

**Creating Privacy Act Statements
&
System of Records Notices**

Ramona Branch Oliver
Department of Labor

1

Historical Framework

- The Privacy Act of 1974
 - Codified at 5 U.S.C. § 552a
 - Created in response to concerns about how the use of computerized databases might impact an individual's privacy rights
 - Balance between the governments need to maintain information about individuals and the right of those same individuals to be protected against unwarranted invasions of personal privacy

2


Policy Objectives of the Privacy Act

- To establish a "code of fair information practices" that regulates the collection, maintenance, use and disclosure of personally identifiable records
 - To restrict disclosure of personally identifiable records maintained by the agencies
 - To grant individuals an increased right of access and a right of amendment of records
 - To grant individuals private rights of action for agency violations of the Act

3

Privacy Act Basics

- Fair information practices:
 - Transparency;
 - Individual Participation;
 - Purpose Specification;
 - Minimization;
 - Use Limitation;
 - Data Quality and Integrity;
 - Security; and
 - Accountability and Auditing.



4

Agency Requirements

(e)(3) – Inform each individual when collecting information of: the authority, the principal purpose(s) for which the information is to be used, routine uses, and effects, if any, of not providing the information;

(e)(4) – Publish system notice in the Federal Register;

5

System of Records Notice (SORN)

- Required by 5 U.S.C. § 552a(e)(4)
 - Describes one or more similar Privacy Act record systems;
 - Gives notice of the existence and character of the system;
 - Describes collection method/use of the record *within* the agency;
 - Describes disclosure to parties *outside* the agency through "**routine uses**;"
 - Explains the rights of the subject of the record;
 - Informs of exemptions to 1st party access;
 - Published in the Federal Register –for notice and comment (NPRM);
 - Uses a standard format to promote consistency.

6

SORN Continued

When to create new SORN?

When...

Record system is a Privacy Act system of records;	No existing SORN covers it (or could be modified to do so); and	New IT system triggers E-Gov Act.
---	---	-----------------------------------

7

SORN Continued

- When to revise existing SORN?
 - Significant changes require modifications to existing SORN;
 - Significant increase in the number or types of covered individuals;
 - Additional record categories;
 - New routine use or exemption;
 - Hardware/software changes impacting access;
 - Change impacting ability to assert individual rights.

8

SORN Drafting

What party drafts SORN?

- Typically, program office/system expert in conjunction with privacy personnel.

SORN package (see OMB Circular A-108):

- transmittal letters to OMB, House, and Senate;
- Narrative Statement (1-2 pages);
- proposed Federal Register Notice (Preamble + SORN);
- proposed rulemaking document (NPRM or Direct Final Rule, if claiming exemptions in last field of SORN).

9

<h2 style="margin: 0;">Finding Privacy Act Covered Records</h2>	<p>Identify what kinds of records you are maintaining that are retrieved by a name and/or personal identifier.</p> <hr/> <p>Very important - Build a relationship with program managers so you can understand their needs/wants and translate them into a systems notice</p> <hr/> <p>E-GOV Act of 2002 requires the development of a cohesive framework to protect the governments information, operations and assets, including Privacy Impact Assessments</p>
---	---

10

<h2 style="margin: 0;">Before the SORN... What is PA "Record?"</h2>	<ul style="list-style-type: none"> ■ "Record" under the Privacy Act means: <ul style="list-style-type: none"> ■ Any item, collection, or grouping of information ■ About an individual ■ That is maintained by an agency, <ul style="list-style-type: none"> ■ 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
---	--


11

<h2 style="margin: 0;">Records in a System of Records</h2>	<ul style="list-style-type: none"> ■ Privacy Act protects information on individuals that is in a "system of records" <ul style="list-style-type: none"> ■ This is any group of records from which information is actually retrieved by the name of an individual or by some other identifying particular assigned to the individual <ul style="list-style-type: none"> ■ Must identify the individual ■ Must be retrieved by an identifier ■ Capability to retrieve (i.e., a search engine) is not enough ■ Excludes <ul style="list-style-type: none"> ■ purely personal notes ■ supervisory notes (memory refreshers)
--	---

12

Retrievability

- ▀ Standard: Actual Retrieval
 - ▀ **OMB Guidelines:**
 - ▀ A system of records exists if:
 - ▀ (1) There is an indexing or retrieval capability using identifying particulars built into the system AND
 - ▀ (2) the agency does, in fact, retrieve records about individuals by reference to some personal identifier
 - ▀ **Confirmed by case law:**
 - ▀ *Henke v. U.S. Department of Commerce*, 83 F. 3d 1453 (D.C. Cir. 1996)
 - ▀ "Capability to retrieve, alone, is insufficient."



13

System of Records (SORN)

Why is this definition so important?

- Most of the rights and requirements of the Privacy Act depend on whether this definition is met.
- For ex. Wrongful disclosure suits, access and amendment rights

Notice Requirements:

- Must publish a system of records notice (**SORN**) in the Federal Register (5 U.S.C. § 552a(e)(4))

14

○ It's the foundation of our Privacy programs

○ It's transparency – enabling people to know what kinds of information we are collecting and on whom

○ It's your tool to answer Privacy Act questions

○ It's rulemaking

○ It's a blueprint that describes our business practice

○ It's the authority for sharing information with others

○ It's something that we update regularly to reflect changes in business practices

Why a SORN?

