

MANUAL: Personnel
Chapter Series CC--Commissioned Corps Personnel Manual
Part 2--Commissioned Corps Personnel Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

Chapter CC26--Conditions of Service
Subchapter CC26.1--Officer Responsibilities and Conduct
Personnel INSTRUCTION 7--Rights and Responsibilities of PHS Commissioned
Officers Under the Privacy Act of 1974

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Section A. Purpose and Scope

This INSTRUCTION describes the rights, duties, and responsibilities of PHS commissioned officers under the Privacy Act of 1974. It also sets forth penalties that may be imposed for failure to abide by the provisions of the Privacy Act.

Section B. Authority

Public Law 93-579, the "Privacy Act of 1974" (5 U.S.C. 552a et seq.) establishes the basic statutory requirement relating to the collection and use by a Federal agency of information about individuals, which the agency retrieves by the individual's name or other personal identifier, such as a Social Security Number. Department of Health and Human Services (HHS) regulations implementing the Privacy Act are set forth in 45 CFR 5b. The Department's Employee Standards of Conduct for the Privacy Act are located in 45 CFR 5b, Appendix A (see Exhibit I).

Section C. General Provisions

The Privacy Act was meant to ensure that information collected by a Federal agency about an individual is not indiscriminately released, but is used only for the legitimate purpose(s) for which it is collected. Listed below are major provisions of the Privacy Act:

1. Limits type(s) of information agencies may collect;
2. Sets standards about how the information will be maintained, used, and disclosed;
3. Gives individuals the right to know what type(s) of information the Federal Government maintains about them;
4. Provides individuals with the right of access to such a file of information; and
5. Gives individuals the opportunity to correct inaccuracies therein.

Section D. Officers' Rights

1. Privacy Act Notice When Asked For Information. When required to provide personal information to a Federal agency, PHS commissioned officers are entitled to know the following:
 - a. Legal authority for requesting the information;
 - b. Reason the information is being collected;
 - c. Whether the response is mandatory or voluntary;
 - d. Uses that will be made of the information; and
 - e. Consequences, if any, of not providing the information.

Federal agencies are required to provide a Privacy Act Notification Statement addressing these questions. Normally, the Notification Statement will be included on the forms used to request personal information from PHS commissioned officers.

2. Release of Personal Information. For the most part, personal information about PHS commissioned officers cannot be released to persons outside HHS without prior written consent of the officer concerned. However, under the Freedom of Information Act (5 U.S.C. 552), some information about commissioned officers is considered in the public domain and can be released without the officer's consent. Such information includes the officer's name, title, grade, salary, duty station, and billet description.

In addition, the Privacy Act provides that under certain other limited circumstances information about an officer may be disclosed to an agency or person outside of HHS without the officer's prior written consent. For example, an officer's records may be released pursuant to an order of a court of competent jurisdiction; to the Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office; or to the Bureau of the Census for purposes of planning or carrying out a census or survey-related activity pursuant to the provisions of Title 13 of the U.S. Code. An accounting, however, must be kept of all permissible disclosures of the record made without consent, and the officer has a right to see this accounting upon request.

Even within HHS, there are some restrictions on the disclosure of an officer's personal records. Basically, the records themselves, or information from records, may be disclosed to only those Department employees and officers who have a "need to know" the information in the performance of their official duties. For example, relevant portions of an officer's official personnel file may be made available to Department officials responsible for administration of the commissioned corps payroll system in order to verify eligibility for certain types of pay and allowances.

