

PRIVACY ACT ADMINISTRATION

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PRIVACY ACT ADMINISTRATION

PART I - GENERAL

"... in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper ... to regulate the collection, maintenance, use, and dissemination of information by such agencies." — the Act

SECTION 1. PURPOSE.

.01 This Handbook supplements the Department's rules (15 CFR Part 4b) (the "Rules") for the implementation of the Privacy Act of 1974 (the "Act") by prescribing detailed instructions, procedures, responsibilities, and policy for administration of the Rules and Act within the Department. This Handbook also incorporates the requirements of central agency supplementary guidance as follows: OMB Privacy Act Guidelines (40 Federal Register 28949-28978, July 9, 1975), OMB Guidance for Conducting Matching Programs (47 Federal Register 21656-21658, May 19, 1982), and OMB Circular A-130 - Management of Federal Information Resources, (December 12, 1985).

.02 For convenience and ready use pertinent guidelines are attached. Attachment 1 is a copy of the Act. Attachment 2 includes OMB's Privacy Act Guidelines dated July 9, 1975, May 19, 1982, and OMB Circular A-130 dated December 12, 1985. Attachment 3 includes the Department's final rules, 15 CFR Part 4b. A list of the Department's system of records is at Attachment 4.

SECTION 2 APPLICATION AND SCOPE.

.01 Application. This Handbook applies to all officers and employees of the Department and to all organizational components, including operating units and Departmental offices.

.02 Scope. This Handbook encompasses all items of information about an individual person covered by the Act, i.e., records in systems of records from which information about an individual is retrieved by the individual's name or by any other particular personal identifier. This Handbook applies to all such records and systems of records which are maintained by the Department, whether in-house or by a contractor, as well as any which may be established after the date of this Handbook.

SECTION 3. AUTHORITY.

This Handbook is issued pursuant to section 4b.1(c) of the Rules, which establish policies and procedures for implementing the Act.

SECTION 4. POLICY.

Policy. **a** Fundamental to the provisions of the Rules and this Handbook, it is the Department's policy that within each primary operating unit a designated senior officer shall serve as the "Privacy Officer" for that unit, with responsibilities and authority as set forth in Part II of this Handbook. These officers are listed by position title in Appendix A of the Rules.

b This policy also prescribes, as provided in the Rules and the Department's published notices of systems of records subject to the Act, that:

1. Public inquiries shall be addressed to the Privacy Officer within each operating unit;

2. All requests for access to records and all requests to amend records shall be approved or disapproved by the Privacy Officer; and

3. All appeals from denials rendered by a Privacy Officer shall be decided by the head of the operating unit, as explained at paragraph 2.01a. of Part II of this Handbook.

c. The extent to which authorities under this policy may or may not be delegated is set forth in Part II.

SECTION 5 EXPLANATION OF TERMS.

.01 Sections (a) of the Act and 4b.2 of the Rules define and explain the principal terms used therein and in this Handbook.

.02 In addition, as used in this Handbook:

a Minor change to a system of records means a change that does not significantly change the system; that is, does not affect the character or purpose of the system, and does not affect the ability of an individual to gain access to the record or to any information pertaining to him or her which is contained in the system; e.g., changing the title of the system manager.

b Privacy Act Record (or "PA Record") is any record as defined in section (a)(4) of the Act, which is maintained in a system of records.

c Privacy Act System of Records (or "PA System") is any system of records as defined in section (a)(5) of the Act and noticed in the FEDERAL REGISTER either by the Department or by another Federal agency as identified in Appendix C to the Rules.

d. System Manager is the official or employee identified in a published notice of a PA System as the responsible manager of the system within the Department.

SECTION 6. PENALTIES.

01. Criminal. a The Act prescribes criminal penalties, including fines up to \$5,000, against:

1. Any Federal Officer or employee who violates certain of its provisions (**as explained further** in other parts of this **Handbook**); and

2. Any person who requests or obtains any **PA Records** from **an agency under** false pretenses.

b With respect to these criminal penalties, it should be noted that **Federal officers and employees are personally liable on an individual basis**, that **no Federal bonding protection is available**, and that **no Federal legal counsel will be provided to aid a person charged with violating the Act**. **Of course, legal advice is available (and sometimes required)** on whether a contemplated action would be consistent with the Act.

.02 Civil. If an operating unit or Departmental office:

a Fails to make a record **available** to an **individual** (or a **person** accompanying him), or **fails to amend** an individual's records, or fails to review its **refusal to amend**, **then:**

—**the individual may bring a civil action to require the Department to comply with the Act and the court may assess reasonable attorney's fees and other litigation costs when the complainant substantially prevails; or**

b. Fails to maintain an individual's records accurately or to comply with any requirement of the Act or Rules, and this action or omission has an "adverse effect" on the individual, and the "adverse effect" is causally related to the action or omission, then:

—**the individual may bring a civil action which could require the Department to pay attorney's fees, other litigation costs, and damages never less than \$1,000.**

SECTION 7. SAVINGS PROVISION.

In event of any conflict between the provisions of this Handbook and those of the Act or the Rules, the provisions of the Act or the Rules shall apply.

PART II - AUTHORITIES, RESPONSIBILITIES, AND DUTIES

"The purpose of this Act is to **provide certain** safeguards for an **individual** against an invasion of personal privacy. . . ."--The Act. Also, section (i) of the Act prescribes criminal penalties with fines for any Federal officer or employee, or any other person, who violates certain provisions.

SECTION 1. ASSISTANT SECRETARY FOR ADMINISTRATION.

01. **Department-wide.** The Assistant Secretary for Administration (the "Assistant Secretary") shall be responsible for Department-wide implementation of the Act, pursuant to the Secretary's delegation at 15 CFR 4b.1(c).

02. **Office of the Secretary.** The Assistant Secretary shall serve as the Privacy Appeals Officer for the Departmental offices and Office of the Secretary, acting on any appeal received in these offices under section 4b.9 of the Rules, and making the final determination thereon.

SECTION 2 HEADS OF PRIMARY OPERATING UNITS.

01. **All Heads of Primary Operating Units** are directly responsible for ensuring full compliance with the provisions of the Rules and this Handbook within their respective organizations. In carrying out this responsibility and effecting the policy set forth in this Handbook, the head of each unit shall:

a. **Serve as the Privacy Appeals Officer** for the unit and make the final determination on any appeal received under the Rules, except appeals from denials based on another agency's exemption determination, in which case the appellant shall be referred to the other agency. This authority cannot be delegated

b. **Provide the unit's designated Privacy Officer with support and resources essential and adequate** to the accomplishment of the Privacy Officer's duties and responsibilities.

c. **Establish** such procedures and controls within the organization as will ensure that:

1. Information about individuals is collected or compiled only: (a) when it is necessary for a program or purpose that is authorized by statute or Executive Order of the President, (b) from the subject individual to the greatest extent practicable, and (c) in compliance with the requirements of the published system notice and section (e)(3) of the Act;

2. No secret (i.e., unannounced to the public) records or systems subject to the Privacy Act are maintained within the operating unit;

3. PA Records within the unit are maintained, used, and protected, and are made accessible, disclosed or amended only in accordance with the pertinent provisions of Parts IV through VIII of this Handbook;

4. Only **those** exemptions to the **requirements** of the **Act** are **exercised** as have been **approved** by the Department Office of General Counsel **and** announced to **the public** under Part VII of this **Handbook**;

5. No PA Systems are altered, nor new PA Systems established, except as provided in Part IX of this **Handbook**;

6. The *unit* responds fully and promptly to the record keeping and reporting requirements of this **Handbook**, and such special requirements of this nature as may be requested by the Assistant Secretary for Administration or the Chief, Management Support Division, on the Assistant Secretary's behalf; and

7. In conjunction with the unit's servicing Personnel Office and or, Procurement Office, rules of conduct under the Act are distributed to all officers, employees and appropriate contractors of the organization, and that instruction is provided to all those who are involved in the design, development, operation, or maintenance of PA Records and PA Systems.

02. The Director, National Bureau of Standards. a. The responsibilities of the Secretary under section 3.b of OMB Circular A-130 (at attachment 2 hereto) shall be performed by the Director, NBS, under the delegation of authority and functions set forth in Department Organization Handbook 30-2A, National Bureau of Standards.

b. In furtherance of the above subparagraph a., and in addition to the provisions of paragraph 2.01 of this part, the Director, NBS shall provide guidance and advice (on request) to enable other officials designated in this Handbook to carry out their duties and responsibilities for the technical protection of PA Records in automated systems under their control, as explained in Part VIII of this Handbook

03. The Director, Bureau of the Census. Under the delegation of authority and functions set forth in Department Organization Handbook 35-2A, and in addition to the provisions of paragraphs 2.01 of this part, the Director, Bureau of the Census, shall (on request) evaluate the effectiveness of avoidance disclosure techniques being considered under section (b)(5) of the Act and paragraph 2.05, Part V, of this Handbook.

SECTION 3. GENERAL COUNSEL.

The General Counsel of the Department (and designees) shall provide legal services to enable other officials designated in this Handbook to discharge their respective duties and responsibilities for interpretation of all matters relating to the Act. (For the purpose of this Handbook, the General Counsel's designees shall include the Deputy GC, and the Assistant GC/Administration. In addition, the General Counsel (and designees) specifically:

a. Shall serve as the focal point within the Department for consultation or other communications with the Department of Justice with respect to any actions to be taken in connection with the Act or the Rules; and

b. Shall review for legal form and substance:

- 1. All proposed exemptions from the requirements of the Act that may be proposed under section (j) and (k) thereof;**
- 2. All proposed amendments, changes, and revisions to the Rules;**
- 3. All proposed reports to be submitted to the Congress and OMB pursuant to section (o) of the Act, with respect to new or altered PA Systems; and**
- 4. All proposed final determinations (by a Privacy Appeals Officer) which would affirm or reverse an initial denial of a request to gain access to, amend or correct a record**

SECTION 4 INFORMATION RESOURCES MANAGEMENT SENIOR OFFICIALS.

The Privacy Act is an integral element of the information resources management concept, i.e., the Paperwork Reduction Act of 1980 (P.L. 96-511). The IRM Senior Official within each bureau, in cooperation with the heads of primary operating units, shall serve as the focal point for linking the provisions of the Privacy Act, as it relates to information resources management, with the program missions,

SECTION 5. DIRECTOR OF PERSONNEL.

In recognition of the fact that all employee personnel records throughout the Department are intrinsically subject to the Act, the Director, Departmental Office of Personnel has special and extensive responsibilities. Specifically, the Director of Personnel shall:

- a. Develop and issue for Department officers and employees rules of conduct pursuant to section (e)(9) of the Act;**
- b. Provide functional guidance and advice to the heads of primary operating units in their training of officers and employees pursuant to the rules of conduct, and provide such training for the personnel of the Departmental offices and such operating units as have no in-house employee development capability;**
- c. Establish such office procedures and controls with respect to the medical records of individuals as will facilitate the administration and application of section 4b.6 of the Rules, and pertinent protection requirements of Part VIII of this Handbook;**
- d. Develop and administer such functional procedures as may be necessary to facilitate application of the Rules with respect to the PA System notices published by the Office of Personnel Management, except that any exemptions under the Act as may be "noticed" by OPM shall apply, and inquiries relating to the exemptions will be directed to OPM; and**
- e. Take the initiative in developing such procedures, identifying and/or establishing such special facilities, and otherwise taking such actions and rendering such assistance as resources permit (alone or in conjunction with other staff elements) to aid employees who request access to or copies of their records.**

SECTION 6. CHIEF, MANAGEMENT SUPPORT DIVISION.

