


**The Privacy Act**  
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**Disclaimers**

- This is NOT a comprehensive Privacy Act presentation—it is specific to OWCP records maintained in DOL/GOVT-1, a government-wide System of Records (SOR).
- If you need Privacy Act advice regarding records maintained by your own agency under your own SOR, or under an OPM government-wide SOR, contact your General Counsel’s/Solicitor’s Office.




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### What is The Purpose of the Privacy Act?

Balance the Government's Need to Maintain Information

*with*

The Rights of Individuals to be Protected Against the Unwarranted Invasion of Their Privacy



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### How Does the Privacy Act Strike that Balance?

- ✓ Establishes Rights for Individuals
- ✓ Creates Responsibilities for Agencies
- ✓ Provides Oversight Mechanisms



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### Right for Individuals

- ✓ Notification (General, Specific)
- ✓ Access to Records About Oneself
- ✓ Amendment of Records in Error
- ✓ Ability to sue to enforce wrongs



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# Agency Responsibilities

- ✓ Establish regulations
- ✓ Maintain records to certain standards
- ✓ Protect records from disclosure
- ✓ Notify the public (general, specific)



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# 4 Basic Policy Objectives

1. Restrict Disclosure
2. Grant individuals increased right of access
3. Grant individuals the right to seek amendment of agency records
4. Establish a code of fair information practices.



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# The Privacy Act



**“No  
Disclosure  
Without  
Consent”**

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# The Privacy Act



**REMEMBER -- A disclosure may be written (most disclosures are) BUT . . . There are oral disclosures as well.**

**ALL DISCLOSURES (INCLUDING DISCLOSURES FROM AQS/ARI) ARE COVERED BY PRIVACY ACT PRINCIPLES!**

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# Privacy Act Terms "Record"

✓ Information About an Individual  
 Examples→ Education, Financial Transactions, Medical History, and Criminal and Employment History

✓ Individual Identifier  
 Examples→ Name, Identifying Number, Symbol, or Other Identifying Particular Assigned to an Individual, Such as a Fingerprint, Voice Print, Biometric, or Photograph



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# Privacy Act Terms "System of Records"

- ✓ Group of Records
- ✓ Under the Control of a Federal Agency
- ✓ Retrieved by Individual Identifier on a Regular Basis



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**Privacy Act Terms**  
**“DOL/GOVT-1”**

DOL/GOVT-1 - Office of Workers' Compensation Programs, Federal Employees' Compensation Act File is the official name of the System of Records that contains FECA claims.

**OFFICIAL**

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**Privacy Act Terms**  
**“Routine Use”**

- ✓ Allows for the disclosure of a record outside of the agency without consent (because of notification to the individual at the time of collection)
- ✓ Disclosure must be “for a purpose which is compatible with the purpose for which [the information] was collected”



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**Privacy Act Terms**  
**Personally Identifiable Information (PII)**

*DOL defines PII as information:*



“whose disclosure could result in harm to the individual whose name or identity is linked to that information. Examples include, but are not limited to, social security number; credit card number; bank account number; residential address; residential or personal telephone; biometric identifier (image, fingerprint, iris, etc.); date of birth; mother’s maiden name; criminal records; medical records; and financial records. The conjunction of one data element with one or more additional elements increases the level of sensitivity and/or propensity to cause harm in the event of compromise.”

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**The Privacy Act**





**“No Disclosure Without Consent”**

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**The Privacy Act**

- ✓ Workers’ compensation records belong to DOL, AND **DOL ONLY!**
- ✓ Any records the employing agency has, including copies, belong to DOL.



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**The Privacy Act**

**So What Does That Mean?**

Any records the agency has belong to DOL, and can only be released in accordance with the Privacy Act, DOL’s published routine uses, and with DOL’s interpretation.



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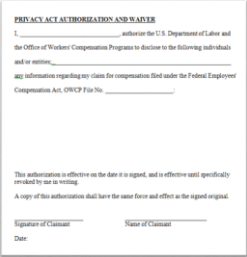
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## The Privacy Act - Waiver



“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 . . .”

5 U.S.C. § 552a(b)

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## The Privacy Act Court Order

“. . . unless disclosure of the record would be . . . pursuant to the order of a court of competent jurisdiction.”

5 U.S.C. § 552a(b)(11)



- ✓ A subpoena is not sufficient.
- ✓ Only federal courts are courts of competent jurisdiction.

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## The Privacy Act Routine Use

“. . . unless for a routine use . . .” -- 5 U.S.C. § 552a(b)(3)

**What are DOL’s Published Routine Uses?**

In addition to the 14 universal routine uses that apply to all DOL systems of records, there are 22 routine uses for DOL/GOVT-1.




