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- S. 3407—Continued
provide for disaster assistance in a manner which assures increased protection against personal injuries resulting from disasters.
Mr. Cook, Mr. Brock, Mr. Hartke, Mr. Huddleston, and Mr. Pearson; Committee on Labor and Public Welfare, 12283.
- S. 3408—To provide that the laws restricting the coastwise trade to vessels of the United States shall not apply to certain hovercraft on routes over land or over water only as an incidental part thereof.
Mr. Stevens; Committee on Commerce, 12283.
- S. 3409—To amend the National Labor Relations Act, as amended, to amend the definition of "employee" to include certain agricultural employees.
Mr. Tunney; Committee on Labor and Public Welfare, 12283.
- S. 3410—To enable the United States to insure an adequate supply of food for its citizens, while providing food for foreign countries for humanitarian purposes, by establishing a Federal Food Reserve for certain designated commodities and by establishing controls on exports of such commodities.
Mr. Metzenbaum; Committee on Agriculture and Forestry, 12283.
- S. 3411—To provide for a First Americans Museum within the Smithsonian Institution.
Mr. Mansfield and Mr. Metcalf; Committee on Public Works, 12644, 15973.
- S. 3412—To establish a temporary National Commission on Alien Labor to conduct a comprehensive study of certain matters relating to the use of alien agricultural labor.
Mr. Montoya; Committee on Labor and Public Welfare, 12644, 23770.
- S. 3413—To amend the Land and Water Conservation Fund Act of 1965, as amended.
Mr. Metzenbaum, Mr. Abourezk, Mr. Bayh, Mr. Domenici, Mr. Haskell, Mr. Humphrey, Mr. Jackson, Mr. Javits, Mr. Kennedy, Mr. Mansfield, Mr. Metcalf, Mr. Mondale, Mr. Packwood, Mr. Tunney, and Mr. Williams; Committee on Interior and Insular Affairs, 12644, 15803.
- S. 3414—To amend chapter 13 of title 38, United States Code, to make eligible for dependency and indemnity compensation widows of veterans who die of non-service-connected causes but who were at the time of death totally disabled as the result of one or more service-connected disabilities.
Mr. Inouye; Committee on Veterans' Affairs, 12644, 23369.
- S. 3415—To authorize the widows of certain former members of the Armed Forces of the United States to use the services and facilities of post exchanges and commissaries.
Mr. Inouye; Committee on Veterans' Affairs, 12644.
- S. 3416—For the relief of Liberato Devina.
Mr. Inouye; Committee on the Judiciary, 12644.
- S. 3417—To amend title 5 of the United States Code (relating to Government organization and employees) to assist Federal employees in meeting their tax obligations under city ordinances.
Mr. Eagleton, Mr. Symington, Mr. Hart, Mr. Javits, and Mr. Metzenbaum; Committee on Finance, 12644, 16614, 17258.—Referred to Committee on Post Office and Civil Service, 12870.
- S. 3418—To establish a Federal Privacy Board to oversee the gathering and disclosure of information concerning individuals, to provide management systems in Federal agencies, State, and local governments, and other organizations regarding such information, and for other purposes.
Mr. Ervin, Mr. Percy, and Mr. Muskie; Committee on Government Operations, 12644, 25718, 31552, 32716, 33914, 34027, 34554, 36691, 36824.—Reported with amendment (S. Rept. 93-1183), 32703.—Debated, 36882, 36883, 36885.—Amended and passed Senate, 36917.—Title amended, 36921.—Amended and passed House; title amended, 39200.—Senate concurs in House amendment with an amendment, 40398, 40410.—Senate concurs in House amendments to the Senate amendments to the House amendments, 40730.—House concurs in Senate amendment with amendments, 40879.—Examined and signed, 41130, 41990.—Presented to the President, 41132.—Approved [Public Law 93-579], December 31, 1974; omitted in Record.
- S. 3419—For the relief of Dr. Jesus Cabrera Yapo.
Mr. Mondale; Committee on the Judiciary, 12644.
- S. 3420—To amend the Emergency Petroleum Allocation Act of 1973 to authorize and require the President of the United States to allocate asphalt and asphalt derivatives, and for other purposes.
Mr. Domenici; Committee on Interior and Insular Affairs, 12644.
- S. 3421—Pertaining to the inheritance of enrolled members of the Confederated Tribes of the Umatilla Indian Reservation of Oregon.
Mr. Hatfield and Mr. Packwood; Committee on Interior and Insular Affairs, 12644.
- S. 3422—Pertaining to land consolidation and development on the Umatilla Indian Reservation.
Mr. Hatfield and Mr. Packwood; Committee on Interior and Insular Affairs, 12644.
- S. 3423—To provide relief for retired military personnel.
Mr. Tower and Mr. Goldwater; Committee on Armed Services, 12644.—Reported (S. Rept. 93-900), 17411.
- S. 3424—To amend the Internal Revenue Code of 1954 to permit the deduction of all expenses for medical care of a taxpayer and his spouse if either of them attained the age of 65, to provide a credit or refund of social security taxes withheld from the wages of certain individuals who have attained the age of 65 and a corresponding reduction in the tax on self-employment income of such individuals, to replace the retirement income credit with a deduction for retirement income, and to increase the number of additional personal exemptions allowable to retired taxpayers.
Mr. Percy; Committee on Finance, 12841.
- S. 3425—To amend the Wagner-Peyser Act to provide for a strengthened employment counseling and placement program for older workers, and for other purposes.
Mr. Percy; Committee on Labor and Public Welfare, 12841.
- S. 3426—To amend title VII of the Civil Rights Act of 1964 to provide for a program to prevent discrimination on account of age in employment, to amend the Age Discrimination in Employment Act of 1967 to provide for improved administration of that act, and for other purposes.
Mr. Percy; Committee on the Judiciary, 12841.
- S. 3427—To liberalize the retirement earnings limitation under the Social Security Act.
Mr. Percy; Committee on Finance, 12841, 18250, 19417.
- S. 3428—To provide for computation of benefits under title II of the Social Security Act based on the combined earnings of a husband and wife.
Mr. Percy; Committee on Finance, 12841, 18250.
- S. 3429—To amend title II of the Social Security Act to eliminate the special dependency requirement for entitlement to husband's or widower's benefits, to provide for the payment of benefits to divorced husbands and surviving divorced husbands, to provide for the payment of benefits to widower fathers with minor children, and to provide that benefits based on a man's wages and self-employment income will be computed in the manner prescribed for the computation of benefits based on a woman's wages and self-employment income.
Mr. Percy; Committee on Finance, 12841.
- S. 3430—To provide for a permanent Advisory Council on Social Security.
Mr. Percy; Committee on Finance, 12841.
- S. 3431—To amend the Consolidated Farm and Rural Development Act to assist young farmers to obtain real estate loans more easily under such act, and for other purposes.
Mr. Clark; Committee on Agriculture and Forestry, 12841, 25718, 29811, 32287.
- S. 3432—To extend the National Health Service Corps, and for other purposes.
Mr. Javits; Committee on Labor and Public Welfare, 12841.
- S. 3433—To further the purposes of the Wilderness Act by designating certain acquired lands for inclusion in the National Wilderness Preservation System, to provide for study of certain additional lands for such inclusion, and for other purposes.
Mr. Aiken, Mr. Jackson, Mr. Allen, Mr. Bellmon, Mr. Buckley, Mr. Clark, Mr. Curtis, Mr. Dole, Mr. Dominick, Mr. Eastland, Mr. Fulbright, Mr. Griffin, Mr. Helms, Mr. Huddleston, Mr. Humphrey, Mr. Mansfield, Mr. McClellan, Mr. McGovern, Mr. Hugh Scott, Mr. Sparkman, Mr. Talmadge, and Mr. Young; Committee on Agriculture and Forestry, 12841, 16614.—Reported (S. Rept. 93-803), 12841.—Debated, 17183.—Passed Senate, 17195.—Referred to Committee on Interior and Insular Affairs, 17245.—Passed House; amended (in lieu of H.R. 13455), 40853.—Senate concurs in House amendment, 41052.—Examined and signed, 41771, 41993.—Presented to the President, 41770.—Approved [Public Law 93-622], January 3, 1975; omitted in Record.
- S. 3434—To establish university coal research laboratories and to establish energy resource fellowships, and for other purposes.
Mr. Hugh Scott; Committee on Interior and Insular Affairs, 12841, 15343, 16614, 17259.
- S. 3435—To authorize a project for flood protection in and in the vicinity of Baytown, Texas.
Mr. Bentsen; Committee on Public Works, 12841.

- H.R. 16371—To further the conduct of research, development, and demonstrations in solar energy technologies, to establish a solar energy coordination and management project, to provide for scientific and technical training in solar energy, to establish a Solar Energy Research Institute, to provide for the development of suitable incentives to assure the rapid commercial utilization of solar energy, and for other purposes. Mr. McCormack, Mr. Teague, Mr. Mosher, Mr. Goldwater, Mr. Fuqua, Mr. Wylder, Mr. Symington, Mr. Esch, Mr. Harna, Mr. Conlan, Mr. Roe, Mr. Parris, Mr. Bergland, Mr. Cronin, Mr. Pickle, Mr. Martin of North Carolina, Mr. Brown of California, Mr. Ketchum, Mr. Milford, Mr. Thornton, and Mr. Gunter; Committee on Science and Astronautics, 27952.—Reported (H. Rept. 93-1348), 30712.—Debated, 31518, 31714.—Passed House, 31723.—Proceedings Vacated; laid on the table (S. 3234 passed in lieu), 31726.
- H.R. 16372—To further the conduct of research, development, and demonstrations in solar energy technologies, to establish a solar energy coordination and management project, to amend the National Science Foundation Act of 1950 and the National Aeronautics and Space Act of 1958, to provide for scientific and technical training in solar energy, to establish a Solar Energy Research Institute, to provide for the development of suitable incentives to assure the rapid commercial utilization of solar energy, and for other purposes. Mr. McCormack, Mr. Teague, Mr. Mosher, Mr. Goldwater, Mr. Price of Texas, Mr. Rarick, and Mr. Anderson of Illinois; Committee on Science and Astronautics, 27952.
- H.R. 16373—To amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies. Mr. Moorhead of Pennsylvania, Ms. Abzug, Mr. Alexander, Mr. Broomfield, Mr. Erlenborn, Mr. Fascell, Mr. Goldwater, Mr. Gude, Mr. Koch, Mr. Litton, Mr. McCloskey, Mr. Moss, Mr. Thone, and Mr. Wright; Committee on Government Operations, 27952.—Reported with amendment (H. Rept. 93-1416), 33547.—Made special order H. Res. 1419, 34495.—Debated, 36643, 36955.—Amended, and passed House, 36976.—Passed Senate, 37064.
- H.R. 16374—To provide financial relief to livestock producers by extending until December 31, 1975, the date for compliance with permits issued with respect to the national pollutant discharge elimination system. Mr. Railsback; Committee on Public Works, 27952.
- H.R. 16375—To amend the Emergency Daylight Saving Time Energy Conservation Act of 1973 to exempt from its provisions the period from the last Sunday in October 1974 through the last Sunday in February 1975. Mr. Roncallo of Wyoming; Committee on Interstate and Foreign Commerce, 27952.
- H.R. 16376—To amend the Internal Revenue Code of 1954 to increase the exemption for purposes of the Federal estate tax, to increase the estate tax marital deduction, and to provide an alternate method of valuing certain real property for estate tax purposes. Mr. Roncallo of Wyoming; Committee on Ways and Means, 27952.
- H.R. 16377—To authorize the Secretary of the Navy to transfer ownership of two naval vessels no longer needed by the Navy to the city of New York, N.Y. Mr. Roncallo of New York, Mr. Stratton, and Mr. Conte; Committee on Armed Services, 27952.
- H.R. 16378—To amend section 232 of the National Housing Act to provide insurance for loans to finance improvements to long-term care facilities required to correct deficiencies identified in State surveys and Federal certification procedures. Mr. Steele, Mr. Cohen, Mrs. Heckler of Massachusetts, Mr. Heinz, Mr. Mosher, Mr. Peyser, Mr. Veysey, and Mr. Young of Illinois; Committee on Banking and Currency, 27952.
- H.R. 16379—To amend the Older Americans Act of 1965 to provide strengthened programs relating to long-term care facilities, and for other purposes. Mr. Steele, Mr. Cohen, Mrs. Heckler of Massachusetts, Mr. Heinz, Mr. Mosher, Mr. Peyser, Mr. Veysey, and Mr. Young of Illinois; Committee on Education and Labor, 27952.
- H.R. 16380—To amend the Social Security Act to provide for the furnishing of rehabilitative services to inpatients of long-term care facilities. Mr. Steele, Mr. Cohen, Mrs. Heckler of Massachusetts, Mr. Heinz, Mr. Mosher, Mr. Peyser, Mr. Veysey, and Mr. Young of Illinois; Committee on Ways and Means, 27952.
- H.R. 16381—To amend title XVIII of the Social Security Act to provide for the establishment of a Nursing Home Affairs Advisory Council. Mr. Steele, Mr. Cohen, Mrs. Heckler of Massachusetts, Mr. Heinz, Mr. Mosher, Mr. Peyser, Mr. Veysey, and Mr. Young of Illinois; Committee on Ways and Means, 27952.
- H.R. 16382—To amend title XIX of the Social Security Act to impose certain requirements relating to the discharge or transfer of Medicaid patients from skilled nursing or intermediate care facilities, and for other purposes. Mr. Steele, Mr. Cohen, Mrs. Heckler of Massachusetts, Mr. Heinz, Mr. Mosher, Mr. Peyser, Mr. Veysey, and Mr. Young of Illinois; Committee on Ways and Means, 27952.
- H.R. 16383—To amend the Social Security Act so as to make permanent certain temporary provisions relating to inspections of long-term care institutions, to provide for the publication of certain information regarding such institutions, and requiring that such institutions provide certain training for their nonprofessional employees as a condition of participation in the Medicare and Medicaid programs. Mr. Steele, Mr. Cohen, Mrs. Heckler of Massachusetts, Mr. Heinz, Mr. Mosher, Mr. Peyser, Mr. Veysey, and Mr. Young of Illinois; Committee on Ways and Means, 27952.
- H.R. 16384—To repeal the Emergency Daylight Saving Time Energy Conservation Act of 1973. Mr. Thomson of Wisconsin; Committee on Interstate and Foreign Commerce, 27952.
- H.R. 16385—To authorize the Secretary of the Interior to convey all right, title, and interest of the United States in and to a tract of land located in the Fairbanks Recording District, State of Alaska, to the Fairbanks North Star Borough, and for other purposes. Mr. Young of Alaska; Committee on Interior and Insular Affairs, 27952.
- H.R. 16386—To amend title 38, United States Code, to strengthen the regulatory authority of the Postal Rate Commission with respect to the operation of the Postal Service, and for other purposes. Mr. Buchanan, Mr. Burgener, Mr. Carney of Ohio, Mr. Casey of Texas, Mr. Cleveland, Mrs. Collins of Illinois, Mr. Dingell, Mr. Duncan, Mr. du Pont, Mr. Esch, Mr. Evans of Colorado, Mr. Huber, Mr. Long of Maryland, Mr. Moakley, Mr. Steiger of Arizona, Mr. Stokes, and Mr. Thone; Committee on Post Office and Civil Service, 27953.
- H.R. 16387—To designate certain lands as wilderness, and for other purposes. Mr. Hosmer, Mr. Regula, Mr. Johnson of California, Mr. Cronin, Mr. Ruppe, Mr. Ketchum, Mr. Lujan, and Mr. Bauman; Committee on Interior and Insular Affairs, 27953.
- H.R. 16388—To provide for disclosure of information by executive departments to committees of Congress. Mr. Moakley; Committee on Armed Services, 27953.
- H.R. 16389—To establish a National Commission on Supplies and Shortages. Mr. Moakley; Committee on Banking and Currency, 27953.
- H.R. 16390—To amend title 44, U.S. Code, to redesignate the National Historical Publications Commission as the National Historical Publications and Records Commission, to increase the membership of such Commission, and to increase the authorization of appropriations for such Commission. Mr. Moakley; Committee on Government Operations, 27953.
- H.R. 16391—To create a congressional price ombudsman. Mr. Moakley; Committee on House Administration, 27953.
- H.R. 16392—To amend the Federal Food, Drug, and Cosmetic Act to require the labels on all foods to disclose each of their ingredients. Mr. Moakley; Committee on Interstate and Foreign Commerce, 27953.
- H.R. 16393—To amend the Fishermen's Protective Act of 1967 in order to strengthen the import restrictions which may be imposed to deter foreign countries from conducting fishing operations which adversely affect international fishery conservation programs. Mr. Moakley; Committee on Merchant Marine and Fisheries, 27953.
- H.R. 16394—To amend title 38, U.S. Code, to increase the maximum amount of the grant payable for specially adapted housing for disabled veterans. Mr. Moakley; Committee on Veterans' Affairs, 27953.
- H.R. 16395—To amend part B of title XI of the Social Security Act to provide a more effective administration of professional standards review of health care services, to expand the Professional Standards Review Organization activity to include review of services performed by or in federally operated health care institutions, and to protect confidentiality of medical records.

- PRITCHARD, JOEL** (*a Representative from Washington*)—Continued
 mining eligibility for assistance under (see bill H.R. 15646), 21309
 Members of Congress: require public inspection relative to information to foreign travel (see bill H.R. 15143), 16942
 National Center for the Prevention and Control of Rape: establish (see bill H.R. 13323), 5693
 National Marine Fisheries Service: authorize certain Federal agencies to detail personnel and loan equipment to (see bill H.R. 13560), 7013
 National Wilderness Preservation System: designate certain lands for inclusion (see bill H.R. 15926), 23398
 Nuclear powerplants: improve procedures for planning and environmental review of proposed (see bill H.R. 13705), 8014
 Pacific Coast Bike Trail: authorize a feasibility study (see bill H.R. 15297), 18574
 Pacific Northwest: Federal power transmission system (see bill H.R. 14168), 10696
 Salmon: ban high seas netting (see H. Con. Res. 515), 17587
 Social security: increase Federal participation in costs (see bill H.R. 15034), 16829
 —increase outside income allowance (see bill H.R. 13231), 5371
 Student loans: tax treatment of certain indebtedness cancellations (see bill H.R. 15748), 22077
 Surveillance activities: require court orders (see bill H.R. 16985), 33390
 Trappings of animals and birds: discourage use of painful devices (see bill H.R. 14197), 10697
 Veterans: tuition payments (see bill H.R. 14085), 10243
 Vice Presidential residence: designating official (see H.J. Res. 1016), 14765
 World Food and World Population Conferences: support U.N.-sponsored (see H. Con. Res. 614), 29731
- Remarks by, on**
 Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped: bill (H.R. 11143) authorizing appropriations, 4960
 Deepwater ports: bill (H.R. 10701) construct and operate certain, 18127
 —conference report, 40540
 Drugs: Turkey's cultivation of opium poppy, 4455
 Economic conditions, 4716
 Elementary and Secondary Education Act: bill (H.R. 69) amend, conference report, 25356
 Emergency Livestock Credit Act of 1974: bills (S. 3679; H.R. 15580) enact, 23324, 23325
 Energy Emergency Act of 1973: bill (S. 2589) enact, conference report, 4411
 Energy Transportation Security Act of 1974: bill (H.R. 8193) enact, 13782, 13783, 13792-13794
 Federal Election Campaign Act Amendments of 1974: bill (H.R. 16090) enact, 27215, 27236, 27237
 Hansen, Julia Butler: tribute, 5324
 Housing and Urban Development Act of 1974: bills (S. 3066; H.R. 15361) enact, 20307
 Library of Congress, 29747
 —proposed takeover of Madison Building, 36987
 Nuclear technology agreements: bills (S. 3698; H.R. 15582) congressional approval of international, 26152
 Rockefeller, Nelson A.: nomination, 41480
 Turkey: cultivation of opium poppy, 4455
 Wage and price controls: ending, 4716
 White House Conference on Libraries: proposed, 36987
- World food reserve: need, 10153
- Tables**
 Beef and grain composition: selected data, 23325
 Grain production, trade, and consumption: selected data, 23324
Votes of. See VOTES IN HOUSE.
- PRITCHETT, E. BLANCHE**
 Article, Effort To Assist Understanding, 32003
- PRIVACY**
 Brief, Bank Secrecy Act (excerpts), California Bankers Association, 9349
 Essay, Data Banks, Privacy and Society, Willis H. Ware, 9865
 Guidelines for the Protection of Privacy, United Presbyterian Church, 185th general assembly, 9383
 Memorandum, Amendments to Federal Privacy Act, 36890
 Press release, Mathias Urges Safeguarding Private Bank Records, 9524
 Supreme Court decisions, bank records, 9524
 Ten Commandments on Information Privacy, Council of Europe, Committee of Ministers, 9377
 Transcript, "Paper Prison," ABC-TV documentary, 14034
- Addresses**
 American Civil Liberties Union, Senator Mathias, 41251
 Boston College Law School, Senator Brooke, 13658
 Congressional Response to President's Message on Privacy, Senator Hart, 5829
 Financial Records, Representative Stark, 9354
 Individual Rights, Representative Barry M. Goldwater, Jr., 9350
 Invisible Threads, Defense of Privacy, Stuart E. Hertzberg, 36195
 Response to President Nixon's Speech on Privacy, Aryeh Neier, 9674
 Restoration of Personal Privacy and Individual Rights, Representative Barry M. Goldwater, Jr., 9700
 Safeguarding Personal Right, Vice President Ford, 15359
 Vice President Ford, before National Computer Conference, 14734
- Analyses**
 Freedom From Surveillance Act (S. 4060), 32838
 House and Senate Compromise Amendments to Federal Privacy Act, 40881
 Protection of Confidentiality of Tax Returns (S. 3982), 30724
 Section-by-section of S. 4252, 40744
- Articles and editorials**
 Administration Order Perils Privacy of Tax Returns, 10922
 Anger Builds Over Illegal Procedures (sundry), 20821, 20822
 Bank Data Access, 9525
 Bank Secrecy Act Upheld, 9526
 Book Shows Bugging News, But Not New, 1026
 Can a Doctor's Social Security Number Make Him Hostage to Big Brother? 25908
 Can There Ever Be Privacy? 22103
 Computer Snooping (series), 15170
 Computers and Privacy, 18659
 Confidentiality of Juvenile Court Proceedings, 9386
 Congress Can No Longer Evade the Warning, 22752
 Congress Expected To Vote Controls, 36112-36114
 Controlling Data Banks, 24289, 24777
 Crime and Privacy, 9525
 Criminal Records Bill, 11076
 Cumulative School Records (series), 9633, 9370, 9645
 Dreams Came Crashing Down With Equity Funding, 9375
- Electronic Eavesdropping, Wiretapping and Your Right to Privacy, 9378
 Excessive Secrecy Problems, 39224
 Fair Credit Reporting, Senator Proxmire, 4228
 Family Educational Rights and Privacy Act of 1974 (sundry), 36528-36535
 Farm Tax Snooping Scrapped (sundry), 9347, 9348, 9938, 9939
 Farmers Tax Returns (series), 9347, 9668, 9938, 9939, 11134
 FBI To Store Arrest Records of One Million, 10416
 First Amendment: Living Thought in the Computer Age, Senator Ervin, 18650
 Footprints Identify Methadone Patients, 9358
 Ford Says No Illegal Tappings, 28541
 Have You Ever Been Arrested? 9388
 Individual Victimized, 9355
 Information Revolution and Bill of Rights, 9359
 Injustice of Arrest Records, 20755
 Inspection of Farmers' Tax Return (sundry), 6466, 6467
 Invading Farmers Privacy (series), 9668
 Limitations on FBI Use of Data, 14474
 Little Brother Is Watching You, 2219
 Majority Favors Legislation on Credit Information, 25127
 Menace of Sensitivity Training, 11144
 Minnesota Government Data Tightly Reined, 19979
 Misuse of Tax Returns, 9374
 Multinational Data Banks Require Special Safeguards, 11101
 National Security Taps, 7742
 National Security Taps, Senator Gaylord Nelson, 7653
 Nixon Rediscovered, 2220
 People Protection, 23457
 Phone Company Sets Policy on Giving Data to Police, 9983
 Privacy: The Issue and the Agenda, Protecting Tax Returns (sundry), 30723
 Protection of Citizens' Privacy, 35759
 Right To Be Let Alone, 178
 Right to Privacy, 20766
 Runaway Threat, Representative Koch, 25622
 Safeguarding the Right of Privacy, 21136
 School Questionnaires, 14596
 Second Thoughts About School Records, 41396
 Self-Regulation by Computer Industry, 18660
 Sevenfold Growth Forecast for Remote Terminal, 16554
 Social Security Numbers, Representative Goldwater, 27976
 Student Records—Preventing Abuses (series), 9929, 9985, 10142, 10401
 Tax Returns, 7102
 Ten More Years? 1974 Report on Invasion of Privacy, 7438
 This Law Is An Abuse, 11948
 Wisconsin Transportation Department Mailing Lists (series), 10144
 Your Part May Be a Prison, 9356
- Bills and resolutions**
 Armed Forces: prohibit surveillance of civilians by (see bills S. 4232; H.R. 16000, 16125, 16312, 16722-16724, 16769, 17066, 17188)
 Arrests: prohibit unreasonable searches incident to (see bills S. 4169, 4170)
 Civilian political activity: define authority of Armed Forces relative to (see bill H.R. 12556)
 Communications: protect privacy of (see bill S. 3920)
 Constitutional rights: protect (see bills, H.R. 12557, 14163, 14323, 15524-15528, 15806, 16064, 16108, 16120)
 Criminal justice information: exchange of (see bills S. 2963, 2984, 4252; H.R. 12574, 12575)

