

# **National Sunshine Week 2018**

## *As a Matter of Open Government*

### **Speaker Sessions**

March 14<sup>th</sup>, 2018

United States Census Bureau



# National Sunshine Week 2018

*As a Matter of Open Government*

**March 14-15 • Free Speaker Sessions**

All sessions will be held in Training Room 5 and available via WebEx

REGISTER AT - <https://www.eventbrite.com/e/sunshine-week-speaker-sessions-as-a-matter-of-open-government-tickets-41497478074>

Date and Time	Open Government Principles	Topic	Presenter(s)
March 14 8:45-9 a.m.	Welcome <i>Light Refreshments</i>		Jennifer Goode, Open Government Program, PCO, Census Bureau
March 14 9-9:40 a.m.	Proactive Disclosures, Transparency	Proactive Disclosures: What Agencies Need to Consider	Michael Toland, Office of Privacy and Open Government, OPOG, Department of Commerce
March 14 9:45-10:25 a.m.	Freedom of Information Act, Privacy	Accessing Your Own Records Through the Privacy Act	Vernon Curry, Freedom of Information Act Branch, CAO, Census Bureau
March 14 10:25-11:10 a.m.	Privacy	Privacy Within the Context of Open Government	Byron Crenshaw, Privacy Compliance Branch, PCO, Census Bureau
March 14 11:15-12 p.m.	Open Data, Transparency, Collaboration	Statistical Community of Practice and Engagement: Response to the Evidence-Based Policy Making Final Report	William Savino, COTS Integration Branch, ADSD, Census Bureau
<b>DAY 2</b>			
March 15 8:45-9 a.m.	Welcome <i>Light Refreshments</i>		Jennifer Goode, Open Government Program, PCO, Census Bureau
March 15 9-9:40 a.m.	Websites, Open Data, Participation	Response Outreach Area Mapper (ROAM)	Suzanne McArdle, Cartographic Products and Services Branch, GEO, Census Bureau
March 15 9:45-10:25 a.m.	Public Notices, Transparency, Participation	Federal Register Notices	Mary Lenaiyasa, Paperwork Reduction Act, PCO, Census Bureau
March 15 10:30-11:10 a.m.	Transparency, Whistleblower Protection	Prohibited Personnel Practices and Whistleblower Protection	Kimberly Merrell, Employee Relations Branch, HRD, Census Bureau & Aaron Lloyd, Investigation and Prosecution Division, Office of Special Counsel
March 15 11:15 a.m.-12 p.m.	Transparency, Participation	2020 Census Update	Erika Becker-Medina, Decennial Communications Coordination Office, ADDC, Census Bureau

# **Freedom of Information Act (FOIA) & Privacy Act**

**Sunshine Week  
March 14, 2018  
10:00 -11:00 a.m.**

**Presented by: Vernon Curry & Latasha Hill  
Freedom of Information Act Office  
Phone: 301-763-2127  
Email: [census.foia@census.gov](mailto:census.foia@census.gov)**

# FOIA Guidance Discussion Points

- Overview of the FOIA
- FOIA Exemptions
- Proactive disclosures
- Use of technology
- Privacy Act of 1974

# The Freedom of Information Act

The Freedom of Information Act (FOIA) is a law that gives people the right to access information from the federal government

- FOIA is often described as the law that keeps citizens in the know about their government
- FOIA requires federal agencies to disclose information contained in federal records, unless it falls under one of nine exemptions
- FOIA requests are not limited to U.S. citizens

# The Freedom of Information Act

- FOIA applies only to the Executive Branch of the federal government
- States have their own access laws for state records

