

§ 70a.3

(3) Are retrieved by reference to an individual name or some other personal individual identifier.

Under the control of means those official records for which the agency is officially responsible and either has in its possession or exercises dominion over. This excludes those records which, although in the physical possession of agency employees and used by them in performing official functions, are not, in fact, agency records. Uncirculated personal notes, papers and records which are retained or discarded at the author's discretion and over which the agency exercises no dominion or control (e.g., personal telephone lists) are not *agency records* for purposes of this part.

The criteria *are retrieved by* covers those records under the control of an agency which are, in fact, accessed by use of a personal identifier, not merely that a capability or potential capability exists for retrieving personal information in some manner. For example, files on firms which contain personal information about officers of the firms are not records for purposes of this part unless the agency actually retrieves this information by reference to a personal identifier.

(f) The term *statistical record* means a record contained within a system of records which is maintained for statistical research or reporting purposes only, and not used, in whole or in part, in making any determination about an identifiable individual. For a record to qualify as a *statistical record*, it must be maintained as a system of records separately from other systems of records where such other systems contain records that are used to make determinations about the rights, benefits, or entitlements of an identifiable individual. The term *identifiable individual* distinguishes determinations about specific individuals from determinations about aggregates of individuals. An example of the latter is the use of census data for the apportionment of funds based upon population.

Records frequently referred to as *research records* which are only used for analytic purposes, qualify as *statistical records* for purposes of this part, provided such records are not used in making any determination about the

29 CFR Subtitle A (7-1-98 Edition)

rights, benefits or entitlement of an identifiable individual.

(g) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. The Privacy Act restricts the use of information to such purposes, but also recognizes that there are corollary purposes "compatible with the purpose for which the information was collected" that are appropriate and necessary for the efficient conduct of government, and are in the best interest of both the individual and the public. Thus, the term *routine use* includes the common and ordinary applications for which such records are generally collected and all proper and necessary applications of records without regard to the frequency of such applications.

(h) *Disclosure officer, responsible official and officer authorized to disclose information from Department records* are those officials in this Department, whose titles and addresses are listed in § 70a.4(ii) of this chapter, who must pass on requests to inspect or copy record information in their custody. The solicitor of Labor, in the case of appeals and with respect to withdrawal of originals is the disclosure officer for such purposes, as is the Secretary of Labor with respect to the withdrawal of originals. As the head of the Department, the Secretary may invest any officer or employee of the Department with the authority to disclose information from particular records.

§ 70a.3 Conditions of disclosure of information.

(a) Nothing in this part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) Exempt as provided in paragraphs (d) through (f) of this section, neither the Department, nor its component units, shall disclose any record which is contained within a system of records subject to the requirements of this part, to any person or agency other than to the individual who is the subject of the record, unless the disclosure is to such person's parent or guardian as provided in § 70a.5 (c) of this part, or to the representative designated by

such individual in accordance with the requirements contained in § 70a.5(b) of this part.

(c) If a requester satisfied the requirements set forth in §§ 70a.4 and 70a.5 of this part, and the record described in paragraph (b) of this section does in fact exist, and is not otherwise exempt from disclosure by any other provision contained in this part, the record shall be made available to the requester in accordance with § 70a.6 of this part.

(d) Upon the notarized written consent of an individual to whom a record described in paragraph (b) of this section pertains, the Department, or any of its component units, may disclose the record to an agency or a person other than the individual to the extent that the individual to whom the record pertains has so consented.

(e)(1) In the absence of written consent from the individual to whom a record described in paragraph (b) of this section pertains, the Department may disclose any such record provided such disclosure is:

(i) To those officers and employees of the Department of Labor who have a need for the information in the performance of their duties;

(ii) Required under the Freedom of Information Act (5 U.S.C. 552);

(iii) For a *routine use* as published in the annual notice in the FEDERAL REGISTER;

(iv) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of title 13 U.S.C.;

(v) To a recipient who has provided the Department with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental ju-

risdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Department, or a unit component thereof, specifying the particular record and the law enforcement activity for which it is sought;

(viii) To either House of Congress, or to the extent that a matter is within its jurisdiction, any committee or subcommittee thereof; or to any joint committee of Congress or a subcommittee of any such joint committee;

(ix) To the Comptroller General, or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(x) Under an order of a court of competent jurisdiction, in which case the Department shall make reasonable efforts to notify the subject individual of the subpoenaed record when the subpoena of such material becomes a matter of public record; or

(xi) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual (not necessarily the individual to whom the record pertains), if upon such disclosure notification is transmitted to the last known address of the individual to whom the record pertains.

