

Office of Special Counsel

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available for testimony, will be subject to OSC's approval.

§ 1820.19 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official OSC records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure.

(b) If the General Counsel so determines, original OSC records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official OSC records, nor may they be marked or altered.

§ 1820.20 Procedure in the event a decision is not made prior to the time a response is required.

If a requestor needs a response to a demand or request before the General Counsel makes a determination whether to grant the demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the General Counsel, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents at this time, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

§ 1820.21 Fees.

(a) *Witness fees.* OSC may assess fees for attendance by a witness. Such fees will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based on 28 U.S.C. 1821, and upon the rule of the federal district closest to the location where the witness will appear. Such fees will include the costs of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding, plus travel costs.

(b) *Payment of fees.* A requestor must pay witness fees for current OSC employees and any record certification

fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the United States Department of Treasury.

§ 1820.22 Final determination.

The General Counsel will notify the requestor and, when appropriate, the court or other body of the final determination, the reasons for the response to the request or demand, and any conditions that the General Counsel may impose on the testimony of an OSC employee or the release of OSC records or information. The General Counsel has the sole discretion to make the final determination regarding requests to employees for testimony or production of official records and information in litigation in which OSC is not a party. The General Counsel's decision exhausts administrative remedies for purposes of release of the information.

§ 1820.23 Penalties.

(a) An employee who releases official records or information or gives testimony relating to official information, except as expressly authorized by OSC, or as ordered by a court after OSC has had the opportunity to be heard, may face the penalties provided under applicable laws. Additionally, former OSC employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current OSC employee who testifies or produces official records and information in violation of this part may be subject to disciplinary action.

§ 1820.24 Conformity with other laws and regulations; other rights.

This regulation is not intended to conflict with 5 U.S.C. 2302(b)(13) or with any statutory or common law privilege against the release of protected information. This part does not create any right, entitlement, or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

PART 1830—PRIVACY ACT REGULATIONS

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AUTHORITY: 5 U.S.C. 552a(f), 301, and 1212(e).

SOURCE: 87 FR 63413, Oct. 19, 2022, unless otherwise noted.

§ 1830.1 Scope and purpose.

(a) This part contains rules and procedures followed by OSC in processing requests for records under the Privacy Act. Further information about access to OSC records generally is available on OSC's website at <https://osc.gov/Privacy>.

(b) This part implements the Privacy Act of 1974, codified at 5 U.S.C. 552a, by establishing OSC policies and procedures for the release of records and maintenance of certain systems of records. *See* 5 U.S.C. 552a(f). This part also establishes policies and procedures for an individual to correct or amend their record if they believe it is not accurate, timely, complete, or relevant or necessary to accomplish an OSC function.

(c) OSC personnel protected by the Privacy Act include all staff, experts, contractors, consultants, volunteers, interns, and temporary employees.

(d) Other individuals engaging with OSC protected by the Privacy Act include, but are not limited to, PPP complainants, subjects of PPP complaints, Hatch Act complainants, subjects of Hatch Act complaints, Hatch Act advisory opinion requesters, whistleblowers filing disclosures under 5 U.S.C. 1213, and USERRA complainants, and the subjects of USERRA complaints.

(e) This part does not:

(1) Apply to OSC record systems that are not Privacy Act Record Systems.

(2) Make any records available to individuals other than:

(i) individuals who are the subjects of the records (“subject individuals”);

(ii) individuals who can prove they have the consent of the subject individual; or

(iii) individuals acting as legal representatives on behalf of such subject individuals.

(3) Make available information compiled by OSC in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such information, including to any subject individual or party to such litigation or proceeding, shall be governed by applicable constitutional principles, rules of discovery, privileges, and part 1820 of this chapter; or

(4) Apply to personnel records maintained by the Human Capital Office of OSC. Those records are subject to regulations of the Office of Personnel Management in 5 CFR parts 293, 294, and 297.

§ 1830.2 Definitions.

As used in this part:

Access means availability of a record to a subject individual.

Disclosure means the availability or release of a record.

