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An Overview of the Privacy Act of 1974

Charles R. Cutshall
Chief Privacy Officer & Director of Open Government
U.S. Department of Commerce

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Speaker Biography

With over a decade of experience leading and transforming privacy programs across the Federal Government, Charles Cutshall is one of the most trusted privacy professionals working in Washington, D.C. today. In August 2022, he began serving as the Chief Privacy Officer (CPO) and Director of Open Government for the U.S. Department of Commerce, where he has agency-wide responsibility and accountability for the Department's privacy program, the Freedom of Information Act (FOIA), the Federal Advisory Committee Act (FACAL), principles of transparency and open government, and management of the Department's directives management program.

Previously, Charles served as the CPO for the Commodity Futures Trading Commission (CFTC) where he was responsible for managing privacy risks to individuals and to the Commission associated with the processing of personally identifiable information and for providing policy and programmatic oversight of the CFTC's privacy program. Prior to joining the CFTC, Charles served in the Executive Office of the President where he was responsible for overseeing Federal agencies' privacy programs, developing Federal privacy policy, and helping Federal agencies solve privacy problems. His prior experience also includes developing enterprise-wide privacy policies and supporting privacy compliance programs at both the Department of the Treasury and the Department of Homeland Security.

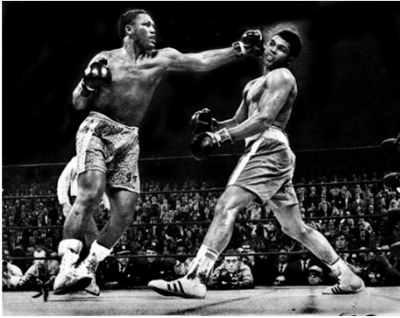
In 2019, Charles was nominated by the Director of the Office of Management and Budget to serve on the Advisory Committee on Data for Evidence Building, a statutory advisory committee responsible for developing recommendations on how to promote the use of Federal data for evidence building.

Charles is a voting member of the Federal Privacy Council's Executive Committee and Chairs the Council's Privacy Risk Management working group. Charles is also member of the Robert S. Brookings Society at the Brookings Institution. He is a Certified Information Systems Security Professional and a Certified Information Privacy Professional. In 2019, the International Association of Privacy Professionals designated Charles as a Fellow of Information Privacy. Charles holds a B.A. and M.P.A. from the Maxwell School of Citizenship and Public Affairs at Syracuse University.

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March 8, 1971

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gettyimages
Credit: New York Daily News Archive

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Draft-age Americans being counseled by Mark Satin (far left) at the Anti-Draft Programme office on Spadina Avenue in Toronto, August 1967.

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Created using OpenAI Dall-E by Charles Cutshall

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Stolen Documents Describe FBI Surveillance Activities

By Betty Modger
and Ken W. Clawson
Washington Post Staff Writers

Copies of stolen FBI records sent to The Washington Post described the bureau's surveillance of campus and black activist organizations at the time of the assassination of Dr. Martin Luther King Jr. The documents, believed to be identical to those received by The Washington Post, were received Monday by Sen. George McGovern (D-S.D.) and Rep. Warren J. Mitchell (D-Md.).

"In addition," continues the Sept. 16, 1970, document, "some will be overcome by the use of the contacting agent, local police chief, the postman and volunteer to tell all—letter, letter carriers, campus happens on a continuing basis." Late yesterday, Attorney General John N. Mitchell said yesterday there is no question that the documents are copies of files stolen in a burglary of the FBI's Media, Pa., office on March 8.

One of the documents encouraged agents to step up in interviews with dissenters "for disclosure of this information which are it will enhance the or cause other serious harm paranoia endemic in these circles persons engaged in investigation and will further serve to give activities on behalf of get the point across there is the United States."

Justice Department sources said yesterday there is no question that the documents are copies of files stolen in a burglary of the FBI's Media, Pa., office on March 8.