(2) The authority to disclose information without the written consent of the individual does not imply mandatory disclosure. The Department shall continue to consider all relevant factors before authorizing the disclosure of information, including the effect that disclosure would have upon the individual who is the subject of the record.

(f) When a record has been amended or a requested amendment thereto has been denied, and the requester has submitted a memorandum of disagreement, the amended information, or the memorandum of disagreement, must be transmitted to prior recipients as provided in 5 U.S.C. 552a(d)(4) and § 70a.9(f) of this part.

(g) Except as prescribed in paragraphs (d) and (f) of this section, and other provisions of this part related thereto, the regulations contained in

§ 70a.4

this part do not require the disclosure of a record to anyone other than the individual to whom the record pertains.

§ 70a.4 Required procedure with regard to a request by an individual for a record contained within a system of records.

(a)(1)(i) Any individual, regardless of age, desiring to examine or copy records of the Department of Labor which are retrieved in the name of that individual or other identifier personal to that individual shall direct a request to the appropriate official as prescribed in (d) of this section. Any individual desiring to ascertain whether, and to whom the Department has disclosed his or her record or part thereof, or desiring to request an amendment to such record, shall direct a request to the same official.

(ii) When a person is uncertain as to whom the request should be directed, it should be sent to: Deputy Assistant Secretary, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

(2) Requests made in person shall be presented during the Department's normal working hours. When the request is made by mail, a notation should be made on the envelope and conspicuously on the letter indicating that the communication involves a request under the Privacy Act (i.e., "Privacy Act Request").

(b) Each request shall be in writing. It shall state the nature of the action desired and shall be reasonably detailed to permit identification and location of the record in question, so far as practicable, the request should specify the subject matter of the record, the date or approximate date when made, the place where made, the person or office that made it, and any other pertinent identifying details. The requester should also indicate whether he or she wishes to review the record in person or obtain a copy by mail.

(c)(1) The disclosure officer who is responsible for acting upon a request shall, upon receipt thereof, have the date and time the request was received immediately inscribed thereon, and

29 CFR Subtitle A (7-1-98 Edition)

within 10 working days thereafter, acknowledge such receipt to the requester. In addition, the acknowledgement shall indicate the time within which it is anticipated that a determination of the request will be made. Such an acknowledgement, however, is not required when a determination can be made within the 10-day period.

(2) If the description contained in the request is insufficient so that a professional employee who is familiar with the subject area of the request cannot locate the record with a reasonable amount of effort, the officer processing the request shall notify the applicant and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist an applicant in the identification and location of the record or records sought.

(d)(1) The titles of the responsible officials of the various independent agencies in the Department of Labor are listed below. Unless otherwise specified, the mailing address of these officials shall be:

U.S. DEPARTMENT OF LABOR, 200 CONSTITUTION AVENUE, NW., WASHINGTON, DC 20210

Chief, Administrative Law Judge.
Chairperson, Employees Compensation Appeals Board.
Benefits Review Board, Julius Miller, Member.
Executive Assistant to the Secretary.
Executive Assistant to the Under Secretary.
Deputy Under Secretary for International Labor Affairs.
Associate Deputy Under Secretary for International Labor Affairs.
Associate Deputy Under Secretary for Trade and Adjustment Policy.
Director, Office of Information, Publication and Reports.
Executive assistant to the Assistant Secretary for Policy, Evaluation and Research.
Deputy Solicitor, Office of the Solicitor.
Assistant Secretary for Administration and Management.
Administrative Information Chief, Division of Management Systems, Bureau of Labor Statistics.
Staff Utilization Chief, Division of Operation, Bureau of Labor Statistics.
Executive Assistant to Deputy Commissioner for Statistical Operations and Processing, Office of Statistical Operations and Processing, Bureau of Labor Statistics.
Assistant Secretary for Labor-Management Relations.