

## FOR WHAT IT'S WORTH

by: Chester E. Brost

The Federal Government is a vast storehouse of information. While some of this information is routinely made available on request, a good portion of it—often the most useful portion—is not.

Fortunately, a citizen's right of access to Federal Government information was significantly aided by the passage of two important pieces of legislation: the Freedom of Information Act and the Privacy Act. Passed in 1966 and 1974 respectively, these acts guarantee a citizen's right to inspect Government documents, subject only to specific exceptions. Notwithstanding, if the Government does deny access, it must explain its reasons, and this explanation can be challenged in a court of law.

The Government generates a wide-range of documents that may, at one point or another, be of public interest. Specific examples of non-public information that may be released under the Freedom of Information Act (FOIA) includes: background reports on consumer products; data on the efficacy of drugs; safety records of automobiles and airlines; and so forth.

The FOIA is based on the presumption that government and information of government belong to the public. The FOIA states that a person has a right of access to any document, file or other record in the possession of any executive agency of the Federal Government—subject to nine specific exemptions. Government employees face possible sanctions if they arbitrarily withhold requested information.

In addition to the FOIA, the Privacy Act was enacted. This act statutorily recognizes an individual's right to privacy in regard to Government files concerning him. Both the FOIA and Privacy Act provide for access to Government records. But while the FOIA is designed to obtain many different kinds of information, the Privacy Act is intended to assist individuals in obtaining information about themselves and prevent certain disclosure of this information.

More specifically, the Privacy Act allows an individual to review almost all federal files pertaining to himself. It requires that these files be accurate, relevant and, up-to-date, and allows the subjects of the files to challenge the accuracy of the information contained in them. It prescribes that information gathered for one purpose may not be used for another, and that whenever possible, the information be obtained directly from the individual. And perhaps most important of all, it gives the individual significant control over how information concerning him is used. With certain exception, it specifies that records containing personal information be disclosed to others only with the consent of the individual to whom the record pertains.

The Privacy Act places restrictions on the disclosure of personally identifiable information and also prescribes that there be no secret record system on individuals.

### WHICH ACT TO USE

If you are interested in obtaining documents concerning the general activities of Government (i.e. the Food and Drug Administration's findings concerning the adverse effects of certain anti-depressants), you should make your request under the FOIA. If, on the other hand, you are seeking records pertaining solely to you (i.e. military records), you should make your request under the Privacy Act.

### HOW TO REQUEST DOCUMENTS UNDER THE FREEDOM OF INFORMATION ACT

The FOIA applies only to documents held by the administrative agencies of the executive branch of the Federal Government. The executive branch includes most executive departments and office, military departments, government corporations, government controlled corporations, and independent regulatory agencies. All records in possession of these entities must be released upon request unless one or more of the nine exemptions are applicable.

### MAKING THE REQUEST

The first step is to determine what you want and state your request as precisely as possible, since the law says your request must "reasonably describe" the records you seek. You do not need to specify a document by name or title. What is necessary is that you provide a description reasonable enough to allow a government employee who is familiar with the agencies files to locate the records you seek. The more precise you make your request, the more prompt your response is likely to be. The Government has ten working days to respond to an initial request. And because agencies seldom volunteer knowledge of other potentially valuable information, and are not required to do research for you, it is a good idea when requesting your documents that you also ask for "other related documents" as well.

Other than the 9 exemptions another barrier to information access is cost. The law permits agencies to charge for the direct cost of searching and copying documents. If you do request copies you should state that you will pay costs up to a stated amount.

### THE NINE EXEMPTIONS

Government agencies may refuse to disclose information if it falls within one of the nine specified categories.

1) Those stamped Top Secret, Secret, or Confidential. However, non-sensitive portions of these documents may be obtained.

2) Records pertaining to internal personnel rules of an agency.

3) Records specifically exempt by statute.

4) Trade secrets.

5) Inter-agency memoranda.

6) Personnel and medical files.

7) Investigatory records compiled for law enforcement purpose, but only the extent that these records would (A) interfere with enforcement (B) deprive a person a fair trial (C) constitute an unwarranted invasion of privacy (D) Disclose the identity of an informant (E) Disclose investigation techniques, or (F) endanger the life of law enforcement.

8) Information concerning financial institutions.

9) Information concerning wells.

It should also be noted that this act applies only to Federal Government Agencies. Most states have similar laws that apply to state government information. Still to come in this series: The FOIA appeal; The Privacy Act request, and; The Privacy Act appeal. This is just FOR WHAT IT'S WORTH.

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Chuck

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