See FBI, A11, Col. 1

March 24, 1971

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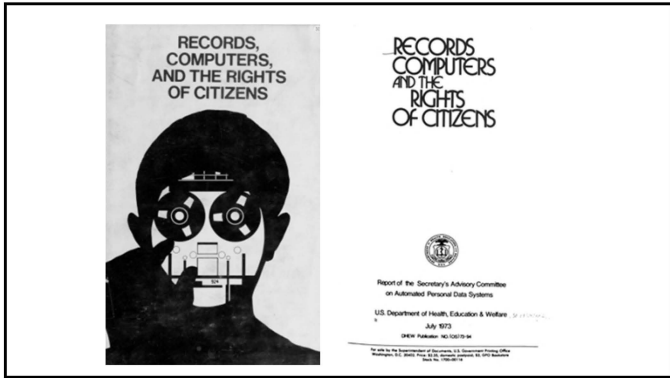


Photos by George Skadding for Life magazine (c) Getty Images

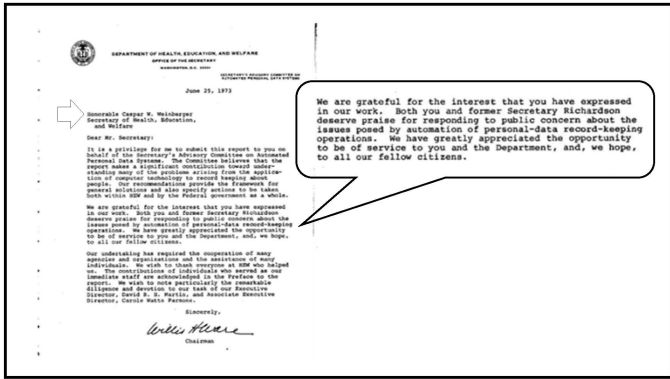
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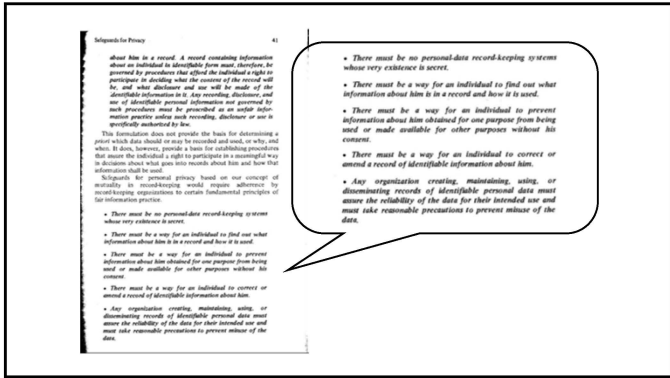
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In his very first speech before the Congress on **August 12, 1974**, President Ford told the American people of his strong belief in the rights of privacy:

"There will be no illegal tappings (taping), eavesdropping, buggings, or break-ins by my Administration. **There will be hot pursuit of tough laws to prevent illegal invasion of privacy in both government and private activities . . .**"



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F A C T S H E E T
MEETING OF DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY
FOR RELEASE 10:00 AM, JULY 10, 1974 CONTACT: Douglas Metz 395-3254

MODERATOR:
Chairman: Vice President Gerald R. Ford
Members: Secretary of the Treasury William E. Simon
Secretary of Defense James B. Schlesinger
Secretary of Commerce Frederick B. Dent
Secretary of Labor Peter Brennan
Casper W. Weinberger
The Attorney General William French Smith
Director, Office of Management and Budget, Roy L. Ash
Director, Office of Telecommunications Policy, Clay T. Whithead
Chairman, Civil Service Commission, Robert E. Hampton
Director, Office of Consumer Affairs, Mrs. Virginia Knauer
Executive Director of the Committee, Philip W. Buchen
Deputy Executive Director, Douglas Metz

COMMITTEE FUNCTIONS:
The Committee was established February 23, 1974, by President Richard M. Nixon, charged with responsibility for recommending by midyear initial measures which can be taken to ensure that the individual's right to privacy is protected.

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20 RECORDS, COMPUTERS, AND THE RIGHTS OF CITIZENS

questionnaires, or stored in microfiche archives, are considered part of the data system, even when the computer-readable files themselves do not contain identifying information.

Consistent with the rationale set forth in Chapter III, we recommend the enactment of legislation establishing a Code of Fair Information Practice for all Automated personal data systems.