Disclosure of information: require consent for (see bill H.R. 13460)

Electronic surveillance: require court orders for (see bills S. 3440, 4062; H.R. 14564, 16985, 17298, 17381, 17429, 17495, 17617)

Fair personal information practices: standards of (see bills S. 3633; H.R. 13774, 13863, 14036, 14087, 14575, 14730, 15254)

Federal agencies: regulate information practices (see bill H.R. 14493)

Federal Privacy Board: establish (see bill S. 3418*)

Federal records: prohibit misuse of (see bill H.R. 16373*)

Financial information: regulate disclosure of (see bill H.R. 13459)

Freedom of Information Act: amend (see bills S. 4172; H.R. 12471*)

Government agencies: access to information from (see bills S. 2543*; H.R. 14031-14035, 14570-14574, 14724-14728, 14855, 15255-15259)

Information: guidelines for classification of (see bills S. 3540; H.R. 15577, 15837)

Mailing lists: limit sale of (see bills S. 3116; H.R. 12558)

Medical information: establish Federal Medical Privacy Board to protect (see bill H.R. 17323)

Polygraphs: prohibit use of (see bill H.R. 17660)

Recording of conversations with a President: prohibit without prior consent of all parties (see bill H.R. 14524)

Records: apprise individuals regarding (see bill H.R. 12559)

Records maintained by Federal agencies: privacy of (see bills H.R. 14435, 16183)

Surveillance activities: regulate (see bills H.R. 13825, 15492)

Tax returns: restrict authority for inspection and disclosure (see bills S. 3935, 4116, 4191; H.R. 16482, 16527, 17029, 17057, 17285, 17464, 17465)

Letters

Criminal justice data banks, FBI Director Clarence M. Kelley, 21473

Criminal justice information, Attorney General William Saxbe, 2226

Educators' recommendations (sundry), 41381

FEDNET computer network (sundry), 15169

Financial record investigations, Internal Revenue Service Commissioner, Donald C. Alexander, 28683

Guaranteed right to individuals, Jack Betts, 8366

Inspection of income tax returns, Secretary of Treasury Simon, 34890

Recommendations of Republican Task Force on Privacy, Republican Research Committee, 30955

Right of privacy of income tax returns, Commissioner of Internal Revenue Service Donald C. Alexander, 2083

Use of social security numbers (excerpts), 9338

Questionnaires

Personality and attitude questions for school children (sundry), 14585, 14590

Selected private organizations and State/local governments on Right to Privacy Act, 42013

Remarks in House

Bill of Rights Procedures Act: enact (H.R. 16896), 32634

Book, Computer Threat to Society, 29755

Civil liberty: preserve, 9337-9394, 9669, 9674, 10389

Collection of information: legislation to regulate (H.R. 667, 9759), 4332

Committee on Government Operations (House): notice of hearings on (H.R. 12206), 2963

Congressional commitment on, 8477

Constitutional rights of individuals: notice of hearings, 6901

Consumer Product Safety Commission: recordkeeping requirement, 37354

Consumer Protection Agency: dissemination of information, 24238

Criminal Justice Information Control and Protection of Privacy Act of 1974: provisions of bill (H.R. 12575), 2105

Criminal Justice Information Systems Act of 1974: provisions of bill (H.R. 12574), 2105

Data banks: protect privacy, 36426

Farmers: rescind Executive Orders relative to, 5630

Farmers' tax returns: right of privacy in, 7609

—U.S.D.A. and IRS policies, 3503

Federal Bureau of Investigation: surveillance of black groups, 11451

Freedom From Military Surveillance Act of 1974: enact (H.R. 16000), 24150

Health data banks: privacy safeguards, 22352

Individuals: protection, 18211

Individuals right: reaffirming, 1541

Mail covers: prevent invasions of privacy by use of, 8297, 9369

Medical records: provisions of H.R. 17323 relative to confidentiality, 36024-36028

New York Times: records subpoenaed by Internal Revenue Service, 3295

Newsman's Right to Privacy Act: enact (H.R. 14981, 15242), 16184, 16181

President and Vice President: action by, to protect taxpayers, 7305

Presidents of the United States: prohibit recording of conversations with without prior knowledge and consent of participants, 12486

Privacy Act of 1974: need to enact, 35759

—support (H.R. 16373), 34779

Privacy of information: proposed amendment to bill (H.R. 11793) by Mr. Goldwater, 4963

Privacy Protection Commission: bills (S. 3418; H.R. 16373) establish, 39200, 40879

Professional Services Review Organization: invasions of privacy, 9372

Proposed legislation to protect individuals, 14973

Protect, 3295

Protecting individual right, 11254

Protection Study Commission: create, 42018

Respect for individual: proposed legislation, 9104, 9417, 9419

Right to legislation (H.R. 14031-14037) to protect and guarantee, 10121

—protect (H.R. 14163), 10566, 10646

—protect and extend, 2415

Right to Privacy Act: enact, 20351, 20626, 20627

—provisions of bill (H.R. 14163) to enact, 11445

Selected private organizations and State/local governments: survey, 42012

Special order on legislation relating to, 7594

Surveillance Practices and Procedures Act of 1974: enact, 19725

Wiretapping directive by French President relative to, 19725

Remarks in Senate

Armed Forces: surveillance (S. 4232), 39411

Arrest records: civil rights, 20754

Bank records: confidentiality, 28682

Bureau of Census: disclosure exceptions, 36907

Civil liberty: protect, 11076

Civilian employees of executive branch: protect invasions, 7551

Computers: misuse of social security numbers, 39033

—protect civil liberties, 5564

Court orders: require for interception of communications, 12867

Credit practices: reform, 4228

Criminal justice information: provisions of S. 4252 relative to protection, 40735

—protecting citizens' right, 2640

Criminal records: data banks, 14471

Criminal Systems Act (S. 2963): provisions of bill, 2214-2219

Data banks: prohibit sale of, 5549

Disclosure of records: protect constitutional rights, 28486

Education: insure protection from invasions of, 14578

—letters of recommendation, 41381

Educational benefits: confidentiality, 39858

Elections: disclosure of taxes paid by candidates, 9539

Electronic surveillance: court authorization (S. 4062), 32834

Federal Board: establish, 32848

Federal data banks: prohibit, 36720

Federal Privacy Board: establish, 12646

Federal safeguards: provide, 21136

FEDNET: computerized network by GSA, 15167

—GSA recommendations, 15192

First Amendment: rights of individual, 36507

Gathering of information: bill (S. 3418) to enact, 40730

Government data bank: rights, 19002

Government's investigative and intelligence activities: control, 26704

Hearings: notice of Joint Legislative, 18649

Income tax returns: inspection (S. 4116), 34890

Internal Revenue Service: policies, 28580

Law enforcement agencies: collection and dissemination of information, 2210

Military surveillance: civilian affairs, 22393

—regulate, 35322

Misuse of Social Security Number, 38037

New Mexico: efforts to preserve, 7436

Polygraph testing: condition of employment, 38857

Privacy Protection Commission: establish (S. 3418; H.R. 16373), 36885, 37064

Protection Commission (S. 3418): establish, 40398, 40411

School records: abuses, 17718

—report, 22557

Searches and seizures: unreasonable, 36451

Senate committee hearings: individual rights of privacy, 19449

Social security number: disclosure, 36904

—universal identifier, 31812

Special Action Office for Drug Abuse Prevention: data banks, 37150

Supreme Court decisions, 9212

Tax returns: insure against unauthorized access, 8115

—prevent disclosure, 29470

—prevent misuse by Federal Agencies, 37449

—restrict inspections, 30722

Westin, Alan F.: tribute, 40620

Wiretapping: abuses, 25086

—response to President Ford's joint session statement on, 28540

Reports

Costs and Benefits of Electronic Surveillance, Herman Schwartz, 23275, 23276, 23878

Electronic Surveillance, Herman Schwartz (series), 21961, 22473-22475, 22725, 22726, 23014-23016

Nationwide Criminal Data Exchange System (sundry), General Accounting Office, 5804-5809

Policy Issues on Data Protection, Organization for Economic Cooperation and Development, Paris meeting, 24502

- PRIVACY—Continued**
 Privacy Protection Commission—Committee Oversight, 36912
 Protecting Privacy and the Rights of Federal Employees, Senate Subcommittee on Constitutional Rights, 5751
 Recommendations, Republican Task Force on Privacy, 30955
 School Records, Warren Cheston, 22557
Resolutions by organizations
 Council of Europe, Committee of Ministers, 9377
 Criminal justice data banks, SEARCH Group, 40735
 Misuse of Social Security Number, Council of the Association for Computing Machinery, 38037
Statements
 Abuses of Government, Senator Nelson, 12352
 Bureaucracy a Threat to Privacy, Howard Phillips, 9380
 Common Sense, New Mexico citizens' groups, 7437
 Computerized Bureaucracy, Senator Ervin, 23450
 Computerized Criminal Justice Information, Senator Ervin, 5801-5809
 Criminal Justice Information System, Arnold R. Rosenfeld, 9366
 Drafting of Criminal Files, 35764
 Economic Census Questionnaires, Representative Roncallo, 10389
 Fair Credit Reporting Act, Sheldon Feldman, 9662-9665
 Family Educational Rights and Privacy Act, Senators Buckley and Pell, 39862
 Government Wiretapping, Senator Nelson, 19442
 Individual's Right, George Mitchell, 19061
 Military Surveillance, Senator Ervin, 11603
 Political Surveillance, Delegate Walter E. Fauntroy, (1973), 9383
 President Ford, 34838
 Privacy Congress, Representative Goldwater, 20625
 Recordkeeping Controls, Donna Schiller, 22393
 Republicans Prepare Agenda on Privacy Rights, 35764
 School Records, Senator Goldwater, 14589
 Who Will Program the Programmers? Senator Goldwater, 5564, 9381
Summaries
 Campaign to Educate on Privacy, New Mexico Civil Liberties Union, 7437
 Right to Privacy Act (H.R. 14163), 10646
 Security in Computer System, National Bureau of Standards, 9358
Texts of
 Amendments to H.R. 16373, 36590
 H.R. 14163, Right to Privacy Act, 11445
 S. 3418, Privacy Protection Commission Act, 36917, 39200
 S. 4252 relative to criminal justice information, 40736
PRIVACY ACT OF 1974
Remarks in House
 Enact (H.R. 16373), 36642, 36666, 36955
Remarks in Senate
 Privacy Protection Commission (S. 3418): establish, 40398, 40411, S. 21821
Reports
 Republican Task Force on Privacy, 36972
PRIVACY PROTECTION COMMISSION
Remarks in Senate
 Budget estimates on requests: submission, 36911
 Establish (S. 3415), 36885, 37066, 40398, 40411
PRIVATE ENTERPRISE *See also* FREE ENTERPRISE
 Article, Government Versus Private Operation, 11003
- PRIVATE PRACTICE** (publication)
Articles
 Can a Doctor's Social Security Number Make Him Hostage to Big Brother? 25908
 FDA and the Physician, 2854
 Prescription: PSRO, Representative Rarick, 7543
 PSRO's Threat to Private Practice of Medicine, 674
PRO VERITATE (magazine)
 Article, We Are Irresponsible Citizens, 2098
PROBATION OFFICERS *See* COURTS OF THE UNITED STATES
PROCTOR, PAM
 Article, Novel Hospital Concept, 19600
PROCUREMENT *See* CONTRACTS
PRODUCT SAFETY LETTER
 Summary, Consumer Product Safety Commission Regulations, 1610
PRODUCTIVITY *See* GROSS NATIONAL PRODUCT; INDUSTRY
PRODUCTIVITY CENTER
 Text of S. 4130 relative to establishing, 35307-35309
PROFAIZER, BRENT
 Article, Low-Cost LV Homes Fall Apart, 24515
PROFESSIONAL SOCIAL WORK MONTH
 Designate (see H.J. Res. 908)
PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS *See also* HEALTH; SOCIAL SECURITY ACT
 Bill, National health insurance: modify operation relative to, (see bill S. 3928)
Remarks in Senate
 Amendments (S. 3928), 29077
 Dental profession: representation, 35298
PROFESSIONAL WOMEN'S CAUCUS
 Letter, abortion, Sue Wimmershoff-Caplan, 6505
PROGRESSIVE (magazine)
Articles and editorials
 Automated Battlefield, 28841
 Dollars and Detente, 25787
 Health Care for All, (series), 9936, 9937
 How To Steal a Library, 36987
 Illegal Immigrants—View From the Barrio, 1525
 Justice Without Politics, 8133
 New Cuba, New Cubans, 42049
 Nixon's Case Against Nixon, Representative Leggett, 13614
 No Peace, No Honor, 4206
 Nuclear Power: Uninsurable, 37158
 Oil Data Shortage, 1825, 4376
 Oil From Coal, 16304
 Pentagon Bleeds Third World, 28848
 Running Out of Everything, 34798-34892, 34825-34829
 6-year Presidency? 17206
 Taking the Lid Off Natural Gas, 4381-4383
PROGRESSIVE FARMER (magazine)
Articles and editorials
 Boll Weevil Eradication Is a Must, 12477
 Land Use Dictatorship—It's Coming! 2002
 No—Not More Washington Bureaucrats, 38861
 Rising Postal Rates, 17110
 Senator Bentsen and Agricultural Research, 24426
PROGRESSIVE GROCER (publication)
 Article, Unnecessary Protection, 30436
PROJECT DA VINCI BALLON FLIGHT
See SCIENCE
PROJECT FRIEND, INC. *See* MARSHFIELD, MASS.
PROJECT INDEPENDENCE
 Remarks in House, Implications, 36671
- PROJECT ON THE STATUS AND EDUCATION OF WOMEN**
 Article, What Constitutes Equality for Women in Sports? (excerpts) (series), 17376, 17605
PROPANE *See* OIL AND GAS
PROPORTIONAL REPRESENTATION
See DEMOCRACY; FOREIGN GOVERNMENTS
PROSE, NORMAN
 Letter, Ingenuity in energy crisis, 186
PROSTITUTION
 Opinion, discrimination by D.C. Police Department, Judge David L. Norman, 8333
PROTESTANT CHURCH
 Remarks in Senate, overseas relief: program, 5900
PROUTY, DICK
 Article, Report Hits Coal-Deposit Policies, 15735
PROUTY, WINSTON L. (late a Senator from Vermont)
 Statement, Federal Educational Role, U.S. Senate, by, 14442
PROVIDENCE, R.I.
 Letter, support for House Committee on Internal Security, Mayor Joseph A. Doorley, 32813
PROVIDENCE (R.I.) BULLETIN
Articles
 Disaster for Poor Nations, 5917
 Ex-IRS Employee Made Good, 9895
 Hope for Consumers, 23574, 23995
 Hope for CPA, 25873
 Information Freedom, 36327, 36631
 Maritime Subsidies, 28507
PROVIDENCE (R.I.) JOURNAL
Articles
 A-Plants Closing Economic Gap? 27355
 Declaration of Independence from Federal Loan Crutch, 21466
 Deposit Bill Survives Attacks, 4803
 Elmwood Sensors: Growth Story, 5219
 Legal Services Corporation, 24048
 Pushed around in Miami Beach, 34325
 Scholars Laud Judge, 5226
PROVIDENCE (Utah) JOURNAL
 Article, Safer Nerve Gas? 3889
PROVIDENCE (R.I.) JOURNAL-BULLETIN
Articles
 J. Carter Brown Does It Again, 37487
 Remember POW/MIA, 30288
PROVO (Utah) HERALD
 Article, Hydrogen Powered Auto Unveiled, 1113
PROXMIRE, WILLIAM (a Senator from Wisconsin)
 Advertisement, Garbage Not a Smelly Word; Mobil Oil Corp., in the Washington Post, 26654
 Analysis, Fairness Doctrine, H. Geller, 40011
 Cloture motion, 961, 1084, 1244, 1382, 1846, 2187, 2338, 4944, 5492, 9272, 9780, 20807, 21195, 28660, 29162
 Court decision, National Broadcasting Co. v. Federal Communications Commission (fairness doctrine), 33821-33837
 Court documents, *Brandywine-Main Line Radio v. F.C.C.*, U.S. Court of Appeals (sundry), 26680, 26697, 26704
 Designated Acting President pro tempore, 35662, 6347, 21373, 27619, 36680
 Essay, Americanism, R. Ringelstetter, 17308
 Financial statement, tax returns, and honorariums, 11036-11039
 Poll of opinion, FCC "fairness doctrine," sundry newspapermen, etc., 23184
 Questions and answers, abuses in Military Airlift Command, DOD, 260
 Reservation and amendments, Genocide Treaty, 1305
 Results of opinion poll, news media on fairness doctrine, 22389

**TITLES OF
UNITED STATES CODE
AND
UNITED STATES CODE ANNOTATED**

- | | |
|---|---|
| 1. General Provisions. | 29. Labor. |
| 2. The Congress. | 30. Mineral Lands and Mining. |
| 3. The President. | 31. Money and Finance. |
| 4. Flag and Seal, Seat of Government, and the States. | 32. National Guard. |
| 5. Government Organization and Employees. | 33. Navigation and Navigable Waters. |
| 6. Surety Bonds (<i>See Title 31, Money and Finance</i>). | 34. Navy (<i>See Title 10, Armed Forces</i>). |
| 7. Agriculture. | 35. Patents. |
| 8. Aliens and Nationality. | 36. Patriotic Societies and Observances. |
| 9. Arbitration. | 37. Pay and Allowances of the Uniformed Services. |
| 10. Armed Forces. | 38. Veterans' Benefits. |
| 11. Bankruptcy. | 39. Postal Service. |
| 12. Banks and Banking. | 40. Public Buildings, Property, and Works. |
| 13. Census. | 41. Public Contracts. |
| 14. Coast Guard. | 42. The Public Health and Welfare. |
| 15. Commerce and Trade. | 43. Public Lands. |
| 16. Conservation. | 44. Public Printing and Documents. |
| 17. Copyrights. | 45. Railroads. |
| 18. Crimes and Criminal Procedure. | 46. Shipping. |
| 19. Customs Duties. | 47. Telegraphs, Telephones, and Radiotelegraphs. |
| 20. Education. | 48. Territories and Insular Possessions. |
| 21. Food and Drugs. | 49. Transportation. |
| 22. Foreign Relations and Intercourse. | 50. War and National Defense. |
| 23. Highways. | |
| 24. Hospitals and Asylums. | |
| 25. Indians. | |
| 26. Internal Revenue Code. | |
| 27. Intoxicating Liquors. | |
| 28. Judiciary and Judicial Procedure. | |

Privacy Act
§ 552a

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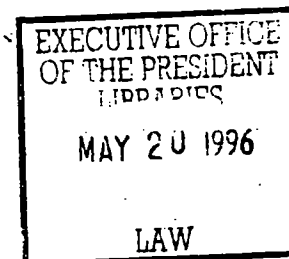
TITLE 5

Government Organization and Employees

§§ 552a to 701

(1996)

Comprising All Laws of a General
and Permanent Nature
Under Arrangement of the Official Code of
the Laws of the United States
with
Annotations from Federal and State Courts



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- Sec.
 576. Enforcement of arbitration agreements.
 577. Arbitrators.
 578. Authority of the arbitrator.
 579. Arbitration proceedings.
 580. Arbitration awards.
 581. Judicial review.¹
 582. Compilation of information.
 583. Support services.

SUBCHAPTER V—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

591. Purpose.
 592. Definitions.
 593. Administrative Conference of the United States.
 594. Powers and duties of the Conference.
 595. Organization of the Conference.
 596. Authorization of appropriations.

¹ So in original. Does not conform to section catchline.

See Anti-Drag Act of 1986 § 10256+3207-40f
See Freedom of Information Reform Act of 1986 § 1802(b)
redesignating 552(e) as 552(f) but not making any technical amendments to other parts of code
- so really refers to § 552(f).

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

Sections 552a to 559 appear in this Volume

§ 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 records under the control of any agency from which information 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;

(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;

(8) the term "matching program"—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel¹

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel; or

(vii) matches performed pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals² entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(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;

(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 and Records Administration 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 Archivist of the United States or the designee of the Archivist 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;

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

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

(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 records.**—Each agency that maintains a system of records shall—

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

(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 (11) of this subsection, publish in the Federal Register upon establishment or revision 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 of 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;

(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; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(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; 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 biennially 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 September 27, 1975.

(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 (e)(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.

(j) **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, to exempt any system of records within the agency from any part of this section except subsections (b), (e)(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 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,

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, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(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;

(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, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) **Archival records.**—Each agency record which is accepted by the Archivist of the United States 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 Archivist of the United States 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, 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)(1) **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.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 shall not be considered a contractor for the purposes of this section.

(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) **Matching agreements.**—(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) **Verification and opportunity to contest findings.**—(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely

affected or significantly threatened during any notice period required by such paragraph.

(q) **Sanctions.**—(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) **Report on new systems and matching programs.**—Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) **Biennial report.**—The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) **Effect of other laws.**—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) **Data Integrity Boards.**—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.³

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) **Office of Management and Budget responsibilities.**—The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(Added Pub.L. 93-579, § 3, Dec. 31, 1974, 88 Stat. 1897, and amended Pub.L. 94-183, § 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub.L. 97-365, § 2, Oct. 25, 1982, 96 Stat. 1749; Pub.L. 97-375, Title II, § 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub.L. 97-452, § 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub.L. 98-477, § 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub.L. 98-497, Title I, § 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub.L. 100-503, §§ 2 to 6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507 to 2514; Pub.L. 101-508, Title VII, § 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334; Pub.L. 103-66, Title XIII, § 13581(c), Aug. 10, 1993, 107 Stat. 611.)

