):* This proposed rule meets applicable standards of §§ 3(a) and 3(b)(2) of Executive Order 12988.

#### List of Subjects in 5 CFR Part 1830

Administrative practice and procedure, Government employees, Privacy.

For the reasons stated in the preamble, OSC proposes to revise 5 CFR Part 1830 to read as follows:

#### PART 1830—PRIVACY

Sec.

1830.1 General provisions.

1830.2 Requirements for making Privacy Act requests.

1830.3 Medical records.

1830.4 Requirements for requesting amendment of records.

1830.5 Appeals.

1830.6 Exemptions.

1830.7 Fees.

1830.8 Other rights and services.

**Authority:** 5 U.S.C. 552a(f), 1212(e).

#### § 1830.1 General provisions.

This part contains rules and procedures followed by the Office of Special Counsel (OSC) in processing requests for records under the Privacy Act (PA), at 5 U.S.C. 552a. Further information about access to OSC records generally is available on the agency's web site (<http://www.osc.gov/foia.htm>).

#### § 1830.2 Requirements for making Privacy Act requests.

(a) *How made and addressed.* A request for OSC records under the Privacy Act should be made by writing to the agency. The request should be sent by regular mail addressed to: Privacy Act Officer, U.S. Office of

Special Counsel, 1730 M Street, N.W. (Suite 218), Washington, DC 20036–4505. Such requests may also be faxed to the Privacy Act Officer at the number provided on the FOIA/PA page of OSC's web site (see 1830.1). For the quickest handling, both the request letter and envelope or any fax cover sheet should be clearly marked "Privacy Act Request." A Privacy Act request may also be delivered in person at OSC's headquarters office in Washington, DC. Whether sent by mail or by fax, or delivered in person, a Privacy Act request will not be considered to have been received by OSC until it reaches the Privacy Act Officer.

*(b) Description of records sought.* Requesters must describe the records sought in enough detail for them to be located with a reasonable amount of effort. Whenever possible, requests should describe any particular record sought, such as the date, title or name, author, recipient, and subject matter.

*(c) Proof of identity.* Requests received by mail, fax, or personal delivery should contain sufficient information to enable OSC to determine that the requester and the subject of the record are one and the same. To assist in this process, an individual should submit his or her name and home address, business title and address, and any other known identifying information such as an agency file number or identification number, a description of the circumstances under which the records were compiled, and any other information deemed necessary by OSC to properly process the request. An individual delivering a request in person may be required to present proof of identity, preferably a government-issued document bearing the individual's photograph.

*(d) Freedom of Information Act processing.* OSC also processes all Privacy Act requests for access to records under the Freedom of Information Act, 5 U.S.C. 552, following the rules contained in part 1820 of this chapter, which gives requesters the benefit of both statutes.

### § 1830.3 Medical records.

When a request for access involves medical records that are not otherwise exempt from disclosure, the requesting individual may be advised, if it is deemed necessary by OSC, that the records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the physician will be permitted to review the records or to receive copies by mail upon proper verification of identity.

### § 1830.4 Requirements for requesting amendment of records.

*(a) How made and addressed.* Individuals may request amendment of records pertaining to them that are subject to amendment under the Privacy Act and this part. The request should be sent by regular mail addressed to: Privacy Act Officer, U.S. Office of Special Counsel, 1730 M Street, N.W. (Suite 218), Washington, DC 20036–4505. Such requests may also be faxed to the Privacy Act Officer at the number provided on the FOIA/PA page of OSC's web site (see 1830.1). For the quickest handling, both the request letter and envelope or any fax cover sheet should be clearly marked "Privacy Act Amendment Request." Whether sent by mail or by fax, a Privacy Act amendment request will not be considered to have been received by OSC until it reaches the Privacy Act Officer. A Privacy Act amendment request may also be delivered by person at OSC's headquarters office in Washington, DC.

*(b) Description of amendment sought.* Requests for amendment should include identification of records together with a statement of the basis for the requested amendment and all available supporting documents and materials. Requesters must describe the amendment sought in enough detail for the request to be evaluated.

*(c) Proof of identity.* Rules and procedures set forth in 1830.2(c) apply to requests made under this section.

*(d) Acknowledgement and response.* Requests for amendment shall be acknowledged by OSC not later than 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt by the Privacy Act Officer and a determination on the request shall be made promptly.

### § 1830.5 Appeals.

*(a) Appeals of adverse determinations.* A requester may appeal a denial of a Privacy Act request for access to or amendment of records to the Legal Counsel and Policy Division, U.S. Office of Special Counsel, 1730 M Street, N.W. (Suite 218), Washington, DC 20036–4505. The appeal must be in writing, and sent by regular mail or by fax. The appeal must be received by the Legal Counsel and Policy Division within 45 days of the date of the letter denying the request. For the quickest possible handling, the appeal letter and envelope or any fax cover sheet should be clearly marked "Privacy Act Appeal." An appeal will not be considered to have been received by OSC until it reaches the Legal Counsel and Policy Division. The appeal letter may include as much or as little related

information as the requester wishes, as long as it clearly identifies the OSC determination (including the assigned request number, if known) being appealed. An appeal ordinarily will not be acted on if the request becomes a matter of litigation.

*(b) Responses to appeals.* The agency decision on an appeal will be made in writing. A final determination will be issued within 30 days (excluding Saturdays, Sundays, and legal holidays), unless, for good cause shown, OSC extends the 30-day period.

### § 1830.6 Exemptions.

OSC will claim exemptions from the provisions of the Privacy Act at subsections (c)(3) and (d) as permitted by subsection (k) for records subject to the act that fall within the category of investigatory material described in paragraphs (2) and (5) and testing or examination material described in paragraph (6) of that subsection. The exemptions for investigatory material are necessary to prevent frustration of inquiries into allegations in prohibited personnel practice, unlawful political activity, whistleblower disclosure, Uniformed Services Employment and Reemployment Rights Act, and other matters under OSC's jurisdiction, and to protect identities of confidential sources of information, including in background investigations of OSC employees, contractors, and other individuals conducted by or for OSC. The exemption for testing or examination material is necessary to prevent the disclosure of information which would potentially give an individual an unfair competitive advantage or diminish the utility of established examination procedures. OSC also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request. OSC may also refuse access to any information compiled in reasonable anticipation of a civil action or proceeding.

### § 1830.7 Fees.

Requests for copies of records shall be subject to duplication fees set forth in part 1820 of this chapter.

### § 1830.8 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Dated: August 8, 2007.

**Scott J. Bloch,**

*Special Counsel.*

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