

## **Privacy Act Conditions of Disclosure**

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### **"No Disclosure Without Consent" Rule**

❖ "No agency shall disclose any record which is contained in a system of records by any means ... to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual..."

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### **Exceptions and Exemptions**

- ❖ **Exceptions-When can an agency provide someone's records to a 3<sup>rd</sup> party without the individual's consent?**
- ❖ **Exemptions-When can an agency deny someone access to their own records?**

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**Twelve Exceptions**

- ❖(b)(1) Intra-agency disclosures – “need to know”
- ❖(b)(2) Disclosure required by FOIA
- ❖(b)(3) Routine Use
- ❖(b)(4) Bureau of Census
- ❖(b)(5) Statistical research and reporting
- ❖(b)(6) NARA

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**Twelve Exceptions**

- ❖(b)(7) Law enforcement
- ❖(b)(8) Compelling circumstances affecting health and safety
- ❖(b)(9) Congress
- ❖(b)(10) GAO
- ❖(b)(11) Court Order
- ❖(b)(12) Debt Collection Act

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**Exceptions**

- ❖(b)(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 job” (a need to know)
- ❖(b)(2) – disclosure required under the Freedom of Information Act

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**Exceptions**

- ❖ (b)(3) - Pursuant to a “routine use” found in the published System of Records Notice (SORN).
- ❖ Routine uses must:
  - Describe the users and purposes of the disclosures
  - Be compatible with the purpose for which the agency originally collected the information
  - Be published in a SORN, & referenced at the point of any info collection associated with the SORN

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**Exceptions**

- ❖ (b)(4) – “to the Bureau of Census for purposes of planning or carrying out a census survey or related activity...”
- ❖ (b)(5) – “to a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research reporting record, and the record is to be transferred in a form that is not individually identifiable”

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**Exceptions**

- ❖ (b)(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”

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**Exceptions**

❖(b)(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”

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**Exceptions**

❖(b)(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”

❖(b)(9) – “to either house of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee”

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**Exceptions**

❖(b)(10) – “to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accountability Office”

❖(b)(11) - “pursuant to the court order of a court of competent jurisdiction”

❖(b)(12) – “to a consumer reporting agency in accordance with section 3711(e) of Title 31”

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### Exceptions and Exemptions

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### Exemptions

- ❖ ex-emp-tion /ig'zɛm(p)SH(ə)n/
- ❖ Noun: the process of freeing or state of being free from an obligation or liability imposed on others.  
"exemption from prescription charges"

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### Exemptions

- ❖ One Special Exemption – civil action
- ❖ Two General Exemptions – CIA; law enforcement
- ❖ Seven Specific Exemptions

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**The Special Exemption**

- ❖(d)(5) – exempts information compiled in the reasonable anticipation of a civil action or proceeding from the **access** provisions of the Privacy Act.
  - Most similar to attorney work product
  - Limited to civil actions and proceedings, but also covers administrative hearings

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**Two General Exemptions**

- ❖(j)(1) information maintained by the CIA
- ❖(j)(2) information maintained by a principal function criminal law enforcement agency and compiled for a criminal law enforcement purpose

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**Seven Specific Exemptions**

- ❖1. (k)(1) classified information
- ❖2. (k)(2) investigatory material compiled for law enforcement purposes, other than material within the scope of (j)(2)

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**Seven Specific Exemptions**

- ❖ 3. (k)(3) maintained in connection with providing protective services for the President of the United States or other individuals
- ❖ 4. (k)(4) required by statute to be maintained and used solely as a statistical record

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**Seven Specific Exemptions**

- ❖ 5. (k)(5) information that reveals a source who was provided an express promise of confidentiality in the context of background investigation materials
- ❖ 6. (k)(6) testing materials used solely to determine an individuals qualifications for appointment or promotions in the Federal service
- ❖ 7. (k)(7) evaluation materials used to determine potential for promotion in the military

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**Accounting of Disclosures**

- ❖ Agencies must record date, nature & purpose of each disclosure...not needed for (b) (1) or (2)
- ❖ Retain accounting for 5 years or life of the record-whichever is longer
- ❖ An individual is entitled to access the accounting of disclosures of their records, except for a (b) (7) release

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**General Notes**

- ❖ “Any ... contractor and any employee of such contractor, ...shall be considered to be an employee of an agency.”
- ❖ “An individual’s name and address may not be sold or rented by an agency unless such action is specifically authorized by law.”
- ❖ A federal employee who willfully & knowingly discloses PA records, in any manner, to a person not entitled to access, “shall be guilty of a misdemeanor and fined up to \$5,000”

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**Exceptions and Exemptions**

❖ **QUESTIONS?**

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