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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 12, 2020

M-21-04

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Russell T. Vought
Director

SUBJECT: Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act

This Memorandum provides guidance for Federal agencies to modernize the processes by which individuals may request access to, and consent to the disclosure of, records protected under the Privacy Act of 1974.¹ As required by the Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (“CASES Act”),² this guidance outlines the responsibilities of agencies for accepting access and consent forms provided in a digital format from individuals who are properly identity-proofed and authenticated.

Authority, Scope, and Terminology

The CASES Act, which became law on August 22, 2019, provides the authority for this Memorandum and requires the Director of the Office of Management and Budget (OMB) to issue this guidance. In accordance with the CASES Act, the terms “agency,” “individual,” and “record” have the meanings given those terms in the Privacy Act.³ This Memorandum characterizes the “electronic consent and access forms”⁴ identified in the CASES Act as “access and consent forms provided in a digital format” (hereinafter “access and consent forms”). It also characterizes the “electronic identity-proofing and authentication processes”⁵ identified in the CASES Act as “remote identity-proofing and authentication through digital processes” (hereinafter “remote identity-proofing and authentication”). For purposes of this Memorandum, “identity-proofing” is the process by which a Credential Service Provider collects, validates, and verifies information about a person, while “authentication” is the process of establishing confidence in user identities presented digitally to a system.⁶

¹ 5 U.S.C. § 552a.

² Pub. L. No. 116-50, 133 Stat. 1073 (2019).

³ *Id.* § 3(c)(1); *see* 5 U.S.C. § 552a(a)(1), (2), (4).

⁴ *See* Pub. L. No. 116-50, § 3.

⁵ *See id.*

⁶ *See, e.g.,* Paul A. Grassi, et al., Nat’l Inst. of Standards & Tech., Dep’t of Commerce, Special Publication 800-63-3, *Digital Identity Guidelines* 45, 47 (June 2017), *available at* <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-3.pdf>.

Background

The Privacy Act grants individuals a right of access to their records and any information pertaining to them that are contained in agency systems of records.⁷ While the Privacy Act increases an individual's right to access the individual's own record, it restricts an individual's ability to access a record pertaining to someone else. The Privacy Act prohibits disclosure of records in a system of records to any person or agency, unless disclosure is pursuant to the prior written request by, or with the prior written consent of, the individual to whom the record pertains.⁸ The Privacy Act provides that "the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual."⁹

Modernizing these processes across the Federal Government is important to facilitating transparency and enabling access to Federal programs through seamless and secure digital service delivery. Over the years, agencies have developed various procedures and forms by which individuals may establish their identity and request access to or provide written consent for disclosure of their records. As technology developed and the Federal Government increased electronic collection and dissemination of information, electronic consent was recognized as a form of written consent.¹⁰ In an effort to modernize and simplify the process, the CASES Act requires OMB to issue guidance that requires agencies to accept access and consent forms from individuals properly identity-proofed and authenticated remotely through digital channels.¹¹ The CASES Act also requires that this guidance include a template for such forms, which agencies must post on their websites.¹²

Agency Responsibilities

Agencies must provide a digital service option to ensure that individuals have the ability to digitally request access to or consent to disclosure of their records.

Within one year of the release of this Memorandum, agencies shall:

1. Accept remote identity-proofing and authentication for the purposes of allowing an individual to request access to their records or to provide prior written consent authorizing disclosure of their records under the Privacy Act.¹³
2. Post on the agency website's privacy program page ([www.\[agency\].gov/privacy](http://www.[agency].gov/privacy))¹⁴ the forms developed using the templates provided in the appendix to this guidance (*i.e.*, the templates for access and consent forms), as customized by the agency. Update all

⁷ 5 U.S.C. § 552a(d)(1).

⁸ *Id.* § 552a(b).

⁹ *Id.* § 552a(h).

¹⁰ See Office of Mgmt. & Budget, Exec. Office of the President, OMB M-01-05, *Guidance on Interagency Sharing of Personal Data - Protecting Personal Privacy* (Dec. 20, 2000).

¹¹ Pub. L. No. 116-50, § 3(a).

¹² *Id.* § 3(a)(2).

¹³ See *id.* § 3(a)(1).

¹⁴ See Office of Mgmt. & Budget, Exec. Office of the President, OMB M-17-06, *Policies for Federal Agency Public Websites and Digital Services* (Nov. 8, 2016).

relevant portions of the agency website that pertain to obtaining access to records with these forms and instructions on how to submit requests digitally.¹⁵

3. Accept the access and consent forms from any individual properly identity-proofed and authenticated remotely through digital channels for the purpose of individual access to records or for authorizing disclosure of the individual's records to another person or entity, including a congressional office.¹⁶

Agencies are responsible for modernizing supporting information systems and digitizing any existing processes to ensure that a digital service option is offered in addition to paper-based or in-person options. Moreover, agencies should avoid to the maximum extent possible establishing any requirements that prevent or impede an individual who has been properly identity-proofed and authenticated from submitting a digital request to access or consent to disclosure of their records.

