

§ 16.1

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AUTHORITY: 5 U.S.C. 552(a); 42 U.S.C. 3535(d).

SOURCE: 40 FR 39729, Aug. 28, 1975, unless otherwise noted.

§ 16.1 Purpose and statement of policy.

(a) The purpose of this part is to establish policies and procedures for implementing the Privacy Act of 1974 (Pub. L. 93-579), 5 U.S.C. 552(a). The main objectives are to facilitate full exercise of rights conferred on individuals under the Act and to insure the protection of privacy as to individuals about whom the Department maintains records in systems of records under the Act. The Department accepts the responsibility to act promptly and in accordance with the Act upon receipt of any inquiry, request or appeal from a citizen of the United States or an alien lawfully admitted for permanent residence into the United States, regardless of the age of the individual.

(b) Further, the Department accepts the obligations to maintain only such information on individuals as is relevant and necessary to the performance of its lawful functions, to maintain that information with such accuracy, relevancy, timeliness and completeness as is reasonably necessary to assure fairness in determinations made by the Department about the individual, to obtain information from the individual to the extent practicable, and to take every reasonable step to protect that information from unwarranted disclosure. The Department will maintain no record describing how an 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.

(c) This part applies to all organizational components in the Department in order to assure the maximum

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amount of uniformity and consistency within the Department in its implementation of the Act.

(d) The Assistant Secretary for Administration shall be responsible for carrying out the requirements of this part, for issuing such orders and directives internal to the Department as are necessary for full compliance with the Act, and for effecting publication of all required notices concerning systems of records.

(e) Requests involving information pertaining to an individual which is in a record or file but not within the scope of a System of Records Notice published in the FEDERAL REGISTER are outside the scope of this part. Requests for departmental records will be considered to determine whether processing under this part, part 15, or both is most appropriate, notwithstanding the requester's characterization of the request, as follows:

(1) A *Privacy Act request from an individual for records about that individual and not contained in a Privacy Act Records System* shall be considered a Freedom of Information Act request and processed under HUD Freedom of Information Act regulations (24 CFR part 15) to the extent that the requester has provided the Department a reasonable description of the documents requested. When a request for records is so considered as a Freedom of Information Act request, the Privacy Act Officer shall promptly refer it to the head of the appropriate organizational unit in accordance with HUD FOIA Regulations and shall advise the requester that time of receipt for processing purposes will be the time when it is received by the appropriate official.

(2) A *Freedom of Information Act request from an individual for records about that individual contained in a Privacy Act Records System* shall be processed as follows:

(i) If the request in whole or in part contains a reasonable description of any HUD document, processing shall be carried out pursuant to HUD FOIA Regulations.

(ii) If the request in whole or in part does not contain a reasonable description of any HUD document, but does provide sufficient information under

HUD Privacy Act Regulations to undertake a Privacy Act Records System search, the Department will provide full access under HUD Privacy Act Regulations. In this situation, the Department will comply with the deadlines for response set forth in the Privacy Act and HUD implementing regulations. In that event, an explanation will be provided to the requester advising that the request did not contain a reasonable description of a particular document as required under the FOIA and offering to process the request under FOIA procedures upon receipt of additional information sufficient to constitute a *reasonable description*.

(3) A *Freedom of Information Act request from an individual for records about another individual contained in a Privacy Act Records System* shall be processed as follows: When an exemption under subsection (b) of FOIA is available, the Privacy Act governs the public interest determination under HUD FOIA Regulations (24 CFR 15.21) and compels the withholding of such documents unless: (i) The subject of those records consents to their release or (ii) disclosure comes within one of the subsections of 5 U.S.C. § 552a(b).

(4) A *Privacy Act request from an individual for records about another individual* shall be processed as follows: Except as expressly permitted in this part, requests by persons who are not the subject of a record contained in a Privacy Act Records System shall be outside the scope of this part. If the request satisfies the Freedom of Information Act requirement that requested records be reasonably described, the Privacy Act Officer shall consider the requests as a Freedom of Information Act request and shall proceed as in § 16.1(e)(1) of this section.

[40 FR 39729, Aug. 28, 1975, as amended at 41 FR 13917, Apr. 1, 1976]

§ 16.2 Definitions.

(a) The definitions of 5 U.S.C. 552a apply in this part.

(b) As used in this part:

(1) *Act* means the *Privacy Act of 1974*, Pub. L. 93-579.

(2) *Privacy Act Officer* means those officials, identified in Appendix A to this part, or their designees, who are authorized to receive and act upon inquiries,

requests for access, and requests for correction or amendment.

(3) *Privacy Appeals Officer* means the General Counsel.

(4) *Inquiry* means a request by an individual that the Department determine whether it has any record in a system of records which pertains to that individual.

(5) *Request for access* means a request by an individual or guardian to inspect and/or copy and/or obtain a copy of a record which is in a particular system of records and which pertains to that individual.

(6) *Request for correction or amendment* means the request by an individual or guardian that the Department change (either by correction, addition or deletion) a particular record in a system of records which pertains to that individual.

(7) *Appeal* means the request by an individual that an initial denial of a request for access or correction or amendment by that individual be reviewed and reversed.

[40 FR 39729, Aug. 28, 1975, as amended at 41 FR 13917, Apr. 1, 1976; 61 FR 5204, Feb. 9, 1996]

§ 16.3 Procedures for inquiries.

(a) Any individual, regardless of age, may submit an inquiry to the Department. The inquiry should be made either in person at the office of, or by mail addressed to, the appropriate Privacy Act Officer. Although oral requests may be honored, a requester may be asked to submit his request in writing. The envelope containing the request and the letter itself should both clearly indicate that the subject is a "PRIVACY ACT INQUIRY". If an individual believes the Department maintains a record pertaining to that individual but does not know which system of records might contain such a record and/or which organizational component of the Department maintains the system of records, assistance in person or by mail will be provided at the first address listed in Appendix A to this part.

(b)(1) An inquiry should contain the following information:

(i) Name, address and telephone number of the individual making the request;