

Part 24 – Protection of Privacy and Freedom of Information

[24.000 Scope of part.](#)

[Subpart 24.1 - Protection of Individual Privacy](#)

[24.101 Definitions.](#)

[24.102 General.](#)

[24.103 Procedures.](#)

[24.104 Contract clauses.](#)

[Subpart 24.2 - Freedom of Information Act](#)

[24.201 Authority.](#)

[24.202 Prohibitions.](#)

[24.203 Policy.](#)

[Subpart 24.3 - Privacy Training](#)

[24.301 \[Reserved\]](#)

[24.302 Contract clause.](#)

24.000 Scope of part.

This part prescribes policies and procedures that apply requirements of the Privacy Act of 1974 ([5 U.S.C. 552a](#)) (the Act) and OMB Circular No. A-130, December 12, 1985, to Government contracts and cites the Freedom of Information Act ([5 U.S.C. 552](#), as amended).

Subpart 24.1 – Protection of Individual Privacy

24.101 Definitions.

As used in this subpart-

Agency means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the

Government (including the Executive Office of the President), or any independent regulatory agency.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain means maintain, collect, use, or disseminate.

Operation of a system of records means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

Personally identifiable information means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. (See Office of Management and Budget (OMB) Circular No. A-130, Managing Federal Information as a Strategic Resource).

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

System of records on individuals means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

24.102 General.

(a) When an agency hires a contractor to design, develop, or operate a system of records on individuals, the agency must apply the Privacy Act requirements to the contractor and its employees working on the contract.

(b) Both agency staff and contractor employees may face criminal penalties for violating the Privacy Act. When contractors operate a system of records on individuals to accomplish an agency function, the law treats these contractors as agency employees for purposes of the criminal penalties.

(c) When a contract specifically calls for designing, developing, or operating a system of records on individuals to accomplish an agency function, the agency must apply Privacy Act requirements to the contractor and its employees working on the contract. The system of records operated under the contract is officially considered to be maintained by the agency for the purposes of the Act.

(d) Agencies that, within the limits of their authorities, fail to require contractors to operate systems of records according to the Privacy Act may be civilly liable. If an individual suffers harm due to the contractor's violation of the Act, the agency may be liable.

24.103 Procedures.

(a) The contracting officer must review requirements to determine if they include designing, developing, or operating a system of records on individuals to accomplish an agency function.

(b) If the contract requires such work, the contracting officer must—

(1) Clearly identify in the contract work statement both the specific system of records and the design, development, or operation work required; and

(2) Provide the contractor with the agency's rules and regulations that implement the Privacy Act.

24.104 Contract clauses.

When a contract requires designing, developing, or operating a system of records on individuals to accomplish an agency function, the contracting officer must include the following clauses in solicitations and contracts:

(a) The clause at 52.224-1, Privacy Act Notification.

(b) The clause at 52.224-2, Privacy Act.

Subpart 24.2 – Freedom of Information Act

24.201 Authority.

The Freedom of Information Act (5 U.S.C. 552) requires that information be made available to the public through three methods:

(a) Publication in the *Federal Register*;

(b) Access to read and copy records at convenient locations; or

(c) Providing a copy of a reasonably described record upon request.

24.202 Prohibitions.

(a) An agency must not disclose under the Freedom of Information Act any proposal submitted in response to solicitation for competitive proposals. This prohibition does not apply to a proposal, or any part of a proposal, that is included or incorporated by

reference in a contract between the Government and the contractor that submitted the proposal. (See 10 U.S.C. 3309 and 41 U.S.C. 4702.)

(b) An agency must not disclose outside the Government any information obtained under part 15 that is exempt from disclosure under the Freedom of Information Act. (See 10 U.S.C. 3705(c)(3) and 41 U.S.C. 3505(b)(3).)

(c) A dispute resolution communication between a neutral person and a party to alternative dispute resolution proceedings that is protected under 5 U.S.C. 574(j) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(3)).

24.203 Policy.

(a) The Freedom of Information Act specifies how agencies must make their records available upon public request, sets strict time standards for agency responses, and exempts certain records from public disclosure. Each agency's implementation of these requirements appears in its respective title of the Code of Federal Regulations and is referenced in subpart 24.2 of its implementing acquisition regulations.