Additional Guidance

1. Agency Officials

The agency's Senior Agency Official for Privacy (SAOP) shall coordinate the activities required by this Memorandum with the agency's Chief Information Officer, Chief Information Security Officer, and other agency officials whose duties include processing requests for access to and disclosure of records subject to the Privacy Act.¹⁷

2. Minimization

As agencies determine the specific information required to verify an individual's identity, establish consent, and identify relevant records, they should apply the minimization principle, one of the Fair Information Practice Principles identified in OMB Circular A-130, *Managing Information as a Strategic Resource*,¹⁸ and ensure that they limit the collection of personally identifiable information (PII)¹⁹ to the minimum that is directly relevant and necessary for this purpose.²⁰ In applying this principle, agencies may customize the PII required by their access and consent forms in accordance with applicable law and policy requirements and assessment of privacy risks. Different types of records may require different types of PII when identifying

¹⁵ See *id.* § 3(a)(2).

¹⁶ See *id.* § 3(a)(3).

¹⁷ The requirements of this Memorandum do not apply to third-party requests made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. However, because individual access requests under the Privacy Act must also be processed under the FOIA, *see* 5 U.S.C. § 552a(t)(1), (2), many agencies manage and process Privacy Act requests as part of their FOIA programs. In such cases, SAOPs shall also coordinate the activities required by this Memorandum with the agency's Chief FOIA Officer.

¹⁸ See Office of Mgmt. & Budget, Exec. Office of the President, Circular No. A-130, *Managing Information as a Strategic Resource*, app. II, at 2 (July 28, 2016).

¹⁹ Per OMB Circular A-130, "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. *Id.* at 33.

²⁰ See Office of Mgmt. & Budget, Exec. Office of the President, *Privacy Act Implementation Guidelines and Responsibilities*, 40 Fed. Reg. 28,948, 28,957, 28,967 (July 9, 1975).

relevant records and conducting identity-proofing and authentication. In accordance with OMB Circular A-130, for this purpose, agencies shall take steps to eliminate unnecessary collection, maintenance, and use of Social Security numbers, and explore alternatives to the use of Social Security numbers as a personal identifier.²¹

3. **Remote Identity-Proofing and Authentication**

Strong identity-proofing and authentication are important to prevent improper disclosure of records. Consistent with Privacy Act implementation guidance,²² agencies shall establish requirements to verify the identity of the individual making the request through remote identity-proofing and authentication processes. These requirements and their implementation shall conform to OMB guidance and NIST standards.²³

The importance of strong identity-proofing and authentication is underscored not only by the Privacy Act's disclosure prohibition, but also by other of its requirements. The Privacy Act requires agencies to "establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained."²⁴ Agencies also are required to keep an accurate accounting of disclosures outside the agency, including those made at the request of the individual or with the individual's written consent.²⁵ Violations of the Privacy Act can incur civil remedies and criminal penalties.²⁶

4. **Privacy Act Implementation Rules and Systems of Records Notices**

Agencies shall review their Privacy Act implementation rules²⁷ regarding accessing and consenting to disclosure of records and update them, as necessary, to ensure they are consistent with and reflect the procedures required by this Memorandum. Where such updates affect the descriptions of record access procedures in existing systems of records notices (SORNs), agencies may need to modify their SORNs.²⁸ In addition, agencies shall review SORNs governing systems of records that include Privacy Act requests for access to and consent to disclosure of records, and, if necessary, modify those SORNs, as well.

Points of Contact

Please direct questions or inquiries on this Memorandum via email to privacy-oira@omb.eop.gov and ofcio@omb.eop.gov.

²¹ See Circular No. A-130, at 17.

²² See *Privacy Act Implementation Guidelines and Responsibilities*, 40 Fed. Reg. at 28,957.

²³ See Office of Mgmt. & Budget, Exec. Office of the President, OMB M-19-17, *Enabling Mission Delivery through Improved Identity, Credential, and Access Management* (May 21, 2019). See also the NIST Special Publication (SP) 800-63 suite, including *Digital Identity Guidelines*, *supra* note 6.

²⁴ 5 U.S.C. § 552a(e)(10).

²⁵ See *Privacy Act Implementation Guidelines and Responsibilities*, 40 Fed. Reg. at 28,955.

²⁶ See 5 U.S.C. § 552a(g), (i).

²⁷ See *id.* § 552a(f).

²⁸ See Office of Mgmt. & Budget, Exec. Office of the President, Circular No. A-108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act* 6 (Dec. 23, 2016).

Appendix I: Instructions and Template for Access Forms

Instructions for Agencies

These instructions are for agencies' use and are not meant to be posted on agency websites:

Agencies shall post to their websites the access forms developed based on the template provided in this Memorandum, as customized by the agency. Agencies shall use the language and section headings provided in the template, replace the language in brackets with appropriate agency language that is consistent with the agency's Privacy Act implementation rules, and customize the formatting, as appropriate. Agencies may modify the text of the Privacy Act statement in accordance with law and policy, in addition to the designated placeholders.