.01 Department-wide. a The Chief, MSD, shall **act** on behalf of the Assistant Secretary for day-to-day Act matters **in** the Department, shall administer the provisions of this Handbook, and shall initiate or process proposed revisions or **amendments** required to **currently** maintain it.

b. Pursuant to **the** provisions of Department Organization Order 20-7, Office of Management and Organization, **the** Chief, MSD, also shall **provide guidance and advice** (on request) to **enable other officials** designated in this Handbook to carry out **their** duties and responsibilities for the administrative **protection of PA Records under their** control, as **explained** in Part VIII of this Handbook

.02 Office of the Secretary. The Chief, Management Support Division, shall serve as the Privacy Officer for the Departmental offices and Office of the Secretary, performing such **duties as are** set forth in Section 9 of this Part.

SECTION 7. DIRECTOR FOR PROCUREMENT AND ADMINISTRATIVE SERVICES.

Pursuant to provisions of Department Organization Handbook 10-5, Assistant Secretary for Administration, subparagraph 5.03d., the **Director** of this **Departmental** office shall **be** responsible for implementing and subsequently administering the provisions of section (m) of the Act. **Such** implementation **requirements should be** compatible with the **procurement** guidance issued by the Administrator of **General Services and in Federal Procurement Regulations, cleared** with the Department General Counsel, and **disseminated** through appropriate Supply Management directives of the Department.

SECTION 8. DIRECTOR, OFFICE OF SECURITY.

The **Director**, Office of Security, pursuant to the provisions of Department Organization Handbook 20-6, Office of Security, shall **provide** guidance and **advice** (on request) to enable other officials **designated** in this Handbook to carry out their duties and responsibilities for the physical protection of PA Records **under** their control, **as explained** in Part VIII of this Handbook.

SECTION 9. OTHER DEPARTMENT OFFICIALS NOT OTHERWISE IDENTIFIED IN PRECEDING SECTIONS 1-7.

.01 Application. This Section applies to officers and office heads categorized in subparagraphs a, b, and c., below. (The terms and titles are defined in Section 3. of Department Organization Order 1-1.)

- a. Program **Secretarial** Officers who **do not serve** as **heads** of primary operating units;
- b. **Heads of** constituent operating units; *and*
- c. Heads of Departmental offices.

.02 Responsibilities. Except as paragraph .03 of this Section pertains to the **heads** of certain Departmental **offices**, the officials categorized above shall:

a Familiarize themselves with the **basic** principles of the Act, the Rules, and this Handbook;

b In the **development** or consideration of **new** plans, programs, or **objectives** for their **components** or the Department overall, be alert to collection, compilation, or use of **personal information about individuals** which bring the **provisions** of the Act into effect; and

c Request the advice or assistance of either the **Assistant General Counsel/Administration** or the Chief, Management Support Division, with **respect to any question** which arises involving the Act, the Rules or this Handbook.

.03 Heads of Departmental Offices Maintaining PA Records. Heads of Departmental offices which maintain records **subject to the Act** are **responsible** for ensuring their **respective office's** full compliance with the **provisions of the Rules** and this Handbook. In this respect, all responsibilities enumerated in paragraph 2.01 c. of this Part II shall apply.

04. Directors, Regional Administrative Support Centers. Directors of Regional Administrative Support Centers are responsible for implementing and administering the provisions of the Privacy Act and this Handbook within their respective centers. This includes: **a** establishing appropriate procedures and controls, as directed and approved by the Administrator, National Oceanic and Atmospheric Administration; **b** providing center Privacy Officers with support and resources essential and adequate for the accomplishment of their duties,

SECTION 10. PRIVACY OFFICERS.

Pursuant to the policy provisions of this Handbook, the duties of each designated Privacy Officer (see Appendix A of the Rules) shall include:

a Responding to all Act inquiries received in the unit, including requests to be notified if a specific PA System contains any record pertaining to the individual;

b Responding to all requests for access to a PA Record or for copies of PA Records;

c Approving or disapproving, and responding to, all requests to amend or to correct PA Records. (NOTE: This authority is held by operating unit Privacy Officers and cannot be delegated; Regional Administrative Support Center Privacy Officers do not have this authority, and must refer such requests to the responsible component's Privacy Officer.)

d Serving as a focal point for all Act matters within the operating unit, and providing liaison between the unit and the Assistant Secretary for Administration;

e Developing, recommending, or deciding on such forms, procedures, standards, reporting requirements, or other needs as are deemed appropriate to support or facilitate operating unit compliance with the Rules and this Handbook;

f Providing direction and advice as appropriate to each System Manager in the unit, especially with respect to the provisions of sections (b) and (e)(5) and (6) of the Act; and

- **Carrying out such other responsibilities or duties relating to the Act as may be delegated or assigned by the head of the operating unit.**

SECTION 11. SYSTEM MANAGERS.

The responsibilities of the System Manager whose title and address appears in the published notice of each PA System shall be as prescribed by the head of the operating unit or the designee, but should normally include:

- a Providing maximum assistance and support to the Privacy Officer, including calculation of any reproduction fees to be charged;**
- b Drafting and submitting to the Privacy Officer or operating unit head any recommendations relating to the Act, especially with respect to;**
 - 1. Provisions of sections (e)(5) and (6) of the Act pertaining to the maintenance, timeliness, accuracy, completeness, and relevancy of records in the PA System; and**
 - 2. Provisions of sections (j) and (k) of the Act pertaining to exemptions which could or should be applied because of the substance of the records in the PA System, the uses to which the records are put, or any changes which may be under consideration in connection with either the substance or uses.**
- c Maintaining, as may be instructed by the Privacy Officer, such registers or accounts of disclosure as required by the Rules and by Parts V and X of this Handbook;**
- d Safeguarding the system and its records in accordance with the provisions of Part VIII of this Handbook; and**
- e Carrying out the detailed duties set forth in Section 5, Part VII, of this Handbook**

PART III - COLLECTING OR COMPIING PA RECORDS

"... the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies."-
-the Act

SECTION 1. STATUTORY LIMITATIONS.

The Act is clear as to what kind of personal information may be collected or compiled, from what sources, and under what conditions. Section (e) of the Act specifically requires that each operating *unit* and Departmental office shall:

- a. Maintain in its records only such information about an individual as is "relevant and necessary"^m to accomplish a purpose required to be accomplished by statute or Executive Handbook;
- b. Collect information to the greatest extent practicable "directly from the subject individual"^w when the information could result in adverse determinations about the individual; and
- c. Advise each individual from whom information is solicited:
 - of the authority (statute or Executive Handbook) which authorizes the solicitation,
 - whether that individual's reply is mandatory or voluntary,
 - *the principal purpose for which the information is to be used,*
 - any other uses (i.e., routine uses) which may be made of the information, such as routine uses published in *the* FEDERAL REGISTER notices, and
 - the effect on the individual of not providing the information.

SECTION 2. BASIC REQUIREMENTS.

.01 Relevancy, Necessity, and Authority. a. When the use of personal information about individuals initially is considered in connection with the conduct of a function or program, the concerned office or other activity must establish the relevancy and need of the data, as well as the authority to collect it. However, authority to collect some information does not confer authority to collect all information the activity deems useful. Personal information may be collected only if it is both relevant and necessary to the function or program. This is a judgmental determination, and the OMB Privacy Act Guidelines at Attachment 2 hereto provide valuable assistance (Page 28960, column 3).

b The responses to the OMB Privacy Act Guidelines' questions, and any other questions applied when making the required determination of relevance and necessity, shall be retained on file in the operating unit or Departmental office developing a PA System. (These responses could prove helpful when preparing, annually reviewing, or revising the public notice, and when replying to any audit or oversight inquiries which might arise.)

.02 Sources of Information. a Personal information about an individual collected for inclusion in a PA System shall be obtained directly from the subject individual unless:

1 the information collected is not used in whole or in part in making any determination about an identifiable individual (e.g., records kept for statistical purposes only); or

2 such direct collection would be clearly impracticable.

b. Before deciding on information source, all pertinent factors should be considered, including:

1 Nature of the program or purpose, i.e., perhaps the kind of information needed (such as an independent assessment of a job applicant's capabilities) can only be obtained from a third party;

2 Cost of collecting data from the subject individuals as compared with the cost of obtaining it from a third party which has the data in hand;

3. Risk that information from a third party could be inaccurate, outdated, irrelevant, or biased and, therefore, could result in an individual being denied benefits (e.g., a pension, a license, or grant); and

4. Use of verification procedures which would permit the individual to verify any data from other sources before any determination is based on the data

c. Lastly, the requirement of the Paperwork Reduction Act of 1980, as amended that the information reporting burden imposed by Federal agencies on the private sector be held to a minimum should not be construed to override the requirements of the 1974 Privacy Act.

A SPECIAL NOTE re PA Planning:

For general planning purposes, it should be noted that this is the earliest possible point in time — i.e., after the basic requirements of relevancy, necessity, authority, and source of information have been resolved — that an activity can begin to consider or start drafting the statutorily required report on a new PA System. This report must clear the Department and be submitted to both Houses of Congress and OMB at least 60 days before the required proposed notice can be sent to the FEDERAL REGISTER for publication.

After publication of the notice, and assuming the proposed new PA System does not involve any exemptions under the Act, at least 30 more days must be allowed for public comment before a final notice can be published in the FEDERAL REGISTER and collection can commence. If there are exemptions, a further waiting period of at least another 30 days could be encountered.

All the above is explained in detail in other parts of this Handbook as indicated by the Table of Contents. This note is inserted here simply to alert all Department activities and officials of the extraordinary time factors inherent in the implementation of the Act.

.03 Authority and Source Notification. The collection authority, and each and every source of personal information, must be identified or otherwise accounted for in the public notice describing the PA System.

SECTION 3. COLLECTION CONDITIONS.

The conditions under which personal information may be collected are prescribed in this Section according to source, i.e., the individual, a third party, or other Federal agency. These conditions shall apply whether the information is collected orally, in writing, or by any other method.

.01 Collecting from the Individual. a Individuals from whom information about themselves is collected must be informed of:

1. The authority for the collection (*statute* or Executive Handbook);
2. The principal purpose(s) for which the information is intended to be used;
3. Any other uses (i.e., routine uses) which will be made of the information in addition to the principal purpose(s);
4. Whether providing the information is mandatory or voluntary; and
5. The effects, if any, of the individual not providing all or any part of the requested information, (Note: These five items of information must be given to the individual in a form or written statement for the retention.)

b. Form CD 317, Privacy Act Advisory Statement, may be used as an aid in informing individuals of the above information. Stocks are available at the Department of Agriculture Central Supply, in Landover, Maryland.

c. If an operating unit or office prepares its own form for this purpose, it shall:

1. Indicate whether the authority either imposes or authorizes any penalty (fine or imprisonment, for example) for failing to answer;
2. In giving the reason or principal purpose(s), be especially careful to point out any purpose which involves a determination as to the individual's rights or benefits;

3. Include as other uses beyond the principal purpose only those "routine uses" (i.e., transmittals outside the Department in any form) which have been (or will be) publicly announced in the FEDERAL REGISTER notice describing the system;

4. State whether the authorizing statute or Executive Handbook is mandatory or voluntary. E.g., it is mandatory to file your tax return, but it is voluntary to apply for Federal employment, Department rules (or other administrative regulations) requiring data or use of statutes and Executive Handbooks. Also, do not confuse authority with effects on individuals of not responding, (See OMB Guidelines, Attachment 2, starting on page 28961, column three.) All these circumstances should be explained in writing in plain English; and

5. In citing any possible effects on the individual, include all, whether beneficial or adverse.

d. Depending on the scope or sensitivity of the information being requested and the PA System of records of which it will become a part, operating units may wish to record the fact that the individual was provided a copy of the appropriate advisory statement. If so, options which may be considered include: signed receipt; initialed acknowledgment of receipt on the collection form; tear-off copy of the collection form (with pre-printed statement thereon) for the individual's retention; and the collector's initials on the collection form affirming that a copy of the written advisory statement was given to the individual

a. All forms or statements prepared pursuant to this paragraph must be cleared with the Assistant General Counsel for Administration.

f. Implicit in the provisions of subparagraphs a., b., and c. of this paragraph is the notion of "informed consent," since an individual should be given sufficient information about a request for information as will enable him or her to make an informed decision on whether or not to respond. However, it must be noted that this act of informing the individual does not satisfy the requirement for obtaining the individual's consent to subsequent disclosures of the record — a provision of the Act which is covered at paragraph 3.05, Part V, of this Handbook.

