



**Court Services and Offender Supervision Agency
for the District of Columbia**

Office of the General Counsel

OFFICE OF THE GENERAL COUNSEL DIRECTIVE

SUBJECT: Freedom of Information/Privacy Act

EFFECTIVE DATE: OCT 2 2000

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PURPOSE AND SCOPE

This establishes procedures for the release of requested records in the possession of the Court Services and Offender Supervision Agency (CSOSA) and the Pretrial Services Agency (PSA) (hereinafter referred to as the Agency). It is intended to implement provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a.

The Freedom of Information Act (FOIA) and the Privacy Act (PA) interact with each other in the following areas:

- When any person requests access to their personal records, both statutes become potentially applicable.
- When any person requests access to another individual's record through the FOIA, the Privacy Act may prohibit the disclosure of that record.
- If a record is required to be released under the FOIA, the Privacy Act does not bar its disclosure. Unlike the FOIA, the Privacy Act applies only to U.S. citizens and aliens admitted for permanent residence.

The determination of what information may be released requires Agency staff to have a basic understanding of both the FOIA and the Privacy Act. Agency staff also should be aware that the Privacy Act establishes criminal penalties and civil liabilities for unauthorized disclosures.

Staff should become familiar with the policy governing release of information.

APPLICABILITY

This policy applies to all Agency employees.

TOPICS ADDRESSED

This policy will address the release of agency records as well as release of information regarding staff, contractors, probationers, parolees and pretrial releases.

PROGRAM OBJECTIVES

Information will be released to a requester in accordance with Federal law and the regulations and policies of the Agency.

DIRECTIVES AFFECTED

a. Statutes

1. 5 U.S.C. § 552
2. 5 U.S.C. § 552a
3. 5 U.S.C. § 301

b. Regulations

1. 5 C.F.R. Part 297
2. 28 C.F.R. §§ 16.30 through 16.34
3. 28 C.F.R. Part 16, Subpart B

c. Agency rules cited in this policy will be contained in 28 C.F.R. Chapter 8.

d. Other rules referenced in this policy are contained in 5 C.F.R. Part 297.

e. United States Code sections cited in this policy are contained in 5 U.S.C. §§ 301, 552 and 552a.

Limitations

a. Social Security Numbers. As of September 27, 1975, Social Security Numbers may not be used in their entirety as a method of identification for any record system, unless such use is authorized by statute or by regulation adopted prior to January 1, 1975.

b. Employee Records. Access and amendments of employee personnel records under the Privacy Act are governed by the

GUIDELINES FOR DISCLOSURE

a. The Agency provides for the disclosure of all agency information pursuant to applicable laws, e.g. the Freedom of Information Act (5 U.S.C. § 552), and the Privacy Act (5 U.S.C. § 552a).

b. The authority to release or deny access to records and information under the Privacy Act (5 U.S.C. § 552a) and the Freedom of Information Act (5 U.S.C. § 552) is limited to the General Counsel and his or her designee.

c. Agency staff will release an agency record in response to a written request, unless a valid legal exemption to disclosure is asserted.

Agency staff may assert any applicable exemption to disclosure which is provided under the FOIA in 5 U.S.C. § 552 or under the Privacy Act in 5 U.S.C. § 552a.

For a listing of Agency systems of records which the Director has exempted from access and disclosure under the Privacy Act, see Attachment C.

Questions regarding the applicability of exemptions may be referred to the Office of the General Counsel.

Privacy Act Requests. Because defendant/offender records are exempt from disclosure under the Privacy Act, defendant/offender requests for records under the Privacy Act will be processed in accordance with the FOIA.

Any request for a list of defendants/offenders under Agency supervision shall be forwarded to the Office of the General Counsel.

Requests by Employee or Former Employee. An employee or former employee must make a written request for access to documents in his or her personnel file and/or other documents concerning the requester which are not contained in the employee's personnel file but which are maintained in an Agency system of records. Such a request is processed pursuant to the applicable provisions of the Privacy Act, 5 U.S.C. § 552a, and the FOIA, 5 U.S.C. § 552.

A written request should be submitted to:

FOIA Officer
Court Services and Offender Supervision Agency

633 Indiana Avenue, NW
Washington, DC 20004

The request must be clearly marked on the face of the letter and on the envelope "PRIVACY ACT REQUEST," and must clearly describe the record sought, including the approximate date covered by the record.

Verification of the identity of the individual whose records are sought is required. An employee making a request must provide identification data and must have his/her signature notarized or a self-sworn declaration pursuant to 28 U.S.C. § 1746.

A request for records concerning an employee or former employee made by an authorized representative of that employee or former employee may be made by writing to the address above. Such requests shall be processed pursuant to the provisions of the Privacy Act.

The request must be clearly marked on the face of the letter and on the envelope "PRIVACY ACT REQUEST," and must describe the record sought, including the approximate dates covered by the record.

Requests for records under the Privacy Act received by the FOIA Officer, will be reviewed for compliance with agency procedures regarding notarization and to ensure that statutory compliance has been met.

Every effort will be made to respond to the requester within the time limit set under the governing disclosure statute.

If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to the requester after deletion of the exempt portions.

Under Congressional authority granted to the Director by 5 U.S.C. § 552a(j) and (k), certain systems of records listed on Attachment C are exempt from access under the Privacy Act of 1974.

Agency records are also subject to the FOIA exemptions from disclosure listed in 5 U.S.C. § 552(b).

A list of Agency employees may be generally releasable.

Denial of Access and Notice of Appeal Rights. If a Privacy Act request for records is denied in whole or in part, a denial letter will be issued and signed by the FOIA Officer and will state the basis for denial.

A requestor who has been denied access will be advised of the right to appeal that decision to the General Counsel by filing a written appeal within 30 days of the receipt of the denial.

The appeal should be marked on the face of the letter and the envelope, "PRIVACY APPEAL - DENIAL OF ACCESS," and be addressed to the:

General Counsel
Court Services and Offender Supervision Agency
633 Indiana Avenue, NW
Washington, DC 20004

Privacy Act Request Fees. Fees for copies of records disclosed will be assessed the direct cost for duplication and will not include any cost for searching, retrieving or reviewing the information.

Correction of Records

A person may request correction of inaccurate, incomplete, or irrelevant information by writing to the Office of the General Counsel of the Court Services and Offender Supervision Agency.

A request for correction must identify the particular record in question, state the correction sought, and set forth the justification for the correction.

Both the request and the envelope must be clearly marked "Privacy Act Correction Request."

CSOSA staff may make or deny requests for correction of agency records. One basis for denial may be that the records are contained in an agency system of records that has been published in the Federal Register and exempted from the Privacy Act provisions requiring amendment and correction.

Any denial of a request for correction should contain a statement of the reason for denial and notice to the requester that the denial may be appealed to the General Counsel by filing a written appeal within 30 days of the receipt of the denial.

The appeal should be marked on the face of the letter and the envelope, "PRIVACY APPEAL - DENIAL OF CORRECTION," and be addressed to the Office of the General Counsel, address cited above.

Requests for correction of records prepared by other Federal agencies shall be forwarded to that agency for appropriate action and the requester will be immediately notified of the referral in writing.

When the request is for correction of non-Federal records, the requester will be advised to write to that non-Federal entity.

Production of Records in Court. Agency records may be sought by subpoena, court order, or other court demand in connection with court proceedings. The Attorney General has directed that records may not be produced in court without the approval of the Attorney General or his or her designee. The guidelines are set forth in 28 C.F.R. Part 16, Subpart B.

Agency staff who receive a subpoena, court order or other court demand shall forward the documentation to the Office of the General Counsel for proper handling.

Disclosure of Records to Third Parties. It is imperative that Agency employees maintain and process all information concerning individuals, to ensure that information is accurate, relevant, and timely, and to ensure that no inadvertent disclosure of information is made.

a. Information that concerns an individual and that is contained in a system of records maintained by the agency shall not be disclosed to any person, or to another agency, except under the provisions of the Privacy Act, 5 U.S.C. § 552a, or the Freedom of Information Act, 5 U.S.C. § 552.

Staff may disclose information from an agency system of records only if one or more of the following criteria apply:

(1) With the written consent of the individual to whom the record pertains.

(2) To employees within the agency who have a need for the record in the performance of their duties.

(3) If disclosure is permitted under FOIA, e.g. "public information," when the public interest in disclosure of the information outweighs the privacy interest involved.

(4) For a routine use described in the agency system of records as published in the Federal Register.

The published notices for these systems describe the records contained in each system and the routine uses for disclosing these records without first obtaining the consent of the person to whom the records pertain.

Some examples of routine uses for CSOSA systems of records may include the following:

- To Federal, state, local and foreign law enforcement officials for law enforcement purposes such as investigations, possible criminal prosecutions, civil court actions, or administrative and regulatory proceedings.
- To the Census Bureau for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, United States Code.
- To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.
- To the National Archives and Records Administration (NARA) as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of the General Services Administration or his or her designee to determine whether the record has such value.
- To either House of the U.S. Congress, or, to the extent of a matter within its jurisdiction, any Congressional committee or subcommittee, any joint committee of Congress or subcommittee of any such joint committee.
- Pursuant to an order of a court of competent jurisdiction.

Congressional requests on behalf of constituents. Responses for information on behalf of a constituent are limited to public information unless staff have first obtained the individual's express or implied consent.

Written consent must be obtained when practical. When this is not practical, staff should consider whether there is implied consent. An example of implied consent is a Congressional inquiry which resulted from a letter the constituent sent to a Member of Congress and this letter is included with the request from the Member of Congress.

Implied consent may not be inferred when a third party (for example, a spouse, parent or associate) initiated the request for information. In such a situation, only public information (see Attachment A) may be released without the individual's written consent.

Any questions regarding appropriate responses to Congressional inquiries, e.g., whether certain information can or should be disclosed, should be directed to the Office of the General Counsel.

Freedom of Information Act Requests. Requests for any agency record (including policy) ordinarily will be processed pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Such a request must be made in writing and addressed to the FOIA Officer, Court Services and Offender Supervision Agency. The requester should clearly mark on the face of the letter and the envelope "FREEDOM OF INFORMATION REQUEST," and clearly describe the records sought.

Requests by Offender. An offender may request a copy of his or her records by writing to the FOIA Officer for the Court Services and Offender Supervision Agency. Such requests will be processed pursuant to the provisions of the Freedom of Information Act. The request must be clearly marked on the face of the letter and on the envelope "FREEDOM OF INFORMATION ACT REQUEST," and must describe the record sought, including the approximate dates covered by the record. An offender making such a request must provide his or her full name, current address, and date of birth. In addition, the requester must provide with the request an example of his or her signature, which must be either notarized or sworn under penalty of perjury pursuant to 28 U.S.C. § 1746, and dated within three (3) months of the date of the request.

Offenders must provide their DCDC or PDID numbers to assist in properly identifying requested records.

Requests on Behalf of an Offender. A request for records made by an authorized representative of an offender will only be released with the subject's written authorization. This authorization must be dated within three (3) months of the date of the request letter.

Requesters must provide the DCDC or PDID numbers to assist in properly identifying requested records.

All requests for records under the Freedom of Information Act received by the FOIA Officer will be reviewed.

If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to the requester after deletion of the exempt portions.

If a request made pursuant to the Freedom of Information Act is denied in whole or in part, a denial letter must be issued and signed by the FOIA Officer and will state the basis for denial. The requester who has been denied access will be advised of the right to appeal that decision to the General Counsel, Court Services and Offender Supervision Agency. Both the envelope and the letter of appeal itself should be clearly marked: "Freedom of Information Act Appeal."

The Office of the General Counsel staff processing requests for release of information under the FOIA are expected to be familiar with the provisions of 5 U.S.C. § 552, as follows:

A requester must be notified of the decision on the request within 20 days after its receipt (excluding Saturdays, Sundays, and legal public holidays).