Agencies shall accept the access forms from individuals properly identity-proofed and authenticated according to the requirements in this Memorandum for the purpose of individual access to records under the Privacy Act. Agencies may accept access forms from parents on behalf of minors or from legal guardians on behalf of incompetents.²⁹ Agencies that provide access to parents and legal guardians may include the relevant [*italicized and bracketed*] language.

Template

[Name of agency and, if applicable, agency component]

Request for Individual Access to Records Protected under the Privacy Act

If you are seeking access to your records, please provide the information below. [*This form may also be used if you are the parent seeking access to the records of a minor or the legal guardian seeking access to the records of an incompetent.*]

Information Required for Identity-Proofing and Authentication

This information is required for the agency to verify your identity.

Full Name

[Other Information Required for Identity-Proofing and Authentication]

[If Applicable: Information for Request by Parent or Legal Guardian]

[Name of Record Subject]

[Other Information Required to Establish Relationship/Guardianship]

²⁹ As defined in 5 U.S.C. § 552a(h) and in accordance with agency policy and regulations implementing § 552a(h).

Additional Information Required to Locate the Record(s)

This information is required for the agency to be able to match the individual's information provided in this request with the records that pertain to that individual.

[Other Information Required to Identify the Record Subject – e.g., Date of Birth]

Description of Requested Records [Describe what information is requested.]

Contact Information

Address for Receiving Records

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above and requesting access to my records [or records that I am entitled to request as the parent of a minor or the legal guardian of an incompetent], and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. § 1001 by a fine, imprisonment of not more than five years, or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. § 552a(i)(3) by a fine of not more than \$5,000.

[Electronic] Signature [and Date]

Privacy Act Statement

In accordance with [the agency's Privacy Act implementation rules] personal information sufficient to identify the individuals requesting access to records under the Privacy Act of 1974, 5 U.S.C. § 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of [agency name] systems of records are not wrongfully disclosed by [agency name]. [Information about published routine uses to which the information is subject.] Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. § 1001 and/or 5 U.S.C. § 552a(i)(3). [Appropriate citation (and, if practicable, a link) to the relevant system of records notice(s).]

Appendix II: Instructions and Template for Consent Forms

Instructions for Agencies

These instructions are for agencies' use and are not meant to be posted on agency websites:

Agencies shall post to their websites the consent forms developed based on the template provided in this Memorandum, as customized by the agency. Agencies shall use the language and section headings provided in the template, replace the language in brackets with appropriate agency language that is consistent with the agency's Privacy Act implementation rules, and customize the formatting, as appropriate. Agencies may modify the text of the Privacy Act statement in accordance with law and policy, in addition to the designated placeholders.

Agencies shall accept consent forms from individuals properly identity-proofed and authenticated according to the requirements in this Memorandum for the purpose of authorizing disclosure of the individual's records under the Privacy Act. Agencies may accept consent forms from parents on behalf of minors or from legal guardians on behalf of incompetents.³⁰ Agencies that provide access to parents and legal guardians may include the relevant *[italicized and bracketed]* language.

Template

[Name of agency and, if applicable, agency component]

Consent for Disclosure of Records Protected under the Privacy Act

If you are providing consent and authorizing the agency to disclose your records to another person or entity, please provide the information below. *[This form may also be used if you are the parent consenting to and authorizing disclosure of the records of a minor or the legal guardian consenting to and authorizing disclosure of the records of an incompetent.]*

Information Used for Identity-Proofing and Authentication

This information is required for the agency to verify your identity.

Full Name

[Other Information Required for Identity-Proofing and Authentication]

[If Applicable: Information for Request by Parent or Legal Guardian]

[Name of Record Subject]

³⁰ As defined in 5 U.S.C. § 552a(h) and in accordance with agency policy and regulations implementing § 552a(h).

[Other Information Required to Establish Relationship/Guardianship]

Additional Information Required to Locate the Record(s)

This information is required for the agency to be able to match the individual's information provided in this request with the records that pertain to that individual.

[Other Information Required to Identify the Record Subject – e.g., Date of Birth]

Description of Requested Records [Describe what information is requested.]

Recipient Information

Name of Recipient (Person or Entity) to Whom Disclosure is Authorized

Address for Receiving Records

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above and consenting to and authorizing disclosure of my records [, or records that I am entitled to request as the parent of a minor or the legal guardian of an incompetent], and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. § 1001 by a fine, imprisonment of not more than five years, or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. § 552a(i)(3) by a fine of not more than \$5,000.

[Electronic] Signature [and Date]

Privacy Act Statement

In accordance with [the agency's Privacy Act implementation rules] personal information sufficient to identify the individuals requesting access to records under the Privacy Act of 1974, 5 U.S.C. § 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of [agency name] systems of records are not wrongfully disclosed by [agency name]. [Information about published routine uses to which the information is subject.] Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. § 1001 and/or 5 U.S.C. § 552a(i)(3). [Appropriate citation (and, if practicable, a link) to the relevant system of records notice(s).]