(b) Contracting officers may receive requests for records that may be exempt from mandatory public disclosure. The most common exemptions are for trade secrets and confidential commercial or financial information (5 U.S.C. 552(b)(4)). Other exemptions include certain interagency or intra-agency memoranda, classified information, internal personnel rules, personal and medical information about individuals, and law enforcement.

(c) Since these requests often involve complex issues requiring in-depth knowledge of court rulings and policy guidance, contracting officers must comply with their agency's implementing regulations. Contracting officers should obtain necessary guidance from agency officials responsible for Freedom of Information Act compliance. For additional assistance, authorized agency officials may contact the Department of Justice, Office of Information and Privacy. A Freedom of Information Act guide and other resources are available at the Department of Justice website under FOIA reference materials: <http://www.usdoj.gov/oip>.

Subpart 24.3 – Privacy Training

24.301 [Reserved]

24.302 Contract clause.

(a) The contracting officer must insert the clause at FAR 52.224-3, Privacy Training, in solicitations and contracts when, on behalf of the agency, contractor employees will—

(1) Have access to a system of records;

(2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or

(3) Design, develop, maintain, or operate a system of records.

(b) When an agency specifies that only its agency-provided training is acceptable, use the clause with its Alternate I.

Part 52 – Solicitation Provisions and Contract Clauses

[52.224 \[Reserved\]](#)

[52.224-1 Privacy Act Notification.](#)

[52.224-2 Privacy Act.](#)

[52.224-3 Privacy Training.](#)

52.224 [Reserved]

52.224-1 Privacy Act Notification.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

52.224-2 Privacy Act.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT (APR 1984)

(a) The Contractor agrees to-

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies-

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this paragraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

52.224-3 Privacy Training.

As prescribed in 24.302(a), insert the following clause:

PRIVACY TRAINING (JAN 2017)

(a) Definition. As used in this clause, “personally identifiable information” means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. (See Office of Management and Budget (OMB) Circular A-130, Managing Federal Information as a Strategic Resource).

(b) The Contractor shall ensure that initial privacy training, and annual privacy training thereafter, is completed by contractor employees who-

- (1) Have access to a system of records;
- (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information on behalf of an agency; or
- (3) Design, develop, maintain, or operate a system of records (see also FAR subpart 24.3 and 39.105).

(c) (1) Privacy training shall address the key elements necessary for ensuring the safeguarding of personally identifiable information or a system of records. The training shall be role-based, provide foundational as well as more advanced levels of training, and have measures in place to test the knowledge level of users. At a minimum, the privacy training shall cover-

- (i) The provisions of the Privacy Act of 1974 (5 U.S.C. 552a), including penalties for violations of the Act;
- (ii) The appropriate handling and safeguarding of personally identifiable information;
- (iii) The authorized and official use of a system of records or any other personally identifiable information;
- (iv) The restriction on the use of unauthorized equipment to create, collect, use, process, store, maintain, disseminate, disclose, dispose or otherwise access personally identifiable information;
- (v) The prohibition against the unauthorized use of a system of records or unauthorized disclosure, access, handling, or use of personally identifiable information; and
- (vi) The procedures to be followed in the event of a suspected or confirmed breach of a system of records or the unauthorized disclosure, access, handling, or use of personally identifiable information (see OMB guidance for Preparing for and Responding to a Breach of Personally Identifiable Information).

(2) Completion of an agency-developed or agency-conducted training course shall be deemed to satisfy these elements.

(d) The Contractor shall maintain and, upon request, provide documentation of completion of privacy training to the Contracting Officer.

(e) The Contractor shall not allow any employee access to a system of records, or permit any employee to create, collect, use, process, store, maintain, disseminate, disclose, dispose or otherwise handle personally identifiable information, or to design, develop, maintain, or operate a system of records unless the employee has completed privacy training, as required by this clause.

(f) The substance of this clause, including this paragraph (f), shall be included in all subcontracts under this contract, when subcontractor employees will-

(1) Have access to a system of records;

(2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or

(3) Design, develop, maintain, or operate a system of records.

(End of clause)

Alternate I (Jan 2017). As prescribed in 24.302 (b), if the agency specifies that only its agency-provided training is acceptable, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The contracting agency will provide initial privacy training, and annual privacy training thereafter, to Contractor employees for the duration of this contract.