¹ So in original. Probably should be "personnel."

² So in original. Probably should be "and individuals."

³ So in original. Probably should be "cost-effective."

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1974 Acts. Senate Report No. 93-1183; see 1974 U.S. Code Cong. and Adm. News, p. 6916.

1975 Acts. Senate Report No. 94-540; see 1975 U.S. Code Cong. and Adm. News, p. 2141.

1982 Acts. Senate Report Nos. 97-378 and 97-287; see 1982 U.S. Code Cong. and Adm. News, p. 3377.

House Report No. 97-804, see 1982 U.S. Code Cong. and Adm. News, p. 3435.

1983 Acts. Detailed Explanation prepared by the Office of the Law Revision Counsel, see 1982 U.S. Code Cong. and Adm. News, p. 4101.

1984 Acts. House Report No. 98-726(Parts I and II), see 1984 U.S. Code Cong. and Adm. News, p. 3741.

Senate Report No. 98-373 and House Conference Report No. 98-1124, see 1984 U.S. Code Cong. and Adm. News, p. 3865.

1988 Acts. House Report No. 100-802, see 1988 U.S. Code Cong. and Adm. News, p. 3107.

1990 Acts. House Report No. 101-881, House Conference Report No. 101-964, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 2017.

1993 Acts. House Report No. 103-111 and House Conference Report No. 103-213, see 1993 U.S. Code Cong. and Adm. News, p. 378.

References in Text

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub.L. 99-570.

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8)(B)(iv), (viii), is classified to section 6103 of Title 26, Internal Revenue Code.

Sections 464, 1137, and 1144 of the Social Security Act, referred to in subsec. (a)(8)(B)(iv), (viii), are classified to sections 664, 1320b-7, and 1320b-14, respectively, of Title 42, The Public Health and Welfare.

For effective date of this section, referred to in subsecs. (k)(2), (5), (7), (l)(2),

(3), and (m), see Effective Date of 1974 Acts note under this section.

Section 6 of the Privacy Act of 1974, referred to in subsec. (s)(1), is section 6 of Pub.L. 93-579, which was set out as a note under this section and was repealed by section 6(c) of Pub.L. 100-503.

For classification of the Privacy Act of 1974, referred to in subsec. (s)(4), see Short Title of 1974 Acts note under this section.

The date of enactment of this subsection, referred to in subsec. (u)(6), is the date of enactment of Pub.L. 100-503, which enacted subsec. (u) of this section, and which was approved Oct. 18, 1988.

Amendments

1993 Amendments. Subsec. (a)(8)(B)(vii). Pub.L. 103-66, § 13581(c), added cl. (vii).

1990 Amendments. Subsec. (p)(1). Pub.L. 101-508 substituted "In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

"(A)(i) the agency has independently verified the information; or

"(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

"(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

"(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

"(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

"(C)(i) the expiration of any time period established for the program by statute

Warrantless physical searches for foreign intelligence purposes: Executive Order 12333 and the Fourth Amendment. William F. Brown & Americo R. Cinquegrana, 35 Catholic U.L.Rev. 97 (1985).

WESTLAW ELECTRONIC RESEARCH

Administrative law and procedure cases: 15ak[add key number].
Records cases: 326k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

- I. GENERALLY 1-60
- II. DEFINITIONS 61-110
- III. CONDITIONS OF DISCLOSURE 111-160
- IV. AGENCY REQUIREMENTS 161-200
- V. CIVIL REMEDIES 201-260
- VI. EXEMPTIONS 261-END

For Detailed Alphabetical Note Index, see the Various Subdivisions.

I. GENERALLY

Subdivision Index

- Access to records
 - Generally 16
 - Amendment of records generally 19
 - Exhaustion of administrative remedies 21
 - Failure to respond 24
 - Individual's information 17
 - Information relating to administrative remedies 20
 - Litigation documents 23
 - Name of requestor 18
 - Statement of disagreement 22
- Accounting of certain disclosures
 - Generally 14
 - Individual named in record 15
- Administrative Procedure Act, construction with other laws 4
- Amendment of records generally, access to records 19
- Balancing of interests 13
- Central Intelligence Information Act, construction with other laws 5
- Civil Service Reform Act, construction with other laws 6
- Construction with other laws
 - Generally 2
 - Administrative Procedure Act 4
 - Central Intelligence Information Act 5
 - Civil Service Reform Act 6
 - Federal question 3
 - Federal Tort Claims Act 7
 - Freedom of Information Act 8
 - Internal Revenue Code 9

- Construction with other laws—Cont'd
 - Missing Persons Act 10
 - Veterans' Judicial Review Act 11
- Criminal penalties 29
- Disclosure of social security number
 - Required by federal statute 33
 - To agency maintaining system of records 34
- Effect of other laws 30
- Exhaustion of administrative remedies, access to records 21
- Failure to respond, access to records 24
- Federal question, construction with other laws 3
- Federal Tort Claims Act, construction with other laws 7
- Freedom of Information Act, construction with other laws 8
- Guardians 28
- Individual named in record, accounting of certain disclosures 15
- Individual's information, access to records 17
- Information relating to administrative remedies, access to records 20
- Internal Revenue Code, construction with other laws 9
- Knowledge of right, social security number disclosure 32
- Litigation documents, access to records 23
- Missing Persons Act, construction with other laws 10
- Name of requestor, access to records 18
- Notice, social security number disclosure 36

- Probate rules, social security number disclosure 35
- Procedures for disclosure, rules and regulations 26
- Procedures for review, rules and regulations 27
- Purpose 1
- Retroactive effect 12
- Review procedures, rules and regulations 27
- Rules and regulations
 - Generally 25
 - Procedures for disclosure 26
 - Procedures for review 27
- Scope of request 37
- Social security number disclosure
 - Generally 31
 - Disclosure required by federal statute 33
 - Disclosure to agency maintaining system of records 34
 - Knowledge of right 32
 - Notice 36
 - Probate rules 35
- Statement of disagreement, access to records 22
- Veterans' Judicial Review Act, construction with other laws 11

1. Purpose

In enacting this section, Congress was concerned predominantly with the increasing use of computers and sophisticated information systems and the potential abuse of such technology. *Thomas v. U.S. Dept. of Energy*, C.A.10 (N.M.) 1983, 719 F.2d 342.

Purpose of this section is to protect individual against invasion of personal privacy. *Johnson v. Department of Treasury*, I.R.S., C.A.5 (Tex.) 1983, 700 F.2d 971.

Main purpose of this section is to forbid disclosure unless such disclosure is required by the Freedom of Information Act. *Lovell v. Alderete*, C.A.5 (Ga.) 1980, 630 F.2d 428.

Purpose of Privacy Act, which governs responsibility of federal agencies and the disclosure of, access to, and content of their records concerning individuals, is to give individuals greater control over the gathering, dissemination, and inaccuracy of agency information about themselves. *Miller v. U.S.*, E.D.N.Y.1986, 630 F.Supp. 347.

The Privacy Act of 1974 [5 U.S.C.A. § 552a] serves to safeguard public inter-

est in informational privacy by delineating duties and responsibilities of federal agencies that collect, store and disseminate personal information about individuals. *Ely v. Department of Justice*, D.C.Ill. 1985, 610 F.Supp. 942, affirmed 792 F.2d 142.

The Privacy Act protects citizens against improper disclosure of information about them that may be held by government agencies and was not intended to be used to shield individuals from compliance with disclosure requirements mandated by law. *U.S. v. Carter Family Trust*, D.C.Ind.1985, 602 F.Supp. 82.

Main purpose of this section is to forbid disclosure unless it is required by section 552 of this title. *DePlanche v. Califano*, D.C.Mich.1982, 549 F.Supp. 685.

This section serves to safeguard the public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store and disseminate personal information about individuals. *Doe v. U.S. Civil Service Commission*, D.C.N.Y.1980, 483 F.Supp. 539.

2. Construction with other laws—Generally

Congress intended that this section provide a more extensive judicial review over agency action that that permitted under section 701 et seq. of this title, and there is no support for suggestion that the type of review must vary depending on the reason offered by agency for denying individual's request. *Zeller v. U.S.*, D.C.N.Y.1979, 467 F.Supp. 487.

3. — Federal question

Section 1331 of Title 28 is not remedial provision and cannot be employed to supplement this section, but, rather, plaintiffs were limited to express remedies provided by this section, not including injunction, and similarly, section 1361 of Title 28 did not authorize prohibitory or preventive order. *Parks v. U.S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677.

4. — Administrative Procedure Act

Former government employee's claims under Administrative Procedure Act (APA) alleging that government agencies failed to follow their own regulations and provide her with hearing or other opportunity to rebut allegations against her in various government reports would be dis-

missed in light of other statutory schemes and remedies through which employee could seek relief; employee's APA claim was, in part, simply a restatement of her Privacy Act claims and, to extent that it was not, it was claim relating to personnel action, for which Congress had provided Civil Service Reform Act. *Mittleman v. U.S. Treasury*, D.D.C.1991, 773 F.Supp. 442.

5. — Central Intelligence Information Act

Enactment of Central Intelligence Information Act, Pub.L. 98-477, Oct. 15, 1984, 98 Stat. 2209, which amended this section by providing that no agency should rely on any exemption in this section to withhold from an individual any record which was otherwise accessible to such individual under provisions of Freedom of Information Act, section 552 of this title, rendered moot issue of whether certain exemption of this section was a withholding statute within the third exemption of section 552(b)(3) of this title. *U.S. Dept. of Justice v. Provenzano*, U.S.N.J.1984, 105 S.Ct. 413, 469 U.S. 14, 83 L.Ed.2d 242, on remand 755 F.2d 922, on remand 762 F.2d 611.

6. — Civil Service Reform Act

Privacy Act does not vest district court with jurisdiction to review personnel decisions where Civil Service Reform Act precludes such review. *Henderson v. Social Sec. Admin.*, C.A.10 (Kan.) 1990, 908 F.2d 559.

Although the Privacy Act permits an individual to correct an agency's inaccurate or incomplete record it cannot be construed so as to undermine the Civil Service Reform Act (CSRA); thus, it is neither a vehicle for securing judicial review of federal personnel decisions, nor is it a springboard for launching a collateral attack on those decisions. *Kleiman v. U.S. Dept. of Energy*, D.D.C.1990, 742 F.Supp. 697, affirmed 956 F.2d 335, 294 U.S.App.D.C. 49, rehearing denied.

7. — Federal Tort Claims Act

Federal Privacy Act does not limit remedial rights of persons to pursue whatever remedies they may have under the Federal Tort Claims Act for violations of their interest in personal privacy. *O'Donnell v. U.S.*, C.A.3 (Pa.) 1989, 891 F.2d 1079.

8. — Freedom of Information Act

This section and Freedom of Information Act, section 552 of this title, are reconcilable by reading the special remedy in this section as serving to vindicate privacy interests in a special manner while leaving standing the preexisting remedy under Freedom of Information Act, section 552 of this title, providing access to information for its own sake. *Porter v. U.S. Dept. of Justice*, C.A.3 (Pa.) 1983, 717 F.2d 787.

Individual may utilize this section or Freedom of Information Act, section 552 of this title, or both to seek access to information about himself in agency records, and is entitled to cumulative total of access rights under the two sections. *Clarkson v. I.R.S.*, C.A.11 (Ga.) 1982, 678 F.2d 1368.

While the Privacy Act was designed to provide individual with more control over gathering, dissemination, and accuracy of agency information about themselves, the Freedom of Information Act was intended to increase public's access to governmental information. *Greentree v. U. S. Customs Service*, C.A.D.C.1982, 674 F.2d 74, 218 U.S.App.D.C. 231.

Material exempted from disclosure under provisions of this section were matters "specifically exempted from disclosure by statute," for purposes of Freedom of Information Act, section 552, of this title. *Painter v. Federal Bureau of Investigation*, C.A.5 (Ga.) 1980, 615 F.2d 689.

If individual is entitled to document under both Freedom of Information Act and Privacy Act, agency must prove that document is exempt from release under both statutes in order to withhold document. *Savada v. U.S. Dept. of Defense*, D.D.C.1991, 755 F.Supp. 6.

Any record exempt from disclosure under this section's exemption for system of records maintained by law enforcement agency is exempt from disclosure under Freedom of Information Act, section 552 of this title. *Stimac v. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*, D.C.Ill.1984, 586 F.Supp. 34.

If material is exempt from disclosure because disclosure would be clearly unwarranted invasion of privacy under exemption section 552 of this title, its release is also prohibited under consent requirement of this section. *DePlanche*

v. Califano, D.C.Mich.1982, 549 F.Supp. 685.

This section does not affect the balancing analysis used in determining the applicability of the exemption under section 552 of this title for personnel and medical files; if the tilt in favor of disclosure is tipped contrariwise by the interests of personal privacy, the shift in the scales occurs independently of, and without any impact from this section; however, information exempted from the mandatory disclosure provisions of section 552 under subsec. (b)(6) of such section is protected from disclosure by this section, unless that information is disclosable under rules implementing this section. *Florida Medical Ass'n, Inc. v. Department of Health, Ed. & Welfare*, D.C.Fla.1979, 479 F.Supp. 1291.

9. — Internal Revenue Code

The 1976 Tax Reform Act provision dealing comprehensively with subject of disclosure of tax return information by Internal Revenue Service was apparently intended to override an inconsistent provision of prior statutes, including Privacy Act, and such Internal Revenue Code provision is exclusive not only as regards Freedom of Information Act but also as regards Privacy Act. *Cheek v. I.R.S.*, C.A.7 (Ill.) 1983, 703 F.2d 271.

Internal Revenue Code supersedes causes of action brought under Privacy Act if lawsuit relates directly or indirectly to determination of existence or possible existence of individual's federal tax liability. *Mallas v. Kolak*, M.D.N.C.1989, 721 F.Supp. 748, vacated in part on other grounds 993 F.2d 1111.

Information sought by taxpayers from Internal Revenue Service, consisting of documents identifying them as illegal tax protesters and copies of 1040 forms Secretary allegedly filed in their names as justification for issuing notices of deficiency, clearly related to determination by IRS of existence or possible existence of liability, or amount thereof, of taxpayers for tax, penalties, fines, forfeitures, or other offenses or enforcement under Internal Revenue Code and, therefore, district court could not exercise jurisdiction over privacy Act claim. *O'Connor v. U.S.*, D.Nev.1987, 669 F.Supp. 317, affirmed 935 F.2d 275, certiorari denied 112 S.Ct. 1196, 502 U.S. 1104, 117 L.Ed.2d 436, rehearing denied 112 S.Ct. 1709, 503 U.S. 999, 118 L.Ed.2d 416.

Privacy Act did not provide jurisdiction over action by individual seeking order compelling Internal Revenue Service to expunge all references to him as a "tax protester" from its records due to specific statutory exemption for IRS. *Dyrda v. C.I.R.*, D.Neb.1985, 633 F.Supp. 2.

Privacy Act is inapplicable in Internal Revenue Service summons enforcement proceedings. *Uhrig v. U.S.*, D.C.Md. 1984, 592 F.Supp. 349.

10. — Missing Persons Act

Dismissal of action brought by wife of Air Force Officer missing in action in Vietnam challenging constitutionality of status review proceeding under the Missing Persons Act, section 551 et seq. of Title 37, was without prejudice to plaintiff's right to pursue her claims under the Freedom of Information Act, section 552 of this title, and this section, since rights under those statutes were independent of the status review process and could survive its outcome. *Darr v. Carter*, C.A.8 (Ark.) 1981, 640 F.2d 163.

11. — Veterans' Judicial Review Act

Because Privacy Act section providing exception to nondisclosure of agency records when disclosures are made pursuant to order of court of competent jurisdiction is more protective of confidentiality than is veterans' statute providing exception to nondisclosure when required by process of United States court to be produced in any pending proceeding, "court order" requirement of Privacy Act displaces "process" requirement of veterans' statute. *In re A Motion For a Standing Order*, Vet.App.1990, 1 Vet.App. 555.

12. Retroactive effect

Even though provisions of this section establishing record-keeping standards, amendment procedures and civil remedies did not become effective until after the Civil Service Commission conducted its investigation of plaintiff and disseminated allegedly inaccurate report to agency that had ultimate power to employ plaintiff and even though the derogatory allegations were recorded in Commission reports before the effective date of the standards, plaintiff's claim was cognizable where plaintiff sought de novo review of the Commission denial of her subsequent request to amend the report and where plaintiff contended that the Commission continued to violate the record-keeping standards after the standards

scheme involving use of SSNs. State ex rel. Beacon Journal Publishing Co. v. Akron, Ohio 1994, 640 N.E.2d 164, 70 Ohio St.3d 605, reconsideration denied 642 N.E.2d 388, 71 Ohio St.3d 1424.

Social security numbers of city employees, obtained by city in its capacity as employer, are not "public records or information the disclosure of which is prohibited by federal law or regulations * * *" under statute protecting information submitted in confidence; neither the federal Privacy Act nor the Social Security Act prohibited disclosure. American Federation of State, County, and Mun. Employees, Council 75 v. City of Albany, 1986, 725 P.2d 381, 81 Or.App. 231.

32. — Knowledge of right

Assuming this section could support a private right of action for retrospective relief against defendants in their capacities as employees of the justice of the peace court for requiring plaintiff's social security number on a voucher for refund of a motor vehicle fine, and assuming that plaintiff's refusal to disclose his social security number was a clearly established right, where defendants could not as reasonable persons have been aware of that right and could not have recognized that any effort to compel disclosure of number or to deny plaintiff his refund violated federal law, damages against defendants were barred by doctrine of official immunity. Doyle v. Wilson, D.C.Del. 1982, 529 F.Supp. 1343.

33. — Disclosure required by federal statute

Regulation requiring the furnishing of social security account numbers for children who are recipients under state plan of aid to needy families with children does not violate this section regarding disclosure of social security account numbers. Green v. Philbrook, C.A.2 (Vt.) 1978, 576 F.2d 440.

The Selective Service System's practice of requiring draft registrants to supply their social security numbers does not violate provisions of this section, particularly in view of section 453(b) of Title 50 App., enacted to provide necessary statutory authority to require submission of social security numbers by draft registrants. Wolman v. U.S., D.C.D.C.1982, 542 F.Supp. 84.

This section was not violated by denial of Aid to Families with Dependent Chil-

dren benefits because of failure to obtain and disclose social security numbers for children for whom benefits were intended. Chambers v. Klein, D.C.N.J.1976, 419 F.Supp. 569, affirmed 564 F.2d 89.

Federal regulation requiring social security numbers for children in order for them to be eligible for benefits under the aid to families with dependent children program did not violate this section. Mullaney v. Woods, Cal.App. 3 Dist. 1979, 158 Cal.Rptr. 902, 97 Cal.App.3d 710.

34. — Disclosure to agency maintaining system of records

State Department's use of its employee's social security number for identity verification did not violate this section, since Department used social security numbers in its system of records before January 1, 1975, and thus came within exemption to this section. Brookens v. U.S., C.A.D.C.1980, 627 F.2d 494, 201 U.S.App.D.C. 35.

Issue whether employees of the justice of the peace court could be held liable under this section and Social Security Act, section 301 et seq. of Title 42, for requiring plaintiff to disclose his social security number on a voucher for refund of a motor vehicle fine was a question which could not be determined in absence of evidence as to whether disclosure qualified as part of the administration of the state's driver's license law and as to whether disclosure was required under a long-standing practice of the state treasurer's office prior to Jan. 1, 1974 under a system of records then in existence and operating. Doyle v. Wilson, D.C.Del.1982, 529 F.Supp. 1343.

35. — Probate rules

Federal Privacy Act is not violated by probate rules requiring decedent's social security number to be placed on petitions for administration and on caveats. In re Amendments to Florida Probate Rules, Fla.1992, 607 So.2d 1306.

36. — Notice

Disclosure statement that Secretary of Agriculture included in its final regulations for school meal programs legally satisfied Pub.L. 93-579, § 7, set out as a note under this section, by informing participants of voluntariness of disclosure of adult household members' social security account numbers, source of authority for

eligibility requirement, and possible uses to which disclosed numbers may be put, despite contention that disclosure was so vague as to be totally uninformative to "target audience." Alcaraz v. Block, C.A.9 (Cal.) 1984, 746 F.2d 593.

Water company could not obtain customers' social security numbers until it complied with disclosure requirements of Privacy Act [5 U.S.C.A. § 552a note], including informing customers of voluntariness of disclosure, source of authority for it, and possible uses to which disclosed numbers might be put. Yeager v. Hackensack Water Co., D.C.N.J.1985, 615 F.Supp. 1087.

The practice of requiring disclosure of social security numbers, for purpose of securing a refund of a motor vehicle fine, cannot be validated under either this section or the Social Security Act, Section 301 et seq. of Title 42, unless it is incident to the administration of a state driver's license or motor vehicle registration law or is required under a statute or regulation adopted prior to January 1, 1975 under a system of records then in existence and operative, and unless refund applicants are provided with information such as whether disclosure is mandatory or voluntary, by which statute or other authority such number is solicited, and what uses will be made of it. Doyle v. Wilson, D.C.Del.1982, 529 F.Supp. 1343.

The Massachusetts Department of Public Welfare and the Department of Health, Education and Welfare [now Department of Health and Human Services] breached their duties under this section to inform applicants for assistance of the uses to be made of their social security numbers insofar as the Departments routinely required applicants for and recipients of aid to families with dependent children to obtain and report the social security numbers of children and took no steps to inform the applicants of uses to be made of the numbers. Doe v. Sharp, D.C.Mass.1980, 491 F.Supp. 346.

Disclosure given to recipients of aid to families with dependent children in connection with request for social security numbers was not meaningful; to comply with this section governing request by governmental agencies for social security numbers, such disclosure must inform recipients that social security numbers will be used to verify employment information in application form with Social Security

Administration and that if information on application form was not accurate, recipient might be subject to prosecution for fraud. Greater Cleveland Welfare Rights Organization v. Bauer, D.C. Ohio 1978, 462 F.Supp. 1313.

Use of social security numbers is allowed for administration of general public assistance; however, notice is still required to welfare recipients of uses to be made of applicants' social security numbers by welfare department. State v. Hughes, Ohio App.1981, 442 N.E.2d 786, 2 Ohio App.3d 443, 2 O.B.R. 538.

37. Scope of request

Request under this section did not carry with it a prospective obligation to turn over any relevant materials that were in existence after date of the request. Crichton v. Community Services Admin., D.C.N.Y.1983, 567 F.Supp. 322.

II. DEFINITIONS

Subdivision Index

Addresses of employees, records	78
Agency	
Generally	61
Colleges or universities	66
Copyright Office	67
Government-controlled corporations	64
Grand juries	68
Hospitals	69
Individual officers or employees	63
Military departments	70
Miscellaneous agencies	74
National banks	71
Not-for-profit corporations	72
Number of agencies	62
Production credit associations	73
State or federal agencies	65
Amtrak, agency	64
Application records	79
Background checks, system of records	91
CHIPS, system of records	92
Clinical files, system of records	93
Colleges or universities, agency	66
Copyright Office, agency	67
Evaluation, records	80
Federal agencies	65
Government controlled corporations, agency	64
Grand juries, agency	68
Hospitals, agency	69
Independent source of information, system of records	89

Indexing or retrieval of information, system of records 90

Individual 75

Individual officers or employees, agency 63

Letters, records 81

Memoranda, records 82

Military departments, agency 70

Multiple agencies 62

National banks, agency 71

Not-for-profit corporations, agency 72

Number of agencies 62

Personal nature of information, records 77

Private notes, records 83

Production credit associations, agency 73

Records

Generally 76

Addresses of employees 78

Application records 79

Evaluations 80

Letters 81

Memoranda 82

Personal nature of information 77

Private notes 83

Remarks or opinions 84

Reports 85

Time sheets 86

Videotapes 87

Remarks or opinions, records 84

Reports, records 85

Standing 75

State or federal agencies 65

System of records

Generally 88

Background checks 91

CHIPS 92

Clinical files 93

Independent source of information 89

Indexing or retrieval of information 90

Miscellaneous records 94

Time sheets, records 86

Universities, agency 66

Videotapes, records 87

61. Agency—Generally

Amended definition of "agency" contained in section 552 of this title also applies to this section. *Ehm v. National R.R. Passenger Corp.*, C.A.5 (Tex.) 1984, 732 F.2d 1250, certiorari denied, 105 S.Ct. 387, 469 U.S. 982, 83 L.Ed.2d 322.

62. — Number of agencies

Department of the Air Force is a single agency for purposes of Privacy Act [5 U.S.C.A. § 552a] because it is a military

department, although it is subdivided into separate entities. *Marcotte v. Secretary of Defense*, D.C.Kan.1985, 618 F.Supp. 756.

63. — Individual officers or employees

Since naval investigative service special agent, who released to a county sheriff the home address and phone number of a civilian employee of the naval air rework facility of the Pensacola Naval Air Station, was not an "agency," he was subject to dismissal as a defendant in the civilian employee's suit for violation of the Privacy Act, which provides that no "agency" shall disclose any record except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. *Doe v. Naval Air Station, Pensacola, Fla.*, C.A.11 (Fla.) 1985, 768 F.2d 1229.

In view of fact that term "agency" in this section providing rules concerning what information a federal agency may keep about employees, circumstances and procedures under which that information may be released, and safeguards required in order to insure that all information is accurate does not encompass individual government officials such as United States attorneys, assistant United States attorney's suit under such statute against United States attorney would be dismissed for failure to state a claim upon which relief could be granted. *Windsor v. The Tennessean*, C.A.6 (Tenn.) 1983, 719 F.2d 155, rehearing denied 726 F.2d 277, certiorari denied 105 S.Ct. 105, 469 U.S. 826, 83 L.Ed.2d 50.

Private individuals were not proper parties defendant to private civil action under this section, which authorizes suit against agency only. *Parks v. U.S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677.

Individual officers or employees of an agency are not "agencies" which may be sued under Privacy Act. *Williams v. McCausland*, S.D.N.Y.1992, 791 F.Supp. 992.

Individuals are not proper defendants in Privacy Act suit, which permits only agency to be sued. *Stephens v. Tennessee Valley Authority*, E.D.Tenn.1990, 754 F.Supp. 579.

Term "agency," as used in this section, does not include individual officers or employees of an agency, and an action

may not be brought against them under this section. *Gonzalez v. Leonard*, D.C.Conn.1980, 497 F.Supp. 1058.

64. — Government-controlled corporations

Antrak was not subject to this section by virtue of extended definition of "agency" to include government controlled corporations. *Ehm v. National R.R. Passenger Corp.*, C.A.5 (Tex.) 1984, 732 F.2d 1250, certiorari denied 105 S.Ct. 387, 469 U.S. 982, 83 L.Ed.2d 322.

65. — State or federal agencies

Federal regulations, which are promulgated to assure that federal funds are spent for purposes intended, do not convert acts of local and state governmental bodies into federal governmental acts and thus federal regulations applicable to Medicaid program did not subject state agencies to provisions of this section and section 552 of this title in connection with cost information furnished by providers under Medi-Cal program. *St. Michael's Convalescent Hospital v. State of Cal.*, C.A.9 (Cal.) 1981, 643 F.2d 1369.

Privacy Act of 1974 does not apply to state agencies or bodies and thus did not provide basis for relief to deputy sheriff whose personnel file was released by sheriff pursuant to a subpoena. *Shields v. Shetler*, D.Colo.1988, 682 F.Supp. 1172, rehearing denied 120 F.R.D. 123.

Privacy Act action could not be brought against individual officers or employees of state agency. *B.J.R.L. v. State of Utah*, D.Utah 1987, 655 F.Supp. 692.

Blind individual, in suit against New Jersey Commission for Blind and Visually Impaired and its executive director, alleging that they unlawfully denied him rehabilitative services and benefits to which he was entitled under the Rehabilitation Act of 1973, section 720 et seq. of Title 19, was not entitled to amend his complaint to state an additional claim for violation of this section, because the Act governs federal agencies only. *Ryans v. New Jersey Comm'n For The Blind and Visually Impaired*, D.C.N.J.1982, 542 F.Supp. 841.

66. — Colleges or universities

State university was not an "agency" as defined by Privacy Act and, thus, university had discretion whether to voluntarily abide by its terms or not, although there were many aspects of university's opera-

tions which touched and/or intersected with the state overall effect was an independent institution divorced from direct, let alone day-to-day, control. *Krebs v. Rutgers*, D.N.J.1992, 797 F.Supp. 1246.

67. — Copyright Office

The Copyright Office is in the legislative branch, and is not an "agency" within the coverage of this section, and thus, personnel records of the employees in the Office are not subject to this section. 1980 (Counsel-Inf.Op.) 4B Op.O.L.C. 608.

68. — Grand juries

Grand jury is not "agency" as that term is used in Privacy Act, and grand jury materials are not "agency records" within scope of Act. *Standley v. Department of Justice*, C.A.9 (Ariz.) 1987, 835 F.2d 216.

69. — Hospitals

Release of medical records of federal employee's wife and son would not violate Privacy Act as hospitals were not "agencies" of federal government within meaning of Act and Act expressly authorizes disclosure of information pursuant to order of court of competent jurisdiction. *Gilbreath v. Guadalupe Hosp. Foundation Inc.*, C.A.5 (Tex.) 1993, 5 F.3d 785.

Although hospital and medical school were recipients of federal research grants and subject to federal supervision, they were not subject to such federal control as to make them federal entities subject to this section. *Dennie v. Univer Pittsburgh School of Medicine, Egin Islands* 1984, 589 F.Supp. 3 affirmed 770 F.2d 1068, certiorari 106 S.Ct. 144, 474 U.S. 849, 88 L. 119.

70. — Military departments

Department of the Navy, of which the Pensacola Naval Air Station is a subagency or instrumentality, is a "military department" within the Privacy Act's definition of the term "agency." *Doe v. Naval Air Station, Pensacola, Fla.*, C.A.11 (Fla.) 1985, 768 F.2d 1229.

The United States Department of Defense is an "agency" within meaning of this section. *Olberding v. U.S. Dept. of Defense*, Dept. of the Army, D.C. Iowa 1982, 564 F.Supp. 907, affirmed 709 F.2d 621.

71. — National banks

National bank was not an "agency" of the federal government within meaning of this section so as to make unlawful disclosure of bank documents to Federal Bureau of Investigation or Postal inspectors. *U.S. v. Miller*, C.A.10 (Colo.) 1981, 643 F.2d 713.

Bank's release of information concerning debtor to another bank did not violate federal Privacy Act, since bank was neither "agency" within meaning of Act nor "debt collector" within meaning of Fair Debt Collection Practices Act. *Baldwin v. First Nat. Bank of Black Hills*, S.D. 1985, 362 N.W.2d 85.

72. — Not-for-profit corporations

Private not-for-profit corporation engaged in business with the United States government was not an agency of the government within definition of the Privacy Act [5 U.S.C.A. § 552a], nor did mere fact that it received funding and was regulated to some extent by federal government bring it within the reaches of the Act. *Unt v. Aerospace Corp.*, C.A.9 (Cal.) 1985, 765 F.2d 1440.

73. — Production credit associations

Production credit association was not an "agency" bounded by constraints of the Privacy Act [5 U.S.C.A. § 552a]. *U.S. v. Haynes*, D.C.Tenn.1985, 620 F.Supp. 474.

74. — Miscellaneous agencies

Reprimand letter, which was written by Government contractor's director of federal laboratory, did not represent determination of National Cancer Institute and, therefore, was not subject to Privacy Act statute, which requires each agency to maintain records used by agency in making any determination about individual. *Reuber v. U.S.*, C.A.D.C.1987, 829 F.2d 133, 264 U.S.App.D.C. 348.

75. Individual

See, also, *Notes of Decisions under note number 212*.

Health care providers who were reimbursed by state through Medi-Cal program in California for services performed, and who were corporations or sole proprietorships, were not "individuals" and thus lacked standing to raise claim concerning release of cost information to requesting public under this section which only applies to records of in-

dividuals. *St. Michael's Convalescent Hospital v. State of Cal.*, C.A.9 (Cal.) 1981, 643 F.2d 1369.

Union of certain federal employees had no standing to sue, under this section, either on its own behalf or in representative capacity. *Parks v. U.S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677.

Company, seeking to forestall disclosure by the Department of Justice and the Securities and Exchange Commission of details of certain "questionable foreign payments," lacked standing to litigate any claims which its employees might have under this section. *Dresser Industries, Inc. v. U.S.*, C.A.5 (Tex.) 1979, 596 F.2d 1231, rehearing denied 601 F.2d 586, certiorari denied 100 S.Ct. 731, 444 U.S. 1044, 62 L.Ed.2d 730.

Plaintiff corporation was not an "individual" within meaning of this section, which creates federal claims, for relief for enumerated violations of this section's substantive provisions, refers throughout only to actions brought by an "individual," and defines individual as citizen of the United States or alien lawfully admitted for permanent residence, and thus such corporation lacked standing in action seeking to enjoin government from releasing investigative reports prepared by the National Institutes of Health. *Cell Associates, Inc. v. National Institutes of Health, Dept. of Health, Ed. and Welfare*, C.A.9 (Cal.) 1978, 579 F.2d 1155.

Privacy Act did not apply to release of information regarding deceased Army officer and, at least incidentally, his widow, as officer was dead, and as records released were contained with systems of records retrievable in name of deceased officer or by some identifying number, symbol or other identifying particular assigned to officer alone. *Crumpton v. U.S.*, D.D.C.1994, 843 F.Supp. 751, affirmed 59 F.3d 1400.

Corporation was not an individual protected by this section. *U.S. v. Haynes*, D.C.Tenn.1985, 620 F.Supp. 474.

Physicians who would be identified if Secretary of Health, Education and Welfare were to release in an individually identifying manner information concerning annual reimbursements to medicare providers had standing, as individuals, to challenge that disclosure under this section even though the materials related to

their commercial interests. *Florida Medical Ass'n, Inc. v. Department of Health, Ed. & Welfare*, D.C.Fla.1979, 479 F.Supp. 1291.

This section does not grant protection to corporations; complaint in which corporation alleged that employees of the Securities Exchange Commission had violated this section did not state a claim upon which relief could be granted. *OKC Corp. v. Williams*, D.C.Tex.1978, 461 F.Supp. 540.

76. Records—Generally

For purposes of Privacy Act's protection from disclosure, although qualifying "record" could consist of single piece of information, it could also consist of collection or grouping of pieces of information, so information could still be included within protected "record" if one piece of information were linked with identifying particular or was itself identifying particular and maintained within system of records. *Quinn v. Stone*, C.A.3 (Pa.) 1992, 978 F.2d 126, rehearing denied.

Term "record" as used in Privacy Act encompasses a broad array of information that can be maintained on "individuals" under various filing systems. *Shermco Industries, Inc. v. Secretary of U.S. Air Force*, D.C.Tex.1978, 452 F.Supp. 306, reversed on other grounds 613 F.2d 1314.

77. — Personal nature of information

Information about individual agent retrieved from National Labor Relations Board's (NLRB) computer system, which was created to track and monitor unfair labor practice and representation cases handled by NLRB, was not a "record" subject to Privacy Act as information was not "personal" information about agent and did not contain evaluations of job performance, even if information might be useful to supervisors in reviewing agent's work. *Tobey v. N.L.R.B.*, D.D.C. 1992, 807 F.Supp. 798, affirmed 40 F.3d 469, 309 U.S.App.D.C. 213.

Information that an unidentified doctor supported or failed to support an employee's disability retirement application is an item of "information about an individual" which is covered by the Privacy Act. *Brooks v. Veterans Admin.*, D.Kan.1991, 773 F.Supp. 1483.

Statement in attorney's affidavit submitted to Board of Professional Responsibility of Supreme Court of Tennessee in which affiant allegedly falsely represented that certain person's name was not mentioned during proffer of proof by witness at United States Attorney's office in which plaintiff was an assistant United States attorney was not personal information about plaintiff's private affairs and was not "record" protected by the Privacy Act. *Windsor v. A Federal Executive Agency*, D.C.Tenn.1983, 614 F.Supp. 1255, affirmed 767 F.2d 923.

Under this section, distinction is not recognized between entrepreneurial and personal information. *Metadure Corp. v. U.S.*, D.C.N.Y.1980, 490 F.Supp. 1368.

78. — Addresses of employees

Addresses of agency employees sought by collective bargaining representative of the employees were "records" covered by broad terms of Privacy Act, and their disclosure would thus be prohibited by law unless Freedom of Information Act (FOIA) required release. *U.S. Dept. of Defense v. Federal Labor Relations Authority*, U.S.1994, 114 S.Ct. 1006, 127 L.Ed.2d 325.

Privacy Act's protection from disclosure for "record" would not be limited to information directly reflecting characteristic or quality of individual so as to exclude protection for individual's out-of-date home address on hunting roster or time card showing hours worked on particular day. *Quinn v. Stone*, C.A.3 (Pa.) 1992, 978 F.2d 126, rehearing denied.

79. — Application records

Application records which were solicited by the United States Civil Service Commission in connection with application for position of administrative law judge, which applicant sought to amend, and which comprised "information about an individual that is maintained by an agency, including *** his *** employment history," fell within definition of "record." *White v. U.S. Civil Service Commission*, C.A.D.C.1978, 589 F.2d 713, 191 U.S.App.D.C. 190, certiorari denied 100 S.Ct. 58, 444 U.S. 830, 62 L.Ed.2d 39.

80. — Evaluations

Where applicant for government employment sought access to negative evaluations which resulted in rejection of his

Privacy Act. *Manuel v. Veterans Admin. Hosp.*, C.A.6 (Mich.) 1988, 857 F.2d 1112, certiorari denied 109 S.Ct. 1317, 489 U.S. 1055, 103 L.Ed.2d 586.

Supervisors' memorandum of meeting with employee was not in a system of records of government facility, and thus was not accessible by employee under this section, where memorandum was not keyed to employee's name or identifying number, which would subject it to purpose behind this section of protecting information from being gathered through computers or other sophisticated technological equipment. memorandum was kept within random type file and could be retrieved only by searching through file, and memorandum was not used in making any decisions concerning employee's employment status. *Boyd v. Secretary of the Navy*, C.A.11 (Fla.) 1983, 709 F.2d 684, certiorari denied 104 S.Ct. 709, 464 U.S. 1043, 79 L.Ed.2d 173.

Publication of letter containing reasons for public employee's discharge did not violate Privacy Act where, in system of records of Department of Education, letter was not retrievable by employee's name or personal identifier. *McGregor v. Greer*, D.D.C.1990, 748 F.Supp. 881.

Bank's former director and legal counsel was not entitled to disclosure of records under this section where information at issue was retrieved from Federal Deposit Insurance Corporation file bearing the bank's name by rummaging through such file and connecting dates and examiners' names given by the requester, decision to search in file of the particular bank was result of local examiner's personal recollection, and where there was no indication that the information was retrieved from a system of records keyed to requester's name or other personal identifier or that the information consisted of records contemplated by provision of this section which prohibits agencies from collecting records describing how an individual exercises his U.S.C.A. Const. Amend. rights. *Fagot v. Federal Deposit Ins. Corp.*, D.C.Puerto Rico 1984, 584 F.Supp. 1168.

91. — Background checks

Investigative background checks performed by Federal Bureau of Investigation (FBI) are a system of records governed by the Privacy Act. *Doe v. U.S. Dept. of Justice*, D.D.C.1992, 790 F.Supp. 17.

92. — CHIPS

National Labor Relations Board (NLRB) Case Handling Information Processing System (CHIPS) was not "system of records," under Privacy Act notice of the existence and character of which had to be published in The Federal Register, as its files contained no information "about" individuals, but rather, contained information "about" NLRB cases. *Tobey v. N.L.R.B.*, C.A.D.C.1994, 40 F.3d 469, 309 U.S.App.D.C. 213.

93. — Clinical files

The Department of Psychiatry and Neurology clinical files at an army medical center constituted a "system of records" within meaning of this section. *Olberding v. U.S. Dept. of Defense*, Dept. of the Army, D.C. Iowa 1982, 564 F.Supp. 907, affirmed 709 F.2d 621.

94. — Miscellaneous records

In action by class of union officers and officials for alleged violations of this section with respect to transfer of certain records from Department of Labor to Justice Department and subsequent subpoena of these records by grand jury, no rights of plaintiffs were infringed when trial court conducted in camera inspection of records in question and determined that they were not kept within "system of records," with result that they were not protected by this section. *Hanley v. U.S. Dept. of Justice*, C.A. 6 (Ohio) 1980, 623 F.2d 1138.

Internal memorandum from special counsel for the Social Security Administration regarding whether irregularities in administrative law judge's travel voucher warranted filing disciplinary charges with Merit Systems Protection Board was not maintained within system of records within meaning of Privacy Act, so as to require its production. *Quinn v. Department of Health and Human Services*, W.D.N.Y.1993, 838 F.Supp. 70.

Information that federal employee had previously been placed on personal improvement plan by another agency was not encompassed by Privacy Act's prohibition against disclosure; information was not contained within system of records at employee's current agency and was not retrievable by employee's name. *Gibbs v. Brady*, D.D.C.1991, 773 F.Supp. 454.

Petition which was circulated by and among plaintiff's coworkers at an air

force base maintained by the defendant and which purportedly claimed that plaintiff was responsible for a "no reading" policy in the data automation division was not maintained in a "system of records" and, hence was not violative of the Privacy Act when turned over to a third party in absence of evidence that the defendant officially authorized or participated in any manner in originating and circulating the petition or evidence that the petition was placed in plaintiff's personnel file or the separate personnel file maintained by the controller on all the employees or included in any pay records or any other records maintained by the defendant. *Johnson v. U. S. Dept. of Air Force*, D.C.Okla.1980, 526 F.Supp. 679, affirmed 703 F.2d 583.

Agency's defense that Privacy Act prohibited its disclosure of inmate medical records was not established, where agency failed to prove that records were kept within a "system of records," and it offered nothing more in support of its resistance to discovery than conclusory assertion that Privacy Act prohibited their production. *Eaks v. Department of Justice*, MSPB 1983, 18 M.S.P.R. 328.

III. CONDITIONS OF DISCLOSURE

Subdivision Index

Addresses, routine use 127
Civil action records, routine use 128
Compatibility requirement, routine use 123
Congressional inquiry responses, routine use 129
Consent of individual
 Generally 111
 Release form 112
Disciplinary action records, routine use 130
Disclosures within this section
 Generally 115
 Independent knowledge of information disclosed 116
 Public nature of information 117
Duty of official, routine use 124
Freedom of Information Act requirements 121
Health or safety of individual 136
Identification records, routine use 131
Independent knowledge of information disclosed, disclosures within this section 116
Intra-agency disclosures 114
Investigatory records, routine use 132

Labor organizations requesting records, routine use 126
Law enforcement activities 135
Law enforcement records, routine use 132
Means of communication 118
Need for record 120
Oral communication 118
Order of court of competent jurisdiction 137
Postal Service records, routine use 134
Public nature of information, disclosures within this section 117
Release form, consent of individual 112
Request by individual 113
Retrieval method 119
Routine use
 Generally 122
 Addresses 127
 Civil action records 128
 Compatibility requirement 123
 Congressional inquiry responses 129
 Disciplinary action records 130
 Duty of official 124
 Identification records 131
 Labor organizations requesting records 126
 Law enforcement records 132
 Postal Service records 134
 Security clearance records 133
 Subpoenas 125
Safety of individual 136
Security clearance records, routine use 133
Subpoenas, routine use 125

111. Consent of individual—Generally

Veteran consented to release of information by Veterans Administration to congressmen when he solicited their assistance in dealing with the VA and he was thus estopped from objecting to the VA's release of the information as violative of the Privacy Act. *Pellerin v. Veterans Admin. of U.S. Government*, C.A.11 (Fla.) 1986, 790 F.2d 1553.

Absent congressman's consent, this section precluded Federal Bureau of Investigation from granting plaintiff access to personnel file concerning the congressman whom plaintiff alleged was "pressured" into taking a public position supportive of government's conclusion in investigation of plaintiff's involvement in death of noted civil rights leader. *Ray v. U.S. Dept. of Justice*, D.C.D.C.1982, 558 F.Supp. 226, affirmed 720 F.2d 216, 232 U.S.App.D.C. 41.

Burley v. U.S. Drug Enforcement Administration, D.C.Tenn.1977, 443 F.Supp. 619.

The disclosure by the Secret Service and the Federal Bureau of Investigation of information on activities of individuals not subject to arrest through entry of such information in the National Crime Information Center must meet the requirements of this section as a routine use. 1982 (Counsel-Inf.Op.) 6 Op.O.L.C. 313.

This section authorizes the disclosure by the United States Parole Commission to local law enforcement authorities, on a routine basis, the names of parolees released into their communities, as a routine use of such information. 1982 (Counsel-Inf.Op.) 6 Op.O.L.C. 227.

133. — Security clearance records

Disclosure by Department of Energy inspector general to the Department of Justice of personnel security questionnaires completed by employees of DOE contractors and used to determine whether those employees had submitted false claims for subsistence payments was not permitted as "routine use" of the personnel security questionnaires and violated the Privacy Act. *Covert v. Herrington*, E.D.Wash.1987, 667 F.Supp. 730, affirmed 876 F.2d 751.

134. — Postal Service records

Postal Service's alleged disclosure of rural mail carrier's charges with Equal Employment Opportunity Commission (EEOC) and of warning letters on unrelated matters was not made for "routine use" of congressmen investigating carrier's claims about alleged undercounting of rural mail routes, and, thus, Privacy Act exemption for routine uses was inapplicable; carrier asked congressmen to investigate the undercounting of routes; and disclosed information had been collected to adjudicate claims of alleged discrimination and to perform routine, personnel functions. *Swenson v. U.S. Postal Service*, C.A.9 (Cal.) 1989, 890 F.2d 1075.

135. Law enforcement activities

Provision of veterans' records statute [38 U.S.C.A. § 3301(b)(3)] permitting disclosure of veteran's medical records when required by department or other agency of United States government did not authorize disclosure of veteran's medical records pursuant to federal grand

jury subpoena where there was no written request from head of agency as required by stricter provision of Privacy Act [5 U.S.C.A. § 552a, (b)(7)] incorporated into veterans' records statute. *Doe v. DiGenova*, C.A.D.C.1985, 779 F.2d 74, 250 U.S.App.D.C. 274, on remand 642 F.Supp. 624.

Privacy Act suit brought against Department of the Navy, predicated on naval investigative service special agent's disclosure to county sheriff of the home address and phone number of a civilian employee, was not subject to dismissal on basis of Privacy Act's law-enforcement exemption, since that exemption requires a written request for disclosure by head of agency making such request to agency which maintains the record, since plaintiff alleged that the information was released pursuant to a telephone request from county sheriff's department, and since issues of fact thus existed as to the method by which request was made and whether it was made by "head" of county sheriff's department. *Doe v. Naval Air Station, Pensacola, Fla.*, C.A.11 (Fla.) 1985, 768 F.2d 1229.

