

PRIVACY ACT

Consultation With Other Air Force Employees/Members of Privacy Act Record Information

This is in response to your request for guidance on the scope of your being able to consult with other Air Force employees and military members concerning the content and subject matter of a Privacy Act record otherwise properly received by you in order to accomplish your Air Force duties. We concur with your opinion that your ability to properly consult with other Air Force employee/members about the content and subject matter of the Privacy Act record is broad.

The Privacy Act of 1974 prohibits a federal agency from disclosing the content of its Privacy Act records to third parties - to include other employees - without the consent of the individual to whom the Privacy Act record applies, unless one of twelve (12) exceptions apply. In this case the first exception, section (b)(1) of the Privacy Act, 5 U.S.C. 552a(b)(1), permits an Air Force office/employee/member to share/discuss a Privacy Act record with another Air Force employee/member as necessary in order to accomplish the individual's Air Force duties.

You point out that it is your job to accomplish one of the duties for which the Privacy Act record was created, but not necessarily the specific duty of the Air Force employee/member you which to consult with for advice. In our view, as long as the reason for your discussing the matter with the other Air Force employee/member is for an appropriate official purpose, discussing the Privacy Act record matter with the other Air Force employee is permitted by the Privacy Act's (b)(1) exception. *See, generally, DoDI 5400.11-R, Department of Defense Privacy Act Program; AFI 33-332, Air Force Privacy and Civil Liberties Program; and Department of Justice (DOJ) Guidance on the Privacy Act @ <http://www.justice.gov/opcl/conditions-disclosure-third-parties>.* Appropriate official purposes would include seeking professional/official advice from a supervisor, a person in your chain of command, or from another Air Force employee/co-worker because of their past duties, or current or past experience/expertise, etc.

As noted on the above referenced DOJ website, a long line of case law interpreting the Privacy Act's (b)(1) exception has broadly held that federal agency employees may consult with each other concerning the content and subject matter of Privacy Act records, although the "consulted" employee may not have specific duties that otherwise would allow him to independently have access to the Privacy Act record. But, a reading of the case law supports a conclusion that the consultation must be proper and for an appropriate official purpose. For instance, the (b)(1) exception does not support discussing another person's Privacy Act record information with a co-worker for purposes of "gossip" or simply because one Air Force employee wants to have a conversation with another employee about something interesting. Rather, the discussion/consultation should be tied to a reasonable official purpose/reason, such as the fact that the consulted employee is the supervisor/commander of the other employee who is expected to provide feedback and advise concerning the consulting employees duties, or the consulted employee(s) has expertise, experience or special knowledge (past or present) that the consulting employee believes will be helpful in their accomplishing their own Air Force duties.

Examples of appropriate discussions/consultations with respect to legal personnel include trial counsel/paralegal/SJA and Special Victims' (SVC) counsel discussions with an alleged victim, investigators, commanders; Area Defense counsel discussions with an accused; legal office personnel discussions with other attorney's/co-workers in a wing/NAF or MAJCOM/HQ USAF legal office; SVC and defense counsel/trial counsel discussions with each other, etc.

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