

OMHA Case Processing Manual

Chapter 2 INFORMATION DISCLOSURE

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2.0 Chapter overview

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OMHA staff is responsible for protecting personal, tax, and health information in accordance with the Social Security Act, the Privacy Act, the Freedom of Information Act (FOIA), the Internal Revenue Code, and other applicable Federal statutes and regulations, while also ensuring information is provided upon request to appropriate individuals or entities. If no law specifically requires or prohibits the disclosure sought in a particular request for information, OMHA will handle the request in accordance with applicable laws and regulations. This chapter addresses communications with parties and non-parties, responding to inquiries from the public and governmental entities, safeguarding information in accordance with applicable law, and, when necessary, reporting unauthorized disclosures of protected information.

Caution: When taking the actions described in this chapter, ensure that all PII, PHI, and Federal Tax Information is secured and only disclosed to authorized individuals (internally, those who need to know).

2.1 Communicating with appeal participants and others

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OMHA is dedicated to timely, accurate, courteous, and pertinent communication with appeal participants and others. When communicating with external entities, staff should always remain professional and avoid the appearance of impropriety, bias, or favoritism.

2.1.1 When do we complete a Report of Contact (OMHA-101)?

Complete a Report of Contact (OMHA-101) when you are contacted by, or make contact with, an individual or entity concerning an appeal that is currently pending before OMHA, and information is provided or exchanged that may affect the how the appeal is processed or the outcome of the appeal. The Report of Contact (OMHA-101) documents the contact that occurred, and the completed form is included in the administrative record for the appeal. For multiple contacts involving the same appeal, complete a Report of Contact (OMHA-101) and then use the accompanying Report of Contact – Multiple Contact Attachment (OMHA-101A) to document additional contacts (see [OCPM 10.1.3](#)).

Completing a Report of Contact (OMHA-101) is not required for:

- Contact that occurs via mail, fax, e-mail, or any other written form of communication that will be included in the administrative record and that identifies the sender and the date the communication was received;
- Contact made solely for the purpose of scheduling a hearing, *unless* documenting an objection or a request to change the time and place of a scheduled hearing;
- Contact made solely for the purpose of communicating the status of an appeal (see OCPM 2.1.5);
- Contact that occurs exclusively among OMHA employees; or
- Contact that occurs between OMHA employees and employees of other staff or operating divisions within HHS that were not involved in the current or prior adjudication of the appeal.

Example: A party is contacted to confirm its availability before sending a notice of hearing. A Report of Contact (OMHA-101) is not required for this communication.

Example: The day of a scheduled hearing, a supplier calls to request that the hearing be rescheduled. A Report of Contact (OMHA-101) is required for this communication.¹

2.1.2 How do we address a request for hearing information?

If an appeal party or participant requests information regarding a scheduled hearing, confirm the appeal number and provide the requested information (see OCPM 2.1.5.1).

Caution: If PII or PHI needs to be disclosed to appropriately respond to the inquiry, ensure that the requestor is authorized to have that information (see OCPM 2.6.8).

2.1.3 How do we address whether a party needs to be present at a hearing?

If a party asks whether he or she is required to be present at a scheduled hearing, inform the party that he or she has a right to appear at the hearing, but may voluntarily waive the right to an oral hearing. Also inform the party that:

- If the party requested the hearing and they fail to appear, their request may be dismissed for failing to appear at the hearing;² and
- Even if the party waives the right to an oral hearing, the ALJ may require the party to participate in the hearing if it is necessary to decide the case.³

OMHA staff may not advise or request a party to waive the right to an oral hearing. No party, including an appellant, may be induced, solicited, coerced, or compelled to waive appearance at an oral hearing. Waivers of the right to an oral hearing must be made in writing.⁴ If a party indicates that he or she wishes to waive the right to an oral hearing, send the party a Waiver of Right to An Administrative Law Judge (ALJ) Hearing (OMHA-104), or direct the party to the OMHA website to download the form. For more information on waiving oral hearings, see [OCPM 14.2.4](#).

2.1.4 How do we address requests for advice about a pending appeal?

If a party asks for advice about how to proceed in a pending appeal, you may only provide information on **how to** exercise rights in an appeal, such as what rule applies or what form to use (for example, [42 C.F.R. section 405.910](#) explains how to appoint a representative and the party may use CMS-1696). You may not give advice or opinions as to whether parties **should** exercise those rights, even if you are asked to do so.

¹ Requests to reschedule made the day prior to, or day of, the hearing may be made orally (see [OCPM 14.6.7.2](#)).

² [42 C.F.R. § 405.1052\(a\)](#).

³ [42 C.F.R. §§ 405.1000\(f\), 423.2000\(f\)](#).

⁴ [42 C.F.R. §§ 405.1038\(b\)\(1\)\(i\), 423.2038\(b\)\(1\)\(i\)](#).

2.1.5 How do we address requests for a case status update?

We must respond to all requests for status updates from parties and non-party participants, or their representatives. Generally, we should respond to requests in the same format in which the request was received; that is, respond to telephone inquiries by telephone and respond to written inquiries in writing.

2.1.5.1 How do we verify the requestor's identity before providing a status update?

If a requestor provides an OMHA appeal number, OMHA staff may assume that the requestor is entitled to a status update *without* verifying the requestor's identity. *However*, if PII or PHI needs to be disclosed to appropriately respond to the inquiry, ensure that the requestor is authorized to have that information (*see* OCPM 2.6.9). OMHA staff may also advise requestors that case status information is available on the [ALJ Appeal Status Information System \(AASIS\)](#). The system allows parties and non-party participants to check the status of appeals that have been filed with OMHA.

If the requestor is unable to provide an OMHA appeal number, a corresponding appeal number from a lower level of appeal is also acceptable to obtain a status update.

2.2 Requests for copies of the administrative record

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While an appeal is pending at OMHA, any party to the appeal, or a representative thereof, may request a copy of all or part of the administrative record, and are entitled to receive the portion of the record they are authorized to view.⁵ OMHA is responsible for processing and responding to these requests for as long as OMHA holds the administrative record (*see* OCPM 2.2.4).

Example: The appellant provider in a multiple beneficiary appeal requests a copy of the record. A copy of the full record is provided because the appellant provider provided services to all of the beneficiaries whose claims are at issue. *See* OCPM 2.2.3.3.

A non-party (sometimes referred to as a third party) or a party to an appeal who is not authorized to receive portions of the record may only receive copies of the administrative record with the written consent of the individual(s) whose personal information is contained in the requested records (*see* OCPM 2.2.3.2).

2.2.1 What information is provided in response to a request for a copy of the administrative record?

While an appeal is pending at OMHA, to the extent authorized (*see* OCPM 2.2.3.2), a party may be provided with a copy of the administrative record, or portion thereof, including:

- The current index of the administrative record (redacted of descriptions related to records which the requesting party is not authorized to receive);
- Documentary evidence (redacted of content which the requesting party is not authorized to receive, if necessary); and
- A copy of the audio recording of the oral proceedings (redacted of segments which the requesting party is not authorized to receive).⁶

See [OCPM 20.4](#) for more information on requests for copies of the disposition package, [OCPM 2.2.3.3](#) for information on redaction of the administrative record, and [OCPM 2.2.4](#) for information about how OMHA only holds the administrative record while an appeal is pending at OMHA.

