

FREEDOM OF INFORMATION ACT

Release of Family Advocacy Records to a First Party Requester

You have asked whether an individual's request for their own Air Force Family Advocacy record must be released to him when requested under the Privacy Act (PA), if information is contained in the record concerning alleged abuse against his child or other information pertaining to another person. Depending on the facts and circumstances, a person who asks for their own Family Advocacy record may be denied parts or all of the record under the Privacy Act, and only be entitled to receive what is releasable to him under the Freedom of Information Act (FOIA).

As with any other Air Force record, Air Force Family Advocacy records can be requested for release by the Air Force to a requester under the PA (for PA records by the person whose PA record it is, or a routine user, or person/entity for which a PA exception applies); or under the FOIA (by anyone else).

In order for a release decision to be properly made, a correct PA or FOIA analysis must be done to determine what information from a Family Advocacy record is releasable to a specific requester.

Family Advocacy Program Records are Air Force PA records. That is, they are records officially/formally, through AF procedures, filed/retrieved by the Air Force by an individual person's name or personal identifier unique to an individual. 5 U.S.C. §552a; AFI 33-332, *Air Force Privacy and Civil Liberties Program*; DoD 5400.11-R, *Department of Defense Privacy Program*. Unless certain exemptions are claimed for a PA record, as discussed below, the PA requires the Air Force to provide a first party requester a copy of his own PA record when requested. *Id.*

Family Advocacy records have a PA System of Records Notice (SORN) published to the public in the Federal Register, informing the public why the Air Force creates these PA records, and how the Air Force uses Family Advocacy records, etc. F044 AF SG Q, *Family Advocacy Program Records* (November 18, 2003, 68 FR 65039) at <http://dpcl.d.defense.gov/Privacy/SORNsIndex/DODwideSORNArticleView/tabid/6797/Article/569871/f044-af-sg-q.aspx>.

This Family Advocacy SORN informs the public that an AF Family Advocacy record is the Privacy Act record of either the military sponsor and/or any spouse who is seen by Family Advocacy personnel (the "first party" requester), but that the Air Force has PA exemptions, (k)(2) and (k)(5), which allows (but does not require) the Air Force to deny the PA record to a first party requester when those exemptions otherwise apply to what is being requested from the person's Family Advocacy record. If one of these claimed PA exemptions applies, the request from the first party requester for his own Family Advocacy record is processed and released to him solely under FOIA procedures. AFI 33-332; DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*.

If a claimed PA exemption does not apply to such a request from the first party requester, the first party requester receives his own Family Advocacy record concerning all information about him that is in his Family Advocacy record. 5 U.S.C. §552a; AFI 33-332. NOTE: the Department of Justice has advised that purely identification type information of someone else in a person's PA record is usually not "about" the PA record individual. For example, another adult's social security number.

With respect to these two PA exemptions, the first one, (k)(2), applies to:

investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: [p]rovided, however [t]hat if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except 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, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

The second PA exemption claimed for Family Advocacy records, (k)(5), applies to:

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, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

A third party requester – i.e., a person's request for another person's Family Advocacy record - is processed solely under FOIA procedures, unless they are a "routine user" as noted in the SORN, or are a requester for official AF purposes covered by one of eleven other PA exceptions, b1 and b3-b12. *See* 5 U.S.C. § 552a(b)(1)-(12). For example, a "routine use" in the Family Advocacy record PA SORN states that it may be provided "[t]o any member of the family in whose sponsor's name the file is maintained, in furtherance of treating any member of the family." Remember, too, that parents and legal guardians usually (but certainly not always, such as when they are being investigated for maltreatment of their child) have first party access rights to their child's Privacy Act records or other records about their children.

In your situation, it appears that because the records may be or are now part of an investigation into the parent's alleged maltreatment/abuse of his child, information in the parent's Family Advocacy record concerning the alleged maltreatment/abuse can be denied to him under the Privacy Act. Under a FOIA analysis, the same information would be denied under FOIA exemptions b6 and b7.

As always, read the applicable release guidance (The Privacy Act and AFI 33-332; the FOIA and AFMAN 33-302; and AFIs concerning Family Advocacy records) and go through a PA analysis and/or a FOIA analysis, as applicable, when PA records are being requested by either a first party requester, or a third party requester (anyone else).

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