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BASIC INFORMATION ON THE
USE OF THE PRIVACY ACT OF
1974 AND THE FREEDOM OF
INFORMATION ACT

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March 24, 1976

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This brief series of questions and answers on the basic use of the Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act, 5 U.S.C. § 552, has been prepared to facilitate the efforts of individuals to acquire information from the agencies covered. No attempt has been made to provide an analysis of the law but merely a practical guide to some of the more frequently asked questions. An appendix has been included with a copy of both acts as well as some sample forms solely for illustrative purposes.

BASIC INFORMATION ON THE USE OF THE PRIVACY ACT OF 1974
AND THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act, 5 U.S.C. § 552 and the Privacy Act of 1974, 5 U.S.C. § 552a, have been enacted in the past decade thus enabling individuals to obtain data from the government in many previously unattainable areas. The two acts differ, however, in their basic focus. The Freedom of Information Act (hereinafter, FOIA) is a disclosure statute granting access to the public to final opinions and orders of agencies, policy statements and interpretations not published in the Federal Register, and other government records including administrative staff manuals and instructions to staff that affect a member of the public. Exempted from disclosure are 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;

"(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) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record 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, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

"(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 regulation or supervision of financial institutions; or

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

The Privacy Act of 1974 covers records which are retrievable by the name of an individual or by other individually identifiable data. Each agency must annually publish a listing in the Federal Register of the record systems which it maintains. The individual identified in the record must be granted a right of access to the file concerning himself and must be given a right to challenge the accuracy of the information contained therein, a provision not included in FOIA. Records are to be disclosed to third parties only upon written request by, or with the prior consent of, the individual to whom the record pertains. Exception to this general rule is made in several situations, including, among others, the following:

- (a) where officers and employees of the agency must maintain the record in the performance of their duties;
- (b) as required by the Freedom of Information Act;
- (c) for preservation of historical records by the National Archives;
- (d) where disclosure is to another agency for law enforcement purposes; or
- (e) upon a showing of compelling circumstances affecting the health or safety of an individual.

Further, although exempt generally from the Act, the Central Intelligence Agency (CIA) and certain data systems of law enforcement agencies must annually publish a notice of the existence and character of the systems of records which they maintain. Lastly, section 7 of the Act limits the use of the Social Security number within circumscribed areas which will be illustrated in the questions and answers which follow.

QUESTIONS AND ANSWERS CONCERNING THE USE OF THE PRIVACY ACT OF 1974

(1) How do I know if an agency has a file on me?

(1) If you believe that a specific agency may have records on you, you must contact that agency and follow the procedures indicated by that agency (see Appendix B for sample request letter).

(2) What information is necessary for my initial request to be handled properly by the agency concerned?

(2) Include the following:
1. Supply full name and address and sign your request.
2. Specify the system(s) of records which you believe contain(s) information concerning you.

3. Give relevant information relating to the transaction (e.g., loan application, date, subject heading (e.g., educational loan), and any identifying numbers).

4. Print Privacy Act Request on the front of the envelope.

(3) Will I need proof of my identity in order to have my request processed?

(3) Yes, proof of identity will be needed. The agency may specify what is to be required as identity or may accept one of the following:

- a) A document with your complete name and address;
- b) A document with your signature and/or photograph, e.g. passport;

(4) What is the charge for acquiring materials under the Privacy Act?

(4) There is no charge for the time spent locating the file; however, the agency may charge a fee for a copy of the records, as determined by the agency.

(5) Is there any government publication available to the public concerning the use of the Privacy Act?

(5) The U.S. Government Printing Office has available for sale a publication entitled "The Federal Register's Privacy Act Digest" for \$5.00 per copy. This volume of slightly more than 700 pages lists the systems and regulations of each agency as of Oct. 10, 1975. Regulations published after that time can be located in the Federal Register which may be found in most public libraries. Included are both the notices of the existence and character of the record systems, including the routine use of the records and procedures for disclosing to an individual his file.

(6) If an individual wants to see records concerning himself only, under what law does he request it?

(6) The Privacy Act of 1974 would cover such a request.

(7) Who can obtain information under the Privacy Act?

(7) The Act grants a right of access to "individuals" a definition which includes both citizens of the United States and aliens lawfully admitted for permanent residence.

(8) Does the above definition include businesses and corporations?

(8) No, a business or corporation is not included within the Act as an individual, thus, businesses may not seek access to their files.

(9) Can an individual use the Privacy Act to obtain information from a non-governmental source?

(9) No. The Privacy Act covers only federal governmental bodies, including the executive departments, government corporations, and independent regulatory agencies. Thus, the access and disclosure provisions may not be used against private businesses or state governments.

(10) Does the Privacy Act prohibit the use of the Social Security number as an identifier in such situations as an application for a driver's license? For enrollment in universities and colleges?

(10) Section 7 of the Act does prohibit federal, state, or local governmental agencies from denying a right, benefit, or privilege provided by law because of the individual's refusal to disclose his Social Security number. IT MUST BE NOTED, HOWEVER, THAT THIS DOES NOT APPLY TO PRIVATE INDUSTRY AT ANY TIME OR PUBLIC AGENCIES WHICH HAD SUCH A SYSTEM OF RECORDS BEFORE JANUARY 1, 1975, WHERE DISCLOSURE OF THE SOCIAL SECURITY NUMBER WAS REQUIRED UNDER STATUTE OR REGULATION PRIOR TO THAT TIME. FURTHER, THIS SECTION DOES NOT APPLY WHERE DISCLOSURE OF THE SOCIAL SECURITY NUMBER IS REQUIRED BY FEDERAL STATUTE. In cases where a federal, state, or local governmental agency requests an individual to give his Social Security number, the requesting agency must state whether such disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and what uses will be made of it.

(11) Does the Privacy Act prevent agencies from giving out individuals' names and addresses?

(11) No. Mailing lists which include an individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law.

(12) Does the Privacy Act include only records which are kept within a computer system?

(12) No. The Privacy Act covers records which are individually identifiable however maintained. Further a "record", as defined under the Act, would include, but is not limited to, educational history, financial transactions, medical history, and criminal or employment history which contain his name, or the identifying number symbol or any other means of identification, such as a fingerprint or voice print or a photograph.

(13) Would the Privacy Act prevent the acquisition of historical records by the National Archives?

(13) No. The Act excepts from coverage disclosure of a record to the National Archives of the United States where there is sufficient historical or other value to determine whether the record has such value.

(14) If a record containing personal information is required to be disclosed under the Freedom of Information Act, can disclosure be refused under the Privacy Act?

(14) No. The Privacy Act allows disclosure where such is required under the Freedom of Information Act.

(15) Will the Privacy Act prohibit the federal government from collecting census data?

(15) No. The Act expressly states that disclosure of records may be made by other agencies to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activities as authorized under federal law, as set forth in title 13 of the United States Code.

(16) Are my own medical records held by an agency covered by the Act?

(16) Yes. Medical records are covered by the access and disclosure provisions of the Act; however, each agency in formulating its own procedures may provide for special procedures, where deemed necessary. (This provision includes psychological records.)

(17) What provision is made for exceptions in case of an emergency?

(17) Disclosure of a record is allowed pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon disclosure notification is transmitted to the last known address of the individual concerned.

(18) Does the Act prevent a member of Congress from obtaining information about an individual pursuant to his own request?

(18) The Act does not allow individual members to be excepted from the prohibitions against agency disclosure of personal data. Some agencies have recognized this problem and in their required listing of systems and usages of the systems published in the Federal Register have listed congressional inquiries for constituents as a "routine use". (The Act allows agencies to make "routine use" of records without obtaining consent from the individual identified in the record but what the agency considers a "routine use" must be published along with its list of systems.)

To facilitate response, a constituent seeking aid from a member of Congress, concerning data maintained by an agency, could enclose a statement of consent.

(19) Are any agencies exempt from the Privacy Act?

(19) The Act exempts, generally, both the Central Intelligence Agency (CIA) and criminal law enforcement agencies, the latter only as to offender identification records, criminal investigatory records, and individually identifiable reports compiled at any time from arrest or indictment through release from supervision.

Other more limited exemptions may be authorized in, among others, the following situations:

(a) where identity of a confidential source would be revealed;

(b) where the information concerns the providing of protective services to the President of the United States and certain other individuals;

(c) as set forth under the national security exemption of the Freedom of Information Act, at 5 U.S.C. § 552 (b)(1);

(d) where investigatory material compiled solely to determine suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts or access to classified information but only to the extent where the identity of a confidential source would be revealed;

(e) where testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service where disclosure would compromise the objectivity or fairness of the testing or fairness of the testing or examination process;

(f) where the evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date under an implied promise that the identity of the source would be held in confidence.

(20) Is any time for responding to inquiries imposed upon the agencies?

(20) No time limit is placed upon the initial response of the agency to an inquiry; however, when an individual requests amendment of his record, the agency must, no later than 10 days after receipt, acknowledge, in writing, the request.

If the agency refuses to make the amendment requested and the individual requests further review, no later than 30 days from the date of request, the agency must complete such review unless for good cause shown, the head of the agency extends the 30-day period. Should the individual so desire, he may then file suit.

(21) What enforcement provisions does the Privacy Act include?

(21) The Act provides for both civil remedies and criminal penalties.

(22) When are civil remedies available against the agency concerned?

(22) An individual may bring a civil suit against an agency when:

(a) the agency refuses to amend the individual's record in accordance with his request, or fails to make such review in conformity with the Act;

(b) the agency refuses to grant the individual access as provided in the Act;

(c) the agency fails to maintain the accuracy of any record concerning the individual, as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and as a result a determination is made which is adverse to the individual; or

(d) the agency fails to comply with the Act having, thus, an adverse effect on an individual.

The court may order the agency to amend the record. Further, the court may order the United States to pay court costs, and the agency may be enjoined from withholding records improperly from an individual. If the court finds that the agency acted intentionally or willfully, the United States shall be liable in an amount equal to the sum of the actual damage with a minimum of \$1,000.

(23) What criminal penalties does the Act provide?

(23) According to the Act, any officer or employee of an agency, who by virtue of his employment, or official position, has possession of, or access to, agency records containing individually identifiable information the disclosure of which is prohibited, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the information to anyone not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(b) Further, any officer or employee of any agency who willfully maintains a system of records without meeting the requirements of publishing annually a listing of the systems, their location, types of records, routine uses, the responsible official, and the procedures for gaining access shall be guilty of a misdemeanor and fined not more than \$5,000.

(c) Further, anyone who knowingly and willfully requests or obtains any record from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

FREQUENTLY ASKED QUESTIONS CONCERNING THE PRACTICAL
USE OF THE FREEDOM OF INFORMATION ACT

1.) What material must be made available to the public under the Freedom of Information Act?

1.) Each agency must make available to the public the following:

- a) a description of its structure, both the central organization and any field offices;
- b) the location and individuals from whom information may be obtained;
- c) procedural rules of the agency;
- d) substantive rules and regulations adopted;
- e) final opinions, including concurring and dissenting opinions, as well as orders, made in deciding cases which were then before the agency;
- f) statements of policy and interpretations which were adopted by the agency and are not published in the Federal Register;
- g) administrative staff manuals and instructions to staff that affect a member of the public;
- h) current indexes providing identifying information for the public regarding matters after July 4, 1967.

2.) What provisions are there, if any, to prevent the disclosure of information under the Freedom of Information Act (FOIA) from resulting in an invasion of the right of privacy of third parties?

2.) An agency may delete identifying details when it makes available or publishes material which would result in a "clearly unwarranted invasion of personal privacy."

3.) Is there any charge for materials obtained pursuant to the FOIA?

3.) Yes. Fees are to be limited to "reasonable" standard charges for document search and duplication and to recover only the direct costs of this search and duplication. Waiver of fees may be granted if the information can be considered as benefiting the public interest.

4.) What agencies and organizations are covered by the Act?

4.) Those covered by the FOIA are the same as those covered by the Privacy Act:

- a.) executive departments;
- b.) military departments;
- c.) government corporations;
- d.) government controlled corporations;
- e.) other establishments in the executive branch, or any independent regulatory agency.

5.) Who may seek information under the Act?

5.) Any member of the public may seek information under the Act.

6.) How can I obtain information under the FOIA?

6.) By writing to the individual agency. Although each agency is authorized to set forth its own procedural regulations, most agencies can be contacted by noting on the envelope "Freedom of Information Request", Attention: Office of Public Affairs.

Although a requester is not required to specify a document by name or title, he or she must provide a reasonable description with enough detail for the agency to know what is being sought. The more specific the request, however, the more rapidly and efficiently the materials may be sent, perhaps resulting in some savings in related fees.

In asking for material not involving personal information, the requester is not required to give the reason for which access is being sought. However, the likelihood of success may be enhanced by providing the reasons for the request since agency officials have the discretion to release data even where it is generally exempt from disclosure. Further if the individual seeks a waiver of fees involved, the requester might benefit by stating why and/or how he feels such disclosure would be to the benefit of the general public. As fees are charged, an individual requesting documents might wish to include an authorization of a dollar amount as a maximum, indicating to the agency that the individual would not want the documents to be sent were it to exceed the amount indicated.

7.) When may court action be sought?

7.) If an individual's request is denied by the head of the agency or if he does not reply within 20 working days, he may file an action in the federal court most convenient to him. If the government is found to have "arbitrarily" withheld information, attorney's fees and court costs may be obtained.

8.) Can officials of the agency be held individually liable?

8.) Yes. If denial has been found to be arbitrary and capricious, the official may be subjected to administrative sanctions.

9.) Does the FOIA provide for individual challenges to the accuracy of data maintained?

9.) No, thus there is no procedure for amending or disputing the accuracy of the agency's information.

10.) What are the time limitations required by the FOIA?

10.) Each agency, upon request for any records, must determine within ten working days after receipt of such request whether to comply or not. The individual requesting material must be notified immediately of the agency's decision and where there has been an adverse determination, inform him of the right to appeal.

b) Any appeal must be decided within twenty days after receipt of such appeal. If on appeal the denial of the request is upheld in whole or in part, the agency must notify the individual so requesting of the provisions for judicial review.

11.) What information cannot be obtained under the FOIA?

11.) The following are exempt from coverage:

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

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

(3) matters specifically exempted from disclosure by statute;

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

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

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

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

(7) investigatory records compiled for law enforcement purposes, to the extent that production of such records would:

(A) interfere with enforcement proceedings;

(B) deprive a person of a right to a fair trial or an impartial adjudication;

(C) constitute an unwarranted invasion of personal privacy;

(D) disclose the identity of a confidential source and, in the case of a record 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 confidential information, furnished only by the confidential source;

(E) disclose investigative techniques and procedures, or

(F) endanger the life or physical safety of law enforcement personnel.

(8) data 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.

12.) If my FOIA request is denied, can I find out the basis of that denial?

12.) Yes. When an FOIA request is denied, the agency must inform the individual of the following:

(a) Reason for the denial, citing exemptions claims.

(b) Person (both name and title) of individual who denied the request;

(c) Information concerning the requesting individual's right to appeal within the agency under 5 U.S.C. §552(a)(6)(A).

13.) How much time does an agency have to respond to an appeal?

13.) Twenty working days after the receipt of the requester's appeal letter. During this time, an agency must inform the individual as to its decision. The agency may obtain an extension of time of up to 10 working days to complete the processing of the appeal if reply to the requester's letter is made within the initial 20 day period.

Should the appeal be denied, wholly or in part, the individual requesting information must be informed of his rights to seek judicial review under 5 U.S.C. § 552 (a)(6)(A) and (6).

14.) What fees may be charged by the agency?

14.) Fees may be charged for the following only:

1) cost of searching for the material; and

2) cost of copying the documents.

15.) What are the range of fees, or average fees, charged?

15.) The standard charge for copying is ten cents per page for pages approximately 8 x 11 inches or 8 x 14 inches.

Five dollars per hour is the standard search fee unless supervisory or professional personnel are required additionally to process the request.

APPENDIX A

Sample Draft of a Request Form under The Privacy Act of 1974

	Address of requester Date
Name of government agency Address	
Dear Sir:	
According to the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a, I am seeking information as to whether your system of records on _____ [specify which system] might contain a file on me concerning _____ [give transaction - e.g., concerning school loan application no. 105 in 1974].	
If more information and documents verifying my identity are needed, could you please inform me of the necessary procedures.	
Thank you for your assistance.	
Sincerely,	

Sample Draft of Envelope Address

Address of Requester
Name of government agency Address
Attn: Privacy Act Request

The Privacy Act of 1974
5 USC §552a

“§ 552a. Records maintained on individuals

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘agency’ means agency as defined in section 552(e) of this title;

“(2) the term ‘individual’ means a citizen of the United States or an alien lawfully admitted for permanent residence;

“(3) the term ‘maintain’ includes maintain, collect, use, or disseminate;

“(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;

“(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;

“(6) the term ‘statistical record’ means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) 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.

(b) **Conditions of Disclosure.**—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title [5 USC § 552];

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) 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;

(6) 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;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the

performance of the duties of the General Accounting Office; or

(11) pursuant to the order of a court of competent jurisdiction.

(c) **Accounting of Certain Disclosures.**—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) **Access to record.**—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;

(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;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

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

(e) Agency requirements.—Each agency that maintains a system of records shall—

(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;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (1) of this subsection, publish in the Federal Regis-

ter at least annually a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources or records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(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;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) 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; and

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) **Agency rules.**—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title [5 USC § 553], which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) **Civil remedies.**—Whenever any agency—

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (D)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance,

timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(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.