Maintain means to maintain, collect, use, or disseminate when used in connection with the term “record;” and to have control over or responsibility for a system of records when used in connection with the term “system of records.”

Notification means communication to an individual whether or not they are a subject individual.

Record means any item, collection, or grouping of information about an individual that is maintained by OSC, including, but not limited to, the individual's education, financial transactions, medical history, criminal, or employment history, that contains a name or an identifying number, symbol, or other identifying particular assigned to the individual. When used in this part, record means only a record that is in a system of records.

Release means making available all or part of the information or records contained in an OSC system of records.

Responsible OSC official means the officer listed in a notice of a system of records as the system manager or another individual listed in the notice of a system of records to whom requests may be made, or the designee of either such officer or individual.

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Subject individual means that individual to whom a record pertains.

System of records means any group of records under the control of OSC from which a record is retrieved by personal identifier such as the name of the individual, number, symbol or other unique retriever assigned to the individual. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records. See 5 U.S.C. 552a(a)(5).

§ 1830.3 Requirements for making Privacy Act requests.

(a) *Submission of requests.* A request for OSC records under the Privacy Act must be made in writing. The request must be sent:

- (1) *By email to:* foiarequest@osc.gov; or
- (2) *By mail to:* U.S. Office of Special Counsel, Chief Privacy Officer, 1730 M Street NW, Suite 218, Washington, DC 20036-4505.

(3) Both the request letter and envelope or email should clearly be marked "Privacy Act Request." A Privacy Act request is deemed received by OSC when it reaches the Chief Privacy Officer.

(b) *Description of records sought.* Requestors must describe the records sought in enough detail for OSC to locate them with a reasonable amount of effort, including, where known, data such as the date, title or name, author, recipient, and subject matter of the requested record.

(c) *Proof of identity.* OSC requires proof of identity from requestors seeking their own files, preferably a government-issued document bearing the subject individual's photograph. OSC requires a signed consent from the subject individual to release records to an individual's representative.

(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, by following the rules contained in part 1820 of this chapter.

§ 1830.4 Medical records.

When a request for access involves medical records that are not otherwise exempt from disclosure, OSC may advise the requesting individual that OSC will only provide the records to a li-

censed health care professional the individual designates in writing. Upon receipt of the designation, the licensed health care professional will be permitted to review the records or to receive copies by mail upon proper verification of identity.

§ 1830.5 Requirements for requesting amendment of records.

(a) *Submission of requests.* Individuals may request amendment of records pertaining to them that are subject to amendment under the Privacy Act and this part. The request must be sent:

- (1) *By email to:* foiarequest@osc.gov; or
- (2) *By mail to:* Chief Privacy Officer, U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036-4505.

(3) Both the request letter and envelope or email should be clearly marked "Privacy Act Amendment Request." Whether sent by mail or email, a Privacy Act amendment request is considered received by OSC when it reaches the Chief Privacy Officer.

(b) *Description of amendment sought.* Requests for amendment should include the identification of the records together with a statement of the basis for the requested amendment and all available supporting documents and materials. The request needs to articulate whether information should be added, deleted, or substituted with another record and clearly articulate the reason for believing that the record should be corrected or amended.

(c) *Proof of identity.* Rules and procedures set forth in §1830.3 apply to requests made under this section.

(d) *Acknowledgement and response.* Requests for amendment shall be acknowledged by OSC no later than ten (10) business days after receipt by the Chief Privacy Officer and a determination on the request shall be made promptly.

(e) *What will not change.* The Privacy Act amendment or correction process will not be used to alter, delete, or amend information which is part of a determination of fact or which is evidence received in the record of a claim in any form of an administrative appeal process. Disagreements with these determinations are to be resolved

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through the assigned OSC Program Office.

(f) *Notice of error.* If the record is wrong, OSC will correct it promptly. If wrong information was disclosed from the record, we will tell those of whom we are aware received that information that it was wrong and will give them the correct information. This will not be necessary if the change is not due to an error—*e.g.*, a change of name or address.

(g) *Record found to be correct.* If the record is correct, OSC will inform the requestor in writing of the reason why we refuse to amend the record, the right to appeal the refusal, and the name and address of the official to whom the appeal should be sent.

