

Creating Privacy Act Statements and SORNs

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Historical Framework

- **The Privacy Act of 1974**
 - Codified at 5 U.S.C. § 552a;
 - Created in response to concerns about how the use of computerized databases impacts individuals' privacy rights;
 - Balance between Government need to maintain information about individuals and individuals' right to be protected against unwarranted invasions of privacy.

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Privacy Act Basics

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

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Agency Requirements

- (e)(3) – Inform each individual when collecting information of: the authority, the principal purpose(s) for which the information is to be used, routine uses, and effects, if any, of not providing the information;
- (e)(4) – Publish system notice in the Federal Register;

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System of Records

- A group of any records under the control of any agency...
 - from which information is retrieved by the name of the individual...
 - or by some identifying number, symbol, or other identifying particular assigned to the individual.
 - Coverage under the Privacy Act depends on the method of retrieval, rather than solely the content of the record.

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System of Records Cont'd.

- **System of records = key definition.**
- Most rights and requirements addressed in the Privacy Act depend on whether this definition is met.
- A system of records exists if:
 - Indexing or retrieval capability using identifying particulars built into the system; and
 - The agency does, in fact, retrieve records about individuals by reference to some personal identifier.
 - Standard = actual retrieval.

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System of Records Notice

- Required by 5 U.S.C. § 552a(e)(4)
 - Describes one or more similar Privacy Act record systems;
 - Gives notice of the existence & character of the system(s);
 - Is published in F.R. and on Internet, by the owning agency;
 - Uses standard format and headings;

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SORN Continued

- Required by 5 U.S.C. § 552a(e)(4)
 - Describes collection/use of the records *within* agency;
 - Describes disclosures to parties *outside* agency ("routine uses");
 - Explains individual record subjects' rights and/or whether exempt from certain Privacy Act requirements.

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SORN Continued

- Why publish SORNs?
 - Foundation of agency privacy programs;
 - Transparency – what/when/where/why/how, etc.;
 - Tool or roadmap for privacy personnel to answer Privacy Act questions;
 - Blueprint of business practices;
 - Updated frequently to reflect changes.

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SORN Continued

- When to create new SORN?
- When...
 - Record system is a Privacy Act system of records;
 - No existing SORN covers it (or could be modified to do so); and
 - Agency owns/controls the records.

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SORN Continued

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

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SORN Drafting

- What party drafts SORN?
 - Typically, program office/system expert in conjunction with privacy personnel.
- SORN package (see OMB Circular A-108):
 - 1) transmittal letters to OMB, House, and Senate;
 - 2) Narrative Statement (1-2 pages);
 - 3) proposed Federal Register Notice (Preamble + SORN);
 - 4) proposed rulemaking document (NPRM or Direct Final Rule, if claiming exemptions in last field of SORN).

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SORN Drafting Cont'd.

- What does a SORN look like?
 - Formulaic.
- System name: as easily understandable as possible;
- System identifier: a number assigned to it (HHS/ALL-001, etc.);
- Classification: OMB A-108 requires classification level for records maintained;
- System location: Address of agency/component responsible for system, as well as that of any 3rd-party service provider;

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SORN Drafting Cont'd.

- System manager(s): Identifies official responsible for the system;
- Authority for maintenance of system: Legal basis for collecting information (specific statute, regulation, executive order);
- Purpose(s) of the system: Address why you are collecting the information and identify internal sharing;
- Categories of individuals covered by system: Identifies who records are being collected on;

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SORN Drafting Cont'd.

- Categories of records in the system: Defines the types of records maintained ("Personal information that includes name, address...");
- Record source categories: Defines where information is obtained;
- Routine uses of records maintained in the system: Defines categories of users and purposes of uses, identifies parties outside the agency with whom records may be shared and for what purpose;
 - Discretionary or permissive nature of routine uses;
 - Typically require written request, written response, and accounting record.

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SORN Drafting Cont'd.

- **Storage:** How is the information stored? Electronic database? Paper records? Microfiche?
- **Retrieval:** This is what makes it a PA system of records – must be retrieved by a name and/or personal identifier;
- **Retention and Disposal:** Describes how long the records will be kept and how they will be disposed of (e.g., records maintained for X years then shredded; permanent – retired to NARA after X years);
- **Safeguards:** Description of administrative, technical, and physical safeguards to which the system is subject;

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SORN Drafting Cont'd.

- **Record Access Procedure:** Tells public where to write and what to provide to identify themselves so their records can be made available to them;
- **Contesting Record Procedures:** Identifies where an individual may contest content of any record pertaining to them in the system; Typically includes the Code of Federal Regulations citation.
- **Notification Procedure:** Tells public who to contact and what to provide to determine if records are maintained on them;
- **Exemptions Promulgated for the System:** Identifies what information may be exempt from disclosure and references rule establishing the exemption has been published in the Federal Register;
- **History:** The citation to the last full publication of the notice in the Federal Register and any subsequent notices of revision.

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Role of PAS in the Act

- (e)(3) – Privacy Act Statement
- An important tenet of the Privacy Act is to directly solicit information from the individual.
- Why? Accuracy!
- When directly soliciting personal information from an individual, they must be provided a Privacy Act Statement (PAS).

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Role of PAS in the Act

- (e)(3) – Privacy Act Statement
- Look at the FIPS -
 - Authority for collection;
 - Purpose(s) for which information intended to be used;
 - Published routine uses;
 - Effects (if any) of not providing all or part of the information
 - Citation/link to relevant System of Records Notice (SORN)

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Drafting PAS

- When an individual is asked to provide personal information (name, date of birth, etc.) that will be stored in a system of records, regardless of the method used to collect the information (i.e., forms, in person, telephone interview, etc.).
- Note: If the information requested will not be included in a system of records, a PAS is not required, but may be good policy, nonetheless.
- If intent is to collect Social Security Number (SSN), specific legal authority must be cited to denote whether collection expressly required by law, permitted by law; OMB A-130 permits SSN to be used only when needed and when no alternative exists.

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Drafting PAS Cont'd.

- Drafting PAS is also formulaic and should track SORN.
- Authority: legal authority for collection that should reflect the authority for maintenance section of the SORN.
- Purpose: provides information about how the Agency will use the information collected and how use fulfills agency objectives, reflecting SORN purpose;

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Drafting PAS Cont'd.

- Routine uses: provides information about inter-governmental sharing of records collected; applies to info collected on the form itself;
- Disclosure: describes whether disclosure is voluntary or mandatory, and prospective impact of non-disclosure;
- Citation to applicable SORN;

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Drafting PAS Cont'd.

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

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Privacy Act Rights

- **Recap:**
 - Access rights;
 - Amendment rights;
 - Right to proper maintenance;
 - Private rights of action for agency violations of the Act.

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Privacy Act Resources

- Statute:
 - Privacy Act of 1974, as amended – 5 U.S.C. § 552a.
- Agency SAOPs, CPOs, Privacy Act Officers.
- Published Privacy Act system of records notices (SORNs).
- Implementing FOIA and Privacy Act regulations.
- DOJ/OPCL Guidance on Privacy Act:
 - <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition>
- OMB privacy guidance:
 - <https://www.whitehouse.gov/omb/information-regulatory-affairs/privacy/>

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