

BY ORDER OF  
THE COMMANDER

HEADQUARTERS, UNITED STATES FORCES, JAPAN  
USFJ INSTRUCTION 37-111



17 June 2016

Information Management

**PRIVACY ACT - IMPLEMENTING INSTRUCTIONS**

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**PURPOSE:** This Instruction implements provisions of the Privacy Act in accordance with 5 USC 552a and DOD Directive 5400.11, DoD 5400.11-R, SECNAVINST 5211.5D, AR 340-21 and AFI 33-332. As HQ USFJ utilizes USAF administrative procedures, the appropriate implementing directive is AFR 12-35. Directives of other services are referenced where appropriate.

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1. **Scope:** Applicable to HQ USFJ staff and all components in Japan.

2. **Policy:** To safeguard the privacy of all individuals, and to enable them to know what governmental records pertain to them.

3. **Responsibilities:**

3.1. USFJ J1 will appoint a Privacy Act Officer to monitor the implementation of Privacy Act

policies and submit the required reports.

3.2. Civil and criminal penalties exist for violation of this statute.

3.3. Except as otherwise provided by law, Federal agencies must allow individuals to ascertain what records concerning them are collected, maintained, used, or disseminated by federal agencies. No records may be used, other than for routine purposes, without the individual's written consent.

3.4. Individuals must be allowed to see, and get copies of records pertaining to them, and must also be allowed to correct or amend same.

3.5. Federal agencies should gather information only for necessary and lawful purposes, and ensure against its misuse.

3.6. Exemptions from the requirements of the statute should be permitted only where a significant public policy is served.

#### **4. Definitions.**

4.1. Individual - A citizen of the U.S. or an alien lawfully admitted for permanent residence. (Legal guardians or parents of a minor have the same rights as the individual and may act on behalf of the individual.) Commercial activities are not individuals.

4.2. Maintain - collection, use, maintenance and dissemination of records. This refers to recordkeeping tasks as well as control over and accountability for systems of records.

4.3. Official Use - Those instances in which officials and employees of an activity have a demonstrated need for access to any record in the performance of their official duties.

4.4. Record - Any item, collection, or grouping of information about individuals that is maintained by an activity, including, but not limited to: educational, financial transactions, medical histories; and criminal or employment histories that contain their names, or the identifying numbers, symbols, or other particulars assigned to individuals, such as finger or voice prints or photographs.

4.5. Routine Use - The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published notice for the system of records involved.

4.6. System of Records - A group of records under the control of an agency from which information is retrieved by name or identifying number, symbol or other identifying particular. System notices for all Privacy Act systems of records must be published in the Federal Register.

#### **5. Rules of Conduct.**

5.1. Maintenance of Records - No system of records concerning individuals will be maintained without prior announcement in the Federal Register. Only that information necessary to carry

out statutes or executive orders will be maintained. The information may be used only for those purpose listed in the Federal Register.

5.2. Disclosure - No disclosures will be made to any unauthorized person or agency. Each member or employee of DOD who maintains records about individuals must protect against unauthorized disclosure.

5.3. Access - Subject to certain exceptions, individuals have the right to see those DOD records pertaining to him, to obtain copies of all/or part of such records, and to have appropriate corrections made.

5.4. Accuracy - Information must be accurate, timely, relevant, and complete.

## 6. **Procedures** (Access by the Individual)

6.1. The individual requesting notification or access must do so in writing or will sign a written record of request. Individuals must verify identity before getting access to their records. Subsequently, he/she must acknowledge in writing when he/she has been granted access to the requested record. The request must be reasonably specific in identifying the record in a system of records. Every effort will be made to assist the requesting party. If the data requested exists at various locations, such information may be consolidated by the receiving activity. There is no obligation to create a record to satisfy a request. Refusal to disclose one's SSN is not grounds for denial of access unless disclosure is required by statute or regulation adopted before January 1, 1975, or if the SSN is the only retrieval method.

6.2. An individual is not entitled to notification or access if the denial authority has exercised an exemption.

6.3. If an individual is accompanied by another person of his/her choosing to review the record, the individual will furnish a written statement authorizing discussion of his/her record in the accompanying person's presence. A person's record may be released to an authorized representative if notarized written consent of that person is furnished.

6.4. No reproduction fee will be assessed where copying is the only means by which the, individual may be provided access to the record.

6.5. This instruction does not require that an individual be given access to a record, which is not retrieved by name or by other individual identifier.

