

# Privacy Act Basics

# PRIVACY ACT

**Heather McClane**

**[Heather.McClane@ihs.gov](mailto:Heather.McClane@ihs.gov)**

**IHS Privacy Act Officer**

# Privacy Act of 1974

(5 U.S.C. §552a)

- Limits collection of personal information
- No *secret* Government record systems
- No *secret* use of Government records
- Right to see and correct one's own records
- *Safeguards* for the security and accuracy
- Civil and Criminal remedies

# When is it a Privacy Act (PA) Records System?

- Group of records (more than one)
- Contains information about an individual
- Designed to be retrieved by name or other Personal Identifier

# PA Record

- “any item, collection, or group of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.”

5 USC § 552a(a)(4)

# Privacy Act Covers:

- U.S. citizens
- Aliens lawfully admitted for permanent residence

# Privacy Act does *not* cover:

- Non-resident aliens
- Deceased \*
- Organizations
- Tribal Governments (PL93-638 excludes the
- 5 U.S.C. requirements (PA, FOIA, etc.)

# Limit Collection of Information

- Necessary to carry out an Agency function
- SSN – only when legally authorized, otherwise *voluntary*
- Inform individual of purpose and use of records collected: Privacy Act System of Record Notice Statement

# Social Security Numbers (SSN)

- Before collection, must state whether: (1) disclosure is mandatory or voluntary, (2) by what statute or other authority such number is solicited, and (3) what uses will be made of it. If no statute or law, then SSN is voluntary by the individual.
- May *not* deny any right, benefit, or privilege provided by law due to refusal to provide SSN unless the SSN is required by federal statute.
- SSN is *voluntary* for Medical Records. SSN are required only for hiring, payroll, financial, etc.



# No Secret Government Records

- Publish a Privacy Act System Notice in the Federal Register *before* collecting data.
- System Notice: brief description of the type of record system and how the Government intends to manage and protect the system.
- IHS has three System or Record (SOR) Notices:
  - (1) Medical, Health and Billing Records,
  - (2) Scholarship and Loan Repayment Program
  - (3) Medical Staff Credentials and Privileges Record

# Parts of a System Of Records Notice

- Number
- Name
- Security classification
- Location
- Who it covers
- Types of Records
- Authority for Collection
- Purpose of System
- Routine Uses: Third-Party Disclosures
- Storage
- How Information is Retrieved
- Safeguards: Authorized users, Physical and Procedural Safeguards
- Retention and Disposal
- System Manager(s) address
- Notification Procedure
- Record access procedure
- Authority for Collection
- Contesting Record Procedure
- Record Source Categories
- Exemptions

# IHS Systems of Records Notices

IHS currently has five Systems of Records Notices

IHS has no exempt systems.

09-17-0001 Medical, Health, and Billing Records Systems

SORN history: 75 FR 1625 (1/12/10), \*83 FR 6591 (2/14/18)

09-17-0002 Indian Health Service Scholarship and Loan Repayment Programs

SORN history: 74 FR 50222 (9/30/09), \*83 FR 6591 (2/14/18)

09-17-0003 Indian Health Service Medical Staff Credentials and Privileges Records

SORN history: 74 FR 46436 (9/9/09); updated 74 FR 50981 (10/2/09), \*83 FR 6591 (2/14/18)

09-17-0004 Indian Health Service Sanitation Facilities Construction Individual Applicant Records

SORN history: 74 FR 43143 (8/26/09), \*83 FR 6591 (2/14/18)

09-17-0005 Personal Health Records (PHR) Administrative Records - IHS

SORN history: 77 FR 65564 (10/29/12), \*83 FR 6591 (2/14/18)

# No Secret Use of PA Records

System Managers or designees *may* disclose records:

- *with* consent of individual (Get in writing, as narrow as appropriate)
- *without* consent of individual
  - 12 provisions (disclosures) from the Privacy Act
  - Routine Uses for the IHS three SORs (same applies for recording of information)

(Disclosures #3-#12 of PA and RU#1-24 of IHS Medical, Health and Billing Records, you *must* keep an accounting, includes: Name and address of person/ agency to whom disclosure is made, date, nature, and purpose)

# 12 Provisions of Disclosure

- ← Employees with legitimate “Need to Know”
  - ← Required under FOIA
  - ← Routine Use (not mandatory)
  - ← Bureau of Census
  - ← Statistical Use (Can’t Identify Individual)
  - ← National Archives
  - ← Civil or criminal law enforcement
  - ← Compelling circumstances affecting health or safety of individual (must be justified)
  - ← House of Congress (oversight capacity)
  - ← Comptroller General (GAO activities)
  - ← Court Order from a Court of Competent Jurisdiction (Subpoenas signed by a judge)\*\*
  - ← Consumer Reporting Agency
- \*\* HHS OGC decision that only “federal courts” and not tribal courts are a Court of Competent Jurisdiction for Privacy Act Purposes.