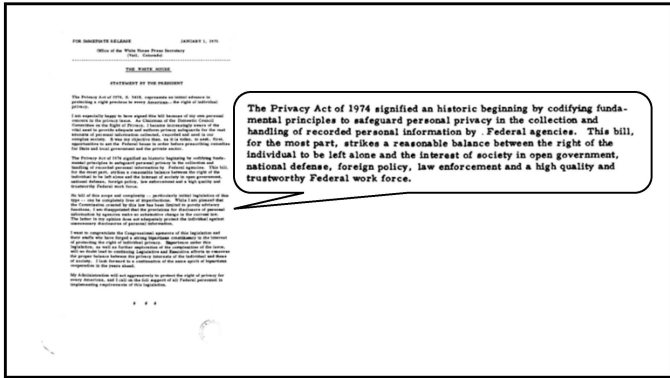
- The Code should define "fair information practice" as adherence to specified safeguard requirements. (Safeguard requirements for administrative personal data systems are set out below; those for statistical-reporting and research systems will be found in Chapter VI.)
- The Code should prohibit violation of any safeguard requirement as an "unfair information practice."
- The Code should provide that an unfair information practice be subject to both civil and criminal penalties.
- The Code should provide for injunctions to prevent violation of any safeguard requirement.
- The Code should give individuals the right to bring suits for unfair information practices to recover actual, threatened, and punitive damages, in individual or class actions. It should also provide for recovery of reasonable attorneys' fees and other costs of litigation incurred by individuals who bring successful suits.

Pending the enactment of a code of fair information practice, we recommend that all Federal agencies (1) apply the safeguard requirements, by administrative action, to all Federal systems, and (2) assure, through formal rule making, that the safeguard requirements are applied to all other systems within areas of the Federal government's authority. Pending the enactment of a code of fair information practice, we call for the most effective use of the institutions within reach of their authority, and all private organizations adopt the safeguard requirements to safeguard personal information. Labor unions, for example, might find the application of the safeguards to employee records an appropriate basis in collective bargaining.

Consistent with the rationale set forth in Chapter III, we recommend the enactment of legislation establishing a Code of Fair Information Practice for all Automated personal data systems.

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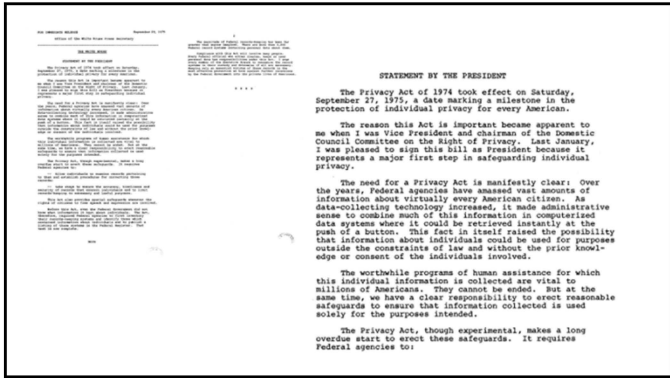
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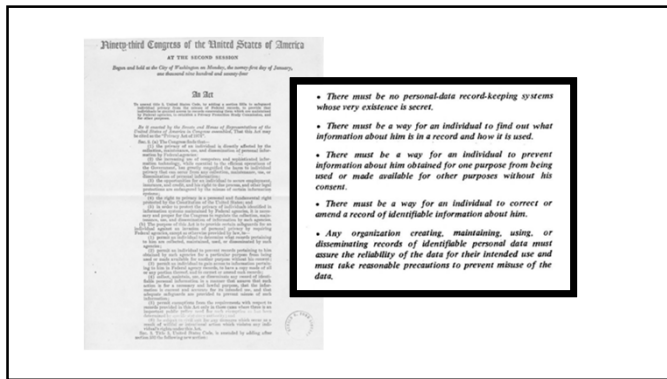
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5 U.S.C. 552a(a) - Definitions

- The term **'individual'** means a citizen of the United States or an alien lawfully admitted for permanent residence.
- 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.
- The term **'system of records'** means 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.
- The term **'routine use'** mean, 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.

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5 U.S.C. 552a(b) – Conditions of Disclosure

Fair Information Practice

- *There must be a way for an individual to prevent information about him obtained for one purpose from being used or made available for other purposes without his consent.*

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.

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5 U.S.C. 552a(b)— Conditions of Disclosure

Fair Information Practice

• There must be a way for an individual to prevent information about him obtained for one purpose from being used or made available for other purposes without his consent.

