

§ 1205.1

5 CFR Ch. II (1–1–07 Edition)

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AUTHORITY: 5 U.S.C. 552a and 1204.

SOURCE: 64 FR 51043, Sept. 21, 1999, unless otherwise noted.

Subpart A—General Provisions

§ 1205.1 Purpose.

This subpart implements the Privacy Act of 1974, 5 U.S.C. 552a, (“the Act”) by stating the procedures by which individuals may determine the existence of, seek access to, and request amendment of Board records concerning themselves, and by stating the requirements that apply to Board employees’ use and disclosure of those records.

§ 1205.2 Policy and scope.

The Board’s policy is to apply these regulations to all records that can be retrieved from a system of records under the Board’s control by using an individual’s name or by using a number, symbol, or other way to identify the individual. These regulations, however, do not govern the rights of the parties in adversary proceedings before the Board to obtain discovery from adverse parties; those rights are governed by part 1201 and part 1209 of this chapter. These regulations also are not meant to allow the alteration, either before or after the Board has issued a decision on an appeal, of evidence presented during the Board’s adjudication of the appeal.

§ 1205.3 Definitions.

The definitions of 5 U.S.C. 552a apply to this part. In addition, as used in this part:

(a) *Inquiry* means a request by an individual regarding whether the Board has a record that refers to that individual.

(b) *Request for access* means a request by an individual to look at or copy a record.

(c) *Request for amendment* means a request by an individual to change the substance of a particular record by addition, deletion, or other correction.

(d) *Requester* means the individual requesting access to or amendment of a record. The individual may be either the person to whom the requested record refers, a legal guardian acting on behalf of the individual, or a representative designated by that individual.

§ 1205.4 Disclosure of Privacy Act records.

(a) Except as provided in 5 U.S.C. 552a(b), the Board will not disclose any personal record information from systems of records it maintains to any individual other than the individual to whom the record refers, or to any other agency, without the express written consent of the individual to whom the record refers, or his or her representative or attorney.

(b) The Board’s staff will take necessary steps, in accordance with the law and these regulations, to protect the security and integrity of the records and the personal privacy interests of the subjects of the records.

Subpart B—Procedures for Obtaining Records

§ 1205.11 Access to Board records.

(a) *Submission of request.* Inquiries or requests for access to records must be submitted to the appropriate regional or field office of the Board, or to the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419–0001. If the requester has reason to believe that the records are located in a regional or field office, the request must be submitted to that office. Requests submitted to the regional or field office must be addressed to the Regional Director or Chief Administrative Judge

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at the appropriate regional or field office listed in appendix II of 5 CFR part 1201.

(b) *Form.* Each submission must contain the following information:

(1) The name, address, and telephone number of the individual to whom the record refers;

(2) The name, address, and telephone number of the individual making the request if the requester is someone other than the person to whom the record refers, such as a legal guardian or an attorney, along with evidence of the relationship. Evidence of the relationship may consist of an authenticated copy of:

(i) The birth certificate of the minor child, and

(ii) The court document appointing the individual legal guardian, or

(iii) An agreement for representation signed by the individual to whom the record refers;

(3) Any additional information that may assist the Board in responding to the request, such as the name of the agency that may have taken an action against an individual, or the docket number of the individual's case;

(4) The date of the inquiry or request;

(5) The inquirer's or requester's signature; and

(6) A conspicuous indication, both on the envelope and the letter, that the inquiry is a "PRIVACY ACT REQUEST".

(c) *Identification.* Each submission must follow the identification requirements stated in § 1205.13 of this part.

(d) *Payment.* Records usually will not be released until fees have been received.

[64 FR 51043, Sept. 21, 1999, as amended at 65 FR 48886, Aug. 10, 2000]

§ 1205.12 Time limits and determinations.

(a) *Board determinations.* The Board will acknowledge the request for access to records and make a determination on whether to grant it within 20 workdays after it receives the request, except under the unusual circumstances described below:

(1) When the Board needs to obtain the records from other Board offices or a Federal Records Center;

(2) When it needs to obtain and examine a large number of records;

(3) When it needs to consult with another agency that has a substantial interest in the records requested; or

(4) When other extenuating circumstances prevent the Board from processing the request within the 20-day period.

(b) *Time extensions.* When unusual circumstances exist, the Board may extend the time for making a determination on the request for no more than 10 additional workdays. If it does so, it will notify the requester of the extension.

(c) *Improper request.* If a request or an appeal is not properly labeled, does not contain the necessary identifying information, or is submitted to the wrong office, the time period for processing the request will begin when the correct official receives the properly labeled request and the necessary information.

(d) *Determining officials.* The Clerk of the Board, a Regional Director, or a Chief Administrative Judge will make determinations on requests.

[64 FR 51043, Sept. 21, 1999; 64 FR 71267, Dec. 21, 1999]

§ 1205.13 Identification.

(a) *In person.* Each requester must present satisfactory proof of identity. The following items, which are listed in order of the Board's preference, are acceptable proof of the requester's identity when the request is made in person:

(1) A document showing the requester's photograph;

(2) A document showing the requester's signature; or

(3) If the items described in paragraphs (a)(1) and (2) of the section are not available, a signed statement in which the requester asserts his or her identity and acknowledges understanding that misrepresentation of identity in order to obtain a record is a misdemeanor and subject to a fine of up to \$5,000 under 5 U.S.C. 552a(i)(3).

(b) *By mail.* The identification of a requester making a request by mail must be certified by a notary public or equivalent official or contain other information to identify the requester. Information could be the date of birth of