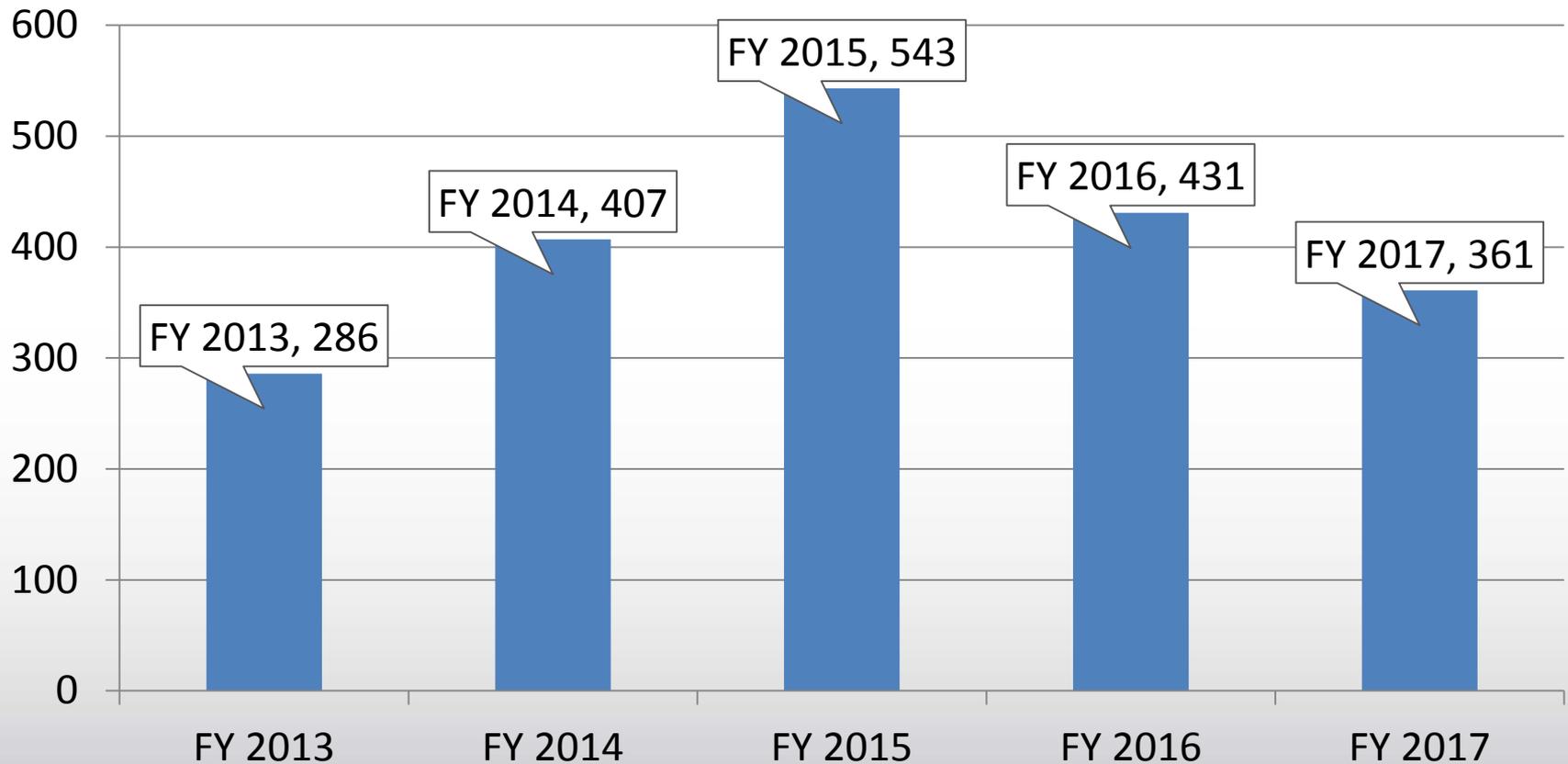
# FOIA

## Legal or other authorities:

- Title 5, U.S.C., Section 552
- 15 CFR, Subpart A
- Census Bureau PPM Chapter C-4
- DAO 205-14



# Number of FOIA/Privacy Act Requests Received by Fiscal Year



# The Freedom of Information Act

- Time limits for responding to a request:
  - Twenty working days
  - In “unusual circumstances,” time period may be extended by written notice to the requester
- FOIA provides for expedited processing of requests in certain instances:
  - Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual
  - The loss of substantial due process rights
  - A matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence
  - If made by a person primarily engaged in disseminating information

# The Freedom of Information Act

- The FOIA establishes three categories of requesters and three types of fees.
  - Commercial
  - News Media, educational
  - All Others
- Fees are assessed based on requester category

# What Constitutes an Agency Record for FOIA Purposes?

Agency records – those either created or obtained by an agency, and those under agency control at the time of the request.