.02 Collecting From a Third Party. a. Third parties from whom information about an individual is being collected shall be informed of the purposes for which the information will be used, if feasible.

b. Third parties may also be ensured that their identity will not be revealed to the subject individual, but only if the published notice specified that exemption (j)(2), (k)(2), and (k)(5) apply to the PA System for which the information is being collected. Also, see paragraph 1.05, Part VII, of this Handbook.

.03 Collecting From Another Federal Agency.

a. Premises. Before collecting, compiling, or using information from another Federal agency which concerns an individual, the operating unit or Departmental office involved must:

1. Ensure that the Department has an authoritative, necessary, and relevant use for the information;

2. Determine whether the existence of the information has been published in the PA System notice in the FEDERAL REGISTER by the other agency; and

3. Ensure that if the Department receives the information it will be in compliance with the Act, if applicable, beginning from the instant the information is received, as explained in b, below.

b. Information in a PA System. If the desired information is a PA Record in a system of records of the other agency, the Department may obtain it and use it under either of two conditions:

1. If the Department has been included in the Routine Use provisions of the other agency's published notice describing the system; or

2. If the Department has requested the information in writing for a civil or criminal law enforcement purpose under section (b)(7) of the Act, or for statistical research purposes under section (b)(5) of the Act.

c. Information Not in a PA System. If the information is not in a PA System of the other agency, then the requesting activity need only determine whether the manner in which the information will be used and maintained by the Department is permissible without bringing the requirements of the Act into force.

d. Other Conditions. Any other plan, proposal, or program which envisions the collection, compilation, or use of PA information from another Federal agency must be treated as a potential new PA System under Department purview. All pertinent provisions of the Act and this Handbook shall apply.

SECTION 4. PENALTIES.

a. Criminal Penalties. With respect to the provisions of this Part III of this Handbook, it should be noted that any officer or employee of the Department (or any other Federal agency) who willfully collects, maintains, or uses a PA Record or PA System without meeting the public notification requirements of section (e)(4) of the Act (Part X of this Handbook) shall be guilty of a misdemeanor and fined not more than \$5,000.

b. Civil Remedies. See paragraph 6.02 of Part I of this Handbook.

PART IV - MAINTENANCE OF PA RECORDS

One specific purpose *is* to require agencies to ensure "that (PA Record) information is **current and accurate** for its **intended use** . . ." --the Act

SECTION 1. STATUTORY REQUIREMENTS.

Except for protection requirements (which are separately treated in Part VIII of this Handbook) this Part deals with statutory records maintenance requirements and prohibitions which apply to all PA Systems or which are common to all PA Records. This part provides specific instruction and guidance on:

— **the name, location, and manager of each system;**

— **the categories of individuals, i.e., the identification by common characteristics, an whom records are maintained in a system;**

— **the categories of records, i.e., the individual kinds or types, which are maintained in a system;**

— **the accuracy, relevance, timeliness, and completeness of records in a system; and**

— **certain records, the maintenance of which is generally prohibited.**

SECTION 2. SYSTEM NAME, LOCATION, AND MANAGER.

The public notice which describes each PA System must include, among other things, the system's name, location, and System Manager's title and address,

.01 System Name. The primary purpose of the name is to facilitate the individual's exercise of his rights under the Act. An accurately descriptive system name should make it possible for an individual to review the published compilation of all PA System notices and -- based on the titles -- easily determine those systems which might contain records on that individual. Subsequent reading of the "category of individual" portion of the selected notices will then verify (or refute) that tentative determination. In naming a system, the responsible officer or employee should strive to include: the category of individual, the subject of the file, and the link between the two. For example, the system of equipment and supplies check-out records at an activity's instrument shop could be named, "Employee Property Accountability Files."

.02 System Location. This should reflect each street address, city, and state where records of the PA System are located. If the records are dispersed among more than a dozen installations, the list can be appended or footnoted in Handbook not to interfere with the readability of the notice.

.03 System Manager. This should be the program officer or employee who is responsible for the policies and practices governing the PA System's uses with respect to the program, not the files supervisor or unit's records manager. The notice shall include the position title and business address of the System Manager.

SECTION 3. CATEGORIES OF INDIVIDUALS.

As a derivative of *the function* or program to which a PA System relates, the **individuals on whom records are to be maintained** must be **identified by category or categories**. This identification should be clearly stated in terms understandable to the public. (For example, "licensed jet aircraft pilots" would be more meaningful and clear than "SF-14 License Holders"). It is this portion of the published notice which allows an individual to determine if information on him might be in the system. It can also help the Department avoid the paperwork associated with general inquiries such as "Please advise if you have any records on me in any of your systems".

SECTION 4. CATEGORIES OF RECORDS.

In describing a proposed new PA System or reviewing an existing PA System, the category of records to be kept shall be critically reviewed to cull out files which fail to meet the standards of relevancy and necessity. Only records which satisfy both of these requirements can be maintained; and all which are maintained must be briefly described or listed in the public notice describing the system. For example, the categories of records maintained in the system "Employee Property Accountability Files" (named in paragraph 2.01 of this part) would read: "Name, address, or organizational unit and room number, date, title of book, or name and serial number of instrument."

SECTION 5. PROHIBITED RECORDS.

01. The Act. Section (e)(7) of the Act prohibits agencies from maintaining "any record describing how any individual exercises rights guaranteed by the First Amendment" to the Constitution unless:

- a expressly authorized by another statute;
 - b expressly authorized by the individual about whom the record is maintained;
- or
- c it is pertinent to and within the scope of an authorized law enforcement activity.

02. Operating Units and Departmental Offices. Commerce activities may maintain such otherwise prohibited records only in accordance with conditions set forth in OMB Guidelines (Attachment 2, page 28965, second column).

SECTION 6. ACCURACY, RELEVANCY, TIMELINESS, AND COMPLETENESS OF RECORDS.

.01 The Act. a The Act, at section (e)(5), stipulates that all records used by an agency in making any determination about a person must be "maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination". (Caution: Note that the responsibility rests with the using agency, whether the record was compiled by that agency or was transferred to it from another agency.)

b. As a corollary to the preceding, the Act also conditionally requires the Department to make a reasonable effort to apply the same standards of quality to a PA Record being sent outside the Department. This provision of the Act, (e)(6), and its conditions are explained more fully in paragraph .04 of this section.

.02 The Objective. The aim of the Act is to minimize any risk that an agency may make an adverse decision about an individual on the basis of inaccurate, incomplete, irrelevant, or out-of-date information.

.03 Standards and Procedures. a. As a practical matter, any evaluation about the accuracy or *other* qualitative characteristics of a record must be based on judgement. In brief, there are no tangible or absolute bases for deciding the quality of a record, and the Act recognizes this in its words: "as is reasonably necessary." Accordingly, each operating unit and Departmental office must draw on the guidance of the Privacy Officer and the experience of the involved program officers to develop its own quality criteria in relation to such factors as may be directly pertinent. These should include the significance, effect, and major or minor nature of the determination to be made about the individual; the nature and objective of the program or function which underlies the PA System; and precedent.

b. As appropriate or applicable, procedures should be developed in conjunction with the System Manager to:

1. Ensure that all items of information clearly essential to the determination are at hand;
2. Ensure that any backlog of materials waiting "to be filed" is specially checked for records pertinent to the subject individual before the determination is made; and
3. Provide for a periodic quality review of each PA System to include all its records, a sampling, or a given portion which would guarantee a repeated review of all the records over fixed intervals of time of not more than 12 months. Specifically, the records in each PA System shall be quality reviewed annually.

EXCEPTION: A review is not required for records in a system of records that cannot be changed, e.g., decennial census records; or records that are not used in making determinations about individuals, e.g., statistical survey records.

.04 Records Going Outside Department. a. The need for quality in PA Records being sent outside an agency is expressed in section (e)(6) of the Act. Prior to disseminations, reasonable efforts must be made to ensure that the records are accurate, relevant, timely, and complete, for this Department's purposes. This means, for example, that records used in the determination to hire an employee ten years ago need not be updated prior to disclosure.

b. Disclosure of Privacy Act records to another Federal agency is not subject to this requirement since each receiving agency is required to apply its standards of accuracy.

c. Disclosure of Privacy Act records in response to a request under the Freedom of Information Act is not subject to this requirement.

PART V - USE AND DISCLOSURE OF PA RECORDS

No **PA Record** containing **identifiable personal information** may be used *or* disseminated except "in a manner **that ensures** that such action **is** for a **necessary and lawful purpose ... and that adequate safeguards** are **provided** to prevent misuse of **such information**" -- the Act

SECTION 1. STATUTORY BACKGROUND.

Another major **principle of the Act (having established that only authorized, relevant, and necessary records may be collected and maintained) is to prescribe the uses** to which **personal information may be put and to set down pre-conditions under which such uses may be effected.**

SECTION 2. DISCLOSURE LIMITATIONS,

a The **disclosure of PA Records to the individual to whom they pertain, to a person accompanying the individual, to the parent of a minor, or to a legal guardian** comprise a **fundamental of the Act** which is **fully covered** in the **Rules and supplemented** in Part VI of this **Handbook**. Otherwise, operating units and Departmental offices may **disclose PA Records only under one of the eleven situations discussed** in paragraphs .01 through .11 of this section, under **one of the special circumstances set out** in **Section 3** of this **Part or with the prior written consent** of the **individual, as explained at paragraph 3.05** of this Part. **In any instance where the Act authorizes or prescribes unique conditions, they are explained; and Section 4 prescribes certain additional unique disclosure procedures.**

b. Many Privacy Act **disclosures are subject to the statutory accounting requirements and these disclosure must be recorded in the file.** Failure to **comply with this requirement may result in administrative or criminal sanctions against the employee,** Statutory accounting requirements which apply to certain disclosures **are explained in Part X of this Handbook.**

.01 To Commerce Personnel Having Official Need. Section (b)(1) of the Act applies.

a Circumstances - A **FA Record** may, of course, **be disclosed to and used by any officers or employees of the Department who have a need for the record in the performance of their official duties.** Such **need is determined by the PA record custodian.** If any uncertainty exists as to **the legitimate need for the record by the requesting component, guidance should be sought from the Office of Management and Organization.**

b. Conditions - **The only conditions applying to this use would be:**

1 As may **be required pursuant to administrative or other controls prescribed by the head of the activity or other responsible official; or**

.02 Replying to Freedom of Information Requests. Section (b)(2) of the Act pertains.

a. Circumstances - A Department activity may receive a request under the Freedom of Information Act for a PA Record(s).

b. Conditions - If a record is not exempt from disclosure under *the* Freedom of Information Act and, therefore, is required to be disclosed, it may be disclosed to a requester without the consent of *the* individual to whom it pertains. (See Section I of Part XI of this Handbook for an explanation of the relationship between the Act and the Freedom of Information Act.)

.03 To a "Routine Use" Party. Section (b)(3) of the Act pertains.

a. Circumstances - PA Records are sometimes disclosed on a routine basis to other agencies or persons, e.g., Department employees' time and attendance records are disclosed to the Treasury Department to facilitate the issuance of salary checks. Disclosure of PA Records under these circumstances is further discussed in paragraph .07 of this section.

b. Conditions - PA Records may be disseminated under a routine use only if such usage: (1) is compatible with the basic purpose for which *the* records were collected, and (2) has been publicly announced in *the* Routine Use portion of *the* FEDERAL REGISTER notice which described the system of records.

.04 To the Bureau of the Census.

a. Circumstances - PA Records may be disclosed to the Census Bureau in individually identifiable form (by any Federal agency) for use by that Bureau pursuant to *the* provisions of Title 13, United States Code. (Title 13 not only limits the use which may be made of these records, but also make them immune from disclosure except as provided by 13 U.S.C. 8.)

b. Conditions - There are no conditions. All disclosures to the Bureau of the Census shall be made under section (b)(1) of the Act and paragraph .01 of this section.

.05 For Statistical Research Purposes. Section (b)(5) of *the* Act pertains.

a. Circumstances - PA Records may be disclosed "in a form that is not individually identifiable" for statistical research and reporting usage.

b. Conditions - All requirements prescribed by OMB Guidelines (page 28954, third column) must be met. If a Department activity has no competent in-house capability for assuring that the data to be disclosed cannot be manipulated and reconstructed to yield information about an individual, an expert evaluation shall be requested of the Director, Bureau of the Census, under paragraph 2.03, Part II, of this Handbook.

.06 For the National Archives. Section (b)(6) of the Act pertains.

a. Circumstances - PA Records may be disclosed to the Archivist of the United States either for permanent archival preservation or for evaluation in Handbook to determine whether, under pertinent law (that is, 44 U.S.C. 2107), the records should be preserved by the Federal Government.

b. Conditions - A disclosure of this nature may be made in response to a written request from the Archivist of the United States or the designee, or after he concurs in such an evaluation proposed by a Department activity.

(Special Note: Records transferred to a Federal Records Center, Department records center, or Department records holding area are not disclosures under the Act; and such records continue to be under the responsibility and control of the transferring Department activity. Personnel at such locations are either agents or employees of the Department.)

.07 For Civil or Criminal Law Enforcement. Section (b)(7) of the Act pertains.

a. Circumstances - PA Records may be disclosed to any Federal, State, or local governmental agency or instrumentality within or under the control of the United States for a civil or criminal law enforcement purpose in response to a written request, (Note: Disclosure at Department initiative has been noticed in the FEDERAL REGISTER as a General Routine Use.)

b. Conditions:

1. The request must be in writing; must be signed by an appropriate official; must specify the law enforcement purpose for which the record is requested; and must specify the particular record requested. (Blanket requests for all records on an individual shall not be accepted)

2. Disclosure may be initiated by the Department when a violation of law is suspected, but only if such disclosure has been established in advance by public announcement in the routine use portion of the FEDERAL REGISTER notice which described the PA System.

(Special Note: Records may also be disclosed to a foreign law enforcement agency provided all conditions cited in subparagraph 1 are satisfied and the action has been noticed in advance as a "routine use" under paragraph .03 of this section.)

.08 For Emergency Health or Safety Reasons. Section (b)(8) of the Act pertains.

a. Circumstances - PA Records may be disclosed in response to "compelling circumstances affecting the health or safety of an individual," and—if the circumstances warrant—the records of persons other than the imperiled individual may be disclosed.

.08 For Emergency Health or Safety Reasons. Section (b)(8) of the Act pertains.

a. Circumstances - PA Records may be **disclosed** in response to "compelling circumstances affecting the **health or safety** of an individual," and--if the **circumstances warrant**--the records of persons **other** than the imperiled individual may be disclosed.

b. Conditions - When an emergency disclosure **is** effected, the Department activity **shall immediately** transmit notification of the fact to the subject individuals(s) at the last known address. .

09. To the Congress. Section (b)(9) of the Act pertains.

a. Circumstances - PA Records may be **disclosed** to either House of Congress or, to the extent of **matter** within its jurisdiction, to any **committee** of the Congress, joint **committee**, or subcommittee.

b. Conditions - Neither the Act nor the OM3 Guidelines **specify** any unique conditions; **but** it must be noted that this provision of the Act does **not** authorize disclosure to a Member of Congress acting in the **individual** capacity. (Special Note: Records may be disclosed to individual Members of Congress under General Routine Use 5., published by the Department, but the circumstances are very limited.)

.10 To the Comptroller General (General Accounting Office). Subsection (b)(10) of the Act pertains.

a. Circumstances - PA Records may be disclosed to the Comptroller General or any of the **authorized representatives** in the course of the performance of the duties of the General Accounting Office.

b. Conditions - None specified.

.11 In Response to a Court Order. Section (b)(11) of the Act pertains.

a. Circumstances - PA Records may be **disclosed** pursuant to the order of a court of competent jurisdiction.

b. Conditions - A Department activity receiving a request under section (b)(11) of the Act shall **immediately** contact the Office of the General Counsel, and any disclosure for this purpose **shall be effected** through the OGC.

SECTION 3. OTHER AUTHORIZED OR PRESCRIBED DISCLOSURES.

In addition to the authorized disclosures enumerated in the preceding section, and disclosure to the subject individual explained in the Rules and Part VI of this Handbook, the provisions of the Act also authorize or mandate disclosure in five instances as explained here.

.01 Disclosure of a Corrected Record or Formal Disagreement Statement. **a.** If a PA Record is corrected *or* amended by the Department in response to *a* request from the individual, then pursuant to section (c)(4) of the Act a copy of the corrected or amended record shall be disseminated to all prior recipients to whom the original record has been disclosed and for which an accounting thereof had been made.

b. If a request for amendment *or* correction is not approved and concludes in a formal disagreement between the individual and the Department, then a copy of the individual's filed statement of disagreement and the Department's reasons for not amending the record shall be provided to all who receive the record after the date of receipt of the disagreement statement. Dissemination of the statements to such parties shall include a notation which clearly points out the particular portion of the record which is disputed. (For automated systems of records, the notation may consist of a special indicator on the entire record or the specific part of the record in dispute.) Statements of dispute must be filed in such a manner as to permit them to be retrieved readily whenever the disputed portion of the record is to be disclosed.

.02 Disclosure In Civil Litigation Under Section (g) of the Act. If an individual brings suit against the Department under the civil remedies provision (section (g) of the Act), the PA Records pertaining to the individual shall be provided to the court.

.03 Disclosure to OMB. The Office of Management and Budget may request certain PA Records in the course of carrying out its responsibilities and functions under section 6 of the Act.

.04 Disclosure With Consent of the Individual. The Act at section (b), and the Rules at section 4b.10(a)(2), also provide that a PA Record may be disclosed to an otherwise unauthorized person if the Department receives the prior written consent of the individual. However, the Department shall incur no obligation in processing requested disclosures of this nature. If a request is received from a person who is not otherwise authorized to gain access to a PA Record, that person or agency shall be advised that it will be their responsibility to contact the individual whose record is involved to obtain the individual's written consent, if the individual is willing to provide it. (See Sample Text Letter "J" at Section 6 of Part VI.)

SECTION 4. UNIQUE DISCLOSURE PROCEDURES.

a Background Investigative Records - No background investigative records of a Departmental office or operating unit may be disclosed without clearance by the Director, Office of Security, or the head of the operating unit's investigative office; and, no background investigative record of another agency in the physical possession of a Commerce activity shall be disclosed without clearance by the Director, Office of Security.

b. Records in Litigation Under the Act - Disclosures under paragraph 3.02 of this part shall be effected through *the* Assistant General Counsel/Administration.

c. Records for OMB - Disclosures under paragraph 30.3 of this part shall be effected through the Assistant Secretary for Administration.

PART VI - PROVIDING ACCESS TO AN INDIVIDUAL'S RECORDS,
AND AMENDING THEM

Agencies shall "permit an individual to determine what records pertaining to him are collected . . . permit an individual to gain access to information pertaining to him have a copy made of all or any portion thereof, and to correct or amend such records." —
the Act

SECTION 1. PURPOSE OF THIS PART.

a This part deals primarily with requests under the Act from individuals who know (or believe) that records pertaining to them exist in PA Systems of the Department. The Rules thoroughly cover this fundamental provision of the Act, prescribing pertinent policies, procedures, and fees for the guidance of both the public and Departmental personnel. This portion merely supplements the Rules with detailed internal instructions.

b. This part also provides sample letter texts for common situations which are likely to require correspondence.

SECTION 2. PRIORITIES.

At several sections (for example, 4b.3(f)), the Rules state that inquiries and requests under the Act shall be acted on within 10 working days. Accordingly, heads of primary operating units and Departmental offices shall establish appropriate procedures to ensure controls for all inquiries and requests received or assigned and to accord them priority handling (for example, time clock/date stamp, hand carry, or automatic facsimile transmission where available).

SECTION 3. OFFICIAL REQUEST FORM.

The official request form is the CD 316, Privacy Act Information Request, hereinafter the "Form." Its use by requesters is recommended but is not mandatory.

.01 Use. Excepting general inquiries by phone or visit, all requests must be in writing. When a request by Form is received by the Privacy Officer, a unit abbreviation (e.g., CEN, O/S, ITA, etc.) will be placed in the "Dept. Facility" box, and the "Control Number" box shall be completed using the calendar year plus sequential numbering (75-1, 75-2, 75-3, etc). (This number plus the unit abbreviation will provide a unique identification for every PA request received in the Department.) When a request is received by letter, the Privacy Officer shall assign it a control number and complete a copy of the Form. (Note: Forms shall not be filed by name and will not become a new system of records. They will be retained only long enough to provide annual report data such as non-collectible cost figures and work load information,)

Availability. For public convenience, a supply of the Forms shall be maintained at all facilities of the Department throughout the country which offer direct service to the public. Heads of primary operating units and Departmental offices, as appropriate, shall establish procedures for obtaining bulk stocks of the Form from or through the Department of Agriculture Central Supply, Landover, Maryland, and redistributing them to ensure that an adequate supply is maintained at their facilities.

.03 Identification of Requester. a Policy - Department policy regarding the need for reliable identification of an inquirer or requester is explained Section 4b.4(f) of the Rules, (Attachment 3). A request cannot be honored unless adequate identification is provided as delineated in the attached Rules.

b. Procedures. Heads of primary operating units and Departmental offices which maintain facilities offering direct service to the public shall authorize designated employee(s) to verify the identification of any inquirer or requester who may appear before them. (Special Note: Verification of identity at a field facility, and official receipt of a request by a Privacy Officer in Washington, could occur many days, or even weeks, apart; therefore, to preclude any confusion over when the Form was officially received by the Department these specially designated employees shall be directed not to date such verification of identity.)

SECTION 4. INITIAL DENIAL OF REQUEST TO GAIN ACCESS OR TO AMEND.

Initial determinations by the Privacy Officer to deny requested access, amendment, or correction shall be cleared with OGC; and a file copy of the signed denial shall be furnished the Assistant General Counsel/Administration. (See Sample Text Letter "F" at Section 6 of this Part.)

SECTION 5. FINAL DETERMINATIONS AFFIRMING INITIAL DENIALS.

Final determinations by the Privacy Appeals Officer which would serve to affirm initial denials of either access or amendment shall be cleared with the Department General Counsel or the Assistant General Counsel for Administration before being issued. (See Sample Text Letter "H" at Section 6 of this Part.)

SECTION 6. SAMPLE TEXT LETTERS.

Application of the Rules will require acknowledgement and correspondence in some instances, and these communications will vary sometimes according to the request at hand. Nevertheless, operating units will find it helpful to develop generally standard texts for certain anticipated situations. This will facilitate clearance and reduce response time. Sample texts for some of these situations are reflected on the next few pages, indexed below by topic and pertinent subsection of the Rules. Operating units and Departmental offices may use or adapt these standard texts or develop their own according to their needs, clear them in advance with legal counsel and signing officials, and thus be ready to Rave individual replies typed and dispatched quickly.

<u>Rules subsection</u>	<u>Text topic</u>	<u>Sample Text</u>
4b.3(f)	Acknowledgement and Basic Reply, using "checked paragraphs"	A
4b.6(c)(3)	Reply to a Request <i>for</i> Medical Records	B
4b.6(c)	Referral to Physician/Psychologist re Disclosure of Records	C
4b.8(a)(2)	Approval of a Request to Amend or Correct a Record	D
4b.5	Denial of a Request for a Record Exempted by the Department	E
4b.8(a)(2)	Initial Refusal of a Request to Amend or Correct a Record	F
4b.8(b).	Advising other Recipients of an Amendment or Correction to a Record	G
4b.9(g)	Refusal of an Appeal to an Initial Denial to Amend or Correct a Record	H
4b.9(g)	Acknowledging Receipt of a Statement of Disagreement	I
4b.10(a)(2)	Response to a Request for an Unauthorized Disclosure	J

SAMPLE LETTER TEXT "A"
(Acknowledgement and Basic Reply Text)

Date

In all correspondence
refer to: (control no.)
(e.g., - EDA 75-13)

Dear ___:

This acknowledges your Privacy Act information request dated _____, which was received in this office on _____. The paragraphs checked below are in reply to your request.

___ Yes, we have a record such as you described.

___ We have searched, but the record you described does not exist.

___ We have located the record you described. You may review it at:
(address, including room number)
_____ between ___ am. and ___ p.m., during the period ___
to _____, 19___. If this is not convenient, please
advise _____ (name, title, address)
of your preferred dates.

___ A copy of the records you requested is enclosed.

___ For a copy of the record you requested, the fee is \$ _____. Please remit by cash (if paid in person) or preferably by money order or check payable to "U.S. Dept. of Commerce" and a copy will be sent to you.

___ We are still searching. Many records of the type you described have been *retired* to a records storage center some distance from here. They are being searched, and we will be in touch with you within an estimated _____ (X weeks or days)

___ We do not have the record you requested, but because it may exist at (the Department of _____), we have forwarded your request to (name and address of Privacy Officer at other Federal agency) _____.

___ We need the following additional information in order to respond to your request:

___ Other:

Yours truly,

Privacy Officer

(Name of operating unit or Departmental office)

SAMPLE LETTER TEXT "B"
(Response to Request for Medical Records)

Date

In all correspondence
refer to:
(control no.)

Dear _____:

This is in reply to your request, received _____ for (access to) (a copy of) the following medical or psychological record(s):

The Department's rules concerning **an individual's** access to the **medical and/or psychological records** allow for a wait of seven **working days** in responding and contain a routine **policy** that **applies** to every **request**. *The* policy is that the **individual be asked**, at *the time* a request is received, to **identify** the **physician or psychologist** and to consent to the Department contacting **the named** physician or **psychologist in the event** the Department determines that direct release of the record could be **misunderstood, upsetting, or otherwise** harmful to the individual.

The consent is **not required**. You may decline to **identify** a physician or psychologist and insist that the record be disclosed **directly to you by the Department**. In this event, the Department's rules **provide that** *the* record will be **reproduced and sent** to you at your home **address** by registered mail, return receipt requested, at no cost to you.

Please indicate your **decision** on the reverse **side of this letter**, sign and **date** it and **return** it to **me**. For your convenience, a postage **paid addressed envelope** is enclosed.

Yours truly,

Privacy Officer
(Name of operating unit or Departmental office)

Enclosure

REVERSE SIDE OF Sample Letter Text "B"

INSTRUCTIONS: You must complete EITHER item "1.A." or "1.B" and you MUST complete item "2."

1. A. I hereby authorize the Department of Commerce to disclose medical and/or psychological records concerning myself to the physician/psychologist named below, should the Department deem it desirable.

Physician or Psychologist Name

Street Address

City, State, Zip Code

or:

1. B. I refuse to provide the name and address of a physician or psychologist. Instead, please send a copy of my medical and/or psychological records to me at home. The address is:

Requester's street address

City, State, Zip Code

2. Signature: _____

Date: _____

SAMPLE LETTER TEXT "D"
(Approval of a Request to Amend or Correct a Record)

Date

In all correspondence,
refer to: {control no.}

Dear _____:

This is *in* reply to your request dated _____ to amend your record in our system of records entitled, _____, in Handbook to (amend)(delete)(update)(revise)(insert)(add)(include)(qualify) that portion pertaining to _____

We have reviewed **and** validated the information you submitted **and** have amended **or corrected** the record accordingly. It now reads as follows: ~~(or)~~ A copy of corrected/amended record is enclosed.

Thank you for helping us in maintaining a complete and accurate record of your (transactions)(relations)(employment)(service) with the Department.

Sincerely,

Privacy Officer
(Name of operating unit of Departmental office)

SAMPLE TEXT LETTER "E"

(Denial of a Request for a Record Exempted by the Department)

Date

In all correspondence,
refer to (control no.)

Dear ----- :

This is in reply to your request, received on _____ (date) for (access to) (a copy of) a record in the Department's system of records entitled, (system title and number) .

The record you seek is exempt from disclosure under the provisions of section 4b.14 of the Department's rules in implementation of the Privacy Act of 1974. These rules were published in the FEDERAL REGISTER on _____ (40 CFR _____).

Specifically, the information cannot be disclosed because it would reveal its source, thus violating the Department's (implied) (expressed) promise of confidentiality to the source. Your request is hereby denied.

The Privacy Act accords you the right to request a review of this denial. Should you wish to do so, the following instructions will help facilitate matters for you:

1. The request, signed by you, must be mailed within 30 days of the above date.

2. Plainly mark both your request and your envelope with the words "PRIVACY APPEAL."

3. If you do not agree with the exemption cited in the rules, and which was asserted by the Department in the FEDERAL REGISTER (40 CFR _____ of (date)) describing the above referenced system of records, you may petition the Department under the provisions of Title 5 of the U.S. Code, section 553(e). Such petition should be addressed to the Assistant Secretary for Administration, Department of Commerce, Washington, D. C. 20230.

4. If you ^{or} believe that the Department's application of the exemption to the record you requested is in error, please include an explanation as to why you believe the application is wrong, and address your appeal to this organization's Privacy Appeals Officer, whose name, position title, and address are:

Yours truly,

Privacy Officer
(Name of operating unit or Departmental office)

SAMPLE LETTER TEXT "F"
(Initial Refusal of a Request to Amend *or* Correct a Record)

Date _____

In all correspondence,
refer to: (control no.)

Dear _____:

This is in reply to your July 4, 1975 request to amend your Federal driver's records as they relate to (your receipt of a police citation for double-parking in front of the Cheerful Cafe on March 10, 1941).

We have reviewed *the* records in our files and we have considered *the* additional information you furnished. For the *reasons* explained below, we found insufficient justification to amend the record.

(e x p l a n a t i o n)

The Privacy Act accords you the right to request a review of this denial. Should you wish to do so, the following instructions will help facilitate matters for you:

1. The request, signed by you, must be mailed within 30 days of *the* date above.
2. It should be addressed to this organization's Privacy Appeals Officer, whose name, position title, and address are:
3. Plainly mark both your request and your envelope with the words "PRIVACY APPEAL".
4. Please include an explanation as to why you believe this denial to be in error.

For your information, the Department's rules implementing the Privacy Act were published in the FEDERAL REGISTER on _____, FR _____).

Yours truly,

Privacy Officer

(Name of operating unit or Departmental office)

SAMPLE LETTER TEXT "H"
(Refusal of an Appeal to an Initial Denial
to Amend or Correct a Record)

Date _____

In all correspondence,
refer to: (control *m.*)

Dear _____:

This is in reply to your August 30, 1975 appeal from the Department's initial denial dated _____, 1975 concerning your request to amend your Federal driver's record with respect to a 1941 incident. This record is part of the Department's system of records known as _____

I have thoroughly reviewed the record, all correspondence from and to you concerning this matter, and the evidence and arguments accompanying your appeal; and I hereby deny the appeal for *the* reasons set forth below.

(reasons for denial)

Please be advised that there are two further rights available to you under the provisions of the Privacy Act of 1974:

1. You have the right to file a concise Statement of Disagreement with the Department. Signed by you, it should set forth your reasons for disagreeing with our refusal to amend the record. After receiving the Statement, which we will acknowledge in writing, we will clearly note the parts of the record with which you disagree; and a copy of your Statement will accompany any disclosures of the record after the date we receive your Statement. The purposes and uses to which the record will be put are the same as those for the above named system of records, as published in the FEDERAL REGISTER (FR). Also, for your information, we currently will file the Department's views with respect to our refusal to amend the record and these views also will accompany any future disclosures of the record.

If you wish to file such a Statement of Disagreement, please address it to:

Mr. John Doe
Assistant Secretary for
Economic Progress
Department of Operations
Washington, DC 20230

2. You also have the right under 5 U.S.C. 552a(g), Section 3 of the Privacy Act (Public Law 93-579), to bring suit against the Department in Handbook to seek amendment of the record. The U.S. District Court has jurisdiction over such suits.

Yours truly,

Privacy Appeals Officer
(Name of operating unit or Departmental office)

SAMPLE LETTER TEXT "I"
(Acknowledging **Receipt of a Statement of Disagreement**)

Date

In all correspondence,
refer to: (control no.)

SUBJECT: (name or description of record
from (name and number of
system of records)

Dear _____:

This Department received on (date) **your** Statement of **Disagreement** relating to the **subject record**. Your **Statement has been filed and the portions of the record** which you disagree with have been **clearly** noted. **Any** future **disclosures of the record will be** accompanied by a **copy** of your **Statement of Disagreement**.

At the same time, **the** Department's views have **been** similarly filed and also will accompany **any** future disclosure **of the record**. For your **information, a copy of the Department's views are enclosed**.

Yours truly,

Privacy Officer
(Name of operating unit or **Departmental office**)

Enclosure

SAMPLE LETTER TEXT "J"
(Response to a Request for an Unauthorized Disclosure)

Date _____

In all correspondence,
refer to:

Dear _____:

This is in reply to your request for (information from) (access to) (a copy of) certain records pertaining to (name of individual) which may be held by this Department. The records you requested are _____

If the record exists, it would be in our system of records entitled, _____, a description of which was published in the FEDERAL REGISTER as required by the Privacy Act of 1974. This published notice also prescribed the conditions covering the use of records in the system.

Review of this notice and your request indicate that (either) — you are not (or your organization is not) included among the categories of users who are authorized access to such information.

(or)

— although you are (or your organization is) included among the categories of users, your intended use of *the* information in this instance is not authorized under the "routine use" portion of the notice.

Accordingly, the Privacy Act prohibits this Department from furnishing the information you seek without the written consent of (name of the individual) . If you wish to contact him/her and he/she is willing to provide such consent in writing, it should be addressed to the undersigned, contain a description of the record(s), specify you or your organization as recipient, and be signed by the individual.

Yours truly,

Privacy Officer
(Name of operating unit or Departmental office)

SAMPLE LETTER TEXT "K"
(Response to a Records Bequest Which Cites Neither
the Act nor the Freedom of Information Act)

Date _____

In all correspondence,
refer to: _____ (control no.)

Dear _____:

This acknowledges your request dated _____ for certain records concerning _____

Requests of this kind are generally handled under one of two different laws, the Freedom of Information Act, or the Privacy Act of 1974. Because your letter did not mention either Act, we are processing your request under both Acts, because the statutory terms of both a FOIA and a Privacy Act request are met in this case. A response will be sent to you by (10-day statutory date).

For future reference, the differences between the two laws are summarized, very briefly, on the reverse side of this letter.

Yours truly,

Privacy Officer
(or)
FOIA Facility Head
(Name of operating unit or Departmental office)

A SUMMARY OF SOME DIFFERENCES BETWEEN THE
FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT
WHICH MAY BE OF CONCERN TO THE REQUESTER

<u>With respect to:</u>	<u>A request for records which is processed under the:</u>	
	<u>Freedom of Information Act</u>	<u>Privacy Act</u>
...response time from date of receipt	Normally must be answered within 10 days .	Must be answered within a reasonable time
...scope	Encompasses all the records of the Department .	Encompasses only those groups of records which have been described in the FEDERAL REGISTER beforehand.
...costs	You pay fees for time spent in searching for the records (e.g., (actual salary rate plus 15 percent of that rate of person conducting the search) and for making copies of records @ 7 cents per page.	You pay only fees for making copies of records @ 7 cents per page,
...changes	Does not allow for amending or correcting a record.	Permits a request to amend or correct a record,
...recourse	If refused, the denial must be appealed to the Department and, thereafter, may be taken to court, At court, it may be accorded priority on the calendar.	If refused, the denial must be appealed to the Department, and thereafter, may be taken to court. No priority at court.

For complete information, see:

—The Freedom of Information Act, as amended, 5 USC. 552,

—The Privacy Act of 1974, as amended, 5 USC. 552a.

PART VII - EXEMPTIONS PERMITTED UNDER THE ACT

" . . . the head of my agency may promulgate rules . . . to exempt any system of records within the agency : . . . —the Act

SECTION 1. INTRODUCTION.

.01 The Act. At Section (j) and (k), the Act permits an agency head to exempt any PA System from *the* requirements of certain other provisions of the Act. These exemptions are permissive; none are mandated. Each exemption requires positive action by *the* Department and the observance of specified procedures, i.e., compliance with statutory rule-making procedures. It is possible that more than one exemption may be applied to the same PA System.

.02 This Part. a The use of exemptions by the Department for any of *its* PA Systems is explained in this Part. However, this Part does not apply to the administration of exemptions determined by another Federal agency to be records of that agency which are maintained by the Department. This situation is provided for in sections 4b.3(h), 4b.5(g)(3)(i), and 4b.13(a) of the Rules.

b. This Part also provides pertinent policy, and explains the relevant duties of *the* System Manager and others.

.03 Types of Exemptions. There are *two* kinds of exemptions, general and specific, and there is a fundamental difference between the two in terms of the selection and substance of *the other* provisions of *the* Act which afterward need not be followed. The next two Sections of this Part summarize the differences,

.04 Basic Requirements. Each exemption must be reflected in the published notice of *the* PA System. The exemption determination is a rule-making procedure and the exemption becomes a part of the Department's Rules.

.05 Exclusion. Exemptions should not be confused with the exception provided for materials compiled in reasonable anticipation of civil Litigation at section (d)(5) of the Act. When such materials are about to be collected, it is very important to make written note of the fact that the collection activity is preliminary to possible civil litigation. The statutory term "reasonable anticipation" cannot be precisely defined, but the employee or official may be able to exercise judgement based on experience. Illustrations which seem to fall within the standard would include: any claim for money filed against the Department; instances of possible breach of contract; and most, if not all, complaints by Department personnel.

SECTION 2 GENERAL EXEMPTIONS.

Utilization of section (j)(2) of the Act, General Exemptions, is diagrammed below. (Section (j)(1) applies only to systems maintained by the Central Intelligence Agency.) In considering or planning for a possible "(j)(2)" exemption, the System Manager must refer to the Act and OMB Guidelines directly, and must consult with the Office of the General Counsel.

What the Act provides:

If a PA System is maintained by an organization or component whose principal function is criminal law enforcement, including efforts to prevent, reduce, or control crime, and the System consists of (a) information compiled for the purpose of identifying alleged offenders, or (b) criminal investigative information including reports of informants and investigators, and is associated with identifiable individuals, or (c) court, probation, and prison records, then

What the Dept. does:

The Assistant Secretary may, but only after publishing the "reason why" in the Department's rules, exempt the PA System from all requirements of the Act *except*

What the result is:

The following requirements of the Act shall still apply:

Conditions of disclosure, (b); Accounting for disclosure and retention of the accounting, (c) (1) and (2);

Public notice except for procedures for identifying the source of records, (e)(4) (A) through (F);

Obligation to check the accuracy, relevance, timeliness, and completeness of records before disclosing to a person other than to another agency or to the public under the FOI Act (e)(6);

Restrictions on maintaining records on First Amendment activities, (e)(7);

Establishment of rules of conduct and administrative,

technical, and physical safeguards, (e)(9) and (10) respectively;

Publication of "routine use" notices, (e)(11); and Criminal penalties, (i).

SECTION 3. SPECIFIC EXEMPTIONS,

Utilization of section (k) of the Act, Specific Exemptions, is diagrammed below. In considering or planning for a possible application, the System Manager must refer to the Act and OMB Guidelines directly, and must consult with the Office of the General Counsel.

What the Act provides;

If a PA System contains any records which:

(k)(1) relate to national defense or foreign policy and are properly classified,

(k)(2) are investigatory and compiled for law enforcement purposes,

(k)(3) pertain to protection of the President,

(k)(4) are required by statute to be maintained and used solely as statistical records;

(k)(5) are investigatory and used for employee or contractor suitability determinations,

(k)(6) are Federal service exam or test materials, or

(k)(7) are armed services promotion evaluation materials, then

What the Dept. does:

The Assistant Secretary may, but only through an advance amendment to, or a revision of, the Department's notice and rules in the FEDERAL REGISTER:

—identify the numbered (k) section (~) which apply to the records;

—specify the sections of the Act from which the the Department claims exemption;

and
—explain the reasons why, then

What the result is:

The Department may relieve itself from following all or any of the following provisions of the Act:

(c)(3) on making accountings available to the individual;

(d) on access to and amendment of records;

(e)(1) on maintaining only relevant and necessary information;

(e)(4)(G), and (H), and (I) on publishing notification, access and contest procedures, and

categories of sources, respectively; and, (f) on promulgating rules.

SECTION 4. POLICY.

As to exemptions permitted under the Act, it is the Department's policy that:

- a. Exemptions shall be adopted only when a compelling need exists;
- b. An exemption shall specify only those subsections of the Act, from which the Department is thereby relieved, as are necessary to effect the purpose of the exemption;
- c. If feasible, an exemption shall cover only specified records, or portions thereof, within a system of records, and not the entire system of records; and,
- d. Specific exemptions under sections (k) of the Act shall be asserted only to the extent that the information in the system of records falls within the language of the exemption as stated in the Act.

SECTION 5. PREPARATION AND CLEARANCE.

.01 System Managers. The System Managers are responsible for:

- a. Detecting the character of information in, or to become part of, a system of records that might require assertion of an exemption by the Department;
- b. Suggesting the appropriate exemption, general or specific, and identifying the exact provision in either section (j) or section (k) of the Act on which the exemption should be based;
- c. Specifying the parts of the Act from which the Department should be relieved; and
- d. Preparing and forwarding to the Assistant Secretary for Administration through the Privacy Officer, normal operating unit channels, and the Department General Counsel, all documentation for exemption necessary in light of the foregoing, including:
 1. Discussion memorandum;
 2. Recommendation for the Assistant Secretary;
 3. Draft report in accordance with OMB Circular A-1311;

4. **Draft notice of system of records in complete form for publication in the FEDERAL REGISTER; and**

5. **Draft proposed regulation in complete form for publication in the FEDERAL REGISTER.**

.02 Operating Unit Heads, No recommendation for exemption shall be forwarded to the Assistant Secretary for Administration without endorsement by the head of the originating primary operating unit or Departmental office,

.03 General Counsel. The Office of General Counsel shall review each proposed exemption and provide advice as to both the legal form and substance of each such proposal prior to action by the Assistant Secretary.

.04 Assistant Secretary for Administration. The Assistant Secretary alone possesses delegated authority to make determinations on exemptions; and all submissions to the FEDERAL REGISTER on proposed and final notices and regulations shall be signed by the Assistant Secretary.

SECTION 6. TIME RESTRICTIONS.

System Managers must take into account the delays and processing time restrictions inherent in the exemption process. The time requirements flow from sections (e)(4) and (11), (j), (k), and (o) of the Act, and the OMB Guidelines, as supplemented. These are discussed further in Part IX of this Handbook. No exemption is valid unless and until formally acted upon by the Assistant Secretary and published in the FEDERAL REGISTER.

PART VIII - PROTECTION OF PA RECORDS

Each agency^u. . . shall establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained." —the Act

SECTION 1. BACKGROUND AND RESPONSIBILITIES.

.01 Background. Section (e)(10) of the Act applies, and is quoted above in its entirety. It clearly prescribes three safeguard requirements which must be considered and applied, as appropriate, and it indicates the scope of dangers which the records must be protected against. Necessarily, of course, and as the OMB Guidelines point out, the development of appropriate safeguards will "have to be tailored to the requirements of each system of records" and to any relevant program needs, for example, ready accessibility during all working hours. Also section (e)(10) cannot be considered independent of the Act's preceding section (e)(9), which mandates "rules of conduct" for all officers and employees involved in the operating and maintenance of PA Systems. The success of most safeguard measures will depend to a large extent on the security awareness and conduct of Departmental officers and employees.

.02 Responsibilities. a. Heads of operating units and Departmental offices which maintain PA Records shall *be* responsible *for* developing and implementing such protective measures as they deem suitable under the Act for each PA System they maintain. Concurrently, they are responsible for assuring that their personnel who work directly with or have responsibilities for PA Systems of Records are instructed in (and periodically reminded of) their individual obligations under the rules of employee conduct.

b. In carrying out *these* responsibilities, heads of operating units and Departmental offices shall apply the provisions of the remaining Sections of this Part, and shall ensure, at a minimum, that the safeguards for each PA System correspond with *or* exceed those which are described in the published FEDERAL REGISTER notice.

SECTION 2 ADMINISTRATIVE PROTECTION,

.01 General. a. In considering administrative safeguards, existing procedures and controls (if any) should first be identified, reviewed, and evaluated as to their adequacy. Conceivably, formal reiteration and reemphasis of these measures, coupled with periodic compliance checks, could satisfy the requirements of the Act.

b. In formulating new or revised safeguards, consider costs and feasibility; and:

--obtain the assistance of the organization's management analysis staff (if one exists);

--request advice and guidance from the Chief, Management Support Division;

--seek appropriate principles or guidance from the Department's Security Handbook (DAO 207-2), depending on the sensitivity of the records in a given PA System; and

--seek the experience and views of the Census Bureau, which has long dealt with these types of records.

.02 **Specific.** With respect to a PA System, where part of the records have been accorded an exemption under section (j) or (k) of the Act, appropriate administrative safeguards must be developed, first, to facilitate easy distinction between the particular records which are exempted and the remainder which are not, and second, to ensure suitable protection in the processing, handling, and storage of each such group in the system.

SECTION 3. TECHNICAL PROTECTION.

.01 **Special Concern.** In section 2.(a) (2), the Act reflects special concern that "the increasing use of computers and sophisticated information technology has greatly magnified the harm to individual privacy that can occur" in the handling and processing of personal information

.02 **Prescribed Guidelines.** Responding to the concern of the Congress, OMB Circular A-130 (Attachment 2 hereto) requires the Secretary of Commerce to issue standards and guidelines on computer and data security. This has been done by the National Bureau of Standards and published under the title, Computer Security Guidelines for Implementing the Privacy Act of 1974, (Federal Information Processing Standards Publication No, 41). These guidelines shall apply throughout the Department. (Copies may be obtained from the Institute for Computer Sciences and Technology in NBS.)

.03 **Safeguard Selection.** a **Existing.** As a first step, existing safeguards must be identified and evaluated against the prescribed guidelines. If judged adequate, no further action need be taken, but plans for periodic re-evaluation must be developed and implemented.

b **New or Revised.** If new or revised technical safeguards are deemed necessary, a memorandum describing them shall be submitted to the Director, OIRM (Attn: Chief, Information Policy and Planning Division), for information. This memorandum shall:

--give the estimated total dollar costs for implementation and the estimated annual operating costs;

--relate the planned safeguards to the measures and options set forth in the prescribed guidelines; and.

—provide such other information or description as the originator considers pertinent,

SECTION 4. PHYSICAL PROTECTION.

a. The determination of adequate physical protection measures is essentially a matter of judgement. Compliance with the Act will involve the same considerations as are applied in considering administrative safeguards under paragraph 2.01a. of this Part.

b. In drafting or planning for physical safeguards, costs and feasibility must be considered. In addition and as necessary:

—request the assistance of the organization's Security Officer;

—request advice and guidance from the Director, Office of Security; and

—consult the provisions of "Office and Building Security," of the Department's Security Handbook (DAO 207-2).

SECTION 5. SPECIAL ACTION.