Where disclosure by the Department of Health, Education and Welfare to the Department of Justice of cost reports submitted to the Ohio Department of Public Welfare in connection with medicaid cost reimbursement program that was administered for Health, Education and Welfare by the state of Ohio was for a routine use and also for criminal law enforcement activity in that the nursing home operator who submitted the reports was suspected of fraud, the disclosure did not violate federal privacy laws. *U.S. v. Collins*, C.A.6 (Ohio) 1979, 596 F.2d 166.

Disclosure of transcript of defendant's parole hearing did not violate subsec. (b) of this section or Parole Commission rules. *Securities and Exchange Commission v. Dimensional Entertainment Corp.*, D.C.N.Y.1981, 518 F.Supp. 773.

Court to whom motion to discover federal records concerning federal agent who was involved in arrest of defendant is addressed should, upon determining that the records are described with sufficient specificity and that there is plausible justification for their production, order the prosecutor to request the records pursuant to this section. *Saulter v. Municipal Court for Oakland-Piedmont Judi-*

cial Dist., Cal.App. 1 Dist.1977, 142 Cal. Rptr. 266, 75 Cal.App.3d 231.

In connection with charge that defendant had used false social security number in order to obtain credit from bank, United States would be required to disclose whether defendant had social security number, and whether social security number given to bank was number assigned to defendant, even though United States claimed that disclosure was barred by federal law. *People v. Purrier*, N.Y.Co.Ct.1994, 607 N.Y.S.2d 218, 159 Misc.2d 917.

In prosecution in which defendant pleaded not guilty by reason of a mental disease consisting of an alleged posttraumatic stress disorder caused by his service in the United States Air Force in Vietnam, the defendant's military records were subpoenaed by the district attorney for a legitimate purpose related to law enforcement, i.e., to shed light on defendant's present mental state, including possible dangerousness, by showing his condition during and after his alleged service in Vietnam. *People v. Lockett*, N.Y.Sup.1983, 468 N.Y.S.2d 802, 121 Misc.2d 549.

136. Health or safety of individual

Unmarried father's statement in affidavit that he was informed that children were being neglected was not sufficient to show such compelling circumstances affecting the health or safety of the children within meaning of this section to warrant disclosure of children's address to him by Social Security Administration. *DePlanche v. Califano*, D.C.Mich.1982, 549 F.Supp. 685.

137. Order of court of competent jurisdiction

This section expressly authorizes disclosure of information "pursuant to the order of a court of competent jurisdiction". *Gilbreath v. Guadalupe Hosp. Foundation Inc.*, C.A.5 (Tex.) 1993, 5 F.3d 785.

When district court considers request for Privacy Act order in discovery context, it must consider use of protective orders and possibility of in camera inspection and should also consider, in its discretion, wisdom of notifying affected parties. *Laxalt v. McClatchy*, C.A.D.C. 1987, 809 F.2d 885, 258 U.S. App. D.C. 14

Federal grand jury subpoena is not "order of a court of competent jurisdiction" for purposes of disclosure of veteran's medical records under veterans' records statute (38 U.S.C.A. § 3301), which incorporates stricter provision of Privacy Act (5 U.S.C.A. § 552a, (b)(11)) precluding disclosure of records maintained on individuals unless disclosure is pursuant to order of court of competent jurisdiction. *Doe v. DiGenova*, C.A.D.C.1985, 779 F.2d 74, 250 U.S.App.D.C. 274, on remand 642 F.Supp. 624.

Release is allowed when a court of competent jurisdiction so orders. *Perry v. State Farm Fire & Cas. Co.*, C.A. 11 (Ga.) 1984, 734 F.2d 1441, certiorari denied 105 S.Ct. 784, 469 U.S. 1108, 83 L.Ed.2d 778.

Information sought by importer in its action against federal government with respect to merchandise that it entered into country, including the names and addresses of customs officials who controlled movement of merchandise from free trade subzone into the United States, was relevant to importer's lawsuit and thus discoverable by importer under the "court order" exemption to Privacy Act. *Ford Motor Co. v. U.S.*, CIT 1993, 825 F.Supp. 1081, 17 C.I.T. 584.

Subpoena duces tecum prepared by attorney for postal employee's wife in divorce action and approved by state court judge was "court order" for purposes of exception to rule that federal agency cannot disclose employee's records without employee's consent, and thus, Postal Service did not violate employee's statutory right by disclosure of his employment records pursuant to subpoena. *Moore v. U.S. Postal Service*, D.C.N.Y.1985, 609 F.Supp. 681.

In civil rights action by federal prisoner against three former federal prison employees, district court would compel two defendants to release to counsel for plaintiff home address of third defendant, despite subsec. (b) of this section prohibiting revelation of home address of employee of Bureau of Prisons, provided that counsel agreed not to disclose that address to any person except as necessary to perfect service of process and as otherwise necessary to prosecute the suit; alternatively, plaintiff's counsel was entitled to address other than defendant's home where service of process might be

effected. *Clymer v. Grzegorek*, D.C.Va. 1981, 515 F.Supp. 938.

Mere issuance in discovery proceedings of a subpoena, which is always subject to power of court to quash or limit, does not come within this section exception permitting disclosure of records pursuant to order of court of competent jurisdiction but instead such exception applies only to those cases in which, for compelling reasons, court specifically directs that records be disclosed. *Stiles v. Atlanta Gas Light Co.*, D.C.Ga.1978, 453 F.Supp. 798.

Subsec. (b)(1) of this section prohibiting certain disclosures of personal data unless disclosure would be pursuant to the order of court of competent jurisdiction would not preclude discovery of criminal record of inmate who allegedly raped plaintiff while plaintiff was visiting another inmate at federal correctional institution. *Christy v. U.S.*, D.C.Tex.1975, 68 F.R.D. 375.

Court of Veterans Appeals is a "court of competent jurisdiction" under Privacy Act section providing exception to non-disclosure of agency records when disclosures are made pursuant to order of court of competent jurisdiction. *In re A Motion For a Standing Order*, Vet.App.1990, 1 Vet.App. 555.

Trial court order requiring personal injury plaintiff to execute an authorization to be filed with the Social Security Administration, allowing defendant to depose psychologist who examined plaintiff for the Social Security Administration, fell within exception to the Privacy Act allowing disclosure of records pertaining to an individual when the disclosure is pursuant to the order of a court of competent jurisdiction, which is construed in favor of disclosure, especially in discovery matters, since trial court order in question reaffirmed previous order compelling psychologist to give his deposition, and stated that psychologist's deposition may well lead to material and relevant discovery. *Tootle v. Seaboard Coast Line R. Co.*, Fla.App. 5 Dist.1984, 468 So.2d 237.

IV. AGENCY REQUIREMENTS

Subdivision Index

Accuracy

Dissemination of records 175

Maintenance of records 171

ADMINISTRATIVE PROCEDURE Ch. 5

Authority of solicitation, information required 164

Completeness, maintenance of records 172

Criminal liability, information required 166

Direct collection of information from individual 162

Dissemination of records

Generally 174

Accuracy 175

Effects of not providing information required 166

Federal Register publication 169

First Amendment rights 176

Information required

Generally 163

Authority of solicitation 164

Effects of not providing information 166

Miscellaneous information 168

Routine use 165

Separate notices 167

Maintenance of records

Generally 170

Accuracy 171

Completeness 172

Timeliness 173

Necessary information 161

Notice of release of record 177

Relevant and necessary information 161

Routine use, information required 165

Rules of conduct 178

Safeguards 179

Separate notices, information required 167

Timeliness, maintenance of records 173

161. Relevant and necessary information

Department of Health and Human Service's retention of reprimand letter from director of federal laboratory to scientist employed by Government contractor served justifiable interest of demonstrating contractor's awareness of circumstances and commitment to better in-house discipline and did not violate Privacy Act statute, which requires agencies to maintain only information that is relevant and necessary to accomplish legitimate agency purpose; National Cancer Institute needed to insure public confidence in its work and to avoid public association with scientist's private dissenting views as to carcinogenicity of malthion. *Reuben v. U.S.*, C.A.D.C.1987, 829 F.2d 133, 264 U.S.App.D.C. 348.

Government's use of DDF Form 1357 which required a retiree to submit his employer's name and address, to indicate what goods and services, if any, his employer provided to the Defense Department or specified agencies, to describe his own position and duties, and to subscribe to statement that duties did not involve selling to the government in violation of statutes and policies, which was modified in 1977 so as to add a disclosure under this section, did not violate this section. *Field v. Brown*, C.A.D.C. 1979, 610 F.2d 981, 198 U.S.App.D.C. 39, certiorari denied 100 S.Ct. 2160, 446 U.S. 939, 64 L.Ed.2d 792.

Where letters written by attorneys appearing before former administrative law judge, which criticized her conduct, were relevant and necessary within meaning of this section, and relevant to determination of whether former administrative law judge adequately and properly performed her duties, this section which proscribed collection of irrelevant information which was not necessary to accomplish purpose of agency was not violated. *Chocallo v. Bureau of Hearings and Appeals*, SSA, D.C.Pa.1982, 548 F.Supp. 1349, affirmed 716 F.2d 889, certiorari denied 104 S.Ct. 426, 464 U.S. 983, 78 L.Ed.2d 360.

162. Direct collection of information from individual

Supervisors' doubts about federal employee's credibility, even if justified, did not equal "impracticability" for Privacy Act purposes and did not excuse failure to obtain information from employee "to the greatest extent practicable" before seeking information from third parties. *Waters v. Thornburgh*, C.A.D.C.1989, 888 F.2d 870, 281 U.S.App.D.C. 173.

Privacy Act requirements that federal agency which maintains systems of records collect the information to the greatest extent practical directly from the subject individual applied to report of board of inquiry into conduct of Veterans' Administration physician. *Kassel v. U.S. Veterans' Admin.*, D.N.H.1989, 709 F.Supp. 1194.

163. Information required—Generally

Purpose and intent of this section is to let citizens know why and for what reasons the United States is asking the questions. *Saunders v. Schweiker*, D.C.N.Y. 1981, 508 F.Supp. 305.

This section does not empower courts to enjoin use of information collected by agency which has failed to give notice required to individual from whom agency seeks information. *Houston v. U.S. Dept. of Treasury*, D.C.D.C.1979, 494 F.Supp. 24.

164. — Authority of solicitation

Internal Revenue Service (IRS) summons need not establish on its face that government has complied with good-faith requirements for judicial enforcement and, thus, summons may be judicially enforceable, yet not meet Privacy Act's content requirement that summons itself give notice of authority under which IRS seeks to obtain information. *Estate of Myers v. U.S.*, E.D.Wash.1993, 842 F.Supp. 1297.

United States office of management and budget guideline, 40 F.R. 28949, at 28961, stating that this section does not require disclosure of authority and purpose where one person is asked to supply information about another conflicts with this section and is null and void to extent that it is a binding regulation. *Saunders v. Schweiker*, D.C.N.Y.1981, 508 F.Supp. 305.

165. — Routine use

Whether Postal Service provided its employees with actual notice of routine use to which employees' handicap, life insurance, and thrift plan codes would be put on forms that complied with Privacy Act presented issues of fact that had to be resolved by district court in first instance, with respect to postal union's attempt to compel disclosure of that information. *U.S. Postal Service v. National Ass'n of Letter Carriers*, AFL-CIO, C.A.D.C.1993, 9 F.3d 138.

Department of Energy Inspector General's disclosure of nuclear reservation employees' personnel security questionnaires to Department of Justice, for purpose of criminal prosecution, violated Privacy Act, regardless of whether disclosure was "routine use" of information within meaning of exception to Act, in that Department did not indicate to employees that questionnaire information could be used for law enforcement purposes; employees were explicitly told that information would only be used for security clearance purposes. *Covert v. Harrington*, C.A.9 (Wash.) 1989, 876 F.2d 751.

5 § 552a

Note 176

Const. Amend. 1 was to make certain that political and religious activities are not used as cover for illegal or 'subversive' activities, and Congress by enacting this subsection did not intend to dilute guarantees of U.S.C.A. Const. Amend. 1 by authorizing maintenance of files on persons who are merely exercising their constitutional rights. *Clarkson v. I.R.S.*, C.A.11 (Ga.) 1982, 678 F.2d 1368.

Videotape showing government employees complaining to their employer about work-related grievances was record of exercise of rights under U.S.C.A. Const. Amend. 1 and its creation violated this section. *Albright v. U.S.*, C.A.D.C. 1980, 631 F.2d 915, 203 U.S.App.D.C. 333, on remand 558 F.Supp. 260.

In his criminal prosecution for failing to file tax returns, defendant was not entitled to evidentiary hearing on his claim that government had violated Privacy Act by engaging in "political spying" and maintaining records derived therefrom: although defendant claimed that information in IRS files was obtained illegally and thus could not be used against him, he failed to show any factual basis for his claim and sought evidentiary hearing in order to obtain necessary information to pursue his theory. *U.S. v. Gillotti*, W.D.N.Y. 1993, 822 F.Supp. 984.

Federal consultant denied appointment as deputy medical officer in Social Security Administration was not entitled under Privacy Act to damages due to injury to his reputation; consultant simply stated that individuals previously sympathetic to the appointment had stopped pushing on his behalf and ceased associating with him, without providing corroborative statements from such individuals, and evidence indicated support for his appointment continued following disclosure of information in question. *Doe v. F.B.I.*, D.D.C. 1989, 718 F.Supp. 90, affirmed in part, reversed in part on other grounds 936 F.2d 1346, 290 U.S.App.D.C. 289.

Document submitted by Marine Corps officer to his commanding officer did not come with section of the Privacy Act providing that no agency shall keep records "describing how any individual exercises rights guaranteed by the First Amendment" unless certain conditions apply; document did not describe how the officer exercised his First Amendment rights, but merely indicated that such a right

ADMINISTRATIVE PROCEDURE Ch. 5

was exercised. *Pototsky v. Department of Navy*, D.Mass. 1989, 717 F.Supp. 20.

177. Notice of release of record

Postal employee had no cause of action against Postal Service for its failure to notify him of its release, pursuant to subpoena duces tecum, of his employment records to his wife in connection with divorce action, absent any showing of prejudice to employee. *Moore v. U.S. Postal Service*, D.C.N.Y. 1985, 609 F.Supp. 681.

178. Rules of conduct

This section authorizes regulations of the type contemplated by the Office of Management and Budget requiring Federal agencies to establish personnel security policies for screening all individuals participating in the design, operation, or maintenance of Federal computer systems or having access to data in Federal computer systems. 1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 384.

179. Safeguards

In some circumstances, existence of regulations in accordance with which records were released may not shield an agency from liability under this section. *Wisdom v. Department of Housing and Urban Development*, C.A.8 (Ark.) 1983, 713 F.2d 422, certiorari denied 104 S.Ct. 1272, 465 U.S. 1021, 79 L.Ed.2d 678.

Former agency officials bringing Privacy Act claim against Department of Justice based on its alleged failure to "establish appropriate administrative, technical and physical safeguards to ensure security and confidentiality of records" satisfactorily pled that agency acted in manner that was intentional or willful; disclosures that were subject of lawsuit allegedly occurred after Department became aware of several prior disclosures regarding that official and several requests for investigation and corrective action. *Pilon v. U.S. Dept. of Justice*, D.D.C. 1992, 796 F.Supp. 7.

Evidence supported finding that government agency provided adequate safeguards to prevent disclosure of employee's employment records; records were compiled and maintained in substantial compliance with agency rules, and agency official's disclosures of employee's employment problems were based, not on agency records, but on official's own independent recollections and personal

Ch. 5 ADMINISTRATIVE PROCEDURE

opinions. *Krowitz v. Department of Agriculture*, U.S. Forest Service, W.D.Mich. 1986, 641 F.Supp. 1536, affirmed 826 F.2d 1063, certiorari denied 108 S.Ct. 705, 484 U.S. 1009, 98 L.Ed.2d 656.

V. CIVIL REMEDIES

Subdivision Index

Accrual of action, limitations period 237
Adverse determination against individual, maintenance of records 204
Adverse effect on individual, compliance with provisions of section 210
Agencies as persons or entities liable 215
Amendment of record
Generally 219
Attorney fees 222
Burden of proof 221
Expungement from record 220
Attorney fees
Amendment of record 222
Intentional or willful acts 231
Production of records 225
Bad faith, intentional or willful acts 227
Burden of proof
Generally 242
Amendment of record 221
Causal relationship between violation and adverse determination, maintenance of records 204
Characterization of complaint, maintenance of records 208
Class actions 213
Collateral attack 218
Commencement of limitations period 237
Compliance with provisions of section
Generally 209
Adverse effect on individual 210
Compliance with request 202
Damages, intentional or willful acts 230
Discovery 239
Dismissal of indictment as alternate remedy 238
Estoppel 241
Exclusive nature of section 201
Exhaustion of administrative remedies, intentional or willful acts 232
Expungement from record 220
Flagrant disregard, intentional or willful acts 228
Identity of persons giving statements, maintenance of records 206
In camera review, production of records 224

5 § 552a

Note 201

Individuals, persons entitled to maintain action 212
Injunction 243
Injury requirement, maintenance of records 205
Intentional or willful acts
Generally 226
Attorney fees 231
Bad faith 227
Damages 230
Exhaustion of administrative remedies 232
Flagrant disregard 228
Miscellaneous actions intentional or willful 233
Miscellaneous actions not intentional or willful 234
Negligence 229
Jurisdiction of district court 217
Jurisdictional nature of limitations period 236
Limitations period
Generally 235
Commencement of period 237
Jurisdictional nature 236
Maintenance of records
Generally 203
Adverse determination against individual 204
Characterization of complaint 208
Identity of persons giving statements 206
Injury requirement 205
Partial or complete inaccuracies 207
Negligence, intentional or willful acts 229
Officials of government, persons or entities liable 216
Partial or complete inaccuracies, maintenance of records 207
Persons entitled to maintain action
Generally 211
Individuals 212
Persons or entities liable
Generally 214
Agencies 215
Officials of government 216
Production of records
Generally 223
Attorney fees 225
In camera review 224
Res judicata 240
Standing 211, 212

201. Exclusive nature of section
Allegedly inaccurate comments in former Veterans Administration physician's proficiency reports did not invade a con-

upon incorrect fact contained in agency records. *Douglas v. Farmers Home Admin.*, D.D.C.1991, 778 F.Supp. 584.

208. — Characterization of complaint

Former federal employee could not maintain action under the Privacy Act for an order requiring employing agency to correct job descriptions listed in his personnel file, which allegedly failed to reflect accurately his actual job duties; nature of former employee's responsibilities and duties while employed by agency were personnel matters, and as such, fell within the Civil Service Reform Act (CSRA); plaintiff could not avoid the CSRA simply by characterizing his action as an attempt to "correct" records, when it was clear from briefs and from oral argument that plaintiff challenged nature and substance of employment relationship itself. *Kleiman v. U.S. Dept. of Energy*, D.D.C.1990, 742 F.Supp. 697, affirmed 956 F.2d 335, 294 U.S.App.D.C. 49.

209. Compliance with provisions of section—Generally

To maintain suit for damages under catch-all provision for violation of Privacy Act's central prohibition against disclosure, plaintiff must advance evidence to support finding of four necessary elements: information is covered by Act as "record" contained in "system of records," agency "disclosed" information, disclosure had "adverse effect" on plaintiff, which includes adverse effect standing requirement and causal nexus between disclosure and adverse effect, and disclosure was "willful or intentional." *Quinn v. Stone*, C.A.3 (Pa.) 1992, 978 F.2d 126, rehearing denied.

Accurate disclosure to enlisted member that Air Force no longer maintained a file on member's complaint of sex discrimination fulfilled the Air Force's obligations under the Privacy Act. *Tufts v. Department of Air Force*, C.A.10 (Kan.) 1986, 793 F.2d 259.

The disclosure requirements of this section are not fulfilled if citizens must pry required information from an agency by initiating a civil action and propounding specific interrogatories to determine what use the agency is going to make of their reported social security account numbers; neither does an agency cure an initial failure to disclose by supplying ci-

tations to an unrevealing passage from an agency handbook. *Doe v. Sharp*, D.C.Mass.1989, 491 F.Supp. 346.

210. — Adverse effect on individual

Privacy Act's adverse effect standing requirement, that individual show adverse effect from violation of the Act to obtain civil remedy under the Act, was satisfied by allegations that hunting licensee about whom information was disclosed and her husband, both of whom were investigated for hunting violations, had undergone stress and emotional anguish and had suffered occupational losses due to investigation allegedly caused by disclosures in violation of the Act. *Quinn v. Stone*, C.A.3 (Pa.) 1992, 978 F.2d 126, rehearing denied.

In government employees' action against agency to recover award under this section for agency's videotaping of an informational hearing attended by employees, evidence failed to establish that the employees, who were depicted visually or orally on the videotape, suffered any adverse effect from the videotaping itself, as opposed to emotional trauma and shock more likely caused by agency's decision to restrict drastically the employees' prospects for promotions and pay increases. *Albright v. U.S.*, C.A.D.C. 1984, 732 F.2d 181, 235 U.S.App.D.C. 295.

Where there was no attack on validity of determination that current market value of social security recipient's apartment was \$150 per month and that she was paying only \$100 a month and thus should be charged with \$50 a month unearned income, she could not show any harm from alleged violation of this section by forms which requested rental information from landlord but did not indicate the use to which that information would be put and thus could not maintain action for violation of this section. *Usher v. Secretary of Health and Human Services*, C.A. 1 (Mass.) 1983, 721 F.2d 854.

Where nothing suggested that actions of government, however disjointed or confused, were willful or deliberate, where there was no demonstration whatsoever of any alleged inaccuracies in records assembled and disseminated by agencies to farmer, and where nothing demonstrated existence of any "adverse effect" on farmer as result of supposed Privacy Act violations, delay in disclosure of documents requested by farmer from

Farmers Home Administration did not entitle farmer to damages under the Privacy Act. *Perry v. Block*, C.A.D.C.1982, 684 F.2d 121, 221 U.S.App.D.C. 347.

Plaintiff, who alleged that disclosure of Freedom of Information Act documents [5 U.S.C.A. § 552] concerning him by an assistant United States attorney to plaintiff's appointed counsel caused appointed counsel to garner ill thoughts about plaintiff and to withdraw as plaintiff's counsel, failed to allege that he suffered any adverse effect caused by the alleged improper safeguarding and accounting of documents by the Department of Justice and the Office of the United States Attorney, in violation of 5 U.S.C.A. § 552a(c), because adversity alleged could not possibly have been caused by alleged violation, and thus, plaintiff failed to state cause of action. *Ely v. Department of Justice*, D.C.Ill.1985, 610 F.Supp. 942, affirmed 792 F.2d 142.

Mere existence of community services administration regional director's file on an employee of the agency without a showing of adverse effect failed to make out prima facie cause of action for damages under this section. *Crichton v. Community Services Admin.*, D.C.N.Y. 1983, 567 F.Supp. 322.

Plaintiff failed to plead adequately either the "adverse effect" required by this section or the "fair notice of actual wrong" required by rule 12(b), Federal Rules of Civil Procedure, Title 28, where letters of Internal Revenue Service complained of did not contain any information about plaintiff which could reasonably be anticipated to cause an adverse inference about plaintiff or to result in his harm and plaintiff pleaded no circumstances which would support such an inference. *Harper v. U.S.*, D.C.S.C.1976, 423 F.Supp. 192.