Very broad, includes email, paper documents, tapes, photos and electronic records generally in the possession and control of the agency.

**A record must exist and be in the possession and control of the agency before it is considered for release.**

# The Freedom of Information Act

- Congress established nine exemptions from disclosure for certain categories of information to protect against certain harms, such as an invasion of personal privacy, or harm to law enforcement investigations
  - Exemptions protect interests such as information protected under statutes such as Title 13, personal privacy, and deliberative process communications

# FOIA Exemptions

- (b)(1) – Protects Classified Matters of National Defense or Foreign Policy
- (b)(2) – Internal Personnel Rules & Practices
- (b)(3) – Information Specifically Exempted by Other Statutes
- (b)(4) – Trade Secrets, Commercial or Financial Information
- (b)(5) – Privileged communication within or between agencies (deliberative process)

# FOIA Exemptions cont.

- (b)(6) – Personal Information Affecting an Individual’s Privacy
- (b)(7) – Investigatory Records Compiled for Law Enforcement Purposes
- (b)(8) – Records of Financial Institutions
- (b)(9) – Geographical & Geophysical Information Concerning Wells

# FOIA Exclusions

- (c)(1) Exclusion - Where the subject of a criminal investigation or proceeding is unaware of the existence of records concerning a pending investigation and disclosure of such records would interfere with the investigation.
- (c)(2) Exclusion - Where there are informant records maintained by a criminal law enforcement agency and the individual's status as an informant is not known.
- (c)(3) Exclusion - Where there are classified FBI records pertaining to foreign intelligence, counterintelligence or international terrorism records.

# Proactive Disclosures

- Census Bureau proactive disclosures:
  - emergency preparedness and response data products,
  - Disclosure Review Board meeting minutes,
  - Data Stewardship policies, and
  - updated custom tabulation requests and FOIA request logs
- Posting Congressional Correspondence logs on a quarterly basis

# Proactive Disclosures

- Other Census Bureau efforts to increase proactive disclosures:
  - Review FOIA request responses to identify frequently requested disclosed information,
  - Link frequently requested disclosed information to the Census FOIA Library page
  - Advertise steps to increase proactive disclosures in DOJ Chief FOIA Officer Report

# Use of Technology

- Started using FOIAonline in October 2012.
  - Government-wide system for managing FOIA requests
  - Public can enter and monitor the progress of requests through FOIAonline
  - FOIA Offices can manage FOIA request from analyst assignment to fulfillment and closeout
  - Provides automated reports

# Privacy Act of 1974 Overview

# Purpose of the Privacy Act of 1974

- (1) Limiting the collection, maintenance, use, and disclosure of personally identifiable information.
- (2) Allow individuals to request access to, amend of, and an accounting of disclosures concerning records about themselves

# Privacy Act of 1974

## Policy Objectives

- (1) Restrict disclosure of personally identifiable maintained by a federal agency
- (2) Grant access rights to individuals agency records on themselves
- (3) Grant rights to individuals to amend agency records on themselves that they have proven to be inaccurate, untimely, or complete
- (4) Agencies to establish and adhere to a code of “fair information practices regarding collection, maintenance, dissemination

# Authorities and Guidance

- Federal Records Act
- Paperwork Reduction Act
- Privacy Act of 1974
- E-Government Act of 2002 (OMG Memo M-03-22)
- E.O. 13402, Identity Task Force
- OMB Memo M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information.



# Can a Federal Employee Make a Privacy Act request?

Federal employees can submit Privacy Act requests as a private citizen.

- Cannot be done during normal duty hours.
- Cannot use government equipment.
- Cannot be done in his/her official capacity.

# Privacy Act Request

- (1) Requests involving information pertaining to an individual that is in a system of record or file.
  - **Examples:** W-2, SF-50, Medical Records, and Leave and Earnings Statements.
- (2) Requests for employee-employer services.
  - **Examples:** test calculations of retirement benefits, explanations of health and life insurance programs, and explanations of tax withholding options.

# How are Requests to be Filed?

- Requests must be in writing.
- Privacy Act Requests may only be mailed or faxed in.



# No Disclosure Without Consent

- **General Rule** – NO disclosure unless you have:
  1. Written request from the subject or
  2. Prior written consent from the subject authorizing a 3<sup>rd</sup> party to gain access
  3. One of the 12 Exceptions established in 5 U.S.C. 552a(b)

# What is Certification of Identity Form BC300?

- When you request records about yourself, you must verify your identity.
- In accordance with 15 CFR Section 4.24(d), the U.S. Census Bureau requires you to provide us with sufficient information to identify you when you submit requests by mail or otherwise not in person under the Privacy Act of 1974, 5 U.S.C. Section 552a.

## CERTIFICATION OF IDENTITY

### PRIVACY ACT STATEMENT

In accordance with 15 CFR Section 4.24(d), the U.S. Census Bureau requires you provide us with sufficient information to identify you when you submit requests by mail or otherwise not in person under the Privacy Act of 1974, 5 U.S.C. Section 552a. We take this step to ensure that we do not wrongfully disclose the records of individuals who are the subject of U.S. Census Bureau systems of records. Providing this information is voluntary, however, if you do not provide it we will be unable to take action on your request. If you provide false information on this statement you may be subject to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(f)(3).

### REQUESTER INFORMATION

1. Full name of requester/ Subject of record(s) sought	Last – Please print or type	First – Please print or type	Middle – Please print or type
	Place of Birth – Please print or type		Date of Birth (mm/dd/yyyy)
2. Current address	Address – Number and street – Please print or type		
	City – Please print or type	State	ZIP Code
	Email Address – Please print or type		
3. Requester status Mark (X) appropriate box.	<input type="checkbox"/> Self		
	<input type="checkbox"/> Guardian of individual whose record(s) is sought – Enclose copy of appointing document,		
	<input type="checkbox"/> Parent of minor child whose record(s) is sought		
4. Information being requested – Please describe in as much detail as possible	Please print or type		
5. Declaration	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 I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by 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(f)(3) by a fine of not more than \$5,000.		
	Original Signature of Requester	Date	
6. Authorization to release information to another person.	a. If you are authorizing information relating to yourself to be released to another person – Please fill in the information below <i>g</i>		
	Name of authorized recipient – Please print or type		
<b>Office Use Only</b> PA/FOIA Control #	b. Further pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Census Bureau to release the above-described information relating to me.		
	Original Signature of Requester	Date	

# Agency Requirements

The PA maintains federal agencies must:

- Maintain only relevant and necessary information
- Collect information directly from the source
- Provide a Privacy Act Statement when collecting information
- Publish new and amended System of Record Notices (SORN) in the Federal Register
- Establish rules of conduct for those who work with records protected by the PA
- Establish appropriate administrative and technical controls on PA information

# Exceptions and Exemptions

- **Exceptions – When can an agency provide someone’s records to a 3<sup>rd</sup> party without the individuals consent?**
- **Exemptions – When can an agency deny someone access to their own records?**

# Twelve Exceptions

- (b)(1) Intra-agency disclosures – “need to know”
- (b)(2) Disclosure required by FOIA
- (b)(3) Routine Use
- (b)(4) Bureau of Census
- (b)(5) Statistical research and reporting
- (b)(6) NARA (National Archives and Records)

# Twelve Exceptions

- (b)(7) Law enforcement
- (b)(8) Compelling circumstances affecting health and safety
- (b)(9) Congress
- (b)(10) GAO (General Accountability Office)
- (b)(11) Court Order
- (b)(12) Debt Collection Act

# Exceptions and Exemptions

- **Exceptions – When can an agency provide someone’s records to a 3<sup>rd</sup> party without the individuals consent?**
- **Exemptions – When can an agency deny someone access to their own records?**

# Exemptions

- (k)(1) – Protects Classified Matters of National Defense or Foreign Policy
- (k)(2) – Internal Personnel Rules & Practices
- (k)(3) – Information Specifically Exempted by Other Statutes
- (k)(4) – Trade Secrets, Commercial or Financial Information
- (k)(5) – Privileged Interagency or Intra-Agency Memoranda or Letters

# Exemptions cont.

- (k)(6) – Personal Information Affecting an Individual’s Privacy
- (k)(7) – Investigatory Records Compiled for Law Enforcement Purposes
- (k)(8) – Records of Financial Institutions
- (k)(9) – Geographical & Geophysical Information Concerning Wells

# The Privacy Act and FOIA Exemptions (b)(6) and (7)(C)

- There is no Privacy Act equivalent to FOIA Exemptions 6 and 7(c).
- Third parties may have a legitimate privacy interest in the information
- Privacy Act requests are processed under the Privacy Act and FOIA

# Questions?

**Chief Administrative Office,  
Freedom of Information/Privacy Act Office, Rm 3J424,  
(301)-763-2127, [census.efoia@census.gov](mailto:census.efoia@census.gov)**

# Privacy In Open Government

Presented by the Privacy Compliance Branch  
Policy Coordination Office



**Byron A. Crenshaw, CIPP/G**  
Chief, Privacy Compliance Branch  
U.S. Census Bureau  
Policy Coordination Office

# Privacy and Open Government

## Is this an oxymoron?

# Open Government PRIVACY

# Privacy & Confidentiality

## Privacy

Respecting individuals' freedom from unauthorized and unwarranted intrusion into their personal information.

Relates to *individuals*

Relates to *information*

## Confidentiality

Protecting identifiable information from unauthorized disclosure once it is collected.

# Privacy & Confidentiality

## Privacy

Respecting individuals' freedom from unauthorized and unwarranted intrusion into their personal information.

**“Don't ask!”**

## Confidentiality

Protecting identifiable information from unauthorized disclosure once it is collected.

**“Don't tell!”**

# Open Government Principles



Transparency

Collaboration

Participation

# Open Government Principles

## Transparency

promotes accountability by providing the public with information about what the government is doing.

## Participation

allows members of the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society.

## Collaboration

improves the effectiveness of Government by encouraging partnerships and cooperation within the Federal Government, across levels of government, and between the Government, private institutions and the public.

*Core value for an effective open government program!*

# Privacy In Open Government E-Government Act

Enacted on December 17, 2002, with an effective date for most provisions of April 17, 2003. Its stated purpose is to improve the management and promotion of electronic government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by establishing a framework of measures that require using Internet-based information technology to improve citizen access to government information and services, and for other purposes.

Section 208 establishes the requirement for Privacy Impact Assessments on Federally owned or operated IT systems.

# Privacy In Open Government

## Section 208 of the E-Government Act

The purpose of this section is to ensure sufficient protections for the privacy of personal information as agencies implement citizen-centered electronic Government.

### Three Sections to Section 208

1. Description of the Privacy Impact Assessment
2. The Contents of the Privacy Impact Assessment
3. Privacy Policy in Machine Readable Format

# Privacy In Open Government

## Privacy Impact Assessments (PIAs)

### AGENCY ACTIVITIES

- (i) conduct a privacy impact assessment;
- (ii) ensure the review of the privacy impact assessment by the Chief Information Officer, or equivalent official, as determined by the head of the agency; and
- (iii) if practicable, after completion of the review under clause (ii), make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means.

# Privacy In Open Government

## Privacy Impact Assessments (PIAs)

### Major Subjects in the PIA

- Type of data collected, maintained, or disseminated by the IT system
- How data is treated once received in the IT system
- Statutes and regulations associated with the data collection (SORN, PRA, Records Retention, etc.)

### Common Stakeholders

- Office of Information Security
- System Owner (SO) and the Information System Security Officer (ISSO)
- Program managers
- PRA Officer
- Records Officer
- Privacy Officer

# Privacy In Open Government

## Privacy Impact Assessments (PIAs)

What is a Privacy Impact Assessment? (Section (2) (B))

A Privacy Impact Assessment, or PIA, is an evaluation tool used to identify and mitigate privacy risks among IT systems. The PIA must answer the following questions:

1. What information is to be collected, maintained, or disseminated?
2. Why the information is being collected, maintained, or disseminated?
3. What is the intended use of the information that is to be collected, maintained, or disseminated?
4. With whom the information will be shared?
5. What notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared?
6. How will the information be kept secured?
7. Is a System of Records being created under Section 552(a) of title 5, United States Code (the Privacy Act)?

# Privacy In Open Government

## Privacy Impact Assessments (PIAs)

1. What information is to be collected, maintained, or disseminated?

### Type of PII (examples)

- Name
- Address
- Social Security Number
- Date of Birth
- Passport
- Driver's License

### Content of the PII

- Health Information
- Financial Information
- Criminal History
- Crime Victimization
- Consumer Expenditure
- Employment Information

# Privacy In Open Government

## Privacy Impact Assessments (PIAs)

2. Why the information is being collected, maintained, or disseminated?

The purpose for the collection. Together with question 3, this provides greater insight into the mission and purpose of the data collection.

# Privacy In Open Government

## Privacy Impact Assessments (PIAs)

3. What is the intended use of the information that is to be collected, maintained, or disseminated?

This question compliments question 2 by providing greater insight into the mission and purpose of the data collection as it addresses the question of the intent of the collection.

# Privacy In Open Government

## Privacy Impact Assessments (PIAs)

### 4. With whom the information will be shared?

- To inform the public of who will have access to their data, i.e., other Census employees, sponsoring agencies, third- party entities, members of the public, etc.

# Privacy In Open Government

## Privacy Impact Assessments (PIAs)

5. What notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared?

- Is the collection mandatory by law?
- Is the sharing of data permitted by law?
- If not, do we provide an opportunity for the respondent to determine what is collected and how information collected is shared?

# Privacy In Open Government

## Privacy Impact Assessments (PIAs)

### 6. How will the information be kept secured?

- Requirements of the Federal Information Security Management Act of 2002 (Title III of the E-Government Act)
- Data Loss Prevention
- Sworn status
- Etc.

# Privacy In Open Government

## Privacy Impact Assessments (PIAs)

7. Is a System of Records being created under Section 552(a) of title 5, United States Code (the Privacy Act)?

- All data collection where PII is stored or retrieved by a personal identifier requires a SORN to be published in the Federal Register
- The SORN must be identified in the PIA

# The Privacy Act

The Privacy Act of 1974 establishes a Code of Fair Information Practice that:

- 1. governs the collection, maintenance, use, and dissemination of personally identifiable information about individuals that is maintained in systems of records by federal agencies.
- 2. provides individuals with a means by which to seek access to and amendment of their records, and sets forth various agency record-keeping requirements.

# The Privacy Act

The Privacy Act of 1974 establishes a Code of Fair Information Practice that:

- 3. prohibits the disclosure of information from a System of Records (SOR) maintained by an agency, without the written consent of the individual.
- 4. mandates that agencies publish a **Systems of Record Notice (SORN)** in the *Federal Register* whenever a SOR is created, amended, or deleted.

# The Privacy Act

What is a “system of records?”

“The term ‘system or records’ 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.”

PII = Any Unique Identifying Information Assigned to an Individual

Name

Social Security Number

Employee ID Number

Passport number

Driver’s License Number

Unique symbol assigned to an individual, for example:

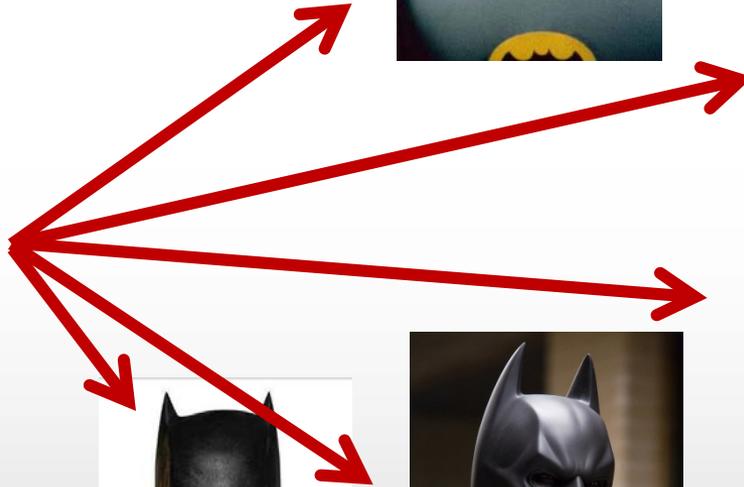
# The Privacy Act

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# The Privacy Act

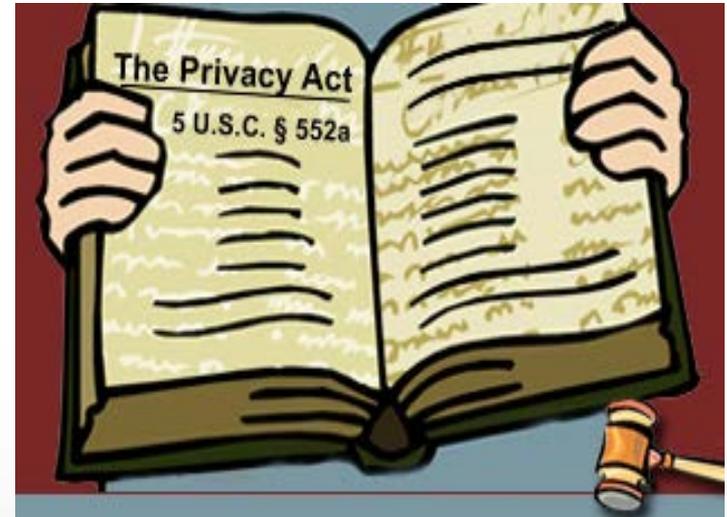


# The Privacy Act

What is a SORN and Why Do We Need Them?

A SORN is a public notice—published in the Federal Register—required by the Privacy Act when a Federal agency maintains a Privacy Act system of records (SOR).

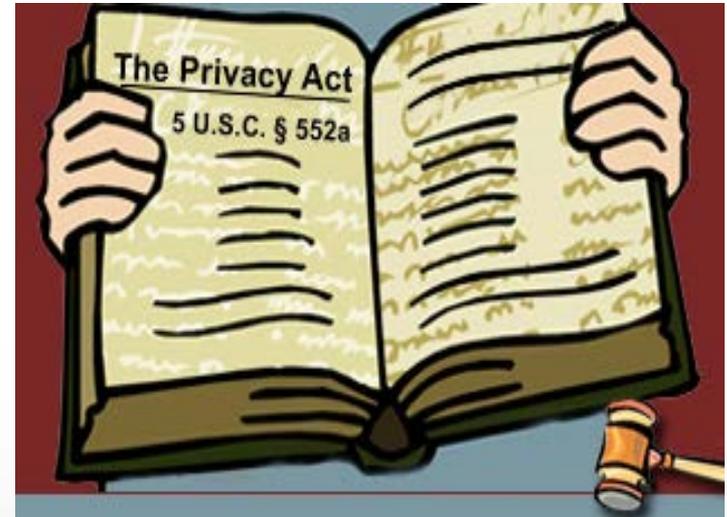
A SORN contains descriptive information about a SOR.



# The Privacy Act

## Privacy Act Requirements

- A notice (SORN) must be created for all Privacy Act systems of records
- System owners/managers are responsible for creating & updating SORNs
- The System Notice must be published and maintained in the Federal Register 30 days before collecting the data



# The Privacy Act

To further promote transparency, the Privacy Act also requires Federal agencies to:

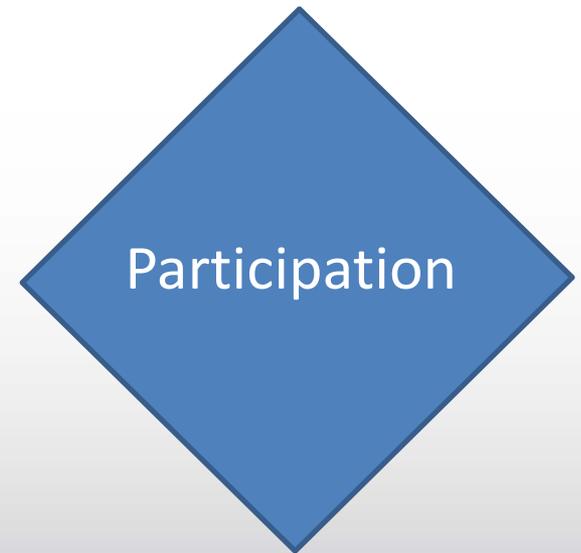
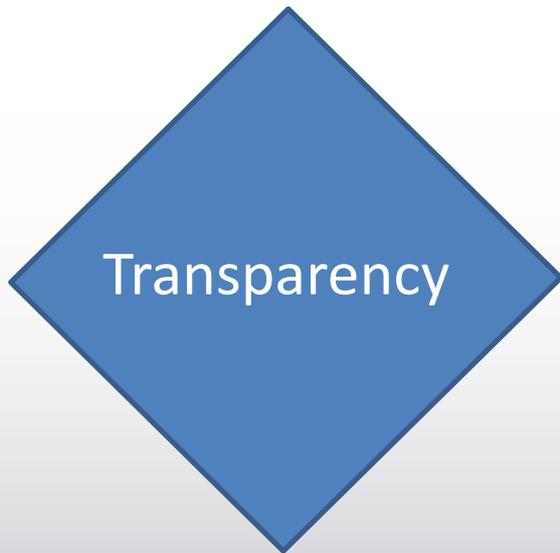
- maintain in its records only such information about an individual as is relevant and necessary to accomplish it's purpose,
- inform each individual (who we asks to supply information) of the following:

## The Privacy Act Statement

- The Privacy Act Statement may be on the form which is uses to collect the information or on a separate form that can be retained by the data provider.

In closing, Privacy in Open Government includes, but is not limited to.....

- Privacy Impact Assessments
- Privacy Act System of Record Notices
- Privacy Act Statements....which allows for greater.....



# Recommendations on Implementing The Promise of Evidence-Based Policymaking Report from The ICSP/SCOPE/Metadata Team

*Report provided by: Bill Savino, Branch Chief COTS integration ADSD  
And Census Liaison to ICSP/SCOPE  
Sunshine Week 2018*

# Law, Report, Recommendation

- 3/30/2016 - H.R.1831 - Evidence-Based Policymaking Commission Act of 2016 Became Public Law No: 114-140
- 9/07/17 - CEP Final Report: The Promise of Evidence-Based Policymaking
- 10/06/17 - ICSP/SCPOE/Metadata Teams Recommendations Report

# Short Term

## 1) Data Quality

Transparency, efficiency, effectiveness, trust, accuracy, and completeness are all aspects, in some sense, of data quality.

- a) Catalog of statistical data sets
- b) Catalog of statistical classifications
- c) Glossary of Terms and definitions

# Short Term cont...

## 2) Building standards

- a) Data Documentation Initiative (DDI)
- b) Generic Statistical Information Model (GSIM)
- c) Statistical Data and Metadata eXchange (SDMX)

# Short Term cont...

## 3) Agency Roles

- a) Chief Data Officers
- b) Chief Evaluation Officers
- c) Local/SME Data Stewards

# Middle Term

## 1) Data discovery

### a) Functionality of a central data set catalog

#### 1) Discovery

#### 2) Understanding

#### 3) Usage

### b) Descriptions linked to variables

## 2) Taxonomies

### a) Organize, harmonize, and standardize

# Long Term

- 1) Proposed National Statistical Data Service
- 2) Government wide integrated metadata systems
- 3) Changes in Laws & Cross agency funding

# Congressional Action Pre Report

- 4/26/16 - H.R.5051 OPEN Government Data Act - Introduced
- 12/12/16 – S.2852 OPEN Government Data Act - Passed Senate
- 3/29/17 - H.R.1770 OPEN Government Data Act - Introduced
- 7/24/17 – S.760 Open, Public, Electronic, and Necessary Government Data Act - Introduced

# Congressional Action Post Report

- 10/31/17 - S.2046 Foundations for Evidence-Based Policymaking Act of 2017 - Introduced
- 11/16/17 – H.R.4174 Foundations for Evidence-Based Policymaking Act of 2017 – Passed House