Generally, all FOIA requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response. Examples which might justify an expedited response include the following:

- a threat to life or safety;
- the loss of substantial due process rights; or
- in cases of widespread and exceptional interest to the media, possible questions about the Government's integrity which affect public confidence.

Because a decision to take a FOIA request out of order delays other requests, simple fairness demands that such a decision be made by the FOIA Officer only upon careful scrutiny of truly exceptional circumstances.

ACCOUNTING OF DISCLOSURES TO THIRD PARTIES

Accounting of disclosures to third parties must be made in accordance with Agency regulations.

Except for disclosures of information to other Agency employees and except for disclosures required under the FOIA (e.g., public information, as listed on Attachment A), an accounting of disclosure to third parties of any information concerning an individual contained in an agency system of records will be made in accordance with the following guidelines:

a. Oral Disclosure

1. Staff may orally release only public information. When public information is disclosed, no accounting is necessary.

- Only in an emergency will staff orally release non-public information to parties other than agency employees.
- Before an emergency oral disclosure is made, staff must contact the FOIA Officer. If this is not possible, staff must inform the FOIA Officer as soon as practicable after the disclosure.

2. Upon oral disclosure of non-public information, a memorandum will be prepared and retained in the individual's file from which the record is disclosed, or an appropriate notation must be maintained in the file and attached to the record disclosed.

The memorandum or notation must include the following information:

- the date of the disclosure;
- the name and address of the person to whom the record was disclosed and the name of the agency that person represents, if any;
- the purpose of the request for disclosure; and
- identification of the specific record disclosed.

b. Written Disclosures. Accounting for a written disclosure may be made by:

- Retaining a copy of the correspondence requesting the information and a copy of the response in the file from which the records are disclosed; or
- Following the procedure for an accounting of an oral disclosure, as described above.

c. Disclosure Record Maintenance. It is the responsibility of the staff member making a disclosure of non-public information to provide an accurate accounting of that disclosure.

Accounting records of the disclosure of non-public information must be maintained in the individual's file for five years or until the record is destroyed, whichever is longer.

An exemption under 5 U.S.C. § 552a(j) does not relieve the agency from the responsibility to account for all disclosures other than those within the agency or under the FOIA.

Non-Agency Documents

a. FBI/National Crime Information Center (NCIC) Information. The NCIC prohibits the agency from disclosing NCIC identification records.

Procedures to request a copy of an offender's FBI/NCIC identification record directly from the FBI are contained in 28 C.F.R. §§ 16.30 through 16.34.

b. Documents from Other Federal Agencies. When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a

determination of its releasability.

c. Documents from Non-Federal Agencies. When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

d. Laboratory Reports. Laboratory reports which contain only scientific testing results are ordinarily disclosable.

FEES

Within a reasonable time after a request, Office of the General Counsel staff will provide disclosable documents to a requester. Fees for the copies are to be calculated as follows:

No fee will be charged for the following:

- the first 100 pages of duplication (or its cost equivalent);
- the first two hours of search time (or its cost equivalent);
or
- charges which total \$10.00 or less.

The duplication cost is calculated by multiplying the number of pages in excess of 100 by \$0.25.

The cost for search time is calculated by multiplying the number of quarter hours in excess of two hours by the following rates for the staff conducting the search:

- \$7.00 per quarter hour for clerical staff;
- \$10.00 per quarter hour for professional staff; and
- \$14.00 per quarter hour for managerial personnel.

Only fees in excess of \$10.00 will be assessed. This means that the total cost must be greater than \$10.00, either for the cost of the search (for time in excess of two hours), for the cost of duplication (for pages in excess of 100 pages), or for both costs combined.

Examples:

Example 1: If a request is made for information contained on 300 pages and clerical staff were able to locate the documents in less than two hours, the requester would be charged \$50.00 (\$0.25 per page x 200).

Example 2: If it takes two hours and 30 minutes for clerical personnel to locate the same 300 pages, the requester would be charged a total of \$64.00 (a duplication fee of \$50.00 plus a \$14.00 search fee for the two quarter hours of time in excess of two hours, at \$7.00 per quarter hour).

Requesters must pay fees by check or money order payable to the Treasury of the United States.

EXEMPTIONS TO DISCLOSURE PROVIDED IN
THE FREEDOM OF INFORMATION ACT

1. The Freedom of Information Act (5 U.S.C. § 552) provides generally for the disclosure of agency records. Section 552(b) exempts from mandatory disclosure matters that are:

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a

confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

2. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information shall be indicated at the place in the record where such deletion is made.

3. Under 5 U.S.C. § 551, Federal "agency records" are defined not to include records of

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States; or

(D) the government of the District of Columbia.

PUBLIC INFORMATION

STAFF

Name
Position Title (past and present)
Grade (past and present)
Salary (past and present)
Duty Station (past and present)
Duty Station Address (past and present)

OFFENDER (parolee)

The U.S. Parole Commission considers the following to be public information on a parolee:

Name
Register Number
Offense of Conviction
Past and current places of incarceration (**an inmate's designated future place of incarceration is not public information**)
Age
Sentence data on the Federal Bureau of Prisons sentence computation record (BP-5)
Date(s) of parole and parole revocation hearings; and
The decision(s) rendered by the Commission following a parole or parole revocation proceeding, including the dates of continuances and parole dates.

OFFENDER (probationer)

The U.S. Probation Office for the District of Columbia considers the following to be public information on a probationer:

Whatever information a person could find out by going to the court jacket such as the charging document, disposition and docketed information in the case.

D.C. Superior Court considers the following to be public information on a probationer:

Whatever information a person could find out by going to the court jacket such as the charging document, pretrial report, motions, discovery requests, Judgement and Commitment Order and probation violation reports.

However, if the information is sealed or expunged, nothing can be released. Although non-public information on a probationer can be obtained from the court, if a FOIA request is made to CSOSA, only public information, i.e., name, age, PDID or DCDC number, may be released without the subject's notarized authorization.

Excerpt from Federal Bureau of Prisons Program Statement
1480.04 - News Media Contacts

The Federal Bureau of Prisons considers the following to be public information on an inmate:

- (1) Name;
- (2) Register number;
- (3) Place of incarceration;

The release of inmate designation information is prohibited. An inmate's designation place of incarceration becomes public information only after the inmate has arrived at the designated institution.

- (4) Age;
- (5) Race;
- (6) Conviction and sentencing data: this includes the offense(s) for which convicted, the court where convicted, the date of sentencing, the length of sentence(s), the amount of good time earned, the parole eligibility date and parole release (presumptive or effective) date, and the date of expiration of sentence, and includes previous Federal, state, and local convictions;
- (7) Past movement via transfers or writs;
- (8) General institutional assignments.

Information in (b)(1) through (8) may not be released if confidential for protection cases.

PUBLISHED SYSTEMS OF RECORDS

No: NAME: PUBLICATION DATE:

CSOSA

001	Public Affairs File	Draft
002	Background Investigation File	Draft
003	Employee Credential System	Draft
004	Proximity Card System	Draft
005	Budget System	Draft
006	Payroll and Leave Records	Draft
007	Time and Attendance Records	Draft
008	Training Management System	Draft
009	Supervision Offender Case File	Draft
010	Presentence Investigations	Draft
011	Offender Automated Supervision Information System (OASIS)	Draft
013	Freedom of Information-Privacy Acts System	Draft
014	Employment Profile	Draft
015	Treatment Referrals	Draft
016	Screeners	Draft
017	Office of Professional Responsibility Record	Draft
018	Alternative Dispute Resolution Record	Draft

PUBLISHED SYSTEMS OF RECORDS

No:	NAME:	PUBLICATION DATE:
019	Sex Offender Registry	Draft
020	Drug Free Workplace	Draft
<u>PSA</u>		
001	Automated Bail Agency Database (ABADABA)	Draft
002	Drug Test Management System (DTMS)	Draft
003	Interview and Treatment Files	Draft
004	Payroll Files	Draft
005	Time and Attendance Files	Draft