# Accounting Of Disclosures

- When the Third-Party Requestor cites the Privacy Act (we) *must* keep a record of:
  - date, nature, and purpose of each disclosure
  - name and address of the person or agency to whom the disclosure is made.

# Right to See and Correct Data

- An individual has some degree of control over information government collects on them:
  - **Right to Access** (except for the ten exemptions)
    - System Manager must reasonably satisfy themselves of an individual's identity
  - **Right to Correct/Amend**
    - May change only factual information and cannot change matters of opinion
  - **Right to Appeal** denial of amendment (Administrative Delegation#20)  
<https://www.ihs.gov/IHM/doa/admin/admin-20/>

# Safeguards

- Must collect information from individual to greatest extent possible that is consistent with the Purpose.
- Establish appropriate administrative, technical, and physical safeguards to insure security (physical, IT, and confidentiality)
- Do risk analysis every three years or less



# Relationship to FOIA

- FOIA: Third-party requests (annual reporting)
- Privacy Act: First-party requests (annual reporting to FOIA)
- FOIA: Nine Exemptions or Full/Partial Release vs. Privacy Act: 12 Exceptions or written consent of the individual
- FOIA Exemption 6 (Personal Privacy)
  - \*Parts of files may be withheld if disclosure “would constitute a clearly unwarranted invasion of personal privacy”
  - \*Must consider personal privacy interest of individual (or even the immediate family) balanced against the public interest (Supreme Court Decision: NARA v. Favish)

# Supervisor's Notes

- They are *not* agency records when:
  - Personal property of supervisor only
  - Never shared with others (i.e., not circulated)
  - Never passed to replacement supervisor
  - Memory joggers only
  - No official use (i.e. not required by agency)
- Considered part of employee's personnel record (agency record) when:
  - Used as basis for employment action
  - Otherwise treated as official Agency records

# Best Practices

- When you receive an email and it contains personal information about another individual, do not forward that document to others.
- Report this as a privacy incident here:  
<https://hqabqdispswhd01.d1.na.ihs.gov/helpdesk/WebObjects/Helpdesk.woa/>
- Save or print the email and delete from your mailbox. Upload the saved email to the incident ticket.

# Disposal of PII

- Don't place documents containing PII in recycle bins.
- Best practice – cross-cut shredding.
- Dispose of PII in a manner that does not result in a privacy breach.

# IHS KEY PLAYERS

- ▶ IHS Director
- ▶ IHS Senior Official for Privacy
  - ▶ IHS Privacy Act Officer
- ▶ Area Privacy Coordinator
  - ▶ Facility Privacy Liaison

# Area Privacy Coordinators (APC)

- Coordinates with the IHS PA Officer
- Advises Area/Service Unit (SU) on PA
- Supports and provides Area/SU level training
- Coordinates/Investigate and resolves local PA complaints at the lowest level

# System Manager Responsibilities

- Tracks location of covered records
- Staff Training: Inform users of requirements
- Security: Enforce safeguards
- Approval/denial of access
- Track access and amendments to records
- Ensure records are complete/accurate/timely/relevant
- Monitor contractor compliance
- Follow IHS Records Schedule
- Ensure Notification Statement is on data collection forms
- Report Requirements: Annual updates/reports

# Computer Data: When it is a Record?

- If a computer system is set up to be used, or is used in practice, to retrieve information by individual identifiers (name, SSN, assigned tracking number) and the system contains personal information, the computer data is covered as a Privacy Act system of records.

(Example(s): Resource and Patient Management System (RPMS) and Electronic Health Record)



# Civil Penalties

## CRIMINAL PENALTIES.—

(1) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

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

# IHS PRIVACY ACT WEBSITE

► Go to: [www.ihs.gov/PrivacyAct](http://www.ihs.gov/PrivacyAct)