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## The Privacy Act

### Routine Use - Examples

- ✓ 3<sup>rd</sup> party in a 3<sup>rd</sup> party action
- ✓ Employing agency at time of injury to verify billing, check status of claim, consider rehire, etc.
- ✓ Potential employers for return to work consideration
- ✓ Rehab agencies for evaluation
- ✓ Physicians for use in treatment
- ✓ Health insurance or medical/welfare plans for clarification of billing responsibility
- ✓ Labor union acting on behalf of the employee
- ✓ Employing Agency OIG <sup>22</sup>

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## The Privacy Act

### "Right of Access" v. "Routine Use" Disclosures

- **Right of Access:** Disclosure to the subject of the record (the FECA claimant), while appropriate, authorized, and required by 5 U.S.C. § 552a(d)(1) (individual's right of access), is not a disclosure pursuant to a routine use.
- **Routine use Disclosure:**
  - **Example** → routine use **e** of DOL/GOVT-1 authorizes release of FECA file information to physicians treating or examining a FECA claimant
  - **Example** → routine use **r** allows release of FECA file information to GSA (for employees of other agencies) when a GSA building houses employees of those agencies <sup>23</sup>

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## The Privacy Act

### Routine Use

So . . . What Does This All Mean?

**Workers' Compensation Data Can be Released Only for the Routine Uses Established by DOL.** <sup>24</sup>

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**The Privacy Act  
Routine Use**

**What Else Does it Mean?**

- ✓ When you release data, you can release only that part of the record that is necessary to meet the routine use.
- ✓ It is a violation of the Privacy Act to disclose any information not covered by the routine uses to anyone.
- ✓ When in doubt, call OWCP.



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**Disclosure – Yes or No?**

EMPLOYING AGENCY

- ✓ OIG—**YES** (IF INVESTIGATING FECA FRAUD)
- ✓ INJURY COMP—**YES**
- ✓ SECURITY OFFICE—**YES** with limitations
- ✓ SUPERVISOR—**YES** IF RTW and with limitations
- ✓ EEO INVESTIGATOR—**NO** (with PA WAIVER, **YES**)

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**Disclosure – Yes or No?**

EMPLOYING AGENCY

- ✓ PERSONNEL ACTION—**NO**
- ✓ AGENCY ATTORNEY—**NO** (if assisting agency with FECA case itself, **YES**)
- ✓ BUDGET OFFICE—**YES**, summary information only
- ✓ SAFETY AND HEALTH—**YES** with limitations
- ✓ UNION REPRESENTATIVE—**YES** but only if representing claimant before OWCP

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# "Yes" Does Not Mean an Unqualified Yes



- ✓ It is important to remember that, unless you have a Privacy Act waiver signed by the FECA claimant, **or** are responding to a first person request by the claimant,
- ✓ you always must confirm that the expected use of the information is compatible with the routine use, **and**
- ✓ you disclose the **least** amount of information necessary for the recipient's anticipated use.

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# Privacy Act – Criminal Penalties (Individuals)

1. **Federal Employee** disclosure of information is prohibited.
2. **Federal Employee** willfully maintains a system of records without meeting notice requirements.
3. Anyone, including a **Federal Employee**, requests or obtains any record under false pretenses.



--(all three)--**MISDEMEANOR,**  
FINE NOT > \$5,000

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# Privacy Act – Criminal Penalties (Individuals)

- ✓ These provisions are solely criminal, and create no private right of action against a federal employee individually.
- ✓ In other words, if you violate an individual's privacy, the individual can only sue the government.

**BUT** THE GOVERNMENT  
CAN PROSECUTE YOU!!!



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# Privacy Act – Civil Remedies

✓ Civil Remedies → Amendment, Access, Accuracy & Other Damages



- ✓ The lawsuit itself is against the **federal agency only.**
- ✓ An individual federal employee is **not** able to be sued for money damages under the Privacy Act.

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# Questions?



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# RESOURCES

Main DOL Privacy Act Systems Page  
<http://www.dol.gov/sol/privacy/main.htm>

DOL/GOVT-1 Systems Notice  
<http://www.dol.gov/sol/privacy/dol-govt-1.htm>

DOL Universal Routine Uses  
<http://www.dol.gov/sol/privacy/intro.htm>

DOL's Assertion of Control  
<http://www.dol.gov/sol/privacy/gov-wide.htm>

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**Contact Information**



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 202-513-6911

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