

U.S. NUCLEAR REGULATORY COMMISSION

PRIVACY ACT REQUEST GUIDE

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This reference guide comprises the following sections to familiarize you with the procedures for submitting a Privacy Act request to the U.S. Nuclear Regulatory Commission (NRC):

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I. Introduction

The Privacy Act (PA) of 1974 is a Federal law that is set forth in Title 5, Section 552a, of the *United States Code* (5 U.S.C. 552a), as amended. The purpose of the PA is to balance the Government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy resulting from the collection, maintenance, use, and disclosure of personal information. In general, the PA allows individuals to learn how the Federal Government collects, maintains, uses, and disseminates records containing personal information. It also safeguards confidentiality by limiting or restricting disclosure of personally identifiable records maintained by Federal agencies. The PA allows individuals to gain access to their own personal records (unless the requested records are exempted from disclosure), and to seek correction or amendment of Federally maintained records that are inaccurate, incomplete, untimely, or irrelevant. As such, the PA establishes a "code of fair information practices," which requires Federal agencies to comply with statutory norms for collecting, maintaining, and disseminating records containing information about individuals.

The PA applies only to U.S. citizens and aliens who are lawfully admitted for permanent residence in the United States. It applies only to personal information maintained by agencies in the Executive Branch of the Federal Government.

The PA also pertains only to information that is maintained in a "system of records," which the Act defines as a group of agency-controlled records from which information is retrieved by a unique identifier, such as an individual's name and/or birth date, social security number, or employee identification number. The PA further defines a "record" as any individually identifiable set of information that an agency might maintain about a person. Such records may include a wide variety of personal information including, but not limited to, information about education,

financial transactions, medical history, criminal history, or employment history. However, the PA explicitly states that agencies may not maintain information about how individuals exercise their First Amendment rights, unless maintenance of that information is specifically authorized by statute or relates to a law enforcement activity.

II. Access to Records Under the Privacy Act

The formal regulations for making PA requests to the NRC are set forth in Title 10, Part 9, Subpart B, of the *Code of Federal Regulations* (10 CFR 9.50), which is available on the NRC's public Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part009/>.

As previously indicated, you may submit a PA request for information only if you are a U.S. citizen or an alien who has been lawfully admitted for permanent residence in the United States. In addition, you may only request information that is maintained in any of the NRC's 41 PA Systems of Records. These systems contain information regarding various categories of individuals including, but not limited to, current and former NRC employees, contractors, consultants, applicants, and licensees. You may also request access to records concerning a minor child, as long as you are that child's parent or legal guardian and demonstrate that you are acting in the child's best interests. In addition, you may request access to records concerning another eligible individual, as long as you can provide verifiable written authorization from that person designating you as a representative acting on his or her behalf. You should note, however, that any individual who willfully requests or obtains any information under false pretenses is guilty of a misdemeanor and may be fined up to \$5,000, pursuant to 5 U.S.C. 552a(i)(3).

You should also note that the Privacy Act is a companion to the Freedom of Information Act (FOIA), which establishes a presumption that any person has the right to request access to records in the possession of the Executive Branch of the Federal Government. The PA and the FOIA have different procedures and exemptions. Consequently, information that is exempt from disclosure under one Act may be disclosable under the other. In order to take maximum advantage of both Acts, you may cite *both* laws when submitting a request for access to NRC records that contain information only about yourself. However, when requesting NRC records that contain information about other individuals or entities, cite only the FOIA.

The NRC will automatically handle requests in a manner that maximizes the amount of information that is disclosable. If you have any doubt about which Act to use in requesting information from the NRC, always cite *both* the PA and the FOIA. While neither Act grants an absolute right to examine Government documents, both Acts give you the right to request records and to receive a response to your request. You also have the right to appeal the denial and, if necessary, to challenge it in court (as discussed later in this guide).

III. Where to Send Your Privacy Act Request

You may submit a PA request to the NRC in person or by mail, email, or facsimile (fax), *addressed to the NRC Freedom of Information Act and Privacy Act (FOIA/PA) Officer*, as follows:

Mail: U.S. Nuclear Regulatory Commission
Mail Stop T6-D8
Washington, DC 20555-0001

Fax: (301) 415-5130

Email: FOIA@nrc.gov

Electronic Information Exchange (EIE): The NRC offers the following means to obtain detailed guidance on making electronic submissions:

- access the agency's public Web site at <http://www.nrc.gov/site-help/eie.html>
- call (301) 415-6030
- email EIE@nrc.gov
- write to the Applications Development Division
Office of the Chief Information Officer
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Among other topics, the available EIE guidance discusses the formats that the NRC can accept, the use of electronic signatures, and the treatment of non-public information.