3. Right to See and Request Correction of Records. In general, commissioned officers have a right to see records maintained on them by Federal agencies, including personnel records (see Section D.4 below regarding medical records and other exceptions). If an officer believes that information in his/her record is not accurate, timely, complete, or relevant and necessary to accomplish a departmental function, the officer may request that the information be corrected or deleted, provided that the correction sought is a matter of fact as opposed to one of judgment. (See section 221a(12), (13), and (14) of the PHS Act (42 U.S.C. 213a(a)(12), (13), and (14)), which provides commissioned officers with the entitlements with respect to the correction of records authority contained in 10 U.S.C. 1552, 1553, and 1554.) For example, an officer will not be permitted under the Privacy Act to challenge a rating officer's evaluation of his/her performance on the officer's Commissioned Officers' Efficiency and Progress Report (COEPR). In such circumstances, the officer must pursue established grievance procedures. If an officer wishes to correct his/her record with respect to a matter of fact under the Privacy Act, the officer is responsible for providing appropriate evidence to substantiate his/her claim.

Officers who wish to obtain or to request correction of official personnel records maintained by the Commissioned Personnel Operations Division (CPOD), Office of Personnel Management (OPM), Office of Management (OM), PHS, except medical records, should submit their requests in writing to:

Privacy Act Coordinator
Commissioned Personnel Operations Division
Office of Personnel Management
Office of Management, PHS
Room 4-35, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Officers who wish to obtain information in their official medical records maintained by CPOD should send their requests in writing to:

Chief
Medical Branch
Commissioned Personnel Operations Division
Office of Personnel Management
Office of Management, PHS
Room 4-35, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

To facilitate answering a request, officers should specify to a reasonable degree the nature of the record being sought or questioned and, to ensure proper identification, include either his/her Social Security Number or PHS serial number. If possible, officers should identify the appropriate system of records from the following list:

- a. PHS Commissioned Officer Personnel Data System (09-37-0002);
 - b. PHS Commissioned Corps Medical Records (09-37-0003);
 - c. PHS Commissioned Corps Training Files (09-37-0004);
 - d. PHS Commissioned Corps Board Proceedings (09-37-0005);
 - e. PHS Commissioned Corps Grievance, Non-Board and Pre-Board Involuntary Retirement/Separation, and Disciplinary Files (09-37-0006);
 - f. PHS Commissioned Corps General Personnel Records (09-37-0007); and
 - g. PHS Commissioned Corps Unofficial Personnel Files and Other Station Files (09-37-0008).
4. Exceptions to Release of Official Personnel Information. Under exceptions contained in the Privacy Act and implementing regulations, certain types of information which may be in an officer's official personnel records maintained by CPOD are not required to be released to the officer. Exceptions include the following:

- a. Medical information when it is determined by a responsible Department official that the release of such sensitive information directly to the officer could have an adverse effect on the him/her. In such cases, the record will be sent to a representative named by the officer, such as a physician, who would be willing to review the record and inform the officer of its contents.
 - b. Testing and examination material used solely to determine individual qualifications for appointment or promotion, including answer keys, ratings used to validate examinations, rating sheets, rating schedules, transmutation tables, test booklets, and test item files, when the release of such information could compromise continuing usefulness of the examination.
 - c. Investigatory material, including an officer's references, compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal employment, 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 Federal Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.
5. Appeal of Decision to Deny Access to or Correction of Records. If an officer's request to obtain or correct information in his/her official personnel record maintained by CPOD is denied, the officer may appeal the decision to:

Director
Office of Management, PHS
Room 17-25, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

If, upon appeal to the Director, OM, a request to obtain or correct an officer's personnel record is denied, the officer shall be informed that:

- a. He/she may file a statement of disagreement to be enclosed with the document in question;
- b. The organization maintaining the record (CPOD) must transmit that statement whenever the record itself is disclosed;
- c. CPOD will transmit that statement to all organizations and individuals who, according to the accounting of disclosures that CPOD maintains (see Section D.2 above), have previously received the disputed record; and

- d. Such statement will be available in the future to all individuals who have a right to review the document in question.

In addition, an officer may seek judicial review of the denial in order to correct a record.

Section E. Officers' Responsibilities

1. Need to Safeguard Records. Each officer who handles any records protected by the Privacy Act, such as patient medical records, is responsible for safeguarding the records to prevent their unauthorized use. Each officer should be thoroughly familiar with the policies and procedures established by his/her agency to protect such records. Particular care must be taken to provide for the physical security of records during periods of the officer's absence from the duty station. In addition, each officer should know the proper schedule and procedures for disposing of obsolete records.
2. Restriction on Disclosure of Records. Before disclosing a record without the individual's prior written request, each officer should ensure that the disclosure is permitted. Within HHS, the record can be shown to only those employees who have a "need to know" the information in the performance of their official duties. Disclosure of records can be made to a person or agency outside of HHS only when permitted by the Privacy Act itself, or when such disclosure has been published in the Federal Register as a "routine use" for the specific system of records. Each officer should review with his/her supervisor those circumstances in which disclosure is permitted. A disclosure must not be made if it does not fall within these circumstances.

If it is permissible to disclose an individual's record to an agency or person outside of HHS, each officer must keep an accounting of all such disclosures actually made, unless a disclosure is required by the Freedom of Information Act. The accounting file must show the name and address of the person to whom the record was disclosed, the purpose of the disclosure, the date of disclosure, and the record disclosed. The accounting file is used to show individuals what disclosures have been made of their records. When a record is corrected, the accounting file is also used to send a copy of the corrected record to those to whom the record was previously disclosed.

Section F. Penalties

1. Any person who knowingly or willfully requests or obtains any record concerning an individual under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

2. Any officer or employee who willfully maintains a system of records without meeting the notice requirements of the Privacy Act shall be guilty of a misdemeanor and fined not more than \$5,000.

3. Any officer or employee who in the performance of official duties has access to agency records, and who, knowing that the disclosure of specific material is 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.

Exhibit I

45 CFR 5b, Appendix A

APPENDIX A TO PART 5B-EMPLOYEE STANDARDS OF CONDUCT

(a) General. All employees are required to be aware of their responsibilities under the Privacy Act of 1974, 5 U.S.C. 552a. Regulations implementing the Act are set forth in 45 CFR 5b. Instruction on the requirements of the Act and regulation shall be provided to all new employees of the Department. In addition, supervisors shall be responsible for assuring that employees who are working with systems of records or who undertake new duties which require the use of systems of records are informed of their responsibilities. Supervisors shall also be responsible for assuring that all employees who work with such systems of records are periodically reminded of the requirements of the Act and are advised of any new provisions or interpretations of the Act.

(b) Penalties. (1) All employees must guard against improper disclosure of records which are governed by the Act. Because of the serious consequences of improper invasions of personal privacy, employees may be subject to disciplinary action and criminal prosecution for knowing and willful violations of the Act and regulation. In addition, employees may also be subject to disciplinary action for unknowing or unwillful violations, where the employee had notice of the provisions of the Act and regulations and failed to inform himself sufficiently or to conduct himself in accordance with the requirements to avoid violations.

(2) The Department may be subjected to civil liability for the following actions undertaken by its employees:

(a) Making a determination under the Act and §§ 5b.7 and 5b.8 of the regulation not to amend an individual's record in accordance with his request, or failing to make such review in conformity with those provisions;

(b) Refusing to comply with an individual's request for notification of or access to a record pertaining to him;

(c) Failing to maintain any record pertaining to any individual 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 that may be made on the basis of such a record, and consequently a determination is made which is adverse to the individual; or

(d) Failing to comply with any other provision of the Act or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(3) An employee may be personally subject to criminal liability as set forth below and in 5 U.S.C. 552a (i):

(a) 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 the Act 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.

(b) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements [of the Act] shall be guilty of a misdemeanor and fined not more than \$5,000.

(c) Rules Governing Employees Not Working With Systems of Records. Employees whose duties do not involve working with systems of records will not generally disclose to any one, without specific authorization from their supervisors, records pertaining to employees or other individuals which by reason of their official duties are available to them. Notwithstanding the above, the following records concerning Federal employees are a matter of public record and no further authorization is necessary for disclosure:

- (1) Name and title of individual.
- (2) Grade classification or equivalent and annual rate of salary.
- (3) Position description.
- (4) Location of duty station, including room number and telephone number.

In addition, employees shall disclose records which are listed in the Department's Freedom of Information Regulation as being available to the public. Requests for other records will be referred to the responsible Department official. This does not preclude employees from discussing matters which are known to them personally, and without resort to a record, to official investigators of Federal agencies for official purposes such as suitability checks, Equal Employment Opportunity investigations, adverse action proceedings, grievance proceedings, etc.

(d) Rules governing employees whose duties require use or reference to systems of records. Employees whose official duties require that they refer to, maintain, service, or otherwise deal with systems of records (hereinafter referred to as ``Systems Employees'') are governed by the general provisions. In addition, extra precautions are required and systems employees are held to higher standards of conduct.

(1) Systems Employees shall:

- (a) Be informed with respect to their responsibilities under the Act;
- (b) Be alert to possible misuses of the system and report to their supervisors any potential or actual use of the system which they believe is not in compliance with the Act and regulation;
- (c) Make a disclosure of records within the Department only to an employee who has a legitimate need to know the record in the course of his official duties;
- (d) Maintain records as accurately as practicable.
- (e) Consult with a supervisor prior to taking any action where they are in doubt whether such action is in conformance with the Act and regulation.

(2) Systems Employees shall not:

- (a) Disclose in any form records from a system of records except (1) with the consent or at the request of the subject individual; or (2) where its disclosure is permitted under § 5b.9 of the regulation.
- (b) Permit unauthorized individuals to be present in controlled areas. Any unauthorized individuals observed in controlled areas shall be reported to a supervisor or to the guard force.

(c) Knowingly or willfully take action which might subject the Department to civil liability.

(d) Make any arrangements for the design development, or operation of any system of records without making reasonable effort to provide that the system can be maintained in accordance with the Act and regulation.

(e) Contracting officers. In addition to any applicable provisions set forth above, those employees whose official duties involve entering into contracts on behalf of the Department shall also be governed by the following provisions:

(1) Contracts for design, or development of systems and equipment. No contract for the design or development of a system of records, or for equipment to store, service or maintain a system of records shall be entered into unless the contracting officer has made reasonable effort to ensure that the product to be purchased is capable of being used without violation of the Act or regulation. Special attention shall be given to provision of physical safeguards.

(2) Contracts for the operation of systems of records. A review by the Contracting Officer, in conjunction with other officials whom he feels appropriate, of all proposed contracts providing for the operation of systems of records shall be made prior to execution of the contracts to determine whether operation of the system of records is for the purpose of accomplishing a Department function. If a determination is made that the operation of the system is to accomplish a Department function, the contracting officer shall be responsible for including in the contract appropriate provisions to apply the provisions of the Act and regulation to the system, including prohibitions against improper release by the contractor, his employees, agents, or subcontractors.

(3) Other service contracts. Contracting officers entering into general service contracts shall be responsible for determining the appropriateness of including provisions in the contract to prevent potential misuse (inadvertent or otherwise) by employees, agents, or subcontractors of the contractor.

(f) Rules Governing Responsible Department Officials. In addition to the requirements for Systems Employees, responsible Department officials shall:

(1) Respond to all requests for notification of or access, disclosure, or amendment of records in a timely fashion in accordance with the Act and regulation;

(2) Make any amendment of records accurately and in a timely fashion;

(3) Inform all persons whom the accounting records show have received copies of the record prior to the amendments of the correction; and

(4) Associate any statement of disagreement with the disputed record, and

(a) Transmit a copy of the statement to all persons whom the accounting records show have received a copy of the disputed record, and

(b) Transmit that statement with any future disclosure.