

THE PRIVACY ACT – Your right to Access and Amendment.

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When making decisions regarding your employment – be it your continued suitability, access to classified information, or merit promotion eligibility – your employing agency typically reviews information about you maintained in “Privacy Act” system of records (*e.g.*, Official Personnel Folders (OPFs), Employee Performance File (EPF), Adverse Action Files, or Personnel Security Clearance Files). (*See generally*, National Archives and Records Administration (NARA), Transmittal No. 22 (Apr. 2010), General Records Schedule (GRS) 1 at ¶¶ 1, 21, 23 and 30(b); and GRS 18 at ¶ 22(a)). The accuracy of that information is essential to your continued employment, career advancement, and benefit entitlements. Fortunately, the Privacy Act of 1974, 5 U.S.C. § 522a, provides you with a means by which to seek access to and amendment of those records. *See* 5 U.S.C. § 522a(d)(1) & (2).

The Privacy Act provides you with a means of access similar to that of the Freedom of Information Act (FOIA). However, the Privacy Act only permits you to seek access to your own “record,” and only if that record is maintained by the agency within a “system of records” -- *i.e.*, is retrieved by your name or personal identifier -- subject to ten Privacy Act exemptions. 5 U.S.C. § 522a(d)(1). Furthermore, you may request to amend your own record to correct any information that you believe is inaccurate, irrelevant, untimely or incomplete. *See* 5 U.S.C. § 522a(d)(2). If your agency refuses to amend your record, you may file with the agency a concise statement setting forth the reasons for your disagreement with the agency and your statement of disagreement must be included with any subsequent disclosure of the record. *See* 5 U.S.C. § 522a(d)(3) & (4). Additionally, “[w]henver any agency . . . makes a determination under subsection (d)(3) . . . not to amend an individual's record in accordance with his request” you may bring a civil action against the agency. 5 U.S.C. § 522a(g)(1)(A).

Just as you would typically obtain a copy of your credit report prior to purchasing or refinancing a home mortgage, it is a good idea to review your OPF, EPF, and Personnel Security Clearance File before applying for a merit systems promotion or undergoing a single scope background (SBI) investigation for continued eligibility to access classified information. Civilian employees should develop the regular habit of yearly requesting access to personal records about them maintained in Privacy Act system of records. The accuracy of the information contained within those record systems could affect many of your rights incidental to your federal law enforcement employment, such as your continued eligibility to access classified information, your leave entitlement, or retirement benefits.

If you have any questions or concerns regarding your rights under the Privacy Act, contact Mahoney & Jeffrey, PLLC, at 202-312-7100 or www.MahoneyJeffrey.com.

The information contained in this article is of a general nature and is subject to change; it is not meant to serve as legal advice in any particular situation. For specific legal advice, the author recommends you consult a licensed attorney who is knowledgeable about the area of law in question.