⁵ 42 C.F.R. §§ 405.1042(b), 423.2042(b).

⁶ 42 C.F.R. §§ 405.1042(b)(1), 423.2042(b)(1).

2.2.2 What if a party requests a written transcript of the hearing?

OMHA does not prepare written transcriptions of hearings, *unless* requested by an individual with a need for language or communication assistance services (for example, an individual who is deaf or hard of hearing) (see [OCPM 10.2](#)).

In all other circumstances, a typed transcription of the hearing is only prepared if:

- A party seeks judicial review of the case in a federal district court;
- The request for judicial review is timely filed and meets all other jurisdictional criteria; and
- The case is not remanded by the court upon the Secretary's motion prior to the filing of an answer.⁷

2.2.3 How does a party make a request for a copy of the administrative record?

Parties may request a copy of the administrative record using a Request for Copy of the Administrative Record (OMHA-144T), Request for Copy of the Record(s) in the Case File (HHS-719), or an equivalent writing that identifies the requestor as a party and indicates what information/records are requested. If a party makes an oral request for a copy of the record, document the request in a Report of Contact (OMHA-101). A copy of the request is kept in the administrative record.

Written requests should be sent to the assigned OMHA adjudicator or, if an adjudicator has not yet been assigned, use the following address:

OMHA Central Operations
Attn: Record Request Mail Stop
1001 Lakeside Ave., Suite 930
Cleveland, OH 44114-1158

If a request is misrouted, the receiving office must forward the request to the appropriate OMHA adjudicator or OMHA Central Operations within 2 business days.

2.2.3.1 May a non-party request a copy of the administrative record?

Non-parties or parties not authorized to access the requested records do not have a right to receive a copy of the administrative record due to the PHI and PII concerns, *unless* authorized under a separate legal authority or with the consent of the individual whose PHI or PII would be disclosed. If multiple beneficiaries are identified

⁷ 42 C.F.R. §§ 405.1042(a)(5), 423.2042(a)(5).

in the requested records, consent must be received from all of the identified beneficiaries.

A non-party's or non-authorized party's request for a copy of the administrative record must be in writing, using a Request for Copy of the Administrative Record (OMHA-144T), Request for Copy of the Record(s) in the Case File (HHS-719), or an equivalent writing that indicates what information/records are being requested. The request must include the original, signed, written consent of each individual identified in the requested record, to release all or part of the administrative record to the non-party or non-authorized party, using an Administrative Record Release (OMHA-145) or an equivalent writing.

OMHA staff is not responsible for obtaining a beneficiary's consent on behalf of a non-party or party who needs consent to obtain portions of the record.

2.2.3.2 Can a non-party obtain a copy of the administrative record without the beneficiary's consent?

If a non-party or non-authorized party does not have the individual's written consent, the non-party or non-authorized party must make a FOIA request for a copy of the administrative record (*see* OCPM 2.4.2).

2.2.3.3 Do we redact copies of the administrative record?

Redact or remove any portions of the administrative record that contain PII for an individual that the requestor is not entitled to receive.

Example: In a multiple-beneficiary appeal, one of the beneficiaries requested a copy of the administrative record before a hearing. The requesting beneficiary did not obtain consent from the other beneficiaries for disclosure of their records. The requestor would receive copies of records related to his or her records and the master records (redacted of any other beneficiaries' PII/PHI), but would not receive copies of the other beneficiaries' records.

Example: A non-party submits a FOIA request for a copy of the administrative record. The beneficiary's PII/PHI, and any other PII in the record must be redacted before disclosure.

2.2.4 When can a request for a copy of the administrative record be made?

A party, or a party's representative, may request and review a copy of the record at any time before the notice of decision, dismissal, or remand is issued.⁸ OMHA only holds the administrative record while an appeal is **pending at OMHA**.⁹

If the appeal is no longer pending at OMHA and the administrative record has been mailed or transferred to another entity as the holder of the permanent record, send a Records Request Referral (OMHA-166) with the holder's contact information to the requestor. See [OCPM 20.4.1](#) for contact information for holders of the permanent record.

Note: For requests to re-send the disposition package or its contents made after OMHA mails or transfers the administrative record to the entity that holds the permanent record, see [OCPM 20.4.1](#).

2.2.5 How do we respond to valid requests for copies of the administrative record?

If the requestor is a **beneficiary**, unless the beneficiary requests a digital copy, issue a **paper copy** of all, or the portion of, the administrative record that the beneficiary is entitled to receive, photocopy or print the requested portion of the record, and mail it to the address provided by the beneficiary. If the beneficiary requests a digital copy, scan any paper records, or export digital records, to create a digital copy of the requested records onto a CD or DVD. Mail the CD or DVD to the address provided by the requestor.

For **all other requests** for information that a requestor is entitled to receive, scan any paper records or export digital records, to create a digital copy of the requested records onto a CD or DVD. Mail the CD or DVD to the address provided by the requestor.

If the requested information includes PII or PHI, the files on the CD or DVD must be encrypted. Enclose the encrypted CD or DVD with the Encrypted Media Enclosure Letter (OMHA-186T), which communicates that the passphrase to open the encrypted file will be provided to the recipient via separate mailing, telephone, fax, or email. If providing the passphrase via mail, use the Passphrase Letter Template. Document the passphrase, in case the recipient requests it again.

⁸ 42 C.F.R. §§ 405.1042(a)(3), 423.2042(a)(3).

⁹ See 42 C.F.R. §§ 405.1042(b)(1) ("While an appeal is pending at OMHA, a party may request and receive a copy of all or part of the record from OMHA, including any index of the administrative record, documentary evidence, and a copy of the audio recording of the oral proceedings."), see also 423.2042(b)(1) (stating the same); §§ 405.1042(a)(4) and 423.2042(a)(4).

All documents and electronic media mailed in boxes containing unmasked (i.e., unredacted) PII must be mailed using delivery tracking or delivery confirmation with return receipt (see OCPM 2.6.5.3). Because PII is generally masked within disposition documents, dispositions may continue to be sent regular US mail.

Note: Heightened guidelines apply for safeguarding FTI when processing IRMAA appeals (see OCPM 2.7).

2.2.6 How do we respond to requests for a copy of the administrative record that cannot be processed by OMHA?

If a request for a copy of the administrative record cannot be processed because the **requestor is not a party (or not a party's representative)**, and does not have the beneficiary's consent (see OCPM 2.2.3.2), send a Notice of Denial of Request for Copy of the Administrative Record (OMHA-162T).

If a request for a copy of the administrative record cannot be processed because the appeal associated with the request is closed and **OMHA no longer holds the permanent record** (see OCPM 2.2.4), send a Records Request Referral (OMHA-166).

2.2.7 Who is responsible for responding to requests for copies of the administrative record?

For **unassigned** appeals, (that is, appeals that are in Central Operations awaiting assignment to an ALJ or attorney adjudicator), **Central Operations** responds to requests for copies of the administrative record.

For **assigned** appeals, the assigned **adjudication team** responds to requests for copies of the administrative record.

For appeals that have been **mailed or transferred to the permanent records custodian**, the **recipient** of the request sends a Records Request Referral (OMHA-166).

2.2.8 What is the time frame for responding to requests for copies of the administrative record?

Respond to requests for copies of the administrative record within 10 business days of receipt, or as quickly as the circumstances require.