Computer print-out devices, office copiers, microfilm printers, and other modern equipment have made the production of copies of records quick and simple. This warrants special attention and appropriate action, best summarized in the following questions:

a. Who is authorized to produce copies? Why?

b. Is every copy necessary and relevant?

c. Where does each copy go?

d. Is each copy subsequently protected? Adequately? By whom?

e. How is each copy ultimately disposed of?

Unless the answers to these questions give assurance that the records are kept secure, necessary actions should be taken immediately to gain that assurance.

Proper security of the records is the responsibility of the systems managers.

While this principle is stated to apply specifically to PA Records in a PA System, its broad application to all records is Department policy.

**PART IX - ESTABLISHING OR ALTERING A SYSTEM
OF RECORDS**

"Each agency shall provide adequate advance notice to the Congress and the Office of Management and Budget of any proposal to establish or alter any system of records., . ." —the Act

SECTION 1 BACKGROUND.

.01 A Compromise. Establishing or altering a PA System of records will involve a considerable administrative effort. As a matter of relevant background, for example, the OMB Guidelines attached indicate that an important provision of the Act, Section 5, represented a legislative compromise in lieu of which an independent agency would have been created to regulate and oversee the implementation of the Act.

.02 Purpose of this Part.

This part establishes the procedures necessary to propose a new or altered PA System of records, and implement the OMB guidance of Circular A-130, Section 4.b. of Appendix I.

SECTION 2 RESPONSIBILITIES.

.01 Proposal to Establish or Alter a System of Records. When it becomes necessary to propose a new system of personal records or alter an existing system subject to the Privacy Act, the systems manager must prepare and submit a Report on New Systems through the Departmental Privacy Officer. Instructions on the specific reporting requirements are found in Section 4.b. of Appendix I of OMB Circular No. A-130.

.02 Reporting Requirements. Each proposal to establish or alter a system of records shall be prepared as a Report on New Systems and *must include* the following components:

- a. Narrative Statement.
- b. Supporting Documentation.
- c. Update of Federal Inventory of Personal Data Systems.

Instructions for preparing these components are given at Attachment 2

.03 Distribution of Report on New Systems. Three copies of *the* report will be sent to the Departmental Privacy Officer for review. If approved the Privacy Officer will send three copies of the report to each of the following:

- a. Speaker of the House.
- b. President of the Senate.

c. Office of Management and Budget.

.04 Timing. For sixty (60) days after submission of *the* report, there may be no data collection forms and/or instructions issued and no public issuance of a Request for Proposal or an Invitation to Bid for computer and/or communications services intended to support the system of records. These restrictions should be noted when timing is critical to establish or alter a system of records, so that the Report on New Systems may be submitted promptly to avoid disruption of operations involved.

PART X - NOTIFICATION TO THE INDIVIDUAL.
ACCOUNTS OF DISCLOSURES, FILINGS,
PUBLIC NOTICES, AND REPORTS

This Part encompasses numerous requirements of the Act which collectively impose an extra-ordinary administrative workload that is not mirrored in any single provision.

SECTION 1. GENERAL.

Some of the extensive paperwork demands of the Act have been covered in the preceding Parts of this Handbook. The remainder are enumerated below and explained in detail in the numbered sections of this part.

.01 Keeping Track of Disclosures. Excepting (i) official use of a PA Record within the Department, (ii) required disclosures under the Freedom of Information Act, (iii) disclosures to the individual, and (iv) disclosures made at the request of or with the prior written consent of the individual, a separate and detailed accounting must be kept of all disclosures. (See Section 2.)

.02 Notifying the Individual of the Disclosure Account. With limited exceptions, the accounting made of all disclosures shall be made available to the subject individual if he so requests. (See Section 2.)

.03 Filing Disagreement Statements in the Record. If the Department initially denies an individual's request to amend or correct the individual's record and affirms that denial on appeal, the Act permits the individual to file a statement of disagreement which then becomes part of the record. (See Section 3.)

.04 Annotating the Record Disputed. Upon receipt of an individual's disagreement statement, the Department must clearly annotate the record to identify the disputed portion, and it will insert a statement or summary of the reason for having denied the individual's request for amendment or correction. (See Section 3.)

.05 Notifying Others About Corrected or Disputed Records. Whenever a record is amended or corrected, the Department must inform all parties, if any, to whom the record was disclosed and of which disclosure(s) an accounting was made. (See Section 4.)

.06 Post-Disagreement Disclosures. All disclosures of a record subsequent to the date a disagreement statement is received must include a copy of the disagreement statement and will include the Department's reasons for having denied the individual's request for amendment or correction. (See Section 4.)

.07 Public Notice of PA Systems. The Department must publish in the FEDERAL REGISTER a notice of each PA System existing in the Department. (See Section 5.)

.08 Advance Public Notice of New Routine Uses or Proposed Changes. Any new or intended routine use of PA Record must be published in the FEDERAL REGISTER in proposed form for a 30-day comment period; and then published in final form before it can go into effect. (See Section 6.)

.09 Annual Report. The Department's activities under the Act must be reported to OMB each year for the President's transmittal to the Congress. Operating unit inputs for this report shall be submitted to and received by the Assistant Secretary no later than the date specified by the Assistant Secretary. (See Section 7.)

.10 Other Paper Work/Reporting Requirements. Such other paper work or administrative requirements as may be imposed on the Department from time to time under the Act shall be transmitted to all concerned activities by the Assistant Secretary, either by memorandum or amendment to this Handbook, as appropriate.

SECTION 2. RECORDING DISCLOSURES.

.01 Required Accounting of Certain Disclosures. a Sections (c)(1) and (2) of the Act pertain, requiring that an accounting be kept of all disclosures of PA Records except (1) those for official use within the Department, and (2) those made in response to Freedom of Information Act requests. Also excepted are disclosures to the individual, and disclosures made at the request of or with the prior written consent of the individual.

b. The accounting shall be posted on forms, as follows:

—CD 318, Accounting of Disclosures, which shall be used to post all disclosures excepting those made to law enforcement activities under section (b)(7) of the Act, and those made from exempted systems of records.

—CD 319, Accounting of Law Enforcement Disclosures, which shall be used to post (i) all disclosures made under section (b)(7) of the Act, and (2) all disclosures made from an exempted system of records on a routine basis under section (b)(3) of the Act.

Special Note: There is a unique situation which can arise with respect to the accounting of disclosures made in response to court orders, under section (b)(11) of the Act. **Specifically:** if the order is a matter of public record, the accounting shall be made on the CD 318 for the system involved; but if the Handbook is not a matter of public record the disclosure shall be posted temporarily on the CD 319 for the particular PA System, When the Handbook becomes public, the accounting shall be transferred to the CD 318.

.02 Notifying the Individual of the Disclosures. Sections (c)(3) and (e)(8) of the Act apply, as explained under a, and b., respectively.

a. At the Individual's Request. Section (c)(3) provides that the accounting of disclosures shall be made available to the individual named in the record at his or her request, except: accounts of disclosures under section (b)(7) of the Act (i.e., under paragraph 2.07, Part V, of this Handbook) shall not be made available; accounts of disclosures under section (b)(11) of the Act (i.e., paragraph 2.11, Part V, of this Handbook) shall be provided only if the court Handbook is a matter of public record; and disclosures from exempted systems shall not be made available. In summary, no disclosures posted on a CD 319 shall be made available to the individual.

b. Prescribed. Section (e)(8) prescribes that when a record is disclosed under compulsory legal process, e.g., pursuant to section (b)(11) of the Act, and the issuance of the court order or subpoena is made public by the court or issuing agency, the Department shall make a reasonable effort to notify the individual of the disclosure. This will be done by certified or registered mail to last known address of individual, with return receipt requested. If an operating unit is served with such an order, it should try to determine if the issuance of the Handbook is a matter of public record; and if it is not, ask to be advised in writing when it becomes public.

SECTION 3. FLING DISAGREEMENT STATEMENTS AND ANNOTATING DISPUTES.

Sections (d)(3) of the Act and 4b.9(g) of the Rules pertain.

.01 Filing a Disagreement Statement in the Record. If the Department denies an individual's request to amend his record and affirms that denial on appeal, the Act provides that the individual may file a concise statement of his reasons for disagreeing with the Department's decision. This statement becomes a part of the record. The Department must acknowledge its receipt.

.02 Annotating the Disputed Record and Firing the Department's Views. Concurrent with the preceding, the Department must note the exact portion of the record disputed to the effect that a formal disagreement is in the record, and will append to the disagreement statement the Department's reasons for having denied the individual's request for amendment or correction. (See section 4b.9(g) of the Rules.)

SECTION 4. NOTIFYING OTHER PARTIES ABOUT CORRECTIONS AND DISAGREEMENT.

Sections (c)(4) and (d)(4) of the Act and 4b.8(b) of the Rules pertain.

.01 Notification of Corrections. When a record is amended or corrected at the request of the individual, the Department must inform any parties to whom the record had been previously disclosed and for which disclosure an accounting had been made. The exact nature of the correction or amendment must be set out dearly. If another agency was a recipient, it shall be advised that it is required, in turn, to notify those to whom it disclosed the record.

.02 Notification of Disagreements. When an individual files a disagreement statement, the Department must furnish a copy of the statement with all, disclosures of the records which are made subsequent to the date the disagreement statement is received, together with a copy of the Department's reasons for having denied the individual's request for amendment or correction.

SECTION 5 ADVANCE PUBLIC NOTICE OF ANY CHANGE IN "ROUTINE USES".

The provisions of section (e)(11) of the Act apply; and the OMB Guidelines at Attachment 2 (page 28966, second column) offer guidance. In brief, a revised public notice must be published before any new or intended routine use is put into effect. Accordingly, it is imperative that action on any desired change in routine uses be initiated by the operating unit or Departmental office as soon as there is sufficient data at hand, for a minimum of sixty days will be consumed in processing before the routine use can be effective.

SECTION 6. ANNUAL REPORT.

Section (p) of the Act applies, as does Section 4. of Appendix I of OMB Circular A-130, supplemented by the detailed instructions for each report received from OMB annually.

.01 Operating Units and Departmental Offices. Annually, each operating unit and Departmental office shall submit a calendar year report (as of December 31 of the preceding year) to the Assistant Secretary for Administration, over the signature of the head of the unit or office. Reports of no activity shall also be in writing.

.02 Content. Each report shall cover the topical areas requested in the detailed instructions from OMB received each year.

SECTION 7. PERIODIC REVIEW REQUIREMENTS.

This section specifies the frequency and areas to periodically be reviewed in Handbook to meet the requirements of OMB Circular A-130, Section 3.a. of Appendix I.

.01 Management Support Division. The reviews shall be conducted by the Management Support Division (MSD), Office of Management and Organization. MSD shall report on the results of such reviews conducted within the operating units and Departmental offices and shall specify the corrective action taken to resolve problems uncovered.

.02 Specific Areas and Frequency of Reviews.

Section (m) Contracts. Review every two years a random sample of agency contracts that provide for the maintenance of a system of records on behalf of the Department to accomplish a Departmental function, in order to ensure that the wording of each contract makes the provisions of the Act apply. (5 U.S.C. 552a (m)(1).)

b. Recordkeeping Practices. Review annually the Department's recordkeeping and disposal policies and practices in order to ensure compliance with the Act.

c. Routine Use Disclosure. Review every three years the routine use disclosures associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the Department originally collected the information.

d. **Exemption of Systems of Records.** Review every three years each system of records for which the Department has promulgated exemption rules pursuant to Section (j) or (k) of the Privacy Act in order to determine whether such exemption is still needed.

e. **Matching Programs.** Review annually each-ongoing matching program in which the Department has participated during the year, either as a source or as a matching Department, in order to ensure that the requirements of the Act, the OMB Matching Guidelines, and the OMB Model Control System and Checklist have been met.

f. **Privacy Act Training.** Review annually the Department's training practices in order to ensure that all personnel are familiar with the requirements of the Act, with the Department's implementing regulations, and with any special requirements that their specific jobs entail.

g. **Violations.** Review annually the actions of Department personnel that have resulted either in the Department being found civilly liable under Section (g) of the Act, or an employee being found criminally liable under the provisions of Section (i) of the Act, in order to determine the extent of the problem and to find the most effective way to prevent recurrences of the problem.

h. **Systems of Records Notices.** Review annually each system of records notice to ensure that it accurately describes the system.