For further information, contact the NRC's FOIA/PA Officer at (301) 415-7169 between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday, excluding Government holidays.

IV. How to Make a Privacy Request

Under the Privacy Act, you may request (1) access to records pertaining to you and contained in a PA system of records, (2) an accounting of NRC disclosures of your personal information to others, and/or (3) correction or amendment of records about you that are maintained in a PA system of records. You may also make such requests on behalf of a minor child, as long as you are that child's parent or legal guardian and demonstrate that you are acting in the child's best interests.

To avoid delays in processing, you should ensure that your request includes three basic elements:

- (1) State that you are seeking access to (or requesting correction/amendment of) records under the Privacy Act (or under the Privacy Act *and* the Freedom of Information Act, as described above).
- (2) Include your name, address, date of birth, employee identification number (if any), signature, and proof of identity (as discussed below).
- (3) Describe the requested records (or information) as specifically as possible. Whenever possible, you should identify which of the NRC's 41 PA systems of records you want the agency to search. You may also want to identify your contacts with the NRC.

Every person who makes a request for records pertaining to himself or herself must meet the NRC's requirements for proof of identity:

- If you make a written request, you may establish your identity by providing your name, address, date of birth, social security number, employee identification number (if any),

signature, and one other identifying item (such as a copy of your driver license, Federal agency badge, or passport).

- If you request your records in person, you may establish your identity by presenting *either* (1) a single document bearing your photograph (such as a driver license, Federal agency badge, or passport), *or* (2) two identifying items that do not bear a photograph but do bear your name, address and signature.
- If you cannot provide the necessary proof of identity, you may provide a notarized statement, affirming or swearing to your identity and the fact that you understand that the NRC may impose penalties for obtaining records under false pretenses, pursuant to 5 U.S.C. 552a(i)(3). You may obtain forms for such notarized statements by contacting the NRC's FOIA/PA Officer, whose address and phone number are noted above.

In addition, when you visit an NRC office to inspect your PA record(s), you may bring along another individual of your choosing to review the record(s) with you. In such instances, the agency will ask you to sign a written statement authorizing discussion of the record(s) in the presence of that person.

V. Processing Your Privacy Act Request

When the NRC's FOIA/PA Officer receives your PA request, that officer will record the request and assign a tracking number. In addition, the NRC will send you a written letter acknowledging receipt of your request and indicating the name and telephone number of the NRC FOIA/PA Specialist whom you should contact if you have questions regarding the processing and/or status of your request. After that, processing depends on whether you are seeking access to, or requesting correction/amendment of your records, as follows.

A. Access to Records

The system manager for the PA system(s) of records identified in the request or who is likely to have the responsive records will be asked to search for records that are responsive to your request and provide a copy of any such records. The system manager, or the FOIA/PA Officer with the advice of the system manager, will determine whether access can be granted. The FOIA/PA Staff will review the system manager's response, coordinate any additional NRC reviews or referral to other agencies, and prepare the agency determination that is sent to you.

B. Corrections or Amendments

The system manager, or the FOIA/PA Officer, with the advice of the system manager who has control of the record(s) you want corrected or amended, shall determine whether to authorize or deny your request. The FOIA/PA staff will then review the system manager's response, coordinate any additional NRC reviews or consultations with other agencies, and prepare the agency determination that is sent to you.

VI. Response Times

A. Access

The Privacy Act does not impose any response times for agency responses to requests. However, the NRC has established in its regulations that you will be notified of the agency determination on your Privacy Act request within 30 working days of receipt of the request unless the request presents unusual difficulties or involves an extensive number of records.

B. Corrections or Amendments

The NRC has a statutory responsibility to respond to your correction or amendment request within 10 days of receiving it.