Example: If a request is received with the response to the notice of hearing, a copy of the records may need to be provided prior to the scheduled hearing

to help ensure the parties and the ALJ can discuss the record during the hearing.

If the assigned adjudicator (for assigned appeals) or the Director of Central Operations (for unassigned appeals) determines that a request is too voluminous and would require excessive resources to fulfill within 10 business days, OMHA staff may:

- Contact the requestor to determine if the request can be narrowed; or
- Notify the requestor that the request will take additional time to complete and give an approximate date that the requested materials will be available.

Note: If the request for a copy of the administrative record is narrowed, OMHA staff will document the updated request in a Report of Contact (OMHA-101) form (*see* OCPM 2.2.3.1).

2.2.9 May a requestor have an opportunity to comment on the record?

Parties may request an opportunity to comment on the administrative record. Requests for an opportunity to comment may be made with the request for a copy of the administrative record, or after receipt of the requested copy of the administrative record, or portions thereof.¹⁰ Requests may be made in writing by completing the applicable section of the Request for Copy of the Administrative Record (OMHA-144T), Request for Copy of the Record(s) in the Case File (HHS-719), or an equivalent writing, or orally. Document all oral requests for an opportunity to comment on the record in a Report of Contact (OMHA-101), which is added to the administrative record.

2.2.9.1 May an adjudicator deny a party's request for an opportunity to comment on the record?

No. An adjudicator may not deny a request for an opportunity to comment on the record, *unless* the requestor is not a party to the appeal (or a party's representative).

2.2.9.2 How long does a party have to comment on the record?

A party may request a specific amount of time to comment on the record, but the amount of time granted for the response is ultimately within the adjudicator's discretion. Factors to be considered when determining the time for a response include:

- The amount of time requested by the party, if applicable;

¹⁰ See 42 C.F.R. §§ 405.1042(b)(2), 423.2042(b)(2).

- The size of the administrative record, or the portion requested by the party;
- The date of any scheduled hearings or conferences;
- Any potential burden to any other party as a result of extension of the adjudication time frame (see OCPM 2.2.9.3).

Upon receipt of a party's request to comment on the record, the OMHA adjudicator issues an Order on Request to Comment on the Record (OMHA-130T). The order specifies the time granted for the party's response and advises that any applicable adjudication period is extended from the date the party's request was received until the expiration of the time granted for the party's response (see OCPM 2.2.9.3).

Send the order and a general Notice (OMHA-120) to the requestor, the appellant (if not the requestor), and any other party copied on the request for hearing (see OCPM 11.6.3).

2.2.9.3 What effect does a party's request to comment on the record have on the adjudication time frame?

If a party requests a copy of all or part of the record and an opportunity to comment on the record, any applicable adjudication time frame is extended by the period *from* the date of receipt of the request *until* the expiration of the time granted for the party's response (see OCPM 7.2.2).¹¹

Note: If a party requests a copy of all or part of the record and subsequently requests an opportunity to comment on the record, the adjudication time frame is extended beginning on the date OMHA receives the request for an opportunity to comment, not the earlier date on which OMHA received the request for a copy of all or part of the record.

2.2.9.4 May a non-party request an opportunity to comment on the record?

No. Only a **party** may request an opportunity to comment on the record. If a **non-party** requests an opportunity to comment on the record, the OMHA adjudicator will issue an Order on Request to Comment on the Record (OMHA-130T), denying the request. Send the order and a general Notice (OMHA-120) to the non-party requestor, the appellant, and all parties who received a copy of the request for hearing.

¹¹ 42 C.F.R. §§ 405.1042(b)(2), 423.2042(b)(2).

2.3 Congressional inquiries

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2.3.1 What are congressional inquiries?

Congressional inquiries are inquiries filed by a Member of Congress or congressional staff, often on behalf of a constituent. A congressional inquiry may involve a request for OMHA to provide information or take action on a specific appeal, or may relate more broadly to OMHA programs and policies. Before releasing information to a congressional office, other than appeal status information, OMHA must receive a signed authorization to release the information from the constituent, which the congressional office is responsible for obtaining. OMHA's goal is to provide accurate, courteous, and timely responses that adhere to Federal and Departmental policies and privacy standards.

2.3.2 How are congressional inquiries made?

Congressional inquiries may be made by telephone, email, fax, or mail.

If a telephone inquiry is received on a specific appeal, document the inquiry in a Report of Contact (OMHA-101) and inform the requestor that no information can be released until OMHA receives a signed authorization to release the information from the constituent (*see* OCPM 2.3.6).

2.3.3 How do we respond to a congressional inquiry if we do not have the constituent's authorization to release the information?

Congressional inquiries that relate to a specific appeal or appeals, other than appeal status inquiries, must be accompanied by a written authorization, signed by the constituent (generally a provider/supplier or beneficiary), to release the requested information. If an inquiry is received without the required authorization, notify the congressional office that we cannot respond to the inquiry until we receives the constituent's written, signed authorization.

Note: If a congressional inquiry is filed on behalf of a provider- or supplier-constituent and requests information that contains a beneficiary's PII, FTI, or PHI, permission to release information must be provided by the beneficiary—even though the beneficiary is not the constituent on whose behalf the request was made—or the information must be redacted prior to release. However, if the requested information does not require the release of a beneficiary's PII, FTI, or PHI—e.g., information on the case status is requested—the beneficiary's release of information is not required.

2.3.4 What is the process for reviewing congressional inquiries?

After receiving a congressional inquiry, review the inquiry to ensure that the requesting congressional office has provided a signed authorization form for the release of information from the constituent, if required. Research the inquiry and develop an appropriate written response.

For inquiries that involve a specific appeal or appeals, the office that responds to the inquiry must make the appropriate entries in the case processing system indicating that a congressional inquiry was received and recorded for the appeal(s).

2.3.5 How do we respond to congressional inquiries that only seek a status update on an OMHA appeal?

Generally, if a congressional inquiry only requests information on the status of a **pending** appeal, the appropriate OMHA office responds to the congressional office using the Congressional Inquiry Status Request Response (OMHA-128T) as follows:

*The appeal is **assigned** to an adjudicator **in the receiving office***

The field office Associate Chief ALJ, or a designee, prepares a response. The Associate Chief ALJ, or designee, will coordinate with the assigned adjudicator as necessary to draft an appropriate response. The Associate Chief ALJ will then sign and send the response within 14 calendar days of receipt.

*The appeal is **assigned** to an adjudicator **in another office***

Forward the congressional inquiry to the assigned adjudicator's field office Associate Chief ALJ, or designee within 5 calendar days of receipt for a **priority 3 appeal**, or the next business day for in a **priority 1 or 2 appeal** (see [OCPM 7.4.2](#)). The assigned adjudicator's field office Associate Chief ALJ, or designee, will coordinate with the assigned adjudicator as necessary to draft an appropriate response. The Associate Chief ALJ will then sign and send the response within 14 calendar days of receipt by the assigned adjudicator's field office.

*The appeal is **not assigned** or the appeal is **closed***

Forward the inquiry to the **Appeals Policy and Operations Division** within 5 calendar days of receipt for a **priority 3 appeal**, or the next business day for a **priority 1 or 2 appeal** (see [OCPM 7.4.2](#)). The Appeals Policy and Operations Director, or designee, coordinates with Central Operations, if necessary, and prepares and sends the response within 14 calendar days of receipt by the Appeals Policy and Operations Division.