211. Persons entitled to maintain action—Generally

Association, association's former executive director, and several members of association bringing suit against various officers and agencies of United States on assertion that members' constitutional and other rights were violated by efforts to disrupt, discredit, and interfere with association's activities lacked standing to assert derivative invasions of privacy of others than themselves based upon constitutional or statutory provisions. *Wil-*

kinson v. F.B.I., D.C.Cal.1983, 99 F.R.D. 148.

212. — Individuals

See *Notes of Decisions under note number 75*.

213. Class actions

There was no standing bar to assertion of invasion of privacy claims relying upon direct invasions of class members' constitutional and statutory privacy interests in action brought against various officers and agencies of the United States by association, association's former executive director, and several members of association on assertion that members' constitutional and other rights were violated by efforts to disrupt, discredit, and interfere with association's activities. *Wilkinson v. F.B.I.*, D.C.Cal.1983, 99 F.R.D. 148.

214. Persons or entities liable—Generally

Privacy Act does not apply to individuals and, accordingly, university students could not bring Privacy Act claim against university president. *Krebs v. Rutgers*, D.N.J.1992, 797 F.Supp. 1246.

215. — Agencies

See, also, *Notes of Decisions under note numbers 61 to 74*.

Agency is only proper party to private cause of action against agency for failure to comply with statute limiting disclosure of federal agency records; civil remedy provisions do not apply to individual defendants. *Schowengerdt v. General Dynamics Corp.*, C.A.9 (Cal.) 1987, 823 F.2d 1328.

Private right of civil action created by the Privacy Act [5 U.S.C.A. § 552a] is specifically limited to actions against agencies of the United States; therefore, the civil remedy provisions of the statute do not apply against private individuals, state agencies, private entities, or state and local officials. *Unt v. Aerospace Corp.*, C.A.9 (Cal.) 1985, 765 F.2d 1440.

This section authorizes private civil actions for violations of its provisions only against an agency, not against any individual. *Brown-Bey v. U.S.*, C.A.7 (Ill.) 1983, 720 F.2d 467. See, also, *Williams v. McCausland*, S.D.N.Y.1992, 791 F.Supp. 992; *Mittleman v. U.S. Treasury*, D.D.C.1991, 773 F.Supp. 442; *Hav v. Secretary of Army*, S.D.Ga.1990, 739 F.Supp. 609.

216. — Officials of government

If records concerning plaintiff were maintained by the Civil Service Commission and disclosed by it, such actions could not be basis for liability under this section where the action was brought against the Secretary of the Department of the Army, not against the Commission. *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402.

This section provided for civil remedies only, against agency and not individuals, so that Chief of the Navy Reference Branch of the National Personnel Records Center of the General Services Administration was not a proper defendant in civil action for damages under this section. *Bruce v. U.S.*, C.A.8 (Mo.) 1980, 621 F.2d 914.

Although individuals may be criminally sanctioned under the Privacy Act for unauthorized disclosure, there is no provision authorizing civil suit against federal officials to compel disclosure; only proper defendants in a Privacy Act action for withholding records are the agencies that allegedly improperly withheld the records. *Whittle v. Moschella*, D.D.C.1991, 756 F.Supp. 589.

The Privacy Act creates a right of action only against federal agency involved; its civil remedy provisions are inapplicable to individual governmental officials. *Nichols v. Block*, D.Mont.1987, 656 F.Supp. 1436.

Under section of the Privacy Act which authorizes private civil actions for violations of its provisions only against agencies [5 U.S.C.A. § 552a(g)(1)], plaintiff could not maintain private actions against assistant United States attorney and plaintiff's appointed counsel for alleged violation of the Act arising from assistant's disclosure of Freedom of Information Act documents [5 U.S.C.A. § 552] to appointed counsel. *Ely v. Department of Justice*, D.C.Ill.1985, 610 F.Supp. 942, affirmed 792 F.2d 142.

In suit brought against federal and state officials allegedly responsible for disseminating to law enforcement agencies a telex message that erroneously accused plaintiffs of devising a plan to kill police officers, the Immigration and Naturalization Service, whose erroneous intelligence report precipitated the entire scenario, might be a proper party defendant in a case under this section arising out of its handling of records pertaining

to the plaintiffs, but the individual defendants could not be sued under that statute. *Gonzalez v. Leonard*, D.C.Conn. 1980, 497 F.Supp. 1058.

217. Jurisdiction of district court

Information in forms sent to tax shelter investors explaining denial of tax deduction and stating that investment counselors who sold tax shelter had been convicted of operating fraudulent tax scheme was at very least indirectly used by Internal Revenue Service in connection with determination of existence or possible existence of federal income tax liability, and thus, district court lacked subject matter jurisdiction over Privacy Act claims brought by investment counselors. *Malas v. Kolak*, M.D.N.C.1989, 721 F.Supp. 748, judgment vacated in part on other grounds 993 F.2d 1111.

District Court had jurisdiction of action for damages under this section for Federal Bureau of Investigation's improper release of records to third party pursuant to section 552 of this title, where under plaintiff's view, jurisdiction was appropriate once a violation had been established and plaintiff was aggrieved by it, and plaintiff properly pleaded allegations of an adverse effect upon him, and if plaintiff was required to show intentional and willful conduct as a threshold jurisdictional requirement, plaintiff adequately pleaded a colorable claim. *South v. Federal Bureau of Investigation*, D.C.Ill. 1981, 508 F.Supp. 1104.

218. Collateral attack

Former federal employee could maintain claims that Department of Army published untrue and unproven private information about him in violation of Privacy Act, notwithstanding claim that Privacy Act claims were essentially collateral attacks upon federal personnel employment actions against him, where former employee alleged that actions were taken in intentional or willful manner in failing to award of actual damages caused by adverse determinations based upon such records. *Hay v. Secretary of Army*, S.D.Ga.1990, 739 F.Supp. 609.

District court lacked jurisdiction over Privacy Act claim arising from records upon which agency relied in denying employees' application for reinstatement, where employees, in essence, were seeking review of agency's determination de-

nying reinstatement. *Henderson v. Social Sec. Admin.*, D.Kan.1989, 716 F.Supp. 15, affirmed 908 F.2d 559.

Former employee of Army and Air Force Exchange Service could not collaterally attack the correctness of his discharge decision by bringing a Privacy Act challenge against records that supported that decision where employee was provided sufficient opportunity to challenge the determination that he had committed a dischargeable offense. *Castella v. Long*, N.D.Tex.1988, 701 F.Supp. 578, affirmed 862 F.2d 872, certiorari denied 110 S.Ct. 330, 493 U.S. 936, 107 L.Ed.2d 319.

Both record reflecting medical diagnosis of employee and report of employee's supervisor were among most relevant records evaluated by Office of Workers' Compensation Programs in making disability award determination, and therefore, reports were not subject to collateral attack and could not be amended under Privacy Act. *Rogers v. U.S. Dept. of Labor*, D.C.Cal.1985, 607 F.Supp. 697.

219. Amendment of record—Generally

District court improperly granted summary judgment in Privacy Act action after ex parte, in camera hearing, no effort having been made to disclose government's evidence and positions to federal employee to greatest extent consistent with valid government privileges; employee sought expungement or amendment of memoranda stating that she failed to obtain necessary clearances before giving foreign officials document containing sensitive national security information. *Strang v. U.S. Arms Control and Disarmament Agency*, C.A.D.C.1990, 920 F.2d 30, 287 U.S.App.D.C. 99.

Under Privacy Act, court should be very hesitant to second guess subjective evaluations and observations by employee's superiors where such matters are within competence and experience of those superiors; trial court should, however, carefully review record to eliminate clear mistakes of fact, inaccurate opinions based solely upon such erroneous facts, and plainly irresponsible judgments of performance or character. *Hewitt v. Grubicki*, C.A.9 (Wash.) 1986, 794 F.2d 1373.

Though language of subsec. (d)(1) of this section expressly limits its applicability to records contained within system of

records, other subsections are not subject to such restrictions, and thus at least with respect to violations of subsec. (e)(7) qualifiedly prohibiting agency from maintaining record describing how any individual exercises right under U.S.C.A. Const. Amend. 1, plaintiff may be entitled to have offending records amended or expunged even if records are not maintained within agency's system of records. *Clarkson v. I.R.S.*, C.A.11 (Ga.) 1982, 678 F.2d 1368.

Veteran, who had been discharged for psychiatric reasons, was authorized under this section to seek amendment of both inaccurate biographic data and unsupported diagnostic conclusions relating to his hospitalization precipitating his discharge from the service. *R.R. v. Department of Army*, D.C.D.C.1980, 482 F.Supp. 770.

220. — Expungement from record

Former Veterans Administration physician was not entitled under Privacy Act to have critical remarks expunged from proficiency report evaluating his performance at VA hospital, absent showing of a substantial controversy regarding factual assertions or historical fact statements included in the report. *Hewitt v. Grubicki*, C.A.9 (Wash.) 1986, 794 F.2d 1373.

Expungement of records compiled by members of intelligence organizations regarding activities of opponents of Viet Nam war or proponents of racial justice would not be precluded on remand by fact that files were necessary for purposes of civil rights action. *Hobson v. Wilson*, C.A.D.C.1984, 737 F.2d 1, 237 U.S.App.D.C. 219, certiorari denied 105 S.Ct. 1843, 470 U.S. 1084, 85 L.Ed.2d 142, on remand 646 F.Supp. 884.

Federal courts are empowered to order the expungement of government records where necessary to vindicate rights secured by the Constitution or by statute. *Chastain v. Kelley*, C.A.D.C.1975, 510 F.2d 1232, 167 U.S.App.D.C. 11.

Under this section, an agency may not refuse a request to revise or expunge prior professional judgments once all facts underlying such judgments have been thoroughly discredited. *R.R. v. Department of Army*, D.C.D.C.1980, 482 F.Supp. 770.

1977, 549 F.2d 341, rehearing denied 551 F.2d 863.

Where plaintiff, an employee of United States Military Academy, pursued grievance process in reliance on and at express direction of personnel officer, governmental defendants in suit under this section were estopped to claim that the procedure was incorrect. *Liguori v. Alexander*, D.C.N.Y.1980, 495 F.Supp. 641.

242. Burden of proof

In suit upon allegations of violations of accuracy of records portion of this section, traditional rule imposing burden of proof on plaintiff was applicable. *Edison v. Department of the Army*, C.A.11 (Ga.) 1982, 672 F.2d 840.

This section places the burden of proof on the agency to sustain its actions when material is exempted. *Gerash v. Smith*, D.C.Colo.1984, 580 F.Supp. 808.

243. Injunction

Violations of Privacy Act, as incorporated into veterans' records statute, through release and disclosure of veteran's medical records in response to grand jury subpoena, did not authorize entry of injunctive relief requiring return of medical records to veteran, exclusion of the information from grand jury, or ban on disclosure by United States Attorney and his staff; violation was not one for which injunctive relief was specifically permitted by the Act. *Doe v. Stephens*, C.A.D.C. 1988, 851 F.2d 1457, 271 U.S.App.D.C. 230.

Though this section expressly provides for injunctive relief for two types of agency misconduct, i.e., wrongful withholding of documents and wrongful refusal to amend record, remedy for violations of all other provisions of this section is limited to recovery of damages upon showing that agency acted in intentional or willful manner. *Clarkson v. I.R.S.*, C.A.11 (Ga.) 1982, 678 F.2d 1368, certiorari denied 107 S.Ct. 1961, 481 U.S. 1031, 95 L.Ed.2d 533.

This section authorizes courts to issue injunctions only to amend, i.e., correct individual's record and to order agency to produce agency records improperly withheld from individual, and no broad right to injunctive relief was to be implied. *Edison v. Department of the Army*, C.A.11 (Ga.) 1982, 672 F.2d 840.

In action by class of union officers and officials for alleged violations of this section with respect to transfer of certain records from Department of Labor to Justice Department and subsequent subpoena of these records by grand jury, injunctive relief sought by plaintiffs was precluded under this section by failure of Congress to provide for such relief. *Hanley v. U.S. Dept. of Justice*, C.A.6 (Ohio) 1980, 623 F.2d 1138.

In view of subsec. (g) of this section authorizing court to issue injunctions in only two instances, to amend record and to order agency to produce agency records improperly withheld, and in view of failure of this section, to authorize injunctive relief against other violations of this section, plaintiffs were not entitled to injunctive relief under Privacy Act. *Park v. U.S. Internal Revenue Service*, C.A.10 (Kan.) 1980, 618 F.2d 677.

Privacy Act could not be used to order disposal of records compiled by FBI in course of investigation for alleged terrorist activity pursuant to tip by paid informant who was later determined to be untrustworthy. *Committee In Solidarity with People of El Salvador (CISPES) v. Sessions*, D.D.C.1990, 738 F.Supp. 544, affirmed 929 F.2d 742, 289 U.S.App.D.C. 149.

Socialist Workers Party was not entitled to declaratory and injunctive relief under section of Privacy Act prohibiting government agencies from maintaining records regarding individual exercise of First Amendment rights, where records in question were accumulated by government agencies prior to Act's effective date. *Socialist Workers Party v. Attorney General of U.S.*, S.D.N.Y.1986, 642 F.Supp. 1357.

Under this section, injunctive relief is available only to order agency to amend incorrect record or allow individual to inspect his record. *Houston v. U.S. Dept. of Treasury*, D.C.D.C.1979, 494 F.Supp. 24.

VI. EXEMPTIONS

Subdivision Index

Central Intelligence Agency records 263
Civil liability of law enforcement agencies 265
Classification studies, prison records 270

Commissary accounts, prison records 271
Construction 261
Evaluation material for promotions 280
Federal Bureau of Investigation records 266
Identity of source
Investigatory material for federal employment 279
Investigatory material for law enforcement purposes 277
Investigatory material for federal employment
Generally 278
Identity of source 279
Investigatory material for law enforcement purposes
Generally 276
Identity of source 277
Law enforcement agency records generally 264
Military criminal investigation records 267
Pardon records 268
Parole records, prison records 273
Prison records
Generally 269
Classification studies 270
Commissary accounts 271
Parole records 273
Prisoner's medical records 272
Prisoner's medical records 272
Promulgation of rules 262
Sentencing reports 274
United States attorney records 275

261. Construction

Disclosure mandated by Privacy Act cannot be totally and absolutely avoided by simple expedient of having personnel evaluations completed in handwritten form, exemptions from individual's right of access under Privacy Act must be narrowly construed. *May v. Department of Air Force*, C.A.5 (Miss.) 1986, 800 F.2d 1402.

Exemptions from individual's right of access under this section must be narrowly construed and their requirements must be strictly met. *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402.

262. Promulgation of rules

Given that principal function of the Drug Enforcement Administration is law enforcement, agency's records system is compiled for purpose of criminal investigation, and agency promulgated regulations exempting system of records, agen-

cy was not required to prepare index of requested documents, specifying in detail which portions of document were disclosable and which exempt, in response to Privacy Act request triggering exemption from disclosure of information compiled for purposes of criminal investigation. *Shapiro v. Drug Enforcement Admin.*, C.A.7 (Wis.) 1983, 721 F.2d 215, certiorari granted 104 S.Ct. 1706, 466 U.S. 926, 80 L.Ed.2d 179, 80 L.Ed.2d 180, vacated on other grounds 105 S.Ct. 413, 469 U.S. 14, 83 L.Ed.2d 242, on remand 755 F.2d 922, on remand 762 F.2d 611.

To exempt a system of records from an individual's right of disclosure properly under this section, an agency must promulgate rules which exempt a system of records from a provision of the section and state the reasons, in the rule itself, as to why the system of records is to be exempt from a provision of this section. *Ryan v. Department of Justice*, C.A.4 (Va.) 1979, 595 F.2d 954.

263. Central Intelligence Agency records

Central Intelligence Agency document sought by plaintiff fell within Agency regulation exempting documents from access provisions of this section. *Alford v. Central Intelligence Agency*, C.A.5 (La.) 1980, 610 F.2d 348, certiorari denied 101 S.Ct. 150, 449 U.S. 854, 66 L.Ed.2d 68, rehearing denied 101 S.Ct. 597, 449 U.S. 1027, 66 L.Ed.2d 488.

264. Law enforcement agency records generally

Regulation implementing Privacy Act exemption for disclosure of information compiled for purposes of criminal investigation contains explanation sufficiently specific to satisfy requirement that such regulation include reasons why records system is to be exempted, namely, that access to such records would alert subject to existence of investigation and thereby impede law enforcement efforts. *Shapiro v. Drug Enforcement Admin.*, C.A.7 (Wis.) 1983, 721 F.2d 215, certiorari granted 104 S.Ct. 1706, 466 U.S. 926, 80 L.Ed.2d 179, 80 L.Ed.2d 180, vacated on other grounds 105 S.Ct. 413, 469 U.S. 14, 83 L.Ed.2d 242, on remand 755 F.2d 922, on remand 762 F.2d 611.

To qualify for exemption from disclosure under Privacy Act exemption for system of records maintained by law enforcement agency, system of records must

5 § 552a

Note 264

be compiled for purpose of criminal investigation, must be exempted by duly promulgated regulations issued by agency claiming exemption, and must be maintained by agency or component of agency which performs as its principal function any activity pertaining to enforcement of criminal laws. *Stimac v. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*, D.C.Ill.1984, 586 F.Supp. 34.

265. Civil liability of law enforcement agencies

Cause of action under Privacy Act's civil remedies provision for agency's denial of request to amend records cannot lie with regard to records that agency has properly exempted from Act's amendment requirements. *Doe v. F.B.I.*, C.A.D.C.1991, 936 F.2d 1346, 290 U.S.App.D.C. 289, rehearing denied.

Statute, which permits agency to exempt system of records from requirements set out in other provisions of Privacy Act, did not permit Veterans Administration to exempt itself from civil liability provisions of Act; declining to follow *Kimberlin v. Dept. of Justice*, 788 F.2d 434 (7th Cir.); *Ryan v. Dept. of Justice*, 595 F.2d 954 (4th Cir.). *Tijerina v. Walters*, C.A.D.C.1987, 821 F.2d 789, 261 U.S.App.D.C. 301.

Department of Justice could not exempt itself from civil remedies provision of Privacy Act, even though general exemption provision did not prohibit exemption from civil remedies provision, and even though general exemption provision prohibited exemption from criminal liability provision. *Nakash v. U.S. Dept. of Justice*, S.D.N.Y.1988, 708 F.Supp. 1354.

266. Federal Bureau of Investigation records

FBI document created for criminal law enforcement purpose and consisting almost entirely of statements of confidential source was exempt from disclosure under Privacy Act and Freedom of Information Act (FOIA), even though *Vaughn* index submitted to district court did not establish requisite "nexus" between investigation and possible violation of federal law. *Simon v. Department of Justice*, C.A.D.C. 1992, 980 F.2d 782, 299 U.S.App.D.C. 1.

Subject of FBI record was barred from taking advantage of civil remedies afforded by Privacy Act, to bring action against

ADMINISTRATIVE PROCEDURE Ch.

federal Government which, he alleged, was negligent in failing to remove from his record information that he believed state court had ordered expunged, where identification division of FBI maintained record and Department of Justice had promulgated rules exempting record system of that division from Privacy Act. *Alexander v. U.S.*, C.A.9 (Cal.) 1986, 787 F.2d 1349.

Criminal investigatory files located within the Federal Bureau of Investigation central records system have been properly exempted from disclosure under this section. *Exner v. Federal Bureau of Investigation*, C.A.9 (Cal.) 1980, 612 F.2d 1202.

Records maintained in criminal case file system and FBI central records system documents were exempt from disclosure under Privacy Act pursuant to section allowing agency to promulgate rules to exempt from disclosure certain systems of records maintained by law enforcement agencies. *Watson v. U.S. Dept. of Justice*, D.D.C.1992, 799 F.Supp. 193.

Materials requested from Federal Bureau of Investigation (FBI) by death row inmate pursuant to Privacy Act, including his rap sheet and all other information in his file, as well as information pertaining to victims of violent crimes he allegedly committed, were wholly exempted from disclosure by Privacy Act segment allowing head of law enforcement agency to promulgate rules to exempt from disclosure "any system of records" consisting of "information compiled for the purpose of a criminal investigation, including reports of informants or investigators, and associated with an identifiable individual"; that segment incorporated inquiry undertaken in evaluating applicability of Freedom of Information Act (FOIA) exemption for investigatory records compiled for law enforcement purposes. *Rojem v. U.S. Dept. of Justice*, D.D.C.1991, 775 F.Supp. 6.

Federal Bureau of Investigation's (FBI's) central record system records are only exempt from disclosure of the Privacy Act to the extent that their contents are protected by an explicit exemption. *Whittle v. Moschella*, D.D.C.1991, 756 F.Supp. 589.

FBI failed to demonstrate that its records on elementary school student who wrote to foreign governments as part of

Ch. 5 ADMINISTRATIVE PROCEDURE

elementary school project were compiled specifically for purposes of criminal investigation and thus, FBI could not contend that Privacy Act claim by student was barred by FBI's regulation exempting central record system from civil remedy provision of Privacy Act. *Patterson v. F.B.I.*, D.N.J.1989, 705 F.Supp. 1033, affirmed 893 F.2d 595, certiorari denied 111 S.Ct. 48, 498 U.S. 812, 112 L.Ed.2d 124.

Federal Bureau of Investigation records maintained on plaintiff for purpose of criminal investigation were exempt from disclosure under this section. *Stimac v. F.B.I.*, D.C.Ill.1984, 577 F.Supp. 123.

Plaintiff was not entitled to amendment of Federal Bureau of Investigation's file to delete information claimed to be false and untrue since information maintained in the FBI central record system has been exempted from the correction and amendment provisions of this section. *Varona Pacheco v. Federal Bureau of Investigation*, D.C. Puerto Rico 1978, 456 F.Supp. 1024.

267. Military criminal investigation records

Refusal of Army Criminal Investigation Division (CID) to amend report of investigation of charges that Reserve Officer had sexually molested children did not give rise to civil action under Privacy Act; files were criminal investigation records exempt by virtue of Army rule exempting CID's system of records. *Aquino v. Stone*, C.A.4 (Va.) 1992, 957 F.2d 139.

268. Pardon records

Pardon Attorney's investigation and assessment of pardon application is protected from disclosure under this section as information compiled for the purpose of criminal investigation. *Binion v. U.S. Dept. of Justice*, C.A.9 (Nev.) 1983, 695 F.2d 1189.

269. Prison records—Generally

Prisons constitute "law enforcement agencies" for purposes of this section, hence, records compiled by prison authorities during investigation of possible violation of criminal laws and prison regulations are not outside scope of this section. *Duffin v. Carlson*, C.A.D.C.1980, 616 F.2d 709, 205 U.S.App.D.C. 1.

Bureau of Prisons (BOP) is "law enforcement agency" for purpose of Privacy

5 § 552a

Note 273

Act such that BOP may promulgate regulations exempting certain records from enforcement of Act. *Kellett v. U.S.*, D.N.H.1994, 856 F.Supp. 65, affirmed 66 F.3d 306.

270. — Classification studies

Since subsection of administrative regulations established by Bureau of Prisons contained justification for exemption of inmate's classification study, study was exempt from disclosure to inmate. *Turner v. Ralston*, D.C.Mo.1983, 567 F.Supp. 606.

