



PRIVACY POLICY GUIDANCE MEMORANDUM

February 11, 2011

Memorandum Number: 2011-01

MEMORANDUM FOR: Component Privacy Officers
and Freedom of Information Act Officers

FROM: Mary Ellen Callahan
Chief Privacy and Freedom of Information Act Officer

SUBJECT: Privacy Act Amendment Requests

I. PURPOSE

This memorandum sets forth Department of Homeland Security (DHS) policy on identifying, processing, tracking, and reporting on requests for amendment of records submitted to DHS under the Privacy Act of 1974, as amended (Amendment Requests).

II. AUTHORITY

Section 552a(d)(2) of the Privacy Act gives individuals the right to submit Amendment Requests to federal agencies holding information about them in a Privacy Act System of Records.¹

III. POLICY

DHS Component Privacy Officers and FOIA Officers² shall have robust and documented procedures for identifying, processing, tracking, and reporting on Amendment Requests. Records found in a Privacy Act System of Records and not otherwise exempted³ are subject to the right to amend. This right is available to individuals whether the request is processed by Component Privacy Officers or FOIA Officers. Components should determine, as part of their documented process, whether the Component Privacy Officer or FOIA Officer will be responsible for identifying, processing, tracking, and reporting Amendment Requests understanding that significant collaboration between the two Officers shall occur.

¹ 5 U.S.C. § 552a(d)(2) permits the individual to request amendment of a record pertaining to him and requires that the agency:

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either-

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official.

² Includes those in the DHS Privacy and Disclosure Office and Component Privacy and Disclosure Offices.

³ The Privacy Act exempts certain information in whole or in part from its search and disclosure provisions.

Amendment of Privacy Act records is an important function and requires close coordination between DHS Privacy and FOIA professionals. Under the Department's current and proposed Privacy Act and FOIA regulations, individuals may submit Amendment Requests either to the DHS component that has responsibility for the Privacy Act record or to the Director of Disclosure & FOIA in the DHS Privacy Office. If records sought exist, individuals have the right to seek amendment of those records and to appeal agency decisions to deny amendment. Note that although non-U.S. persons are afforded the right to seek amendment of records as a matter of DHS policy, the Privacy Act does not extend the right of judicial review to non-U.S. persons.⁴

A. Identifying Privacy Act Amendment Requests

Component Privacy Officers and FOIA Officers must be able to identify Amendment Requests, which often follow a disclosure by DHS to an individual who has filed a Privacy Act or FOIA request. Upon review of the disclosed documents, the individual may believe the requested records contain inaccurate information. In other instances, an individual may submit correspondence labeled as a Privacy Act or FOIA request that is actually an Amendment Request. It is the Component Privacy Officer's or FOIA Officer's responsibility to determine whether the correspondence includes an Amendment Request and to communicate directly with the requester to clarify the requester's intent in instances where the plain language of the correspondence is not sufficient to make this determination.

i. What to Look For

Amendment Requests, like requests for access under either the Privacy Act or FOIA, arrive at the Department in the form of unsolicited correspondence. There is no particular form required for Amendment Requests. Component Privacy Officers and FOIA Officers shall make all reasonable efforts to discern the requestor's intent in submitting the correspondence. Components shall look for key words, such as "change," "amend," "amendment," "correction," "modify," and their related synonyms, and construe correspondence containing such language as Amendment Requests pursuant to subsection (d)(2) of the Privacy Act. An Amendment Request shall identify the exact record(s) in question, state the amendment or correction, and state why the requester believes the record is not accurate, timely, relevant, or complete, and may include supporting documentation. The Amendment Request shall also identify the Privacy Act System(s) of Records in which the records in question are found. If there is any doubt as to whether the requester intended his/her correspondence to serve as an Amendment Request or not, the Component Privacy Officer or FOIA Officer shall interpret such a request broadly. The Component Privacy Officer or FOIA Officer shall base their determination on the language the requester uses in the correspondence and shall directly contact the requester to resolve any ambiguities that may exist as to the intent of the correspondence. Further guidance can be found in the Department's Privacy Act regulations at 6 C.F.R. Chapter I & Part V.

⁴ As a matter of DHS policy "individual" means both persons covered by the Privacy Act (citizens of the United States and aliens lawfully admitted for permanent residence) and non-U.S. Persons whose Personally Identifiable Information is held in the Department's Mixed Systems of Records, as discussed in DHS Privacy Policy Guidance Memorandum 2007-1, *DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons*; last updated January 7, 2009 (Mixed Systems Policy), available at http://www.dhs.gov/xlibrary/assets/privacy/privacy_policyguide_2007-1.pdf.

B. Processing Amendment Requests

Under the Privacy Act, an Amendment Request must be submitted by the subject of a record in a non-exempt Privacy System of Records, or by the subject's designated agent or legal guardian, and must comply with DHS regulations governing Privacy Act requests.⁵

After identifying from the requester which records in a given non-exempt Privacy Act System(s) of Records the requester would like for the Department to amend, the Component Privacy Officer or FOIA Officer should forward the request to the appropriate system manager. The system manager should then confirm that the requester is a subject of a record in the specified Privacy Act System(s) of Records. The system manager, in consultation with the Component Privacy Officer or FOIA Officer as well as Counsel, shall make the determination as to whether to amend the record(s) and then shall notify the requester in writing after the initial determination. If the record will be amended, a notification should be sent to system manager(s) informing them of the update and requiring the change be made. If an initial determination is made to deny amendment, the Component Privacy Officer or FOIA Officer will notify the requester of this information and how to appeal the denial, should the requestor choose to do so. All responsible officials must follow Department regulations⁶ and Office of Management and Budget guidelines⁷ when processing Amendment Requests.

C. Tracking and Reporting Amendment Requests

Component Privacy Officers and FOIA Officers are responsible for tracking and reporting the number and disposition of all Amendment Requests to the DHS Privacy Office as the Chief Privacy Officer may require but no less than annually. In the DHS Privacy Office, the primary contact for Amendment Requests is the Director of Privacy Incidents and Inquiries.

⁵ DHS Interim FOIA/PA Regulations, 6 C.F.R. § 5.21(d), available at http://www.dhs.gov/xlibrary/assets/FOIA_FedReg_Notice.pdf; according to 5 U.S.C. § 552a(d)(2).

⁶ 6 CFR § 5.26.

⁷ Circular A-108, Privacy Act Implementation Guidelines and Responsibilities, 40 Federal Register 28, 948, 28, 968 (July 9, 1975), available at www.whitehouse.gov/omb.