VII. Fees

The NRC does not charge fees for search or review of records disclosed from a Privacy Act system of records requested by the individual to whom the record pertains, and provides a single copy free for the requester's review. However, for copies of records disclosed from Privacy Act Systems of Records under the Freedom of Information Act, fees applicable to processing FOIA requests are charged as described in NRC regulations at 10 CFR 9.35.

VIII. Initial Request Determinations

Once the NRC has processed your request, the agency will send you a written initial determination letter. This letter will advise you whether the NRC is withholding any information pursuant to one or more of the exemptions to the Privacy Act (as discussed below). When the NRC is withholding one or more page(s) in entirety, the initial determination letter will either specify the number of pages being withheld or will provide a reasonable estimate of the volume of information withheld.

There are two general and seven specific exemptions in the PA. The two general exemptions cover:

- (1) all records maintained by the Central Intelligence Agency (not applicable to the NRC)
- (2) selected records maintained by an agency or component thereof which performs as its principal functions any activity pertaining to the enforcement of criminal laws (only used by the NRC Office of the Inspector General)

In addition, the Privacy Act provides seven specific exemptions:

- (1) information that is properly classified in the interest of national defense or foreign policy;
- (2) investigatory material compiled for law enforcement purposes not covered by the general exemptions. The specific law enforcement exemption is limited when -- as a result of the maintenance of the records -- an individual is denied any right, privilege, or benefit to which he or she would be entitled by Federal law or for which he or she would otherwise be entitled. In such cases, disclosure is required except where it would reveal the identity of a confidential source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

- (3) information maintained in connection with providing protective services to the President of the United States or other individuals who receive protection from the Secret Service;
- (4) information required by statute to be maintained and used solely as statistical records;
- (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence;
- (6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service, but only to the extent that the disclosure of such material would compromise the objectivity or fairness of the testing or examination process;
- (7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

IX. Appeals

Upon receiving the NRC's initial determination letter, you will have 60 calendar days to submit an appeal if the letter indicates that the NRC has decided to deny a PA request for

(1) access to records or (2) amendment or correction of records. All appeals must be made in writing, directed to the appellate official identified in the NRC's initial determination letter, and addressed as follows:

Freedom of Information and Privacy Act Officer
U.S. Nuclear Regulatory Commission
Mail Stop T6-D8
Washington, DC 20555-0001

When appealing the NRC's decision to deny access to the requested records, you should clearly identify your appeal (on the envelope and in the letter) as "Privacy Act Appeal—Denial of Access." Similarly, when appealing the NRC's decision to deny your request for correction or amendment of the record(s), you should clearly identify your appeal (on the envelope and in the letter) as "Privacy Act—Correction Appeal."

The NRC will make a determination within 30 working days of receiving your appeal unless the agency extends the time for good cause, such as the need to obtain additional information, the volume of records involved, or the complexity of the issue. The NRC may extend the appeal response time up to 30 additional working days.

X. Statement of Disagreement

If you still disagree with the agency's decision regarding your appeal of a denial related to correction or amendment of the specified record(s), you may submit a written statement of disagreement within 30 working days of receiving the agency's final adverse appeal determination. Address your statement of disagreement as follows:

Freedom of Information and Privacy Act Officer

U.S. Nuclear Regulatory Commission
Mail Stop T6-D8
Washington, DC 20555-0001

Clearly identify your statement of disagreement (on the envelope and in the statement) as "Privacy Act—Statement of Disagreement." The NRC will enter your statement of disagreement in the PA system(s) of records in which the disputed item of information is maintained. In addition, the NRC will mark the original record to indicate (1) that the information is disputed, (2) that a statement of disagreement exists, and (3) where the statement of disagreement is located within the system of records.

XI. Judicial Review

If you have filed an appeal and/or a statement of disagreement, but you still believe that the NRC has not handled your request in accordance with the Privacy Act, you have the right to challenge the agency's decision in a lawsuit. The NRC's response to your appeal will inform you that you may file your suit in a District Court of the United States in the district in which you reside or have a principal place of business, the district in which the relevant agency records are maintained, or the District of Columbia.

The Privacy Act also provides a civil remedy whenever an agency fails to maintain records in a manner that is accurate, complete, timely, and/or relevant, as is necessary to ensure fairness in any agency determination, in the event that the agency makes a determination that is adverse to your interests. You may also sue an agency for failing to comply with any other provision of the Privacy Act in a manner that adversely affects you.

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