



THE PRIVACY ACT:

Codified in 5 U.S.C. §552a



The Privacy Act of 1974

- (d) Access to Records.
- —Each agency that maintains a system of records shall—
- (1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

The Privacy Act of 1974

- (2)**permit the individual to request amendment of a record pertaining to him and—**
- (A)not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and
- (B)promptly, either—
- (i)make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or
- (ii)inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

WHAT DOES 'RECORD' MEAN?

- (4) the term “record” means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

WHAT IS 'SYSTEM OF RECORDS'?

- (5) the term “system of records” means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;
- **THIS INCLUDES:** FBI Guardian, EGuardian, Central Records System, NCIC, Sentinel, including its 'Prohibited Access and "Restricted Access" files.

What records can they keep?

- (1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;
- (2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

What records they cannot keep?

- (7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

Penalties for having unauthorized records

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

What rights does it confer?

- **Gives you the right to:**

- (d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall— (1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

EXCEPTIONS to agency that the Act allows:

of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

REMEDIES FOR NON-COMPLIANCE

- **If American citizen/resident, 5 U.S.C. § 552a(g)(1)(B) grants individuals the right to sue a federal agency to access their records if the agency fails to comply with a request for access under the ACT.**
- Injunctive relief to compel access AND CORRECTION OF RECORDS;
Damages of no less than \$1000.
- damages in cases of intentional or willful refusal to comply with a request for access (§ 552a(g)(1)(C) and (D))

ADDITIONAL REMEDIES

- Permits the individual to request amendment of a record pertaining to him within 10 days;
- and (B) promptly, either— (i) make any correction which the individual believes is not accurate, relevant, timely, or complete; or (ii) inform the individual of its refusal to amend the record, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal.

Additional Remedies (2)

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

WHERE TO FILE LAWSUIT?

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be

IS IT JUST FOR AMERICANS? (NO.)

- **The Judicial Redress Act extends the right to pursue certain civil remedies under the Privacy Act to citizens of designated foreign countries. COVERED COUNTRIES ARE:**
- European Union (EU) as a regional economic integration organization (designated January 17, 2017, effective February 1, 2017): Covers EU citizens from all 27 member states (e.g., Germany, France, Italy, Spain, etc.).
- United Kingdom (designated February 12, 2019, effective April 1, 2018, post-Brexit extension under DPPA).



If Citizen of European Country

- **The Judicial Redress Act extends the right to pursue certain civil remedies under the Privacy Act to citizens of designated foreign countries** ALLOWS:
- Injunctive relief (no damages) FOR THE FOLLOWING: (1) intentional or willful unlawful disclosures of a covered record under subsection (g)(1)(D); and (2) improper refusal by a designated Federal agency or component to grant a covered person access to or amendment of a covered record under subsection (g)(1)(A) & (B).

REMEDIES FOR EUROPEANS:

- Scope and Limitations
- Applicable Records: Only "covered records" (personal data transferred from a covered country to a U.S. agency for law enforcement purposes) qualify.
- Remedies: Covered persons can sue designated U.S. agencies (e.g., DOJ components like FBI) in the U.S. District Court for the District of Columbia for:
 - Access or amendment denials (§ 552a(g)(1)(A)-(B)).
 - Willful unlawful disclosures (§ 552a(g)(1)(D)).

Europeans Limited to: “Designated Federal Agencies”

- They have been enumerated, but the relevant ones for you are the following Federal agencies and all of their respective components are “designated federal agencies”:
- United States Department of Justice;
- United States Department of Homeland Security;

Caveats:

- **Exclusivity**: These are the only remedies; no broader Privacy Act rights apply.
- **Exhaustion**: Plaintiffs must generally exhaust administrative remedies under the Privacy Act before suing.
- **Venue**: The District Court for the District of Columbia has exclusive jurisdiction over claims arising under the Judicial Redress Act.

WHILE THE SUPREME COURT HAS SAID NO...

- Federal courts do not have the authority to require a plaintiff to exhaust available administrative remedies before seeking judicial review under the APA, where neither the relevant statute nor agency rules specifically mandate exhaustion as a prerequisite to judicial review. The language of § 10(c) of the APA is explicit that an appeal to "superior agency authority" is a prerequisite to judicial review only when "expressly required by statute" or when the agency requires an appeal "by rule and provides that the (administrative) action is ... inoperative" pending that review. *Darby v. Cisneros*, 509 U.S. 137 (1993)

MOST USDC HAVE RULED OTHERWISE

- In the context of FOIA, not Privacy Act (D.C. Circuit)
- *Klaus v. HHS*, 11 F.3d 1109 (D.C. Cir. 1993); *Doe v. DOJ*, 753 F.2d 1092 (D.C. Cir. 1985)
- Strictly enforces exhaustion for amendment and damages claims; requires appeal to agency head within 180 days of denial. For access claims, prudential exhaustion applies unless waived. D.C. Circuit often handles Privacy Act cases due to its venue in challenges to federal agencies.

LANGUAGE TO INCLUDE

- Your identification information(Name, where you lived, etc.)
- The specific period of time you are requesting
- The legal authority (5 USC 552a)
- Specify you want to inspect **all your** records in **ALL** agency records(Not limited to Central Record System)

RULE OF THUMB:

FILE THE APPEAL WITHIN 90 DAYS

TEMPLATE WILL BE POSTED IN:
targetedjustice.com/activism/

ANATOLEDO.SUBSTACK.COM



What next?

- We could file individual lawsuits to force compliance, or one class action lawsuit.
- Benefits/pros/cons: to be weighted and brought to you in the future.
- THIS REQUIRES: ORGANIZATION, COLLABORATION,

THANK YOU!

AND REMEMBER:

YOU ARE MORE POWERFUL THAN YOU GIVE
YOURSELF CREDIT.