4. To the Census Bureau for purposes of the Census or survey under Title 13;
5. To a recipient that has assured it will be used solely for conducting statistical research or reporting, and the record must be transferred in a non-identifiable form;
6. To NARA for preservation by the Archivist or to determine whether the record has such value;
7. To an agency for civil or criminal law enforcement activity authorized by law, and when the head of the agency has requested the particular records;
8. To a person when an individual's health and safety are at risk, with subsequent notice to the individual.
9. To Congress;
10. To GAO;
11. To a Court in response to a court order; and
12. To a consumer reporting agency.

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5 U.S.C. 552a(c)— Accounting of Certain Disclosures

Fair Information Practice

• There must be a way for an individual to find out what information about him is in a record and how it is used.

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 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 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 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

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5 U.S.C. 552a(d)— Access to Records

Fair Information Practice

• There must be a way for an individual to find out what information about him is in a record and how it is used.

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.

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5 U.S.C. 552a(d)— Access to Records (Cont.)

Fair Information Practice

- *There must be a way for an individual to correct or amend a record of identifiable information about him.*

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;

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5 U.S.C. 552a(e)— Agency Requirements

Fair Information Practice

- *There must be no personal data record-keeping systems whose very existence is secret.*

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;

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 – the authority, the purpose, the routine uses, and the effect of not providing the information.

4. Publish in the *Federal Register* upon establishment or revision a notice of the existence and character of the system of records notice, including the name, categories of individuals and records, routine uses, policies and practices, responsible official, sources, and access and amendment procedures.

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.

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5 U.S.C. 552a(e)— Agency Requirements

Fair Information Practice

- *Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take reasonable precautions to prevent misuse of the data.*

Each agency that maintains a system of records shall—

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;

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;

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5 U.S.C. 552a(e) — Agency Requirements

Fair Information Practice

- *There must be a way for an individual to find out what information about him is in a record and how it is used.*

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;

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5 U.S.C. 552a(e) — Agency Requirements

Fair Information Practice

- *Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take reasonable precautions to prevent misuse of the data.*

Each agency that maintains a system of records shall—

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;

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5 U.S.C. 552a(f) — Agency Rules

Fair Information Practices

- *There must be a way for an individual to find out what information about him is in a record and how it is used.*
- *There must be a way for an individual to correct or amend a record of identifiable information about him.*

Each agency that maintains a system of records 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;
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;

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5 U.S.C. 552a(g) — Civil Remedies

Fair Information Practice

- The Code should provide for injunctions to prevent violation of any safeguard requirement.

Whenever an agency...

1. Refuses access to or amendment of an individual's record;
2. Fails to maintain any record 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, and consequently a determination is made which is adverse to the individual;
3. 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.

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5 U.S.C. 552a(i) — Criminal Penalties

Fair Information Practice

- The Code should provide that an unfair information practice be subject to both civil and criminal penalties.

1. 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.

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5 U.S.C. 552a(j) — General Exemptions

The head of any agency may promulgate rules, in accordance with the requirements of 5 U.S.C. 553 (Administrative Procedures Act), to exempt any system of records within the agency from **any** part of this section **except** subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

- maintained by the **Central Intelligence Agency**; or
- maintained by an agency or component thereof which performs as its **principal function** any activity pertaining to the **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.

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5 U.S.C. 552a(k) – Specific Exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553 (Administrative Procedures Act), to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(C), (h), and (i) and (f) of this section if the system of records is—

- Subject to the provisions of section 552(b)(1) of this title (i.e., National Security & Classified Information);
- 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;
- Maintained in connection with providing protective services to the President of the United States or other individuals protected by the Secret Service;
- Required by statute to be maintained and used solely as statistical records;
- 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;
- 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
- 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.

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5 U.S.C. 552a(m) – 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) – Criminal Penalties – of this section any such contractor and any employee of such contractor shall be considered to be an employee of an agency.

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5 U.S.C. 552a(v) – OMB 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.

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“The proper functioning of Government requires the public’s trust, and to maintain that trust the Government must strive to uphold the highest standards for collecting, maintaining, and using personal data. Privacy has been at the heart of our democracy from its inception, and we need it now more than ever.”

– Executive Order 13719

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Let’s stay in touch!

www.linkedin.com/in/CharlesCutshall

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