PART XI - CONTRACTS, PRIVACY vs FREEDOM
OF INFORMATION, MAILING LISTS, AND OTHER
MATTERS UNDER THE ACT

Preface - This Part provides policy, instruction, and guidance on certain "one-time" requirements, and on those remaining provisions of the Act not directly accounted for in the preceding Parts of this Handbook. The unrelated nature of these matters is indicated in the alphabetized titles in the following sectional index:

<u>Title</u>	<u>Section</u>
Effect on Other Orders...	11
Forms and Format Instructions	8
Freedom of Information Act vis-a-vis Privacy Act	1
Government Contractors	3
Mailing Lists	10
Matters Outside the Act	4
Operating Unit Directives	5
Permanent Records and Stored Records	6
Records Management Policies	7
Rules of Conduct	9
Social Security Numbers	2

PART XI

SECTION 1. FREEDOM OF INFORMATION ACT vis-a-vis PRIVACY ACT.

The interrelationship between the Freedom of Information Act and the Privacy Act is not entirely clear. Both statutes provide for public access to Federal records and they overlap in scope. In application, however, there are distinct and meaningful differences in several critical aspects such as exemptions, fees, response times, and appeal procedures — to list just a few. To ensure consistency within the Department, therefore, and as a matter of policy, operating unit and Departmental office responses to requests for records shall be handled as follows:

- a. Requests which cite the Privacy Act shall be processed only under the Act, the Rules, and this Handbook
- b. Requests which cite the Freedom of Information Act shall be processed only under that statute and the provisions of Department Administrative Handbooks 205-12 and 205-14.
- c. Any request which cites both the Privacy Act and the Freedom of Information Act must be processed under both Acts.
- d. Requests which do not cite either statute must be processed under both the Privacy Act and the Freedom of Information Act. Dual processing in this instance is necessary, because the request meets the statutory terms of both a FOIA and a Privacy Act request. (OMB's Supplemental Privacy Act Guidance — dated May 24, 1985, gives further explanation.)

SECTION 2 SOCIAL SECURITY NUMBERS.

01. **Background.** This section provides coverage and policy on current and future uses of the social security number ("SSN") within the Department. The original basis of the use of social security numbers by Government agencies to identify individuals is E.O. 09397, November 22, 1943.

02. **Policy.** It is the Department's policy that no SSNs be collected or used unless and until the collection or use has been verified to be in compliance with section 7 of the Act. Further, it is the Department's policy that SSNs not be collected or used, even when permitted under section 7, when a reasonable alternative exists,

03. **The Act.** Unlike some parts of the Act, section 7 became effective on December 31, 1974; applies not only to Federal agencies, but also to State and local government agencies; and governs all files in the Department, not merely PA Records in PA Systems. It prescribes that:

a It is unlawful for the Department to deny any individual any right, benefit, or privilege provided by law because the individual refuses to give the SSN, except

1. When disclosure is required by Federal statute, or
2. When the Department was maintaining a system of records including SSNs on December 31, 1974, and the SSN was required under statute or regulations adopted on or before that date in Handbook to verify the identity of an individual, and

b. Each time the Department requests an individual to give the SSN, the Department shall inform the individual of the following:

1. The statutory or other authority for requesting disclosure;
2. Whether disclosure is mandatory or voluntary; and
3. The uses which will be made of the SSN.

Two Special Notes

- (1) Re subparagraph "a." above: note must be taken of the phrase "to verify the identity of an individual" If the use was not to verify identity but was for some other purpose (e.g., a decision for convenience in design of a file manual), then the authorization by statute or regulation will not suffice to protect continued use after January 1, 1975.
- (2) Re subparagraph "b." above: Department form, CD 317, must be used to notify the individual of this information. It is designed for use as an attachment to whatever form or letter actually requests the individual's SSN. Forms CD 317 are available from the Department of Agriculture Central Supply, Landover, Maryland.

.04 SSN Use. The use of SSNs in records in Government-wide Personnel Systems is covered by notices published by the Office of Personnel Management. These OPM systems of records were adopted and noticed in the FEDERAL REGISTER on October 26, 1979 (FR Vol. 44, No. 44, No. 219, November 9, 1979). These general notices give guidance on the management of records in the OPM systems maintained in the Department.

.05 Responsibilities. The responsibilities of Department officials concerning use of SSNs in the Department are as follows:

a. Beads of operating units and Departmental offices, The heads of these units and offices shall:

1. Identify each and every current use within their respective organizations;
2. Verify, with the advice of legal counsel, that each such use identified is permitted by Section 7 and (a) if not permitted, terminate such use or (b) if permitted, determine whether a means exists to discontinue such use; and,
3. Ensure that no new collection of SSNs is initiated within their respective organizations without approval of the Department Office of General Counsel.

b. Personnel Officers. Operating unit Personnel Officers shall adhere to the directives of the Office of Personnel Management, both in OPM's final rules on the Act and in FPM issuances, with respect to personnel records in PA Systems covered by notices published by OPM. Any personnel records maintained in the Department which are not covered by OPM's published notices shall be administered according to this section. (Also, see paragraph .04 of this section.)

c. Legal Counsel. Legal counsel, when responding to a request under subparagraph .05a.2. of this section shall consider the impact upon files both before and after December 31, 1974, the effective date of Section 7, and the need to revise forms and formats and to amend regulations and directives.

SECTION 3. GOVERNMENT CONTRACTORS.

.01 Background. The Act, at section (m), requires that its provisions be extended to any contractor who maintains systems of records by or on behalf of the Department. It also specifies that under contracts entered into after September 26, 1975, the contractor and any employee of the contractor shall be considered to be an employee of the Department for the purposes of section (i) prescribing criminal penalties.

.02 Implementation. To ensure proper implementation of section (m) of the Act, operating units and Departmental offices shall comply with the applicable provisions of the Federal Acquisition Regulations System. The Federal Acquisition Regulation (48 CFR Chapter 1, Part 24), and the Commerce Acquisition Regulation (48 CFR Chapter 13, Part 1324) specify agency responsibilities to safeguard the security and privacy of records, including responsibilities of contractors regarding Privacy Act requirements. In addition, OMB provides guidance on pages 28975-76 of Attachment 2 hereto. The Department has established coverage of essential access by contractors to its PA Systems under general Routine Use No. 10.

SECTION 4. MATTERS OUTSIDE THE ACT.

Over the years, there have been certain matters which employees have transacted at their "personnel office" or "payroll office" in a routine manner without either formal procedures or paper work. These have included, for example:

- consideration of options for tax withholding purposes;
- the estimation of retirement benefits as of a given date;
- the posting of additional educational credits or achievements;
- a change in insurance beneficiary; and
- a change in savings bond deduction.

Unless an employee prefers otherwise, i.e., formal action under the Act, the provisions of this Handbook do not apply to such traditional counselling and transactions.

SECTION 5. OPERATING UNIT DIRECTIVES.

Primary operating units which issue organizational and instructional directives shall review all directives in their systems to ensure compliance with the Act, Rules, and this Handbook. However, supplementation of this Handbook is prohibited without the concurrence of the Privacy Act Counterpart Group, and its senior management official. Such concurrence would be based on the operating unit's unique circumstances, not specified in this Handbook which would require supplementation for effective implementation of the Act.

SECTION 6. PERMANENT RECORDS AND STORED RECORDS.

Section (L) of the Act pertains; and implementation requires that a careful distinction be maintained between permanent records and stored records.

.01 Distinction. Permanent records are records deposited with the National Archives and Records Administration (NARA); and when they are formally accepted by the Archivist of the United States as permanent records, the originating Federal agency is no longer responsible for them. Stored records, on the other hand, are agency records which have merely been transferred to NARA for economical safe-keeping pending their final disposition. Stored records continue to be the responsibility of the transferring agency. Whenever either type of record is transferred to NARS the most recent PA systems notice should accompany the records to aid in documenting the distinction.

.02 Stored PA Records. PA Records transferred to a Federal Records Center operated by NARA, or sent to a Departmental storage center, or moved to a Department records holding center, continue to be subject to the Act, this Handbook, and the provisions of the public notice of the PA System to which they belong. The operating unit or Departmental office which transferred the records continues to be responsible for control and compliance. (The transfer is considered to be an "intra-agency" movement which need not be "noticed" under the routine use provisions of the Act.)

.03 Permanent PA Records. PA Records deposited in the National Archives are the responsibility of NARA. However, if a copy of such a record *or* information from such a record is used by the Department to **make** a determination about an **individual**, it becomes subject to the Act to the same extent as any PA Record maintained *or* used by the operating unit or office.

SECTION 7. RECORDS MANAGEMENT POLICIES.

.01 Background. Overall records management policies for the Department are prescribed in Department Administrative Handbook 205-1, "Records and Other Documents Disposition Management Program," which derives from the Federal Records Act of 1950 and relevant regulations issued by the NARA in *the Code of Federal Regulations*. The requirements of the Act add fresh impetus and importance of the need for effective records management policies and compliance therewith

.02 Relationship and Impact. a. There is an intrinsic and important relationship between the Records Control Schedules prescribed in DAO 205-1 and the records storage and retention provisions of PA System notices, that is, the latter must be compatible with the Schedules.

b. Records Control Schedules should provide for the prompt disposition of records which are no longer timely or relevant, and for which there is no authoritative need—either statutory *or* operational. Schedules developed in past years should be critically re-evaluated, especially those which call for "permanent," or decades-long retention periods. Each operating unit and Departmental office is responsible for maintaining currently accurate Record Control Schedules for PA systems of records.

SECTION 8. FORMS AND FORMAT INSTRUCTIONS.

.01 Personal Data Collection Forms. Any form or prescribed format used to collect personal data from an individual for inclusion in a PA System of records is subject to the provisions of subsection (e)(3) of the Act. These provisions require that the individual, in each such instance, *be* given certain advice in writing. The advisory items are explained in Sections 1 and 3 of Part III in this Handbook.

.02 Responsibilities. Operating units and Departmental offices shall inventory and review all personal data collection forms and formats to ensure compliance with the Act if they are used to collect data for inclusion in a PA System. Depending on such factors as cost and feasibility, compliance may be achieved by revision, overprinting, or attachment. In each instance, the advisory statement developed for a form shall also be transmitted (with appropriate instructions) to all other Federal activities, if any, which use the form. Also, see paragraph 3.01 of Part III of this Handbook,

SECTION 9. RULES OF CONDUCT.

a. **Effective compliance with the Act requires the informed and active support of all employees who have responsibilities involving PA Records or who may have access to them in any way. Rules of Conduct prescribed by subsection (e)(9) of the Act are provided under Department Administrative Handbook 202-735, "Employee Responsibilities and Conduct," and the Employee Rules of Conduct Under the Privacy Act of 1974, transmitted by memorandum from the Assistant Secretary for Administration dated September 19, 1975, addressed to all employees of the Department.**

b. **Heads of operating units and Departmental offices, in conjunction with employee development staff, should take appropriate action to ensure:**

--that **a discussion of responsibilities under the Act is included** in all **general personnel** orientation programs;

--that **employees** who handle or **process PA Records** are especially trained in the **procedural provisions of the Rules** and this **Handbook**;

— that officers and **employees** who are **potentially criminally liable** or whose actions could **expose the Department** to civil suit **under the Act** are fully **informed of their specific obligations** thereunder; and

—that full advantage is **taken** of such training **opportunities** as may be made **available, either in-house or outside the Department.**

SECTION 10. MAILING LISTS.

Section (n) of the Act applies. Lists of individual names and addresses may not be sold or rented by Commerce activities for *my* commercial or solicitation purposes unless such action is specifically authorized by law, nor may they be loaned or donated for such purposes.