Note: The response time frame begins when a complete inquiry is received by the responding office, which includes a written, signed release of information from the constituent (see [OCPM 2.3.3](#)).

Note: Forward congressional inquiries through encrypted email, fax, or tracked mail due to PII concerns (see OCPM 2.6.5).

2.3.6 How do we respond to congressional inquiries that are not solely related to the status of a pending appeal?

Congressional inquiries that are not solely related to the status of a pending appeal must be reviewed and responded to by OMHA Headquarters. Forward these inquiries to the **Appeals Policy and Operations Division** within 5 calendar days of receipt for a **priority 3 appeal**, or the next business day for a **priority 1 or 2 appeal** (see OCPM 7.4.2). The Appeals Policy and Operations Division prepares the response or, depending on the subject matter addressed in the inquiry, routes the inquiry to another Headquarters division for response, and issues a response within 21 calendar days of receiving the complete inquiry.

Example: A field office receives a congressional inquiry and privacy release regarding a recently closed beneficiary appeal, asking why the appeal was denied payment, and requesting full Medicare payment. If an appeal is no longer pending, or an inquiry is not solely requesting a status update, it must be forwarded to the Appeals Policy and Operations.

2.3.7 What format do we use to respond to congressional inquiries?

Responses to congressional inquiries must be **in writing**. Oral responses are permitted, but must be followed up in writing within the time frame designated for response. Unless the inquiry was made by telephone, respond to the inquiry in the same format used to make the inquiry (that is, answer email inquiries by email, standard mail inquiries by mail, and faxed inquiries by fax), *unless*:

- The requestor requests the response in a different format;
- The responder determines that a more formal response is appropriate; or
- A response must be sent in a different format because the response contains PII, FTI, or PHI and the requestor does not have access to a secure fax machine, or is unable to receive encrypted email attachments.

For congressional inquiries that only request information on the status of a **pending** appeal, see OCPM 2.3.5.

2.3.8 Do we need to respond to all congressional inquiries?

If there is no record in the case processing system of an OMHA appeal for the constituent and OMHA does not have jurisdiction on the matter raised in the inquiry, the **Appeals Policy and Operations Division** forwards the inquiry to the appropriate entity for response and notifies the requestor that the response has been forwarded. The misrouted inquiry will be forwarded in accordance with the time frame established for other misrouted filings in [OCPM 9.2.2.2](#).

Generally, if OMHA operations, budget, policy, or the constituent's OMHA appeal rights are implicated, Appeals Policy and Operations Division will issue a response.

Example: An inquiry concerns an appeal that is pending with a MAC at the redetermination level. The Appeals Policy and Operations Division notifies the requestor that the inquiry was forwarded to the CMS Medicare Enrollment and Appeals Group for resolution.

Example: An inquiry concerns an overpayment and a request for an extended repayment schedule, and no appeals associated with the overpayment are pending at OMHA. Because OMHA has no jurisdiction over repayment schedules, the Appeals Policy and Operations Division notifies the requestor that the inquiry was forwarded to the CMS Office of Financial Management for resolution.

Example: An inquiry concerns an unfavorable reconsideration decision issued by the QIC, but OMHA has not received a request for hearing. Because the constituent has a right to an ALJ hearing if all jurisdictional requirements are met, the Appeals Policy and Operations Division issues a response that includes instructions for filing an appeal with OMHA.

2.3.9 How do we respond to congressional inquiries that purport to request a hearing on behalf of the constituent, but do not include an appointment of representative form?

Provide a written response as outlined in OCPM 2.3.6. The response:

- Explains that only a party may request an ALJ hearing or review of a dismissal, and a congressional office cannot file a request on behalf of a party without evidence that it was appointed to act on the party's behalf;
- Provides information on how the constituent may request a hearing or review of a dismissal, including the procedures for appointing a representative, the

deadline for timely filing, and, if applicable, the procedures for requesting an extension of the filing deadline; and

- Includes a blank Request for Administrative Law Judge (ALJ) Hearing or Review of Dismissal (OMHA-100) and a blank Appointment of Representative (CMS-1696) forms.

If the time frame for the constituent to file a timely request for hearing may elapse while waiting for OMHA's response to the congressional inquiry, call the requestor and provide the above information orally (offer to email or fax the OMHA-100 and CMS-1696, or direct the requestor to the forms page on the OMHA website). Follow up the telephone contact in writing within the time frame for providing a written response.

Note: A standard authorization form to release information does not establish that the constituent has appointed the congressional office to act as his or her representative pursuant to [42 C.F.R. section 405.910](#). For more information on appointed representatives, see [OCPM 5.1.3](#).

2.3.10 How do we track and report congressional inquiries solely related to the status of an appeal?

Each OMHA office is responsible for documenting and tracking all congressional inquiries addressed by that office and maintaining copies of all inquiries and responses in accordance with applicable Federal records retention schedules.

- **Case-specific** inquiries and responses solely related to the status of an appeal are maintained in the administrative record for the appeal and are maintained on a secure network drive.
- **Non-case-specific** inquiries and responses are maintained on a secure network drive.

Track all inquiries on the OMHA Congressional Inquiries Tracker, available as a support material to this chapter, for quarterly reporting purposes. Field offices will track and report all inquiries every quarter.

2.4 Media and FOIA requests

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2.4.1 Does OMHA respond to requests from the media?

Only an authorized employee may communicate on behalf of OMHA and respond to informational requests from the media. All official communications to media outlets from OMHA are routed through the **Executive Office**.

Reply to any media requests for comments on OMHA or Department policies or positions by conveying that:

- You are not authorized to comment on behalf of HHS or OMHA;
- You will forward your request to the Executive Office; and
- Someone from the Executive Office will contact you shortly.

Accurately record all media requests and any follow-up inquiries and immediately convey them to the Hearing Office Director or the appropriate Headquarters division director, who in turn refers them to the Executive Office.

2.4.2 What are FOIA requests?

FOIA is a Federal statute that allows individuals to request disclosure of Federal agency records.

2.4.2.1 Who manages FOIA requests for the Department?

The HHS Assistant Secretary for Public Affairs (ASPA), FOIA/Privacy Act Division is responsible for tracking and responding to all FOIA requests made to the staff divisions of the Department.

2.4.2.2 How do we process FOIA requests from ASPA?

When ASPA receives a FOIA request that is related to OMHA, it refers the request to OMHA's FOIA Coordinator. ASPA assigns a case number and a due date to the FOIA request, which is processed through an electronic tracking and management system. The FOIA Coordinator then contacts any staff that may have responsive documents in order to gather the records.

2.4.2.3 How do we process FOIA requests submitted directly to OMHA?

Forward any requests sent to the OMHA FOIA Coordinator, who in turn will send an acknowledgement to the party making the request and send the request to ASPA to begin the process.

2.4.2.4 How do we process a FOIA request submitted directly to OMHA for a copy of the record in a pending appeal?

A party to a pending appeal may request a copy of the record¹² without needing to file a FOIA request (see OCPM 2.2.3). As such, a FOIA request made by a party and submitted directly to OMHA is treated as a request for a copy of the record and is not forwarded to ASPA.

*If the requestor is a **party** and the appeal is **assigned***

The FOIA Coordinator refers the inquiry to the assigned adjudicator with a copy to the Hearing Office Director. The assigned adjudication team responds directly to the requestor with a copy of the record.

*If the requestor is a **party** and the appeal is **not assigned***

The FOIA Coordinator refers the inquiry to Central Operations. Central Operations responds directly to the requestor with a copy of the record and notifies the FOIA Coordinator.

*If the requestor is **not a party***

Only parties may request a copy of the record;¹³ as such, these requests are processed as FOIA requests (see OCPM 2.2.3.2).

2.4.2.5 How do we process FOIA requests for deliberative work product related to an OMHA appeal?

Deliberative work product related to an OMHA appeal is exempt from FOIA disclosure.¹⁴ The FOIA coordinator and ASPA will process and respond accordingly to any FOIA requests that specifically seek this information.

2.4.2.6 How do we process FOIA requests that are unrelated to an OMHA appeal?

If a FOIA request is not related to a specific OMHA appeal, the FOIA Coordinator contacts the appropriate OMHA Headquarters division for responsive documentation and responds to ASPA.

¹² 42 C.F.R. §§ 405.1042(b), 423.2042(b).

¹³ 42 C.F.R. §§ 405.1042(b), 423.2042(b).

¹⁴ See 5 U.S.C. § 552(b)(5).

2.4.2.7 How do we process FOIA requests related to an appeal that is no longer pending at OMHA?

Because CMS or SSA is the custodian of the official record after an appeal is closed at OMHA, the FOIA Coordinator will respond to ASPA explaining that the FOIA request should instead be referred to CMS or SSA.

2.4.2.8 What are our document production responsibilities when responding to FOIA requests?

Upon receiving a FOIA request, OMHA staff is required to search all locations that are reasonably likely to have documentation responsive to the request within 5 business days from receipt of the request, unless another time frame is specified by the FOIA Coordinator. If responsive documentation is found, send it to the FOIA Coordinator.

Note: If responsive documentation contains PII, FTI, or PHI forward to the FOIA Coordinator through encrypted email (*see* OCPM 2.6.6.1).

If the request is overly broad, complex, or would result in voluminous documentation, the FOIA Coordinator contacts ASPA to:

- Seek clarification from the requesting party in an effort to narrow the scope of the request; and/or
- Request an extension to prepare a response.¹⁵

2.4.2.9 How do we respond to ASPA once we have completed our search for documents?

After the search for responsive documentation is complete, the FOIA Coordinator submits any responsive documents, and any proposed redactions, to ASPA with a transmittal memorandum via the electronic FOIA request tracking and management system. The memorandum includes the rationale for any redactions in accordance with one of the nine statutory FOIA exemptions,¹⁶ and the amount of staff time spent responding to the request.

2.4.2.10 How do we respond to ASPA if we do not find any responsive documents?

The FOIA Coordinator notifies ASPA by memorandum via the electronic FOIA request tracking and management system (*see* OCPM 2.4.2.2) if, after consultation with the

¹⁵ See 5 U.S.C. § 552(a)(6)(B)(i). ASPA must respond to the requestor within 20 business days from the date of the request. ASPA may grant a 10 business day extension in unusual circumstances upon written notice to the party making the request.

¹⁶ See 5 U.S.C. § 552(b).

appropriate staff, the FOIA Coordinator determines that OMHA has no responsive documentation.

If the FOIA Coordinator determines that another agency may have responsive documentation, the FOIA Coordinator will notify ASPA and recommend that the FOIA request be reassigned.

2.5 Law enforcement inquiries

(Issued: 06-17-20, Effective: 06-17-20)

2.5.1 When is a records release to law enforcement permitted?

In certain situations, OMHA may release records to law enforcement. The Privacy Act permits Federal agencies to disclose personal information 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;
- The head of the agency or instrumentality has made a written request to the agency that maintains the record; and
- The request specifies the particular portion of the record desired and the law enforcement activity for which the record is sought.¹⁷

2.5.2 Who responds to law enforcement inquiries?

Forward all requests from law enforcement to **OMHA Appeals Policy and Operations Division**, which determines if the conditions for disclosure under the Privacy Act have been met. If disclosure is appropriate, the Appeals Policy and Operations Division coordinates with appropriate staff to gather responsive documents and respond to the inquiry.

2.5.3 How do we respond to law enforcement inquiries?

Forward any requests for information from law enforcement to the Hearing Office Director or the appropriate Headquarters division director, who in turn forwards the request to the Appeals Policy and Operations Division for a response.

¹⁷ 5 U.S.C. § 552a(b)(7).

2.6 Protecting PII

(Issued: 06-17-20, Effective: 06-17-20)

OMHA is entrusted with PII related to case adjudication, in both an electronic and paper form, on a daily basis, and is required by law to protect this information.¹⁸ This section establishes guidelines for identifying and safeguarding PII, the notification protocols in the event of an actual or suspected breach, and the penalties associated with violation of the Privacy Act and its associated regulations.

Note: Heightened guidelines apply for safeguarding FTI when processing IRMAA appeals (see OCPM 2.7).

2.6.2 What is PII?

PII refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.¹⁹

Examples of PII include:

- Name;
- Social Security Number;
- Biometric records;
- Date or place of birth;
- Mother's maiden name;
- Former name;
- Driver's license number;
- Street address; and
- Email address.

PHI may include health information, such as medical records, Health Insurance Claim Numbers (HICNs) and Medicare Beneficiary Identifiers (MBIs).

¹⁸ See 5 U.S.C. § 552a(b).

¹⁹ Office of Management and Budget (OMB) M-17-12, *Preparing for and Responding to a Breach of Personally Identifiable Information*, § 3(B), Jan. 3, 2017 (hereinafter OMB M-17-12).

2.6.2.1 Who is authorized to access PII at OMHA?

Only staff whose official duties or responsibilities require access to PII may access PII.²⁰ In addition, only those with a “need to know” the specific PII in question may access the PII.²¹

2.6.2.2 When can we disclose PII?

Generally, disclosure of PII is not permitted without the written consent of the individual(s) to whom the record applies.²² However, certain exceptions apply that permit OMHA to disclose PII without the written consent of the individual. The exceptions most relevant to OMHA include:²³

- The record is required by HHS employees for performance of official duties;²⁴
- Disclosure is required under FOIA;²⁵ or
- There are compelling circumstances affecting the health or safety of any individual, and notice of the disclosure is sent to the individual’s last known address.²⁶

2.6.2.3 What is a PII breach?

A PII breach is the loss of control, compromise, unauthorized disclosure, or unauthorized acquisition of PII, or any similar occurrence where:

- A person other than an authorized user accesses or potentially accesses PII; or
- An authorized user accesses or potentially accesses PII for other than an authorized purpose.²⁷

Example: Viewing PII for curiosity or for reasons other than official duties is not permitted and is considered a breach.

²⁰ 5 U.S.C. § 552a(b)(1).

²¹ OMB M-17-12, § VII(E)(2)(c)(ii) (stating that an example of a breach is when an employee sends an individual's PII to another employee at the same agency who does not need to know that PII for his or her duties).

²² 5 U.S.C. § 552a(b), 45 C.F.R. § 5b.9(a)(1).

²³ There are other Privacy Act exceptions, but these are the most relevant for OMHA staff. See 5 U.S.C. § 552a(b).

²⁴ 5 U.S.C. § 552a(b)(1).

²⁵ 5 U.S.C. § 552a(b)(8).

²⁶ 5 U.S.C. § 552a(b)(2).

²⁷ OMB M-17-02, § III(C).

2.6.3 How do we store hard copy PII?

Store PII in a secure, locked environment (for example, an area accessible only by OMHA employees and contractors with keycard access). When possible, keep PII in workspaces locked in an office, desk, cabinet, or drawer.

2.6.4 How do we store electronic PII?

Store electronic information with PII only on a network drive (personal, office, or shared drives on an HHS-issued laptop) or encrypted government equipment. Do not store PII on the desktop or any other location on the C:\ drive of a laptop, or on personal media or devices.

Do not store PII that is not necessary to perform OMHA functions.

Example: An adjudication team assembles data containing PII on a spreadsheet in order to more efficiently generate appeals correspondence through a mail merge. When the PII is no longer needed, the team must remove the PII or delete the spreadsheet.

2.6.5 How do we transport PII within an OMHA office or building?

When transporting PII through public spaces in an OMHA office or building, such as between floors, keep all PII within your control and sealed to prevent inadvertent viewing or access.

2.6.6 How do we transmit PII?

Ensure PII is sent only to authorized individuals and cannot be inadvertently seen by unauthorized individuals.

2.6.6.1 How do we transmit PII via email?

Encrypt all emails containing PII prior to sending. Encrypt emails containing PII that are sent **within OMHA or the Department** using Outlook.

Note: The ability to exchange encrypted email is dependent on whether another HHS organization publishes employee Personal Identify Verification (PIV) certificates to the shared HHS Global Address List (GAL). If an employee's PIV certificate is unpublished, Outlook will notify the sender that an encrypted email cannot be sent to that HHS employee. If Outlook cannot be used to encrypt the email, remove PII from the body of the email and use SecureZip to encrypt the document containing PII and attach it to the email.

For emails sent to recipients **outside of the Department**, use SecureZip to encrypt the document containing PII and attach it to an unencrypted email in Outlook. Do not include PII in the body of the email (SecureZip only encrypts documents; it does not encrypt email messages themselves).

Caution: Do not email PII, even if encrypted, to any party to an appeal (for example, an appellant, beneficiary, or representative) *other than* a CMS contractor.

The passphrase created to open the encrypted file must be provided separately to the recipient via mail, telephone, fax, or a separate email. If needed, include general instructions to open the file.

If providing the passphrase in writing, use the Passphrase Letter Template. Document the passphrase, in case the recipient requests it again.

Caution: Do not transmit or store PII via text messaging, instant messaging (such as Jabber), or on any social media site or application, whether internal or external, to HHS employees, or in the course of your official duties.

2.6.6.2 How do we send PII via fax?

Before sending PII, confirm that the fax machine is secure or that the intended recipient is waiting at the fax machine to receive the fax. “Secure” means the fax machine is located where only the intended recipient(s) can receive the fax, or is in a limited-access environment (for example, faxing to a QIC fax machine located in an access-restricted area).

After sending PII via fax, immediately remove the documents from the machine and wait for the transmission completion notification.

2.6.6.3 How do we mail paper documents containing PII?

We must take the appropriate steps to protect PII when mailing paper documents, as follows:

1. Use first class mail, priority U.S. mail, or a commercial delivery service;
2. Pack boxes to prevent movement and follow OMHA guidelines for weight maximum per box;
3. Use the Shipping Cover Sheet (OMHA-203) for case files;

4. Use a label with minimal case information (do not include any health information, such as a beneficiary's HICN or MBI, on the outside of an envelope or box); and
5. Keep envelopes/boxes for pick up within secure office space (that is, do not leave in unsecure building hallways with open access).
6. Use only tracked mail or delivery confirmation with return receipt when mailing unmasked (that is, not redacted) PII. Mail that contains masked PII (for example, disposition documents, notices, and other appeals correspondence that contains only partially redacted (truncated) HICNs and a first initial and last name) may be sent untracked by regular first class mail.

Note: Heightened guidelines apply for mailing FTI when processing IRMAA appeals (see OCPM 2.7).

2.6.6.4 How do we mail electronic media containing PII?

Electronic media that contains PII must be encrypted before shipment or distribution.

The passphrase created to open the encrypted files must be provided separately to the recipient via mail, telephone, fax, or email. If needed, include general instructions to open the files. If providing the passphrase in writing, use the Passphrase Letter Template. Document the passphrase, in case the recipient requests it again.

Once encrypted, follow steps 1–5 of the mailing procedures outlined in OCPM 2.6.6.3. Tracked mail or return receipt is not required for encrypted PII.

2.6.7 How do we process PII received from external sources?

Protect PII by only storing information necessary for performing necessary duties (see OCPM 2.6.3) and report all intended and unintended, suspected and actual breaches, as necessary (see OCPM 2.6.17).

2.6.7.1 How do we process unsolicited, unencrypted emails containing PII?

Protect the PII by moving the PII from Outlook to a network drive and then permanently delete the PII from Outlook. When replying to an email with PII, encrypt the email (where permitted), remove the PII before replying, or create a new email message (for example, when sending to an appellant, beneficiary, or representative).

2.6.7.2 How do we process PII received by fax?

If an OMHA office receives a fax containing PII, immediately remove the fax from the machine and distribute the documents to the appropriate individuals.

2.6.7.3 How do we process PII received on electronic media?

Materials other than requests for hearing or review may be accepted on electronic media, such as compact discs, digital video discs, and thumb drives. An index of the electronic file names and the contents of each file should be created or requested from the filer, and included in the administrative record. If the appeal is processed electronically, the files are uploaded to the case processing system and associated with the electronic record (see [OCPM 9.2.1.3](#)). After uploading the files, dispose of the electronic media using an OMHA shredder, place the media in a locked container for offsite shredding, or arrange for appropriate disposal directly with a disposal vendor.

2.6.8 How do we protect PII during oral conversations?

Do not discuss PII outside secure areas (for example, while in an elevator or in a building lobby). Avoid using a speakerphone when discussing PII *unless* in a closed environment, such as an office, conference room, or hearing room.

2.6.9 How do we respond if a caller requests information about an appeal and the answer would require disclosure of PII?

If PII needs to be disclosed in response to a call, ensure that the requestor is authorized to have that information. See OCPM 2.1.5.1 for information on when and how to verify the caller's identity.

Generally, disclose PII only to a party to the appeal, or their representatives. We may also disclose PII to SSA, CMS or CMS contractors if they have a need to know the information in order to perform their official duties. See OCPM 2.6.1.2 for more information on when we may disclose PII.

2.6.10 How do we protect PII on our physical equipment?

To protect PII on physical equipment such as a laptop, desktop, or cell phone, lock the device screen when not in use and remove the PIV card, if applicable. Position the monitor or screen in a way to prevent others from viewing, whether in an office/cubical or in any public venue.

2.6.11 How do we protect PII from being exposed to visitors to our office space?

Make every effort to minimize exposure of PII to visitors.

- *During office hours (8:00 a.m.–4:30 p.m. in the local time zone).* Visitors with daily access to secure OMHA office space (for example, building maintenance, cleaning staff) are permitted without an OMHA escort, provided the visitor can be clearly observed. All other visitors (for example, hearing participants) must be accompanied by OMHA personnel.

- *Outside of office hours.* All visitors must be authorized by the local Hearing Office Director, and accompanied by OMHA personnel.

2.6.12 How do we protect PII in our hearings?

PII may only be discussed at a hearing in the presence of authorized individuals. See OCPM 2.6.1.2 for more information on when we may disclose PII.

Example: In a hearing for a multiple-beneficiary appeal or a consolidated hearing with multiple appeals, only the beneficiary whose PII is being discussed may be present during that portion of the hearing.

Note: Only CMS contractors that processed or adjudicated a specific claim are authorized to access PII related to that claim.

2.6.13 How do we protect PII in correspondence and case-related materials issued by OMHA?

To safeguard PII, partially redact (mask) beneficiary names and identifiers in all OMHA correspondence and case-related materials produced by staff as follows:

1. Identify the beneficiary by his or her first initial and complete last name, including any suffixes.

Example: J. Doe, Jr.

2. For **HICNs**, display only the last four numeric digits of the HICN, plus any alphanumeric suffix. Filler asterisks should be used for the preceding numbers and (if applicable) letters.

Example: *****1234B5

3. For **MBIs**, display only the last five digits, which should always be a number, followed by two letters, followed by two numbers. Filler asterisks should be used for the preceding numbers and letters.

Example: *****1AB23

Ensure that all documents are only transmitted to authorized individuals.

Note: Partially masked HICNs, MBIs, and beneficiary names are still considered PII.

2.6.13.1 How do we protect PII in multiple-beneficiary appeals?

Take special care with correspondence that contains PII for multiple beneficiaries to ensure that only authorized individuals have access to the PII.

Take the following actions to safeguard PII in multiple-beneficiary appeals:

1. *Multiple beneficiaries with one appellant-provider/supplier.* The appellant may receive an unredacted copy of the correspondence as a party to all individual claim determinations on appeal. Redact correspondence so that all PII unrelated to the receiving beneficiary is on an appendix that is not provided to the beneficiary.
2. *Multiple CMS contractors with one appellant-provider/supplier.* Redact correspondence so that each CMS contractor only receives PII for the claims that it processed. The appellant may receive an unredacted copy of the correspondence as a party to all individual claim determinations on appeal.

Note: Consolidated proceedings may only be conducted for appeals filed by the same appellant, *unless* multiple appellants have requested aggregation pursuant to [42 C.F.R. § 405.1006](#) and all of the beneficiaries at issue have authorized disclosure of their PII to the other parties and participants.²⁸

Note: Appeals that are combined for administrative efficiency are restricted to appeals with initial determinations processed by the same contractor (see [OCPM 9.9.3.2](#)).

2.6.14 How do we protect PII when teleworking?

Follow all PII policies that apply when working in the office, and only take PII to an approved Alternate Duty Station (ADS) when teleworking.

Provide a list of all case files and other information that contains PII that will be removed from the official duty station (ODS) for telework to your immediate supervisor, or check the cases out through the office inventory control system.

2.6.14.1 How do we transport PII to an ADS?

Transfer case files in a locked container during transport (for example, a backpack with a lock that can be attached or a locking briefcase).

²⁸ [42 C.F.R. § 405.1044\(c\)](#).

When boxes are necessary for transport of case files outside the ODS, seal the boxes with packaging tape to prevent unauthorized viewing and/or accessing of PII.

If transporting case files in an automobile, store locked containers out of sight in the rear cargo area or locked trunk during transport to and from an ADS.

Note: If files in transit are subject to random searches (for example, security searches on public transit), a cover sheet must be placed over files or tabs if PII is visible.

Caution: Never leave electronic devices (for example, laptops, government-issued phones) or documents with PII unattended.

Example: You are transporting your laptop and two case files in your locked laptop bag in your automobile to your ADS to telework. On the way to your ADS, you stop at the grocery store. You must take your laptop bag with you into the store and may not leave it in the car unattended.

2.6.14.2 How do we store PII at an ADS?

Place files and any documents with PII in a locking file cabinet/storage at the ADS when not in use. Store electronic information with PII only on a network drive (personal, office, or shared drive on an HHS-issued laptop) or encrypted government equipment (see OCPM 2.6.3); do not open or save work emails with PII on a personal electronic device.

2.6.15 How do we protect PII during official travel?

While on official travel, follow all PII policies that apply when working in the office and teleworking. When traveling by airplane, electronic devices or documents with PII must be packed in carry-on luggage and kept in the traveler's control at all times. If electronic devices or documents with PII must remain in a hotel room unattended, the items must be locked in a safe or in luggage.

2.6.16 How do we dispose of PII when it is no longer needed?

Dispose of PII that is no longer required to process a pending appeal, *unless* retention of the information is required by law, regulation, or OMHA policy. For example:

- As part of the administrative record;
- As responsive to a litigation hold;
- As responsive to a FOIA request (see OCPM 2.4.2.8); or

- Pursuant to OMHA's record retention schedule (see OMHA Records Management File Plan).

PII may be stored on personal network drives without redacting. However, if the information is shared in a shared network folder, all PII must be redacted.

Retention of draft disposition documents beyond the close of an appeal is permitted, however such documents must be stored on a network drive and access to such documents must be restricted to the drafter and the drafter's adjudication team.

2.6.16.1 How do we dispose of paper containing PII?

Dispose of paper containing PII using an OMHA shredder, or place the paper in a locked OMHA container for offsite shredding.

2.6.16.2 How do we dispose of electronic PII?

Dispose of electronic PII by deleting the file containing PII from the network drives on your HHS laptop.

<p><i>Note:</i> Remember, PII must be stored on a network drive and cannot be saved on the laptop's hard drive.</p>

2.6.16.3 How do we dispose of physical devices containing PII?

When no longer in use, dispose of equipment as follows:

1. *OMHA-owned devices.* OMHA offices are responsible for arranging for appropriate disposal of the devices directly with a disposal vendor. Contact your Hearing Office Director if you possess equipment that requires disposal.
2. *ITIO-owned devices.* OMHA offices must return the devices to ITIO.

2.6.17 How do we report PII breaches?

OMHA staff is required to report all **known** and **suspected** PII breaches. To report a breach, follow the procedures identified in the Internal Incident Summary form.

The HHS Privacy Incident Response Team (PIRT) will assess the risk associated with the breach. The PIRT, OMHA IT Specialist, and OMHA office where the breach occurred will discuss what additional steps are required, if any.

2.6.18 Are we required to take any training regarding protection of PII?

Yes, annual HHS online privacy training is required. Additional training may be required for access to select HHS information systems.

2.7 Protecting Federal Tax Information (FTI)

(Issued: 06-17-20, Effective: 06-17-20)

OMHA staff may encounter Federal Tax Information (FTI) in paper form when adjudicating IRMAA appeals, and is required to safeguard taxpayer information and keep it confidential.²⁹ This section establishes guidelines for identifying FTI, safeguarding FTI when processing IRMAA appeals, reporting unauthorized disclosure and access to FTI, and the penalties associated with unauthorized disclosures.

2.7.1 What is FTI?

FTI refers to any return (*see* OCPM 2.7.1.2) or return information (*see* OCPM 2.7.1.3) received from the IRS or secondary government source, such as SSA, the Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI also includes any information created by the recipient that is derived from a Federal return or return information received from the IRS or secondary government source.

2.7.1.1 What is not FTI?

For OMHA's purposes, FTI does not include any information provided directly by the taxpayer, or his or her representative, in connection with a Medicare appeal.

Example: In a **Part B MSP appeal**, the appellant attaches tax returns to the request for a hearing to support his request for waiver of recovery. The tax returns sent directly to OMHA by the taxpayer are not FTI.

Example: In an **IRMAA appeal**, the appellant attaches tax returns to the request for an ALJ hearing. SSA forwards the request for an ALJ hearing and the case file to OMHA. Although SSA forwards the tax returns, the information was provided directly by the taxpayer and, as such, the tax returns sent by the appellant are not FTI.

Caution: In an **IRMAA appeal**, any FTI included in the case file by SSA is FTI, and does not fall under this exception, because it was provided by SSA and not provided directly by the taxpayer.

²⁹ 26 U.S.C. § 6103(a), (p)(4).

2.7.1.2 What is a “return”?

A return is any tax return, “information return, declaration of estimated tax, or claim for refund,” required or permitted under the Internal Revenue Code and filed with the IRS by, on behalf of, or with respect to, any person or entity.³⁰

Note: This definition includes amendments and supplements to any of the above documents and all supporting schedules, attachments, lists that are supplemental to, or part of, a filed return.

Example: Forms filed electronically or on paper, such as Forms 1040, 941, 1120, and other informational forms, such as the 1099 or W-2.

2.7.1.3 What is “return information”?

Return information refers to any information collected or generated by the IRS with regard to any person’s liability or possible liability under the Internal Revenue Code, including the following:

- Information, including the return, that the IRS obtained from any source or developed through any means and that relates to the potential liability of any person under the Internal Revenue Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense;
- Information extracted from a return, including names of dependents or the location of a business;
- The taxpayer’s name, address, and tax identification number;
- Information collected by the IRS about any person’s tax affairs, even if identifiers such as name, address, and identification number are deleted;
- Status of whether a return was filed, under examination, or subject to other investigation or processing, including collection activities; and
- Information contained on transcripts of accounts.³¹

Caution: Return information may also include PII. OMHA employees must adhere to FTI safeguarding procedures and procedures outlined in OCPM 2.7.2, as well as general PII guidance in OCPM 2.6.

³⁰ 26 U.S.C. § 6103(b)(1), Internal Revenue Serv., Safeguards for Protecting Federal Tax Returns and Return Information, [Publication 1075, § 1.4.2](#) (2016) (hereinafter “Publication 1075”).

³¹ See 26 U.S.C. § 6103(b)(2), [Publication 1075, § 1.4.2](#).

2.7.2 What does it mean to safeguard FTI?

Safeguarding FTI means protecting it from unauthorized access and unauthorized disclosure.

2.7.2.1 What is unauthorized access?

Unauthorized access is when an entity or individual knowingly, or due to gross negligence, has access to FTI without authority.³²

2.7.2.2 Who is authorized to access FTI at OMHA?

Only staff whose official duties or responsibilities require access to FTI are authorized to access FTI.³³ In addition, only those with a “need to know” the specific FTI may access the FTI.³⁴

2.7.2.3 What is an unauthorized disclosure?

An unauthorized disclosure is when authorized staff knowingly, or due to gross negligence, disclose FTI to an entity or individual unauthorized to receive it.³⁵

2.7.2.4 When can we disclose FTI?

Only disclose FTI to authorized entities or individuals, unless the taxpayer has given consent.³⁶

2.7.2.5 What do we do if we find FTI outside of an IRMAA appeal?

Immediately report any FTI encountered outside of an IRMAA appeal to your immediate supervisor and Hearing Office or Division Director as a suspected breach. Management must follow the breach procedures outlined in OCPM 2.7.4 to determine if an unauthorized disclosure of FTI has occurred. Department security personnel will coordinate with OMHA to determine the appropriate next steps for appeal processing.

Caution: FTI does not include any information provided directly by the taxpayer or his or her representative in connection with a Medicare appeal (see OCPM 2.7.1.1).

³² Publication 1075, § 1.4.5.

³³ 26 U.S.C. § 6103(p)(4)(C).

³⁴ Publication 1075, § 1.4.7.

³⁵ Publication 1075, § 1.4.6.

³⁶ See 26 U.S.C. § 6103(c).

2.7.3 How do we safeguard FTI in IRMAA appeals?

In IRMAA appeals, following a SSA reconsideration that was not fully favorable, appellants submit a request for hearing to SSA, which forwards the requests and corresponding records to OMHA. Because IRMAA appeals typically contain FTI in the case files forwarded from SSA, OMHA, in coordination with the IRS Office of Safeguards, has implemented specific procedures to docket and adjudicate IRMAA appeals to protect FTI.

Docketing and assignment procedures

On receipt, Central Operations identifies IRMAA case files and notes that the file contains FTI. Central Operations assigns these appeals to specially trained adjudication teams, alerts the Field Office IRMAA Point of Contact (POC), and hand-delivers IRMAA case files via secured container. After signing for the documents, the POC places the file in a locked container in the IRMAA workroom and informs the adjudication team that the file has been delivered.

Adjudication procedures

The assigned IRMAA adjudication team gains electronic entry to the IRMAA workroom to process the appeal. All IRMAA hearings are held in the secure workroom. Documentation and dispositions associated with IRMAA appeals must be produced on designated equipment in the IRMAA room that is not connected to network. Network equipment may not generate or retain any documents containing FTI. Entry of management information must be redacted and cannot include FTI. FTI may be transmitted via secure fax (see OCPM 2.6.6.2), and may not be transmitted via email.

Mailroom procedures

After an IRMAA appeal is closed, designated staff enter the secure IRMAA workroom to prepare the appeal for shipment. The package must be closed and double-sealed within the secure workroom and hand-delivered to the mailroom for shipping.

For more information on handling and safeguarding IRMAA appeals, see Cleveland Field Office Specific Documents.

Caution: FTI is a form of PII and OMHA PII policies must also be adhered to (see OCPM 2.6).

2.7.4 How do we report an unauthorized disclosure or access of FTI?

If there is an unauthorized disclosure of or access to FTI, follow the protocols for reporting a PII breach outlined in the Internal Incident Summary form.

2.7.4.1 Do we have to report *suspected* breaches?

Yes, in addition to known breaches, OMHA staff is required to report even *suspected* unauthorized access, acquisition, or disclosure of FTI.

2.7.5 What are the penalties for unauthorized disclosure or access of FTI?

For each unauthorized inspection or disclosure made by an employee of the United States government, the taxpayer may be entitled to damages that are the greater of \$1,000 for each act of unauthorized inspection or disclosure, or the sum of the actual damages sustained as a result of the unauthorized inspection or disclosure, plus:

- In the case of a willful inspection or disclosure, or an inspection or disclosure that is the result of gross negligence, punitive damages;
- The taxpayer's cost to bring the action to recover damages; and
- Attorneys' fees, but only if the taxpayer is the prevailing party, as determined under 26 U.S.C. section 7430(c)(4).³⁷

Individuals may also be subject to additional criminal and civil penalties for unauthorized disclosure or access of FTI.³⁸

³⁷ 26 U.S.C. § 7431(c).

³⁸ 26 U.S.C. §§ 7431, 7213(a)(1),(3), 7213A.

Revision history

Date	Description	Sections/subsections updated
06/17/2020	Initial Release	N/A

If the table above indicates there are prior versions of this chapter, click [here](#) to view them.