

## PRIVACY ACT

### Processing Requests from Individuals for their own Privacy Act records that claim a Privacy Act Exemption and Routine Use ...

You have asked whether the Office of Primary Responsibility (OPR) may release an individual's own Privacy Act (PA) record under the PA to the individual (otherwise known as a first party requester) when the records in question contain a PA exemption - such as PA exemption "(k)(2)." 5 U.S.C. § 552s(k)(2). As way of background, the PA requires an agency to release an individual's PA record(s) to the individual when requested by the individual or his designated representative, unless the agency has claimed a PA exemption for the records in question. 5 U.S.C. § 552a(d)(1). PA exemptions are commonly claimed for, among other things, classified, law enforcement, and investigative records. 5 U.S. C. § 552a(j)(2), (k)(1) – (k)(7).

A PA exemption permits, but does not require, the Air Force to deny an individual his own PA record under the PA. Notwithstanding a PA exemption, the Air Force can choose to release to the individual his own PA record, as appropriate (for instance, restrictions on otherwise releasing classified information or confidential sources should be followed). Office of Management and Budget, *Privacy Act Implementation, Guidelines and Responsibilities*, Federal Register, Volume 40, Number 132, Part III, page 28971, ("[i]t should be emphasized that the exemption provisions are permissive, i.e., an agency head is authorized, but not required, to exempt a system..."). Of course, if an exemption is claimed for a PA record, release should not occur without approval from the organization with primary responsibility for the PA record and its associated System of Records Notice.

Finally, if an exemption is applied that permits the Air Force to withhold the PA record from the first party requester (subject of the PA record), then release of the record must still be analyzed under the Freedom of Information Act (FOIA) and all information released to the first party requester that must be released to him under the FOIA. See DoD 5400.7-R\_AFMAN 33-302, paragraph C1.5.14.2, *Freedom of Information Act Program (FOIA)*

On a related note, the same general release principal applies to the use of claimed PA "routine uses." A routine use allows, but does not require, the Air Force to release an individual's PA record to an appropriate third party without first obtaining a PA release or other type of consent from the individual of the PA record. Further, even when releasing a PA record to a third party under a routine use exception, the Air Force may withhold portions of the PA record the requester does not need in order to accomplish their official duties. See 5 U.S.C. § 552a(b)(3); DoD 5400.11-R, *Department of Defense Privacy Program*, C4.2.3.2; Office of Management and Budget, *Privacy Act Implementation, Guidelines and Responsibilities*, Federal Register, Volume 40, Number 132, Part III, page 28953, ("[n]othing in the privacy act should be interpreted to authorize or compel disclosures of records, not otherwise permitted or required, to anyone other than the individual to whom a record pertains...").