(h) *Record of another government agency.* If you request OSC to correct or amend a record governed by the regulation of another government agency, we will forward your request to such government agency for processing and we will inform you in writing of the referral.

§ 1830.6 Appeals.

(a) *Appeals of adverse determinations.* A requestor may appeal a denial of a Privacy Act request for access to or amendment of records to OSC's Office of General Counsel. The appeal must be in writing and be sent:

(1) *By email to:* foiarequest@osc.gov; or

(2) *By mail to:* U.S. Office of Special Counsel, Office of General Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036-4505.

(3) The appeal must be received by the Office of General Counsel within 45 calendar days of the date of the letter denying the request. Both the appeal letter and envelope or email should be clearly marked "Privacy Act Appeal." An appeal is considered received by OSC when it reaches the Office of General Counsel. The appeal letter may include as much or as little related information as the requestor wishes, as long as it clearly identifies OSC's 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.* OSC's decision on an appeal will be made in writ-

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ing. A final determination will be issued within 20 business days—unless OSC shows good cause to extend the 20-day period.

§ 1830.7 Exemptions.

OSC exempts investigatory material from records subject to Privacy Act record requests or requests to amend records. This exemption aims to prevent interference with OSC's inquiries into matters under its jurisdiction, and to protect identities of confidential sources of information. OSC also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency. OSC may exempt any information compiled in reasonable anticipation of a legal action or proceeding.

§ 1830.8 Fees.

Requests for records under this section shall be subject to the fees set forth in part 1820 of this chapter.

§ 1830.9 Accounting for releases.

OSC will maintain an accounting of all releases of a record for six (6) years or for the life of the record in accordance with the General Records Schedule, whichever is longer—except that, we will not make an accounting for releases:

(a) Of a subject individual's records record made with the subject individual's consent;

(b) To employees of OSC who have a need for the record to perform their duties; and

(c) Required under the Freedom of Information Act, 5 U.S.C. 552, and part 1820 of this chapter.

§ 1830.10 Conditions of release.

OSC shall not release any record that is contained in a system of records to any individual or to another agency, except as follows:

(a) *Consent to release by the subject individual.* Except as provided in paragraphs (b) and (c) of this section authorizing releases of records without consent, no release of a record will be made without the consent of the subject individual. The consent shall be in writing and signed by the subject individual. The consent shall specify the

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individual, agency, or other entity to whom the record may be released, which record may be released and, where applicable, during which time frame the record may be released. The subject individual's identity and, where applicable, the identity of the individual to whom the record is to be released shall be verified as set forth in § 1830.3(c).

(b) *Releases without the consent of the subject individual.* The releases listed in this paragraph may be made without the consent of the subject individual, including:

(1) To employees and contractors of the Office of Special Counsel who have a need for the record to perform their duties.

(2) As required by the Freedom of Information Act, 5 U.S.C. 552, and part 1820 of this chapter.

(3) To the entities listed in in the Privacy Act at 5 U.S.C. 552a(b)(1) through (12).

PART 1840—SUBPOENAS

AUTHORITY: 5 U.S.C. 1212(e).

§ 1840.1 Service of subpoenas by mail.

In addition to all other methods of authorized service, an Office of Special Counsel subpoena may be served by mailing a copy to the person at his or her residence or place of business by certified or registered mail.

[54 FR 47345, Nov. 14, 1989]

PART 1850—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF SPECIAL COUNSEL

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1850.170 Compliance procedures.

1850.171–1850.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 87 FR 63415, Oct. 19, 2022, unless otherwise noted.

§ 1850.101 Purpose.

The purpose of this part is to implement section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended Section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1850.102 Application.

This part applies to all programs or activities conducted by OSC, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

§ 1850.103 Definitions.

Auxiliary aids means services or devices that enable individuals with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by OSC. For example, auxiliary aids useful for individuals with impaired vision include readers, Braille materials, audio recordings, and other similar services and devices. Auxiliary aids useful for individuals with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf individuals (TDDs), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes