

**TWELVE EXCEPTIONS
TO THE "NO DISCLOSURE WITHOUT CONSENT" RULE
OF THE PRIVACY ACT**

Note that, with the exception of (b)(2), disclosures under the following exceptions are permissive but not mandatory.

5 U.S.C. § 552a(b)(1) - to those officers and employees of the Agency which maintains the record who have a need for the record in the performance of their duties.

Note 1: This "need to know" exception authorizes the intra-agency disclosure of a record for necessary, official purposes.

Note 2: Any disclosure made pursuant to this exception DOES NOT require an entry on the Accounting Disclosure Form in the applicable record.

5 U.S.C. § 552a(b)(2) - required under 5 U.S.C. § 552, as amended.

Note 1: The point of this exception is that the Privacy Act never prohibits a disclosure that the FOIA actually requires.

Note 2: This is the one exception request that will not be processed by the Privacy Act System of Records Manager (records custodian). Any request citing to 5 U.S.C. § 552a(b)(2) will be processed as a FOIA request and will be handled and coordinated by the command's FOIA Coordinator.

Note 3: Any disclosure made pursuant to this exception DOES NOT require an entry on the Accounting Disclosure Form in the applicable record.

5 U.S.C. § 552a(b)(3) - for a routine use as defined in subsection (a)(7) and described under subsection (e)(4)(D) of the Privacy Act.

Note 1: Subsection (e)(4)(D) requires Federal Register publication of "each routine use of the records contained in the system, including the categories of users and the purpose of such use."

Note 2: Subsection (a)(7) defines the term "routine use" to mean "with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected."

Note 3: The DoD has published a list of "Blanket Routine Uses" that apply to all Privacy Act Systems of Records collections maintained by any DoD component unless the System of Records Notice for that System specifically excludes a stated use. Other routine uses will be specifically defined within the text of the System of Records Notice for that System.

Note 4: Any disclosure made pursuant to this exception DOES require an entry on the Accounting Disclosure Form in the applicable record, which must be made available for viewing to the subject of the record, upon request.

5 U.S.C. § 552a(b)(4) - to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13.

Note 1: Any disclosure made pursuant to this exception DOES require an entry on the Accounting Disclosure Form in the applicable record which must be made available for viewing to the subject of the record, upon request.

5 U.S.C. § 552a(b)(5) - to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

Note 1: Any disclosure made pursuant to this exception DOES require an entry on the Accounting Disclosure Form in the applicable record, which must be made available for viewing to the subject of the record, upon request.

5 U.S.C. § 552a(b)(6) - to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value.

Note 1: Any disclosure made pursuant to this exception DOES require an entry on the Accounting Disclosure Form in the applicable record, which must be made available for viewing to the subject of the record, upon request.

5 U.S.C. § 552a(b)(7) - to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

Note 1: This provision, in addition to providing for disclosures to federal law enforcement agencies, also allows an agency, "upon receipt of a written request, [to] disclose a record to another agency or unit of State or local government for a civil or criminal law enforcement activity [OMB Guidelines, 40 FR 28,948; 28,955 (July 9, 1975)]. Note that the request must be submitted in writing and generally must be from the head of the agency or instrumentality.

Note 2: Any disclosure made pursuant to this exception DOES require an entry on the Accounting Disclosure Form in the applicable record. However, unlike the other exception disclosures, accountings disclosures made pursuant to this exception are not to be made available for viewing by the subject of the record.

5 U.S.C. § 552a(b)(8) - to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification of disclosure is transmitted to the last known address of the subject individual.

Note 1: In addition to the above notification requirement, any disclosure made pursuant to this exception ALSO requires an entry on the Accounting Disclosure Form in the applicable record, which must be made available for viewing to the subject of the record, upon request.

5 U.S.C. § 552a(b)(9) - to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee of any such joint committee.

Note 1: This exception DOES NOT authorize the disclosure of a Privacy Act protected record to an individual Member of Congress acting on his/her own behalf or on behalf of a constituent.

Note 1: Any disclosure made pursuant to this exception DOES require an entry on the Accounting Disclosure Form in the applicable record, which must be made available for viewing to the subject of the record, upon request.

5 U.S.C. § 552a(b)(10) - to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

Note 1: Any disclosure made pursuant to this exception DOES require an entry on the Accounting Disclosure Form in the applicable record, which must be made available for viewing to the subject of the record, upon request.

5 U.S.C. § 552a(b)(11) - pursuant to the order of a court of competent.

Note 1: The essential point of this exception is that the Privacy Act "cannot be used to block the normal course of court proceedings, including court-ordered discovery." However, it should be noted that the Court of Appeals for the District of Columbia Circuit decisively ruled that a subpoena routinely issued by a court clerk is NOT a "court order" within the meaning of this exception because it is not "specifically approved" by a judge [see Doe v. DiGenova, 779 F.2d 74, 77-85 (D.C. Cir. 1985)]

Note 2: Any disclosure made pursuant to this exception DOES require an entry on the Accounting Disclosure Form in the applicable record, which must be made available for viewing to the subject of the record, upon request.

5 U.S.C. § 552a(b)(12) - to a consumer reporting agency in accordance with section 3711(e) of Title 31.

Note 1: This disclosure exception was added by the Debt Collection Act of 1982. It authorized agencies to disclose bad-debt information to credit bureaus, but only after the agency has completed a series of due process steps designed to validate the debt and to offer the individual an opportunity to repay it.

Note 2: Any disclosure made pursuant to this exception DOES require an entry on the Accounting Disclosure Form in the applicable record, which must be made available for viewing to the subject of the record, upon request.