271. — Commissary accounts

Rule exempting records from Privacy Act if principal function of agency relates to enforcement of criminal laws, including activities of correctional, probation, pardon or parole authorities or if records consist of reports identifiable to individual compiled at any stage of process of enforcement of criminal laws from arrest or indictment for relief from supervision did not exempt records of inmate's prison commissary account for purposes of inmate's action challenging disclosure of information concerning the account. *Kimberlin v. U.S. Dept. of Justice*, D.C.Ill. 1985, 605 F.Supp. 79, affirmed 788 F.2d 434, certiorari denied 106 S.Ct. 3306, 478 U.S. 1009, 92 L.Ed.2d 719.

272. — Prisoner's medical records

On remand, government was not free to claim that inmate's medical records fell within statutory exemptions of Privacy Act, where Bureau or Prisons had contended throughout administrative and litigation proceedings that none of inmate's medical records were exempt, and government is not entitled to raise defenses to request for information seriatim until it finds theory that court will accept, but must bring all defenses at once before district court. *Benavides v. U.S. Bureau of Prisons*, C.A.D.C.1993, 995 F.2d 269, 301 U.S.App.D.C. 369.

273. — Parole records

Prisoner seeking parole was not entitled to bring civil action against the Parole Commission to correct alleged inaccuracies in presentence reports under the Privacy Act, 5 U.S.C.A. § 552a(j)(2)(C), which exempts from the Act reports identifiable to individual compiled at any stage of process of enforcement of criminal laws, since the Commission has promulgated rules implementing such ex-

5 § 552a

Note 273

emption. *Fendler v. U.S. Parole Com'n*, C.A.9 (Cal.) 1985, 774 F.2d 975.

Form prepared by assistant United States Attorney informing United States Parole Commission of prosecutor's opinion regarding prisoner and propriety of granting him parole was exempt from both disclosure and amendment provisions of Privacy Act [5 U.S.C.A. §§ 552a, 552a(j)(2)]. *Wentz v. Department of Justice*, C.A.7 (Wis.) 1985, 772 F.2d 335, certiorari denied 106 S.Ct. 1470, 475 U.S. 1086, 89 L.Ed.2d 726.

274. Sentencing reports

Presentencing report in federal prisoner's central file was exempt from disclosure under provision in Privacy Act authorizing head of agency involved with law enforcement activities to promulgate rules to exempt system of records from disclosure requirements where Attorney General had promulgated rules exempting from disclosure certain records of federal inmates pertaining to sentencing and parole. *Rosenberg v. Meese*, D.C.N.Y. 1985, 622 F.Supp. 1451.

275. United States attorney records

Prisoner could not receive records under Privacy Act pertaining to homicide for which he was convicted since information prisoner requested was contained in criminal law enforcement records and such information was exempt under Act. *Durham v. U.S. Dept. of Justice*, D.D.C. 1993, 829 F.Supp. 428.

276. Investigatory material for law enforcement purposes—Generally

"Pratt test" for evaluating applicability of Exemption 7 of Freedom of Information Act (FOIA) to law enforcement agency records could be applied to determine whether Federal Bureau of Investigation (FBI) records were exempt from Privacy Act's amendment requirements; under test, investigatory activities that gave rise to records had to be related to enforcement of federal laws or to maintenance of national security and nexus between investigation and one of FBI's law enforcement duties had to be based on information sufficient to support at least colorable claim of its rationality, and requesting party bore burden of producing evidence that asserted law enforcement rationale for investigation was pretextual. *Doe v. F.B.I.*, C.A.D.C. 1991, 936 F.2d 1346, 290 U.S.App.D.C. 289, rehearing denied.

ADMINISTRATIVE PROCEDURE C

Under this section, agency could promulgate regulations exempting investigatory material compiled for law enforcement purposes, and none of additional conditions found in exemption under Freedom of Information Act, section 552 of this title, such as disclosure of confidential source, need be met before exemption under this section applied; thus, where Department of Justice had promulgated necessary regulations to exempt FBI records, this section added nothing to citizen's rights under Freedom of Information Act to obtain such records. *Irons v. Bell*, C.A.1 (Mass.) 1979, 596 F.2d 468.

Federal Bureau of Investigation (FBI) properly invoked Privacy Act exemption providing for withholding of investigatory material compiled for law enforcement reasons to withhold information that would have revealed identities of individuals who provided information in connection with preemployment investigation of requester, a former FBI agent. *Putnam v. U.S. Dept. of Justice*, D.D.C. 1995, 873 F.Supp. 705.

Background check into applicant's suitability for employment by Justice Department had law enforcement purpose, as required for Freedom of Information Act (FOIA), where check was conducted pursuant to executive order authorizing such checks as the result of its finding that interests of national security required that government employees be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty. *Doe v. U.S. Dept. of Justice*, D.D.C. 1992, 790 F.Supp. 17.

In view of fact that affidavit established that records were generated as a result of official investigation of special agents' complaints and grievances conducted to determine if any administrative action should be taken, they clearly qualified as investigative records compiled for law enforcement purposes and were exempt from disclosure under this section. *Frank v. U.S. Dept. of Justice*, D.C.D.C. 1979, 480 F.Supp. 596.

277. — Identity of source

Inmate seeking damages for disclosure of record pursuant to another inmate's Freedom of Information Act request, stated cause of action against government for violation of Privacy Act, even though record did not contain "personal information" about him and was not retrieved

Ch. 5 ADMINISTRATIVE PROCEDURE

5 § 552a

Note 279

through search of indices bearing his name or other identifying characteristics; record contained information inmate had given under promise of confidentiality, and thus disclosure may have violated Privacy Act. *Sterling v. U.S.*, D.D.C. 1992, 798 F.Supp. 47.

Justice Department's response to job applicant's Privacy Act request for records developed during background investigation of him was proper, insofar as Department withheld only those portions of documents that would reveal identity of source who specifically requested confidentiality. *Doe v. U.S. Dept. of Justice*, D.D.C. 1992, 790 F.Supp. 17.

278. Investigatory material for federal employment—Generally

Where agency has properly exempted records from access and amendment under Privacy Act, agency no longer has any obligation to disclose those records, irrespective of underlying motives of agency or impact of records on parties. *Nolan v. U.S. Dept. of Justice*, C.A.10 (Colo.) 1992, 973 F.2d 843.

Information contained in document qualifying for exemption under Privacy Act as law enforcement record does not lose its exempt status when recompiled in nonlaw enforcement record if purposes underlying exemption of original document pertain to recompilation as well. *Doe v. F.B.I.*, C.A.D.C. 1991, 936 F.2d 1346, 290 U.S.App.D.C. 289, rehearing denied.

Exemption under this section from access requirements for investigatory material compiled solely for determining suitability, eligibility, or qualifications for Federal civilian employment" is not limited to investigations for determining advisability of hiring employees, as opposed to advisability of their continued employment. *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402.

The confidentiality exemption found under this section is applicable to suits seeking access to agency records. *Doe v. U.S. Civil Service Commission*, D.C.N.Y. 1980, 483 F.Supp. 539.

279. — Identity of source

Records compiled by FBI on applicant for federal positions pursuant to statute requiring "loyalty check" and pursuant to executive order did not fall within law enforcement records exemption from

amendment provisions Privacy Act; the only exemption applicable to records was that for investigatory material compiled for purpose of determining suitability or qualifications for federal service, and were thus only exempt to extent that disclosure would reveal identity of source who furnished information under express promise that identity would be held in confidence. *Vymetalik v. F.B.I.*, C.A.D.C. 1986, 785 F.2d 1090, 251 U.S.App.D.C. 402.

It is main rule under this section that individual shall have access to federal agency records pertaining to him or her, and an exception, shielding informants' identities, is tightly contained for investigations conducted after effective date of this section, though exception is less strict for investigations antedating this section. *Londrigan v. F.B.I.*, C.A.D.C. 1983, 722 F.2d 840, 232 U.S.App.D.C. 354.

Finding that witnesses had been "given assurances" that their statements would be kept as secret as possible was sufficient finding of "express promise" that identity would be held in confidence, for purposes of exemption under this section as to investigatory material compiled solely for determining "suitability, eligibility or qualifications for federal civilian employment." *Hernandez v. Alexander*, C.A.10 (N.M.) 1982, 671 F.2d 402.

In action challenging the Federal Bureau of Investigation's refusal to disclose to plaintiff portions of Bureau file compiled during the course of an investigation of plaintiff's qualifications for federal employment, substantial fact issue existed as to whether persons interviewed in connection with the investigation were impliedly assured of confidentiality so as to fall within the exemption under subsec. (k)(5) for investigatory material compiled prior to the effective date of this section under an implied promise that the identity of the source of the information would be held in confidence, precluding summary judgment. *Londrigan v. Federal Bureau of Investigation*, C.A.D.C. 1981, 670 F.2d 1164, 216 U.S.App.D.C. 345.

This section's exception relating to investigatory material compiled solely for the purpose of determining suitability for federal employment exempted disclosure of those portions of a document containing information obtained under proper promise of confidentiality even though

source of information was known. *Volz v. U.S. Dept. of Justice*, C.A.10 (Okla.) 1980, 619 F.2d 49, certiorari denied 101 S.Ct. 397, 449 U.S. 982, 66 L.Ed.2d 244.

Implicit in regulation authorizing granting of confidentiality under exception to this section's general requirement that government agencies permit an individual access to agency's records containing information about him is a required finding of good cause; also, pledges of confidentiality may not be assumed. *Larry v. Lawler*, C.A.7 (Ill.) 1978, 605 F.2d 954.

Documents in the possession of defense investigative service containing identities of individuals who gave information with desire to remain anonymous is exempt from release under Freedom of Information Act and Privacy Act. *Savada v. U.S. Dept. of Defense*, D.D.C.1991, 755 F.Supp. 6.

Information in applicant's personnel file which concerned investigation into applicant's character, reputation, and background by Federal Bureau of Investigation and which would identify source, even if source's name were redacted, was exempt from disclosure pursuant to statute which exempts information that would reveal identity of source. *Voelker v. F.B.I.*, E.D.Mo.1986, 638 F.Supp. 571.

Government was properly allowed to delete from documents sought by university professor relating to government surveillance of academicians during McCarthy era portions of five documents pursuant to subsec. (k)(5) of this section allowing an agency to withhold investigatory material compiled solely for purpose of determining suitability, eligibility, or qualifications for federal civilian employment in that persons interviewed logically assumed their identities and cooperation would be kept confidential and affidavit filed by agency explained that cooperation from law enforcement agencies and commercial institutions in processing background information provided unemployment applications would have been impeded if assumed confidences were not honored. *Diamond v. Federal Bureau of Investigation*, D.C.N.Y.1981, 532 F.Supp. 216, affirmed

707 F.2d 75, certiorari denied 104 S.Ct. 995, 465 U.S. 1004, 79 L.Ed.2d 228

Regulation which was promulgated by government agency pursuant to this section and which allowed material compiled during employment investigations to be extracted or summarized in a manner which protected identity of a confidential source was not invalid for failure to comply with requirement that a statement of "basis and purpose" be included therein where requirement was satisfied by publication of such a statement in the Federal Register. *Lorenz v. U.S. Nuclear Regulatory Commission*, D.C.Colo.1981, 516 F.Supp. 1151.

Identities of sources who made derogatory statements to Civil Service Commission investigators concerning applicant for the noncompetitive service were exempt from disclosure under this section where the sources, who provided information used to determine the applicant's suitability for federal employment, were promised that their names would not be disclosed and where disclosure of the sources' identities was not critical to a fair determination of issues actually remaining in the case. *Doe v. U.S. Civil Service Commission*, D.C.N.Y.1980, 483 F.Supp. 539.

To justify withholding information identifying sources of investigatory material compiled for purpose of determining suitability, eligibility, or qualifications for federal civilian employment, furnished under promise of confidentiality, agency must meet the requirements of exemption with respect to such materials, and cannot rely on "privacy" exemptions of section 552 of this title. *Nemetz v. Department of Treasury*, D.C.Ill.1978, 446 F.Supp. 102.

280. Evaluation material for promotions

Air Force promotion recommendation reports were not exempt from disclosure under Privacy Act on grounds that reports were handwritten and would thus reveal raters' identities, where Air Force could prepare special copy of requested form, either typewritten or in third party's handwriting. *May v. Department of Air Force*, C.A.5 (Miss.) 1986, 800 F.2d 1402.

§ 552b. Open meetings

(a) For purposes of this section—

(1) the term "agency" means any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term "member" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

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

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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ADMINISTRATIVE PROCEDURE

of Freedom of Information Act (5 USCS § 552), and any record exempt from disclosure under Privacy Act exemption (j)(2) is likewise exempt from disclosure under Freedom of Information Act. *Stimac v Department of Treasury, Bureau of Alcohol, Tobacco & Firearms* (1984, ND Ill) 586 F Supp 34, later proceeding (ND Ill) 1988 US Dist LEXIS 420.

In combined claim under both Freedom of Information Act (5 USCS § 552) and Privacy Act (5 USCS § 552a), petitioner is entitled to cumulative result of materials provided by both statutes, and court must determine whether requested information may be disclosable under one or other. *Fagot v Federal Deposit Ins. Corp.* (1984, DC Puerto Rico) 584 F Supp 1168.

Effect of Privacy Act (5 USCS § 552a) is to preclude disclosure of some information exempt from mandatory disclosure under Freedom of Information Act (5 USCS § 552) except under specified circumstances, and thus to remove agency's discretion to disclose such information when not compelled by Freedom of Information Act; proper Privacy Act analysis utilizes standards developed under Freedom of Information Act in determining whether disclosure is mandatory or whether information is exempt. *Andrews v Veterans Admin., of United States* (1985, DC Wyo) 613 F Supp 1404, revd on other grounds (CA10 Wyo) 838 F2d 418, 3 BNA IER Cas 1274, cert den (US) 102 L Ed 2d 35, 109 S Ct 56, 3 BNA IER Cas 1344.

Agency is permitted to disclose records under Privacy Act (5 USCS § 552a) where Freedom of Information Act (5 USCS § 552) requires it, but is prohibited from disclosure where particular Freedom of Information Act exemption allows agency to withhold information. *Sullivan v Veterans Admin.* (1985, DC Dist Col) 617 F Supp 258.

Material exempt under Privacy Act (5 USCS § 552a) does not prevent disclosure of such material under Freedom of Information Act (5 USCS § 552). *Miller v United States* (1986, ED NY) 630 F Supp 347.

4. —Internal Revenue Code

Taxpayer is not entitled under either Freedom of Information Act (5 USCS § 552) or Privacy Act (552a) to obtain information in files of Internal Revenue Service concerning his tax returns which are shielded from disclosure by confidentiality provisions of 26 USCS §§ 6103(a)(1), (e)(7), since comprehensive disclosure provisions of § 6013 override inconsistent provisions of §§ 552, 552a. *Cheek v IRS* (1983, CA7 Ill) 703 F2d 271, 83-1 USTC ¶ 9274, 51 AFTR 2d 83-1010.

Sending of "Privacy Act notice" is not prerequisite to enforcement of IRS summons. *United*

5 USCS § 552a, n 6

States v McAnlis (1983, CA11 Fla) 721 F2d 334, 84-1 USTC ¶ 9187, 53 AFTR 2d 84-455, cert den 467 US 1227, 81 L Ed 2d 877, 104 S Ct 2681, reh den 468 US 1224, 82 L Ed 2d 916, 105 S Ct 21.

Privacy Act (5 USCS § 552a) is not concerned with gathering of information by government agency, but with use of that information once it has been gathered; no Privacy Act claim exists for disclosure of bank records to IRS pursuant to summons. *McTaggart v United States* (1983, ED Mich) 570 F Supp 547, 83-2 USTC ¶ 9578, 52 AFTR 2d 83-5931.

Privacy Act is not intended to be used to shield individuals from compliance with disclosure requirements mandated by law, and taxpayers issued with summonses by IRS to disclose tax information must comply therewith. *United States v Carter Family Trust* (1985, ND Ind) 602 F Supp 82, 88-1 USTC ¶ 9315, 55 AFTR 2d 85-1350.

Because of exemption of 26 USCS § 7852(e), District Court has no jurisdiction to hear Privacy Act claim to order IRS to expunge all references to taxpayer as "tax protestor." *Dyrda v Commissioner* (1985, DC Neb) 633 F Supp 2, 86-1 USTC ¶ 9126, 57 AFTR 2d 86-752.

5. —Provisions relating to veterans

38 USCS § 211, providing that decisions of Veterans Administration relating to benefits are not subject to judicial review, is not impliedly repealed to extent individual claims that Veterans Administration based its adverse disability determination on improperly maintained records; Privacy Act (5 USCS § 552a) fails to evince clear and manifest congressional intent necessary to overcome presumption against repeals by implication. *Rosen v Walters* (1983, CA9 Cal) 719 F2d 1422.

Where Veterans' Records Statute (38 USCS § 3301) and Privacy Act (5 USCS § 552a) are inconsistent, provision which is more protective of confidentiality of individual records is applicable. *Doe v Di Genova* (1985) 250 App DC 274, 779 F2d 74, on remand (DC Dist Col) 642 F Supp 624, affd in part and remanded in part (App DC) 851 F2d 1457.

6. Meaning of "individual"

Corporation is not "individual" within meaning of 5 USCS § 552a(g)(1) which creates federal claims for relief for enumerated violations of Act's substantive provisions and refers throughout only to actions brought by "individual" since 5 USCS § 552a(a)(2) defines "individual" as citizen of United States or alien lawfully admitted for permanent residence. *Céll Associates, Inc. v*

5 USCS § 552a, n 6

National Institutes of Health, etc. (1978, CA9 Cal) 579 F2d 1155, 4 Media L R 1543.

Corporation is without standing to bring proceedings under Privacy Act since it is not "individual" as defined in that Act (5 USCS § 552a(a)(2)); corporation similarly lacks standing to litigate any claims which its employees might have under Privacy Act. Dresser Industries, Inc. v United States (1979, CA5 Tex) 596 F2d 1231, CCH Fed Secur L Rep ¶ 96925, 27 FR Serv 2d 825, reh den (CA5 Tex) 601 F2d 586 and cert den 444 US 1044, 62 L Ed 2d 730, 100 S Ct 731.

Court must examine character of request for records under Privacy Act (5 USCS § 552a) to determine whether all or part of that request is made by "individual" and if made by "individual" whether his request relates to entrepreneurial activities; corporation is not "individual" under this definition and lacks standing under "access to records" provision of 5 USCS § 552a(d). Shermco Industries, Inc. v Secretary of United States Air Force (1978, ND Tex) 452 F Supp 306, 25 CCF ¶ 82432, revd on other grounds (CA5 Tex) 613 F2d 1314, 27 CCF ¶ 80280.

Term "individual" is used in Privacy Act (5 USCS § 552a(a)(2)) instead of term "person" in order to distinguish between rights which are given to citizens as individual under Act and rights of proprietorships, businesses and corporations which are not intended to be covered by this Act. OKG Corp. v Williams (1978, ND Tex) 461 F Supp 540, CCH Fed Secur L Rep ¶ 96745.

Provisions of 5 USCS § 552a do not protect aliens who are illegally in United States as they are not "individuals" as term is defined in § 552a(a)(2). Re Thorpe (1977, Bd Imm App) 41 AdL2d 786.

Congress did not intend in 5 USCS § 552a to provide corporation right to gain access to records pertaining to it which are maintained by federal agencies; such right pertains only to individuals. Re Chemex Corp. (1976, SEC) 39 AdL2d 910.

7. What constitutes record, generally

5 USCS § 552a applies only to disclosure of records; disclosure of information from personal knowledge of individual, and not from retrieval of information from government report, does not constitute disclosure of record. Olberding v United States Dept. of Defense, Dept. of Army (1983, CA8 Iowa) 709 F2d 621.

Memorandum of meeting between supervisor and employee which was not kept within a system of records was not subject to antidiscovery provisions of Privacy Act (5 USCS § 552a).

AGENCIES GENERALLY

Boyd v Secretary of Navy (1983, CA11 Fla) 709 F2d 684, cert den 464 US 1043, 79 L Ed 2d 173, 104 S Ct 709.

Letters written by agency official communicating sensitive information contained in investigation may constitute agency record; Privacy Act (5 USCS § 552a) covers more than mere physical dissemination of records or copies but does not necessarily cover disclosure of information merely because information has to be contained in records; Privacy Act (5 USCS § 552a) is not limited to information directly retrieved from tangible recording and extends in some circumstances to information acquired by means other than retrieval from system of records. Bartel v Federal Aviation Admin. (1984) 223 App DC 297, 725 F2d 1403, on remand (DC Dist Col) 617 F Supp 190, later proceeding (ED NY) 664 F Supp 669.

Grand jury is not an agency as described in Privacy Act and grand jury materials are not agency records within scope of Privacy Act; rather grand jury materials are records of court to which Privacy Act does not apply; list compiled by U.S. Attorneys' Office regarding names and addresses of members of organization which promotes tax avoidance and was subject to grand jury investigation did not constitute grand jury material. Standley v Department of Justice (1987, CA9 Ariz) 835 F2d 216, 61 AFTR 2d 88-436.

Term "record", as defined for purposes of Privacy Act, means tangible or documentary record (as opposed to record contained in someone's memory) and has broader meaning than term commonly has when used in connection with record-keeping systems; information alleged to have been divulged did not constitute disclosure of record within meaning of Privacy Act where it was personal opinion stated from memory. King v Califano (1979, DC Dist Col) 471 F Supp 180.

"Record", within meaning of Privacy Act, is information which is personal and reflects upon individual's private affairs; information which does not reflect upon individual's private affairs is not record within act. Windsor v Federal Executive Agency (1983, MD Tenn) 614 F Supp 1255, affd without op (CA6 Tenn) 767 F2d 923.

8. —Name retrievability

Records which do not mention requestor's name and which do not make reference to him in any way are not disclosable under Privacy Act (5 USCS § 552a); administrative law judge is not entitled to memoranda concerning operation of his hearing office where records are not retrievable by his name and where records are not part of "system of records". Wren v Heckler (1984, CA10 NM) 744 F2d 86.

CHAPTER 5—ADMINISTRATIVE PROCEDURE

Sections 500 to 552 appear in this Volume.

SUBCHAPTER I—GENERAL PROVISIONS

- Sec.
500. Administrative practice; general provisions.
501. Advertising practice; restrictions.
502. Administrative practice; Reserves and National Guardsmen.
503. Witness fees and allowances.
504. Costs and fees of parties.

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

551. Definitions.
552. Public information; agency rules, opinions, orders, records, and proceedings.
552a. Records about individuals.¹
552b. Open meetings.
553. Rule making.
554. Adjudications.
555. Ancillary matters.
556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.
557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record.
558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses.
559. Effect on other laws; effect of subsequent statute.

SUBCHAPTER III—NEGOTIATED RULEMAKING PROCEDURE

561. Purpose.
562. Definitions.
563. Determination of need for negotiated rulemaking committee.
564. Publication of notice; applications for membership on committees.
565. Establishment of committee.
566. Conduct of committee activity.
567. Termination of committee.
568. Services, facilities, and payment of committee member expenses.
569. Role of the Administrative Conference of the United States and other entities.
570. Judicial review.

SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS

571. Definitions.
572. General authority.
573. Neutrals.
574. Confidentiality.
575. Authorization of arbitration.
576. Enforcement of arbitration agreements.
577. Arbitrators.

Ch. 5 ADMINISTRATIVE PROCEDURE

- Sec.
578. Authority of the arbitrator.
579. Arbitration proceedings.
580. Arbitration awards.
581. Judicial review.¹
582. Compilation of information.
583. Support services.

SUBCHAPTER V—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

591. Purpose.
592. Definitions.
593. Administrative Conference of the United States.
594. Powers and duties of the Conference.
595. Organization of the Conference.
596. Authorization of appropriations.