6.6. Access will not be denied on the basis that the record is not readily physically available (i.e., on magnetic tape) or because the context of the record may disclose sensitive information about another person. To protect the personal privacy of the other person(s), an extract or copy shall be prepared, deleting that information which would not be released to the requesting individual under the Freedom of Information Act.

6.7. A medical record shall be disclosed to the requesting individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. In such case the information may be given to a physician named by the requesting individual.

6.8. All requests received from individuals for access to records pertaining to themselves and which are located in a system of records will be processed in accordance with this instruction even though the requester may seek the information under the Freedom of Information Act.

6.9. Requests for access will be acknowledged within 10 working days and access provided within 30 days of receipt of request. If transfer of action from one office to another is necessary, it will be made within 2 days.

6.10. Copies of investigative records compiled by an investigative organization, which are being held in the temporary custody of HQ USFJ for disciplinary, administrative, judicial, investigative, or other purposes, are the records of the investigative organization. Upon completion of the official action, such reports shall be destroyed or returned, in accordance with the instructions of the originating investigative organization. Individuals seeking access to such records under this instruction shall be directed to the originating investigative organization.

6.11. This instruction does not entitle an individual to have access to any information compiled in reasonable anticipation of civil action or proceeding. Such request and related records shall be forwarded to the appropriate denial authorities in cases where denial on these grounds appears to be appropriate.

6.12. Request to determine the existence of records. Individuals who have knowledge of whether a record pertaining to them is maintained in a system of records by HQ USFJ:

6.12.1. Should submit a request to the system manager identified in the applicable systems notice published in the Federal Register or to the USFJ Directorate/Advisor likely to have custody. Persons may be required to supply certain information to verify identity.

6.12.2. On receipt of the request, the system manager or office of custodial responsibility will note on the request the date of receipt, act on the request, attempt to locate the record and determine whether the record is exempt from the Privacy Act requirements.

6.12.2.1. If the record is not exempt, the system manager (or office of custodial responsibility) will notify the individual within 10 working days of receipt of the request whether or not the requested record is maintained by HQ USFJ. If the record is not maintained by HQ USFJ, the system manager will prepare a reply advising the individual at what agency the record may be found, or that the record has been destroyed, etc., as appropriate. Every effort should be made to assist the individual to locate the record. If the record is maintained, the system manager or office of custodial responsibility will also notify the individual where and when he/she can review the record if it is not exempt.

6.12.2.2. If the system manager deems denial of a request is appropriate, he/she will, after coordination with the Staff Judge Advocate (J06), forward the request with recommendation, appropriate reply and related information to J00 via J02 and J01 for determination.

6.13. Request for Access to Records. Each HQ USFJ Directorate/Advisor that maintains systems of records must:

6.13.1. Permit individuals to review at reasonable time and place, records pertaining to them unless the record is exempt from access.

6.13.2. Permit individuals to obtain, for an appropriate cost, a comprehensible copy of their records unless exempted. Fees will be charged for copying, in accordance with AR 340-21, AR 340-17, SECNAVINSTR 5211.5D, paragraph 11b and AFI 33-332, paragraph 4.3. Those fees are: the first 100 pages copied are free for the first time the document is requested, additional copies cost \$0.15 per page. No charge for search will be assessed.

6.13.2.1. Upon receipt of a request for a copy of a record, the system manager will notify the individual of the reproduction fee and request payment in advance.

6.13.2.2. System manager may waive reproduction fees if the cost of processing the fees exceeds the amount collected.

6.14. Denial of Access. If, in the judgment of the system manager, a legitimate purpose exists for denying access, within five working days after receipt of the request, the manager, after coordination with the Staff Judge Advocate (J06), will forward a copy of the request, together with a copy of the record involved, the reason(s) for recommending denial, and an appropriate response to J00 via J02 and J01. COMUSJAPAN is the denial authority for requests for access to HQ USFJ records.

## 7. **Procedures** (Disclosure to Third Parties)

7.1. HQ USFJ personnel will only release information protected by the Privacy Act to other agencies and to third parties when required to do so by DoD 5400.11-R, Privacy Program, Chapter 4 or DoD 5400.7-R, DOD Freedom of Information Act Program or specific regulatory or legal authority. Before release of any information, USFJ personnel should take reasonable efforts to ensure the records are timely, accurate, complete and relevant.

7.2. Some authorized releases of Privacy Act information include the following releases:

7.2.1. To DOD officials and employees who need the record in the performance of their duties and who will use the record for the purpose for which it was maintained.

7.2.2. Required to be disclosed to the public under the Freedom of Information Act.

7.2.3. To the Bureau of the Census for purpose of planning or carrying out a census or survey or related activity pursuant to Title 13, USC.

7.2.4. To a recipient who has provided DOD or COMUSJAPAN with advance written assurance that the record will be used solely as a statistical research or reporting record, and;

7.2.4.1. The record is to be transferred in a form that is not individually identifiable.

7.2.4.2. The record will not be used to make any decisions about the rights, benefits, and entitlements of an individual.

7.2.5. To the National Archives of the U.S. as a record which has sufficient historical or other value to warrant continued preservation by the U.S. government, or for evaluation by the Administrator of General Services or a designee to determine whether the record has such value.

7.2.6. To an agency outside of DOD (or instrumentality of any governmental Jurisdiction within or under the control of the U.S.) for a civil or criminal law enforcement activity authorized by law. The head of the agency or instrumentality, or a designee must submit a written request for the record to the System Manager. The request must specify the particular record or portion desired and the law enforcement purpose for which the record is requested. Blanket request for all records pertaining to an individual will not be accepted. A record may also be disclosed to a law enforcement agency by the HQ USFJ office that maintains the record when criminal conduct is suspected.

7.2.7. To another person under compelling circumstances affecting the health or safety of an individual provided that notification of any such disclosure is sent to the last known address of the individual to whom the record pertains. The individual on whom records are disclosed need not necessarily be the individual whose health or safety is at peril, such as release of dental records on several individuals in order to identify an individual killed or seriously injured in an accident.

7.2.8. To either House of Congress, congressional committee, or subcommittee there-of, and/or joint committees of Congress, in pursuit of matters within its jurisdiction.

7.2.9. To the Comptroller General, or any of his/her authorized representatives, on business of the General Accounting Office.

7.2.10. Pursuant to the order of a court of competent jurisdiction:

7.2.10.1. When a record is disclosed under compulsory legal process and issuance of that order or subpoena is made public by the court which issued it, reasonable efforts must be made to notify the individual to whom the records pertains. This may be accomplished by notifying the individual by mail at the most recent address.

7.2.10.2. When served with an order to disclose a record, an effort will be made to determine whether the issuance of the order is a matter of public record. If it is not, ask to be advised if it becomes public. An accounting of the disclosure will be made at the time of compliance with the order of subpoena.

7.2.11. To a third party with the prior written consent of the individual to whom the record pertains.

7.2.11.1. Each system manager shall keep an accurate accounting of each disclosure

7.2.11.2. Whenever a record is disputed, amended or corrected, the system manager will notify every recipient that the record was amended, corrected or is disputed.

7.2.11.3. The record of accounting will be retained for five years after the last disclosure or for the life of the record, whichever is longer.

7.2.11.4. Upon request of the individual to whom the record pertains, the system manager will make available all information in the accounting of disclosures except those pertaining to disclosures to another agency outside DOD or government instrumentality for law enforcement purposes, unless the system of records is exempt by virtue of a general exemption.

## **8. Amendment Procedures.**

8.1. Any individual is entitled to request amendment of his record. Such requests will be in writing by mail or in person, and should contain sufficient information to locate and identify the record, state the reason for the requested amendment, and provide any additional information the individual considers appropriate to support his request. If available, documentary evidence supporting the requested amendment should be submitted. Requests will not be rejected or required to be resubmitted unless additional information is essential to process the request. It is important that the individual requesting the amendment be identified properly to assure that he/she is seeking to amend a record pertaining to him/her and not another individual.

8.2. System managers will acknowledge in writing any requests for amendment within 10 working days after receipt; whenever practicable, a decision will be made within 30 working days. An individual will be promptly notified when any portion or all of his amendment request has been granted and the record will be amended accordingly.

8.3. If the request for amendment is denied in whole or in part, USFJ personnel will comply with the requirement of DoD 5400.11-R, paragraph C3.2. When the system manager deems denial of the request warranted, the request, proposed reply, recommendation, and a copy of record and related material will be forwarded to the denial authority. If the denial authority concurs, he will promptly notify the individual of the refusal, the basis thereof and the opportunity to request review within 120 days, by writing to the appropriate reviewing authority of the military department concerned. The denial authority should furnish a copy of the refusal letter to the system manager possessing the records.