15

<p>A SORN Must Identify the Following Elements</p>	<p>System location</p> <ul style="list-style-type: none"> • Where are the records? <p>Categories of persons covered by the system</p> <ul style="list-style-type: none"> • Whose records are we collecting? <p>Authority for the collection</p> <ul style="list-style-type: none"> • What gives us legal authority for collecting the information? <p>Purpose for the information collection</p> <ul style="list-style-type: none"> • Why we need it and how is that need consistent with the legal authority for collection? <p>Routine uses for the information</p> <ul style="list-style-type: none"> • How is the information going to be used to further government business?
---	--

16

<p>A SORN Must Identify the Following Elements:</p>	<p>Storage & security</p> <ul style="list-style-type: none"> • How will we maintain the records to ensure they are not accessed without authorization? <p>Retention & disposal</p> <ul style="list-style-type: none"> • How long will the records be kept? Are they temporary or permanent? <p>System manager & location</p> <ul style="list-style-type: none"> • Who is charge of maintaining the records and where are they located? <p>Access & correction of errors/incomplete data</p> <ul style="list-style-type: none"> • Who can be contacted to gain access or facilitate a request for an amendment?
--	--

17

<p>A SORN Must Identify the Following Elements:</p>	<p>Exemptions Promulgated for the System: Identifies what information may be exempt from disclosure and references that a rule establishing the exemption has been published in the Federal Register. In most instances, it states NONE.</p> <p>History: The citation to the last full publication of the notice in the Federal Register and any subsequent notices of revision</p>
--	---

18

Role of Privacy Act Statement (PAS)

(e)(3) – Privacy Act Statement

Look at the FIPS -

- Authority for collection;
- Purpose(s) for which information intended to be used;
- Published routine uses;
- Effects (if any) of not providing all or part of the information
- Citation/link to relevant System of Records Notice (SORN)

19

Drafting a Privacy Act Statement

When an individual is asked to provide personal information (name, date of birth, etc.) that will be stored in a system of records, regardless of the method used to collect the information (i.e., forms, in person, telephone interview, etc.).

Note: If the information requested will not be included in a System of Records, a Privacy Act Statement is not required, but may be good policy, nonetheless.

If intent is to collect Social Security Number (SSN), specific legal authority must be cited to denote whether collection expressly required by law, permitted by law; OMB A-130 permits SSN to be used only when needed and when no alternative exists.

20

Drafting Privacy Act Statement

Drafting PAS is formulaic and should track the related SORN.

Authority: legal authority for collection that should reflect the authority for maintenance section of the SORN.

Purpose: provides information about how the Agency will use the information collected and how use fulfills agency objectives, reflecting SORN purpose.

21

Drafting a Privacy Act Statement	<hr/> <p>Routine uses: provide information about inter-governmental sharing of records collected; applies to info collected on the form itself;</p> <hr/> <p>Disclosure: describes whether disclosure is voluntary or mandatory, and prospective impact of non-disclosure;</p> <hr/> <p>Citation to applicable SORN;</p>
---	--




22

Drafting Privacy Act Statement	<hr/> <p>PAS should appear on the form; if the means of collection is other than a form, PAS should be read to individual and if requested, a copy sent to individual;</p> <hr/> <p>Preferred locations for PAS: below title of form, elsewhere on the front page, on the back of the form with a notation of its location on the front, or as click-through for web-based collections.</p>
---------------------------------------	---


23

Sample Privacy Act Statement	<p>PRIVACY ACT STATEMENT Section 4311 of Title 5, United States Code, authorizes collection of this information. The primary use of this information is by management and your payroll office to approve and record your use of leave. Additional disclosures of the information may be: to the Department of Labor when processing a claim for compensation regarding a job connected injury or illness; to a State unemployment compensation office regarding a claim; to Federal Life Insurance or Health Benefits carriers regarding a claim; to a Federal, State, or local law enforcement agency when your agency becomes aware of a violation or possible violation of civil or criminal law; to a Federal agency when conducting an investigation for employment or security reasons; to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of leave administration; or the General Services Administration in connection with its responsibilities for records management. Public Law 104-134 (April 26, 1996) requires that any person doing business with the Federal Government furnish a social security number or tax identification number. This is an amendment to Title 31, Section 7701. Furnishing the social security number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application. If your agency uses the information furnished on this form for purposes other than those indicated above, it may provide you with an additional statement reflecting those purposes. Approved/Disapproved</p>
-------------------------------------	--


24

 For Discussion	<div style="border: 1px solid black; border-radius: 10px; padding: 10px; margin-bottom: 10px;">  <p>Using OPM/GOVT-1, General Personnel Records lets delve into the how's and why's of a SORN.</p> </div> <div style="border: 1px solid black; border-radius: 10px; padding: 10px;">  <p>How would you handle these scenarios based on the information available in the referenced SORN?</p> </div>
--	--

25

 Scenarios	<hr/> <p>A REQUEST FROM AN OPM EMPLOYEE WHO HAS AN OFFICIAL NEED OR USE FOR THE RECORD?</p> <hr/> <p>A FEHB ADMINISTRATOR SEEKING TO VERIFY QUALIFICATIONS FOR BENEFITS?</p> <hr/> <p>RECORDS MAINTAINED BY A SUPERVISOR, IN HIS OFFICE, BUT DERIVED FROM THE OPF?</p>
---	--

26

	 Scenarios
	<hr/> <p>Is it appropriate to disclose records to facilitate a claim for a death benefit?</p> <hr/> <p>What about to a prospective non-federal employer?</p> <hr/> <p>A request from a recognized labor union for access to updated home addresses of all bargaining unit employees?</p>

27

Scenarios	How long are records kept once a Federal civilian employee separates from the government?
	OPM owns the records, but where might a requester submit a request? Does it depend on service status?
	What about to a prospective non-federal employer?

28

QUESTIONS?	Thank you!!
------------	--------------------

29