(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 construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to the effective date of this section [270 days following Dec. 31, 1974].

(h) **Rights of legal guardians.**—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) **Criminal penalties.**—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

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

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(i) **General exemptions.**—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title [5 USC §§ 553(b)(1)–(3), (c), and (e)], to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend

criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists 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.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title [5 USC § 553(c)], the reasons why the system of records is to be exempted from a provision of this section.

(k) **Specific exemptions.**—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title [5 USC § 553(b)(1), (2), (3), (c), and (e)], to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (c)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title [5 USC § 552(b)(1)];

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

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

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material

would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title [5 USC § 553(c)], the reasons why the system of records is to be exempted from a provision of this section.

(1)(1) Archival records.—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred 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, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred 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, on or after the effective date of this section [270 days following Dec. 31, 1974], shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) Government Contractors.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(n) Mailing lists.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Report on new systems.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(p) Annual report.—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

(q) Effect of other laws.—No agency shall rely on any exemption contained in section 552 of this title [5 USC § 552] to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section. (Added Dec. 31, 1974, P. L. 93-579, § 3, 88 Stat. 1897.)

APPENDIX B

Sample Draft for a Request under the Freedom of Information Act

		Address of requester Date
Name of government agency Address		
Dear Sir:		
According to the provisions of the Freedom of Information Act (FOIA), as amended, 5 U.S.C. § 552, I am requesting _____ [Here insert the words "a copy of" or "access to," depending on the nature of the request] the following:		
[Here give a description of the material sought.]		
Should the expenses involved exceed _____ [Fill in the amount], please notify me before continuing.		
Should the request be denied, please inform me of the procedure for an appeal within your agency.		
Thank you for your assistance.		
Sincerely,		

Sample Draft of Envelope Address

Address of Requester	
Name of Government Agency Attn: Office of Public Affairs Address	
Attn: Freedom of Information Request	

Sample Draft for an Appeal under the Freedom of Information Act

Address of individual seeking an appeal Date
Head of Agency Name of government agency Address
Dear _____: (Head of Agency)
By letter dated _____, _____ [individual's name] of the office of _____ [as entitled in the letter of denial] of your agency, I was notified that my request of [give full date] for _____ ["access to" or "a copy of"] material pursuant to 5 U.S.C. § 552, the Freedom of Information Act, was denied. A copy of my original request and your agency's reply are included.
It is my understanding that if my appeal is not acted upon by your agency within 20 working days, my request may be considered denied.
Sincerely,
Enclosures

Sample Draft of Envelope Address

Address of individual seeking an appeal
Head of Agency Name of government agency
Attn: Freedom of Information Request

Freedom of Information Act, 5 U.S.C. § 552

552. Public information.—Agency rules, opinions, orders, records, and proceedings.—(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public; unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in

the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, 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, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in

the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to com-

plete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to 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;

(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) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record 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, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(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 or geophysical information and data, including maps, concerning wells.

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.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(d) On or before March 1 of each calendar

year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

- (1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;
- (2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;
- (3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;
- (4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;
- (5) a copy of every rule made by such agency regarding this section;
- (6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and
- (7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

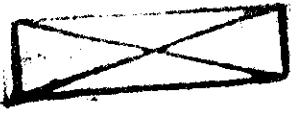
(e) For purposes of this section, the term "agency" as defined in section 551(1) of this title [5 USC § 551(1)] includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency. (As amended June 5, 1967, P. L. 90-23 § 1, 81 Stat. 54; Nov. 21, 1974, P. L. 93-502, §§ 1-3, 88 Stat. 1561, 1563, 1564.)

Repeal of amendment of prior law.—Act June 5, 1967, P. L. 90-23, § 3, 81 Stat. 56, repealed Act July 4, 1966, P. L. 89-487, 80 Stat. 250, which amended § 1002 of former Title 5 upon which this section was based.

Effective date.—Section 4 of Act June 5, 1967, cited to text, provided that the amendment of this

section "shall be effective July 4, 1967, or on the date of enactment [June 5, 1967], whichever is later."

Effective date of 1974 amendments.—Act Nov. 21, 1974, P. L. 93-502, § 4, 88 Stat. 1564, provided: "The amendments made by this Act [amendments to this section] shall take effect on the ninetieth day beginning after the date of enactment of this Act [enacted Nov. 21, 1974]."



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