8.4. Amendments will be limited to factual matters.

8.5. Amendment procedures for personnel records vary among services. Therefore consult: AR 340-21, SECNAVINST 5211.5D, Marine Corps Order P5211.2B and AFI 33-332 for more information.

## **9. Collection of Personal Information from Individuals.**

9.1. Collect personal information, to the greatest extent possible, directly from the individual when the information may result in adverse determinations about a person's rights, benefits, and privileges under Federal programs. Collection of information from third parties should be minimized to reduce the possibility of obtaining erroneous or outdated information.

9.2. Individuals who are asked to supply personal information about themselves will be advised of:

9.2.1. The Federal statute or executive order of the President, which authorized the solicitation of the information, including the brief title or subject of that statute or order. For obtaining the SSN, provide the statute, executive order, departmental or local directive that requires the SSN.

9.2.2. The principle purpose for which it is to be used,

9.2.3. The routine uses to be made of it.

9.2.4. Whether furnishing the information is mandatory or voluntary.

9.2.5. The effects of the individual, if any, on not providing all or part of the information requested.

9.3. This advice must be given regardless of the media used in requesting or recording the information, whether it is a form in the sense (i.e., a preprinted document with a control number and edition date) or a format, questionnaire, survey sheet, or report rendered on a blank sheet.

9.4. As forms are revised or new ones issued, the Privacy Act Statement will be incorporated, if practical, in the body of each one. It should be conspicuously placed so the individual can read the statement before he or she begins to furnish the information requested.

## **10. System of Records.**

10.1. Records systems will be maintained only on that personal information that is both relevant and necessary to accomplish a purpose required by Federal statute or executive order. (This does not convey unlimited authority to collect and maintain information for useful or convenient purpose.) No system of records should be maintained unless first having been published in the Federal Register.

10.2. Records will be maintained with accuracy, relevance, timeliness, and completeness.

10.3. Maintenance of a system of records describing how individuals exercise rights guaranteed by the First Amendment (including religious and political beliefs, freedom of speech and press, the right of assembly and to petition) are prohibited unless authorized by Federal statute; by the individual concerned; or pertinent to an authorized law enforcement activity.

10.4. Administrative and physical safeguards will be established to protect each system of records from unauthorized or unintentional access, disclosure, modification or destruction.

## **11. Exemptions.**

11.1. The Secretary of the military department designates those systems of records that will be exempt from certain provisions of the Privacy Act. Exemptions may be either general or specific. No exemption will be considered automatic, and no system of records can be exempted from all the provisions of the Act. There are two general exemptions - records of the CIA, and those maintained for law enforcement purpose. There are seven specific exemptions:

11.1.1. Classified information that is exempt from release under the Freedom of Information Act.

11.1.2. Investigating material compiled for law enforcement purpose, other than material covered under a general exemption.

11.1.3. Presidential protection files maintained to provide protection to the President or other individuals pursuant to 18 USC 3056.

11.1.4. Statistical files required by statute to be used for statistical purpose.

11.1.5. Employment and investigative information compiled for determining suitability, eligibility, or qualifications for Federal service; Federal contracts and access to classified information, but only to the extent that disclosure would reveal a confidential source.

11.1.6. Testing material for determining a person's qualifications for appointment or promotion in the Federal service, if disclosure would compromise objectivity or fairness of the examination process.

11.1.7. Armed Forces promotion material used to determine potential for promotion, to the extent that disclosure of such material would reveal the identity of a confidential source.

## 12. **Legal Advice.**

12.1. Any question that arises concerning the implementation of any facet of the Privacy Act should be referred to both the Privacy Act Officer and the Office of the Staff Judge Advocate (J06).

## 13. **Annual Report.**

13.1. The HQ USFJ Privacy Act Officer will submit an annual report by 1 Feb of each year. The report is to be completed and sent in accordance with USCINCPACINST 5211.2C, paragraph 6a(4).

## 14. **References.**

14.1. 5 USC 552a (The Privacy Act of 1974)

14.2. DOD DIR 5400.11, Department of Defense Privacy Program, dated 13 Dec 1999.

14.3. AFI 33-332, Air Force Privacy Act Program, dated 8 Nov 2000.

14.4. AR 340-21, The Army Privacy Program, dated 5 Aug 1985.

14.5. SECNAVINST 5211.5D, Personal Privacy and Rights of Individuals Regarding Their Personal Records

  
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