¹ So in original. Does not conform to section catchline.

Amendment of Analysis

Pub.L. 101-648, § 5, Nov. 29, 1990, 104 Stat. 4976, provided for repeal of Subchapter III (items 561 to 570), effective 6 years after Nov. 29, 1990, except as otherwise provided. See section 5 of Pub.L. 101-648, as amended, set out as a note under section 561 of this chapter.

For termination of amendment by section 11 of Pub.L. 101-552, see Sunset Provisions note set out under section 571 of this title.

HISTORICAL AND STATUTORY NOTES

Amendments

1992 Amendments. Pub.L. 102-354, § 4, Aug. 26, 1992, 106 Stat. 945, redesignated items relating to former subchapter IV, Negotiated Rulemaking Procedure, formerly sections 581 through 590, as subchapter III, sections 561 through 570, redesignated items relating to former subchapter III, Administrative Conference of the United States, formerly sections 571 through 576, as subchapter V, sections 591 through 596, and redesignated items comprising subchapter IV, Alternative Means of Dispute Resolution in the Administrative Process, formerly sections 581 through 593, as sections 571 through 583.

1990 Amendments. Pub.L. 101-648, §§ 3(b), 5, Nov. 29, 1990, 104 Stat. 4976, added heading of subchapter IV and items 581 to 590 relating to negotiated rulemaking procedure, and repealed that

heading and those items effective six years after Nov. 29, 1990.

Pub.L. 101-552, § 4(c), Nov. 15, 1990, 104 Stat. 2745, temporarily added "Subchapter IV—Alternative Means of Dispute Resolution in the Administrative Process" and items 581 to 593. See Sunset Provisions note set out under section 571 (formerly 581) of this title.

1986 Amendments. Pub.L. 99-470, § 2(b), Oct. 14, 1986, 100 Stat. 1198, substituted "Authorization of appropriations" for "Appropriations" in item 576.

1985 Amendments. Pub.L. 99-80, § 6(a), (b)(1), Aug. 5, 1985, 99 Stat. 186, effective Oct. 1, 1984, restored item 504 and repealed Pub.L. 96-481, Title II, § 203(c), Oct. 21, 1980, 94 Stat. 2327, which had provided for the repeal, effective Oct. 1, 1984, of item 504.

Applicability of this subchapter to—Cont'd

- Motor carriers certificates or permits suspension by Interstate Commerce Commission, see 49 USCA § 11124.
- National insurance development program; rules and regulations, see 12 USCA § 1749bbb-17.
- National Labor Relations Board declination of jurisdiction rules, see 29 USCA § 164.
- National Labor Relations Board rules and regulations generally, see 29 USCA § 156.
- National Security Agency personnel security procedures, see 50 USCA § 835.
- National Space Program privileged or confidential information, see 42 USCA § 2454.
- Natural gas policy rules or orders, see 15 USCA § 3412.
- Public contracts, see 41 USCA § 43a.
- Radio licenses for aliens licensed by foreign governments, see 47 USCA § 310.
- Radio stations licenses authorization for alien amateur operators, see 47 USCA § 303.
- Radio stations owned by foreign government authorization, see 47 USCA § 305.
- Rail car emergency service Interstate Commerce Commission actions, see 49 USCA § 11123.
- Rail freight services transfer, see 45 USCA § 1116.
- Rail traffic rerouting by Interstate Commerce Commission, see 49 USCA § 11124.
- Rail transportation directed actions of Interstate Commerce Commission, see 49 USCA § 11125.
- Register of Copyrights actions, see 17 USCA § 701.
- Sawtooth National Recreation Area private land regulations, see 16 USCA § 460aa-3.
- Securities and Exchange Commission investor protection rules, see 15 USCA § 78ggg.
- Select Committee on Standards and Conduct of Senate regulations, see 2 USCA § 502.
- Steel research and development management plan, see 15 USCA § 5103.
- Strategic Petroleum Reserve drawdown and distribution rules, regulations, or orders, see 42 USCA § 6241.
- Technology innovation cooperative research and development agreements protections against dissemination of information, see 15 USCA § 3710a.
- Thrift Depositor Protection Oversight Board and Resolution Trust Corporation promulgation of standards, policies, and rules, see 12 USCA § 1441a.
- Unfair labor practices hearings, see 5 USCA § 7118.
- Unfair practices in import trade determinations, see 19 USCA § 1337.
- Vending facilities for blind in Federal buildings dispute arbitration, see 20 USCA § 107d-2.
- Water resource development projects acquisition of lands, see 33 USCA § 597.
- Water transportation previously exempted from ICC jurisdiction temporary authority, see 49 USCA 10929.
- Wire or radio communication hearings, see 47 USCA § 409.
- Archaeological resource information made publicly available under this subchapter, see 16 USCA § 470hh.
- Department of Justice functions vested in Attorney General except those vested in administrative law judges by this subchapter, see 28 USCA § 509.
- Department of Treasury duties and powers vested in Secretary of Treasury except those vested in administrative law judges by this subchapter, see 31 USCA § 321.
- Judicial Officer of Postal Service as agency for purposes of this subchapter, see 39 USCA § 204.
- Office of Federal Housing Enterprise Oversight and Department of HUD considered agencies responsible for regulation of financial institutions for purposes of this subchapter, see 12 USCA § 4525.

- Presidential rulemaking and export restrictions concerning energy supplies related materials and equipment, see 42 USCA § 6212.
- "Presiding officer" defined as in this subchapter for purposes of administrative remedies for false claims and statements, see 31 USCA § 3801.
- Sawtooth National Recreation Area setting standards for use, subdivision development of private lands in, see 16 USCA § 460aa-3.
- Thrift Depositor Protection Oversight Board and Resolution Trust Corporation agency of United States for purposes of this subchapter, see 12 USCA § 1441a.
- Walsh-Healey Act, see 41 USCA § 43a.

LIBRARY REFERENCES

Law Review and Journal Commentaries

- Separating the objective, the subjective, and the speculative: Assessing compensatory damages in fair housing adjudications. Alan W. Heifetz & Thomas C. Heinz, 26 J. Marshall L.Rev. 3 (1992).
- Thoughts on accountability and the administrative process. Marshall J. Breger, 39 Ad.L.Rev. 399 (1987).
- Visibility at the Grand Canyon: Regulatory negotiations under the Clean Air Act. D. Michael Rappaport & John F. Cooney, 24 Ariz.St.L.J. 627 (1992).

§ 551. Definitions

→ §§ 551-559

For the purpose of this subchapter—

(1) agency means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50; appendix.

(2) person includes an individual, partnership, corporation, association, or public or private organization other than an agency.

(3) party includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be

admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and

(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 381; Pub.L. 94-409, § 4(b), Sept. 13, 1976, 90 Stat. 1247; Pub.L. 103-272, § 5(a), July 5, 1994, 108 Stat. 1373.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1966 Acts.

Derivation:	United States Code	Revised Statutes and Statutes at Large
(1)	5 U.S.C. 1001(a)	June 11, 1946, ch. 324, § 2(a), 60 Stat. 237. Aug. 8, 1946, ch. 870, § 302, 60 Stat. 918. Aug. 10, 1946, ch. 951, § 601, 60 Stat. 993. Mar. 31, 1947, ch. 30, § 6(a), 61 Stat. 37. June 30, 1947, ch. 163, § 210, 61 Stat. 201. Mar. 30, 1948, ch. 161, § 301, 62 Stat. 99.
(2)-(13)	5 U.S.C. 1001 (less (a))	June 11, 1946, ch. 324, § 2 (less (a)), 60 Stat. 237.

In paragraph (1), the sentence "Nothing in this Act shall be construed to repeal delegations of authority as provided by law." is omitted as surplusage since there is nothing in the Act which could reasonably be so construed.

In paragraph (1)(G), the words "or naval" are omitted as included in "military".

In paragraph (1)(H), the words "functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947" are omitted as executed. Reference to the "Selective Training and Service Act of 1940" is omitted as that Act

expired Mar. 31, 1947. Reference to the "Sugar Control Extension Act of 1947" is omitted as that Act expired on Mar. 31, 1948. References to the "Housing and Rent Act of 1947, as amended" and the "Veterans' Emergency Housing Act of 1946" have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by section 111(a)(1) of the Act of Sept. 21, 1961, Pub.L. 87-256, 75 Stat. 538, since section 111(c) of the Act provides that a reference in other Acts to a provision of law repealed by section 111(a) shall be considered to be a reference to the appropriate provisions of Pub.L. 87-256.

ties and Exchange Commission. *Commercial Capital Corp. v. Securities and Exchange Commission*, C.A.Ill.1966, 360 F.2d 856.

21. — U.S. International Trade Commission

Tariff Commission [now U.S. International Trade Commission] in anti-dumping proceeding acts in advisory capacity only and is not "agency" engaged in "rule making" within this subchapter and chapter 7 of this title, and Customs Court's review is not so broad as that provided by § 706 of this title. *Imbert Imports, Inc. v. U.S.*, 1970, 314 F.Supp. 784, 65 Cust.Ct. 697, R.D. 11,718, affirmed 331 F.Supp. 1400, affirmed 475 F.2d 1189.

22. — U.S. Parole Commission

Board of Parole [now U.S. Parole Commission] is an "agency" for purposes of this subchapter and chapter 7 of this title. *Pickus v. U.S. Bd. of Parole*, C.A.D.C. 1974, 507 F.2d 1107, 165 U.S.App.D.C. 284.

Even if Parole Board [now U.S. Parole Commission] is "agency" as defined in this section, procedural requirements with respect to conduct of hearings do not apply to parole decision-making. *de Vyver v. Warden, U.S. Penitentiary*, D.C.Pa.1974, 388 F.Supp. 1213.

23. — Miscellaneous agencies

Smithsonian Institution had reasonable basis for concluding that it was not "agency" under Freedom of Information Act (FOIA), and, thus, it was not liable for attorney fees, even though institution is federally chartered, receives federal appropriations, has many employees subject to civil service laws, and hires own police force. *Cotton v. Heyman*, C.A.D.C.1995, 63 F.3d 1115, 314 U.S.App.D.C. 161.

Center for disease control, public health service and national institute for occupational safety and health are each an "agency" subject to application of the Freedom of Information Act. *Formaldehyde Institute v. Department of Health and Human Services*, C.A.D.C.1989, 889 F.2d 1118, 281 U.S.App.D.C. 285.

The Chicago Board Options Exchange was a Delaware nonstock corporation and not an authority or agency of the government and, therefore, was not governed by this subchapter and chapter 7 of

this title. *Shultz v. S.E.C.*, C.A.7, 1980, 614 F.2d 561.

County airport commission and board of county commissioners were not federal agencies within the meaning of the Federal Administrative Procedures Act, and thus were not subject to the requirements of the APA. *Skydiving Center of Greater Washington, D.C., Inc. v. St. Mary's County Airport Com'n*, D.Md.1993, 823 F.Supp. 1273.

24. Person

That agency in its governmental capacity does not have standing to appeal agency decision is suggested by fact that general judicial review provision of Administrative Procedure Act (APA) does not include agencies within category of "person adversely affected or aggrieved"; since provision reflects general legislative pattern of administrative and judicial relationships, it indicates that even under specific "adversely affected or aggrieved" statutes, agencies as such normally do not have standing. *Director, Office of Workers' Compensation Programs, Dept. of Labor v. Newport News Shipbuilding and Dry Dock Co.*, U.S.1995, 115 S.Ct. 1278, 131 L.Ed.2d 160.

Status as alien did not exclude Irish citizen from access to government documents under Freedom of Information Act; definition of "person" in Act was not facially restricted to citizens. *O'Rourke v. U.S. Dept. of Justice*, D.D.C.1988, 684 F.Supp. 716.

Defense contractor was a "person" within the meaning of Freedom of Information Act, 5 U.S.C.A. § 551(2). *Burnside-Ott Aviation Training Center, Inc. v. U.S.*, D.C.Fla.1985, 617 F.Supp. 279.

The Boston survey group from which the Federal Reserve Bank of Boston obtained salary surveys which allowed the Board of Governors of the Federal Reserve System to execute its compensation litigation to approve the compensation schedules of the reserve banks was a "person" within this section exempting from disclosure commercial or financial information obtained from a person and confidential. *9to5 Organization for Women Office Workers v. Board of Governors of Federal Reserve System*, D.C.Mass.1981, 527 F.Supp. 1163.

A foreign government or an instrumentality thereof is a "public or private organization" within terms of this section de-

fining person. *Neal-Cooper Grain Co. v. Kissinger*, D.C.D.C.1974, 385 F.Supp. 729.

25. Party

"Party" does not refer to a hypothetical party, but rather refers to a person actually participating in litigation or entitled to right to be admitted as a party. *Anchor Bldg. Trades Council v. Department of Housing and Urban Development*, D.C.Alaska 1974, 384 F.Supp. 1236.

26. Rule

Annual peach and nectarine assessments for generic advertising programs are "rules" within the meaning of the Administrative Procedure Act (APA). *Wileman Bros. & Elliott, Inc. v. Espy*, C.A.9 (Cal.)1995, 58 F.3d 1367, amended on denial of rehearing, as amended, petition for certiorari filed.

Although assessments requiring contributions from handlers of California almonds towards California almond board advertising were "rules" subject to notice-and-comment requirement of Administrative Procedure Act, failure of Secretary of Department of Agriculture to give notice and request comments was harmless. *Cal-Almond, Inc. v. U.S. Dept. of Agriculture*, C.A.9 (Cal.) 1993, 14 F.3d 429.

Memorandum of understanding (MOU), between laboratory of Environmental Protection Agency (EPA) and private accreditation organization, was final agency action for purposes of determining standing; MOU, which stated that parties to MOU would work together to develop technical specifications, fit within definition of "rule" under Administrative Procedure Act (APA), since it was statement of general applicability and future effect designed to implement Federal Technology Transfer Act (FITTA). *Chem Service, Inc. v. Environmental Monitoring Systems Laboratory-Cincinnati of U.S. E.P.A.*, C.A.3 (Pa.) 1993, 12 F.3d 1256.

District court properly subjected interpretation by Office of Personnel Management (OPM) of procurement contract with private carrier to provide health plan benefits to government employees to standard of review for rules under Administrative Procedure Act. *Caudill v. Blue Cross and Blue Shield of North Carolina*, C.A.4 (N.C.) 1993, 999 F.2d 74.

There was no requirement that formal rules be established pursuant to the Administrative Procedure Act to determine which social security disability cases the Appeals Council would review on its own motion, and thus selection of case for review pursuant to unpublished rules did not provide basis for vacating the Appeals Council's reversal of an award of benefits by administrative law judge. *Dyer v. Secretary of Health and Human Services*, C.A.6 (Mich.) 1989, 889 F.2d 682.

Agency attempting to promulgate rule pursuant to Administrative Procedure Act bears heavy burden in justifying retroactivity in view of Act's goal of assuring that new rules be of prospective application only. *Mason General Hosp. v. Secretary of Dept. of Health and Human Services*, C.A.6 (Mich.) 1987, 809 F.2d 1220.

Department of Labor's regulation governing selection of employers for safety inspections was a "rule" within meaning of par. 4 of this section. *U.S. Dept. of Labor v. Kast Metals Corp.*, C.A.5 (La.) 1984, 744 F.2d 1145.

Department of Interior's interpretation of its enabling statute, section 1782 of Title 43, was within this section's definition of "rule" constituting reviewable "final agency action," and was therefore reviewable. *Rocky Mountain Oil and Gas Ass'n v. Watt*, C.A.10 (Wyo.) 1982, 696 F.2d 734.

Status of agency guidelines as "rules" is determined by their binding character, and fact that agency uses term "guidelines" is not controlling; it is impact and not phrasing that matters. *Western Coal Traffic League v. U.S.*, C.A.5, 1982, 694 F.2d 378, on rehearing 719 F.2d 772, certiorari denied 104 S.Ct. 2160, 466 U.S. 953, 80 L.Ed.2d 545.

Interpretative rules, interpreting an existing statute or existing legislative regulation, or both, are not within this section's definition of "rule" because interpretative rules do not have future effect as that term is used in this subchapter and chapter 7 of this title and are not binding on courts. *Energy Consumers & Producers Ass'n, Inc. v. Department of Energy*, Em.App.1980, 632 F.2d 129, certiorari denied 101 S.Ct. 102, 449 U.S. 832, 66 L.Ed.2d 38.

Department of Agriculture's institution of direct extension news wire service constituted adoption of a "rule" within this

**TITLES OF
UNITED STATES CODE
AND
UNITED STATES CODE ANNOTATED**

- | | |
|---|---|
| 1. General Provisions. | 29. Labor. |
| 2. The Congress. | 30. Mineral Lands and Mining. |
| 3. The President. | 31. Money and Finance. |
| 4. Flag and Seal, Seat of Government, and the States. | 32. National Guard. |
| 5. Government Organization and Employees. | 33. Navigation and Navigable Waters. |
| 6. Surety Bonds (<i>See Title 31, Money and Finance</i>). | 34. Navy (<i>See Title 10, Armed Forces</i>). |
| 7. Agriculture. | 35. Patents. |
| 8. Aliens and Nationality. | 36. Patriotic Societies and Observances. |
| 9. Arbitration. | 37. Pay and Allowances of the Uniformed Services. |
| 10. Armed Forces. | 38. Veterans' Benefits. |
| 11. Bankruptcy. | 39. Postal Service. |
| 12. Banks and Banking. | 40. Public Buildings, Property, and Works. |
| 13. Census. | 41. Public Contracts. |
| 14. Coast Guard. | 42. The Public Health and Welfare. |
| 15. Commerce and Trade. | 43. Public Lands. |
| 16. Conservation. | 44. Public Printing and Documents. |
| 17. Copyrights. | 45. Railroads. |
| 18. Crimes and Criminal Procedure. | 46. Shipping. |
| 19. Customs Duties. | 47. Telegraphs, Telephones, and Radiotelegraphs. |
| 20. Education. | 48. Territories and Insular Possessions. |
| 21. Food and Drugs. | 49. Transportation. |
| 22. Foreign Relations and Intercourse. | 50. War and National Defense. |
| 23. Highways. | |
| 24. Hospitals and Asylums. | |
| 25. Indians. | |
| 26. Internal Revenue Code. | |
| 27. Intoxicating Liquors. | |
| 28. Judiciary and Judicial Procedure. | |

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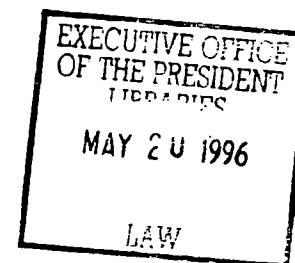
TITLE 5

Government Organization and Employees

§§ 1 to 552

(1996)

Comprising All Laws of a General
and Permanent Nature
Under Arrangement of the Official Code of
the Laws of the United States
with
Annotations from Federal and State Courts



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33. Ex parte communication

Congress enacted provisions of this subchapter and chapter 7 of this title, prohibiting ex parte communication to ensure that agency decisions required to be made on a public record are not influ-

enced by private, off-the-record communications from those personally interested in the outcome. *Raz Inland Navigation Co., Inc. v. I.C.C.*, C.A.9, 1980, 625 F.2d 258.

§ 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)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo. *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(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) Repealed. Pub.L. 98-620, Title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357]

(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 Special Counsel 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 Special Counsel, after investigation and consideration of the evidence submitted, shall submit his 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 Special Counsel 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 complete 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 (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(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) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk

circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(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 and 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)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) 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.

(e) 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 denial of information 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.

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title 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.

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 383; Pub.L. 90-23, § 1, June 5, 1967, 81 Stat. 54; Pub.L. 93-502, §§ 1 to 3, Nov. 21, 1974, 88 Stat. 1561 to 1564; Pub.L. 94-409, § 5(b), Sept. 13, 1976, 90 Stat. 1247; Pub.L. 95-454, Title IX, § 906(a)(10), Oct. 13, 1978, 92 Stat. 1225; Pub.L. 98-620, Title IV, § 402(c), Nov. 8, 1984, 98 Stat. 3357; Pub.L. 99-570, Title I, §§ 1802, 1803, Oct. 27, 1986, 100 Stat. 3207-48, 3207-49.)

*Public Law 99-570
99th Congress

An Act

To strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

Oct. 27, 1986

[H.R. 5484]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Anti-Drug Abuse
Act of 1986.
21 USC 801 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Drug Abuse Act of 1986".

SEC. 2. ORGANIZATION OF ACT.

This Act is organized as follows:

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Narcotics Penalties and Enforcement Act of 1986

Subtitle B—Drug Possession Penalty Act of 1986

Subtitle C—Juvenile Drug Trafficking Act of 1986

Subtitle D—Assets Forfeiture Amendments Act of 1986

Subtitle E—Controlled Substance Analogue Enforcement Act of 1986

Subtitle F—Continuing Drug Enterprise Act of 1986

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

Subtitle H—Money Laundering Control Act of 1986

Subtitle I—Armed Career Criminals

Subtitle J—Authorization of Appropriations for Drug Law Enforcement

Subtitle K—State and Local Narcotics Control Assistance

Subtitle L—Study on the Use of Existing Federal Buildings as Prisons

Subtitle M—Narcotics Traffickers Deportation Act

Subtitle N—Freedom of Information Act

Subtitle O—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

Subtitle P—Manufacturing Operations

Subtitle Q—Controlled Substances Technical Amendments

Subtitle R—Precursor and Essential Chemical Review

Subtitle S—White House Conference for a Drug Free America

Subtitle T—Common Carrier Operation Under the Influence of Alcohol or Drugs

Subtitle U—Federal Drug Law Enforcement Agent Protection Act of 1986

*Note: This is a subsequently typeset print of the hand enrollment which was signed by the President on October 27, 1986.

"(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

"(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

"(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien."

(e)(1) From the sums appropriated to carry out this Act, the Attorney General, through the Investigative Division of the Immigration and Naturalization Service, shall provide a pilot program in 4 cities to establish or improve the computer capabilities of the local offices of the Service and of local law enforcement agencies to respond to inquiries concerning aliens who have been arrested or convicted for, or are the subject to criminal investigation relating to, a violation of any law relating to controlled substances. The Attorney General shall select cities in a manner that provides special consideration for cities located near the land borders of the United States and for large cities which have major concentrations of aliens. Some of the sums made available under the pilot program shall be used to increase the personnel level of the Investigative Division.

8 USC 1103 note.

(2) At the end of the first year of the pilot program, the Attorney General shall provide for an evaluation of the effectiveness of the program and shall report to Congress on such evaluation and on whether the pilot program should be extended or expanded.

Reports.

Subtitle N—Freedom of Information Act

SEC. 1801. SHORT TITLE.

This subtitle may be cited as the "Freedom of Information Reform Act of 1986".

Freedom of Information Reform Act of 1986.

5 USC 552 note.

SEC. 1802. LAW ENFORCEMENT.

(a) EXEMPTION.—Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and proce-

State and local governments.

dures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;".

(b) EXCLUSIONS.—Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f) respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

"(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section."

SEC. 1803. FEES AND FEE WAIVERS.

Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

Regulations.

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

Research and development.

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

"(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

"(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided*, That the court's review of the matter shall be limited to the record before the agency."

SEC. 1804. EFFECTIVE DATES.

5 USC 552 note.

(a) The amendments made by section 1802 shall be effective on the date of enactment of this Act, and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

(b)(1) The amendments made by section 1803 shall be effective 180 days after the date of enactment of this Act, except that regulations to implement such amendments shall be promulgated by such 180th day.

(2) The amendments made by section 1803 shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations.