NATIONAL COMMISSION ON MILITARY, NATIONAL, AND PUBLIC SERVICE

1 CFR Part 426
RIN 3262–AA01

Privacy Act Regulations


ACTION: Interim final rule; request for comments.

SUMMARY: This rule provides guidance and assigns responsibility for the privacy program of the National Commission on Military, National, and Public Service (the “Commission”) pursuant to the Privacy Act of 1974 and applicable Office of Management Budget (OMB) guidance.

DATES: This interim final rule is effective on May 2, 2018. Written comments on the interim final rule should be received on or before June 1, 2018.

ADDRESSES: You may send comments, identified by Regulatory Information Number (RIN) number, by any of the following methods:

- Email: Please send comments to legal@inspire2serve.gov and include the RIN in the subject line of the message.
- Website: http://www.inspire2serve.gov/content/share-your-thoughts. Follow the instructions on the page to submit a comment and include the docket number in the comment.

All submissions received should include the RIN for this rulemaking. If the Commission cannot read your comment due to technical difficulties and cannot contact you for clarification, the Commission may not be able to consider your comment.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions, or any additional information about this interim final regulation, please contact Rachel Rikleen, at (703) 571–3760 or by email at rachel.r.rikleen@inspire2serve.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 2016, the President signed into law the National Defense Authorization Act for Fiscal Year 2017, Public Law 114–328, 130 Stat. 2130. To establish procedures to facilitate public interaction with the Commission, the agency is issuing interim final regulations under the Privacy Act of 1974.

II. Summary of Interim Final Rule

The authority for this rulemaking is 5 U.S.C. 552a, the Privacy Act of 1974, as amended (the Privacy Act), which requires implementation by Federal agencies. This action ensures that the Commission’s collection, use, maintenance, or dissemination of information about individuals for purposes of discharging its statutory responsibilities will be performed in accordance with the Privacy Act and applicable guidance from the Office of Management and Budget (OMB). This rule:

- Establishes rules of conduct for the Commission personnel and contractors involved in the design, development, operation, or maintenance of any system of records.
- Establishes appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual about whom information is maintained.
- Establishes procedures for inquiring about implementation of the Privacy Act of 1974, acquiring access to records, amending or correcting an individual’s record, and appealing a refusal to amend or correct a record.
- Ensures that laws, policies, procedures, and systems for protecting individual privacy rights are implemented throughout the Commission.

III. Procedural Requirements

Administrative Procedure Act

This interim final rule parallels the procedures currently used by other agencies to implement the Privacy Act. The Commission has determined that good cause exists under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3) to waive the notice and comment and delayed effective requirements of the Administrative Procedure Act to publish this regulation as an interim final rule with a request for comments. The Commission is a temporary, independent establishment with statutorily-defined deadlines and a limited existence. It is the intent of the agency to protect private information. In light of this agency’s limited duration, as set forth in its enabling legislation, and the need for timely access, the Commission has decided that full notice and comment rulemaking is impracticable and contrary to public policy. Additionally, the Commission has determined that full notice and comment rulemaking is not necessary as this rule constitutes a rule of agency procedure under 5 U.S.C. 553(b). This is because the rule generally establishes procedures to facilitate requests under the Privacy Act. It does not change the substantive standards by which the agency evaluates such requests. Finally, the Commission has determined that this interim final rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3). The 30-day delay in effective date typically allows regulated entities time to revise their policies in light of a regulation that governs those entities’ conduct. Here, such a delay is unnecessary because the regulation facilitates requests under the Privacy Act.

Executive Orders 12866 and 13771

This rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required. It is also not subject to the requirements found in Executive Order 13771.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require State, local, or tribal governments to spend more than $100 million in one year. This rule will not mandate any requirements for State, local or tribal governments, nor will it affect private sector costs.

Regulatory Flexibility Act

The Commission certifies this interim rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

It has been determined that this rule does not impose reporting or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

List of Subjects in 1 CFR Part 426

Administrative practice and procedure, Privacy, Reporting and recordkeeping requirements.
Therefore, for reasons discussed in the preamble, the National Commission on Military, National, and Public Service amends title 1, chapter IV of the Code of Federal Regulations by adding part 426 to read as follows:

PART 426—NATIONAL COMMISSION ON MILITARY, NATIONAL, AND PUBLIC SERVICE

Subpart A—Implementation of the Privacy Act of 1974

Sec.
426.101 Purpose and scope.
426.102 Definitions.
426.103 Inquiries about systems of records or implementation of the Privacy Act.
426.104 Procedures for accessing records pertaining to an individual.
426.105 Identification required when requesting access to records pertaining to an individual.
426.106 Procedures for amending or correcting an individual's record.
426.107 Procedures for appealing a refusal to amend or correct a record.
426.108 Fees charged to locate, review, or copy records.
426.109 Procedures for maintaining accounts of disclosures.

Subpart B—Reserved

Authority: 5 U.S.C. 552a(f).

Subpart A—Implementation of the Privacy Act of 1974

§ 426.101 Purpose and scope.

The regulations in this part set forth the Commission's procedures under the Privacy Act, as required by 5 U.S.C. 552a(f), with respect to systems of records maintained by the Commission. The rules in this part apply to all records maintained by the Commission that are retrieved by an individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether a Commission system of records contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals.

§ 426.102 Definitions.

The definitions in subsection (a) of the Privacy Act (5 U.S.C. 552a(a)) apply to this part. In addition, as used in this part:

Business day means a calendar day, excluding Saturdays, Sundays, and legal public holidays.

Chair means the Chair of the Commission, or his or her designee;

Commission means the National Commission on Military, National, and Public Service;

Commission system means a system of records maintained by the Commission;

General Counsel means the General Counsel of the Commission, or his or her designee.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Privacy Act or Act means the Privacy Act of 1974, as amended (5 U.S.C. 552a);

You, your, or other references to the reader of the regulations in this part are meant to apply to the individual to whom a record pertains.

§ 426.103 Inquiries about systems of records or implementation of the Privacy Act.

Inquiries about the Commission's systems of records or implementation of the Privacy Act should be sent to the following address: National Commission on Military, National, and Public Service, Office of the General Counsel, 2530 Crystal Drive, Suite 1000, Box No. 63, Arlington, VA 22202.

§ 426.104 Procedures for accessing records pertaining to an individual.

The following procedures apply to records that are contained in a Commission system:

(a) You may request to be notified if a system of records that you name contains records pertaining to you, and to review any such records, by writing to the Office of the General Counsel (see § 426.103). You also may call the Office of the General Counsel at 703–571–3742 on business days, between the hours of 9 a.m. and 5 p.m., to schedule an appointment to make such a request in person. A request for records should be presented in writing and should identify specifically the Commission system(s) involved. Your request to access records pertaining to you will be treated as a request under both the Privacy Act, as implemented by this part, and the Freedom of Information Act (5 U.S.C. 552), as implemented by subpart B of this part.

(b) Access to the records, or to any other information pertaining to you that is contained in the system, shall be provided if the identification requirements of § 426.105 are satisfied and the records are determined otherwise to be releasable under the Privacy Act and these regulations. The Commission shall provide you an opportunity to have a copy made of any such records about you. Only one copy of each requested record will be supplied, based on the fee schedule in § 426.108.

(c) The Commission will comply promptly with requests made in person at scheduled appointments, if the requirements of this section are met and the records sought are immediately available. The Commission will acknowledge, within 10 business days, mailed requests or personal requests for records that are not immediately available, and the information requested will be provided promptly thereafter.

(d) If you make your request in person at a scheduled appointment, you may, upon your request, be accompanied by a person of your choice to review your records. The Commission may require that you furnish a written statement authorizing discussion of your records in the accompanying person's presence. A record may be disclosed to a representative chosen by you upon your proper written consent.

(e) Medical or psychological records pertaining to you shall be disclosed to you unless, in the judgment of the Commission, access to such records might have an adverse effect upon you. When such a determination has been made, the Commission may refuse to disclose such information directly to you. The Commission will, however, disclose this information to you through a licensed physician designated by you in writing.

(f) If you are unsatisfied with an adverse determination on your request to access records pertaining to you, you may appeal that determination using the procedures set forth in § 426.107(a).

§ 426.105 Identification required when requesting access to records pertaining to an individual.

The Commission will require reasonable identification of all individuals who request access to records in a Commission system to ensure that records are disclosed to the proper person.

(a) The amount of personal identification required will vary with the sensitivity of the record involved. In general, if you request disclosure in person, you will be required to show an identification card, such as a driver's license, containing your photograph and sample signature. However, with regard to records in Commission systems that contain particularly sensitive and/or detailed personal information, the Commission reserves the right to require additional means of identification as are appropriate under the circumstances. These means include, but are not limited to, requiring you to sign a
statement under oath as to your identity,
acknowledging that you are aware of the
criminal penalties for requesting or
obtaining records under false pretenses
or falsifying information (see 5 U.S.C.
552a(j)(3); 18 U.S.C. 1001).
(b) If you request disclosure by mail,
the Commission will request such
information as may be necessary to
ensure that you are properly identified
and for a response to be sent.

Authorized means to achieve this goal
include, but are not limited to, requiring
that a mail request include a signed,
notarized statement asserting your
identity or a statement signed under oath
as described in subsection (a) of
this section.

§ 426.106 Procedures for amending or
correcting an individual's record.
(a) You are entitled to request
amendments to or corrections of records
pertaining to you that you believe are
not accurate, relevant, timely, or
complete, pursuant to the provisions of
the Privacy Act, including 5 U.S.C.
552a(d)(2). Such a request should be
made in writing and addressed to the
Office of the General Counsel (see §
426.103).
(b) Your request for amendments or
corrections should specify the
following:
(1) The particular record that you are
seeking to amend or correct;
(2) The Commission system from
which the record was retrieved;
(3) The precise correction or
amendment you desire, preferably in the
form of an edited copy of the record
reflecting the desired modification; and
(4) Your reasons for requesting
amendment or correction of the record.
(c) The Commission will acknowledge
a request for amendment or correction of
a record within 10 business days of
receipt, unless the request can be
processed and the individual informed
of the General Counsel’s decision on the
request within that 10-day period.
(d) After receiving and investigating
your request, the General Counsel
agrees that the record is not accurate, timely,
or complete, based on a preponderance
of the evidence, then the record will be
corrected or amended promptly. The
record will be deleted without regard to
its accuracy, if the record is not relevant
or necessary to accomplish the
Commission’s function for which the
record was provided or is maintained.
In either case, you will be informed in
writing of the amendment, correction, or
deletion. In addition, if accounting was
made of prior disclosures of the record,
all previous recipients of the record will
be informed of the corrective action
taken.
(e) If after receiving and investigating
your request, the General Counsel
does not agree that the record should be
amended or corrected, you will be
informed promptly in writing of the
refusal to amend or correct the record
and the reason for this decision. You
also will be informed that you may
appeal this refusal in accordance with
§ 426.107.
(f) Requests to amend or correct a
record governed by the regulations of
another agency will be forwarded to
such agency for processing, and you
will be informed in writing of this
referral.

§ 426.107 Procedures for appealing a
refusal to amend or correct a record.
(a) You may appeal a refusal to amend
or correct a record to the Chair of the
Commission. Such appeal must be made
in writing within 30 business days of
your receipt of the initial refusal to
amend or correct your record. Your
appeal should be sent to the Office of
the General Counsel (see § 426.103),
should indicate that it is an appeal, and
should include the basis for the appeal.
(b) The Chair will review your request
to amend or correct the record, the
General Counsel’s refusal, and any other
pertinent material relating to the appeal.
No hearing will be held.
(c) The Chair shall render his or her
decision on your appeal within 30
business days of its receipt by the
Commission, unless the Chair, for good
cause shown, extends the 30-day period.
Should the Chair extend the appeal
period, you will be informed in writing of
the extension and the circumstances of
the delay.
(d) If the Chair determines that the
record that is the subject of the appeal
should be amended or corrected, the
record will be so modified, and you will
be informed in writing of the
amendment or correction. Where an
accounting was made of prior
disclosures of the record, all previous
recipients of the record will be informed
of the corrective action taken.
(e) If your appeal is denied, you will
be informed in writing of the following:
(1) The denial and the reasons for the
denial;
(2) That you may submit to the
Commission a concise statement setting
forth the reasons for your disagreement
as to the disputed record. Under the
procedures set forth in paragraph (f) of
this section, your statement will be
disclosed whenever the disputed record
is disclosed; and
(3) That you may seek judicial review
of the Chair’s determination under 5
U.S.C. 552a(g)(1).
(f) Whenever you submit a statement
of disagreement to the Commission in
accordance with paragraph (e)(2) of this
section, the record will be annotated to
indicate that it is disputed. In any
subsequent disclosure, a copy of your
statement of disagreement will be
disclosed with the record. If the
Commission deems it appropriate, a
concise statement of the Chair’s reasons
for denying your appeal also may be
disclosed with the record. While you
will have access to this statement of the
Chair’s reasons for denying your appeal,
such statement will not be subject to
correction or amendment. Where an
accounting was made of prior
disclosures of the record, all previous
recipients of the record will be provided
a copy of your statement of
disagreement, as well as any statement
of the Chair’s reasons for denying your
appeal deemed appropriate.

§ 426.108 Fees charged to locate, review,
and copy records.
(a) The Commission will charge no
fees for search time or for any other time
expended by the Commission to review
a record. However, the Commission may
charge fees where you request that a
copy be made of a record to which you
have been granted access. Where a copy
of the record must be made in order to
provide access to the record (e.g.,
computer printout where no screen
reading is available), the copy will be
made available to you without cost.
(b) Copies of records made by
photocopy or similar process will be
charged to you at the rate of $0.12 per
page. Where records are not susceptible
to photocopying (e.g., punch cards,
magnetic tapes, or oversize materials),
you will be charged actual cost as
determined on a case-by-case basis.
Copying fees will not be charged if the
cost of collecting a fee would be equal
to or greater than the fee itself.
Copying fees for contemporaneous requests by
the same individual shall be aggregated
to determine the total fee.
(c) Special and additional services
provided at your request, such as
certification or authentication, postal
insurance, and special mailing
arrangement costs, will be charged to
you at the market rate.
(d) You may request that a copying fee
not be charged or, alternatively, be
reduced, by submitting a written
petition to the Commission’s General
Counsel (see § 426.103) asserting that
you are indigent. If the General Counsel
determines, based on the petition, that
you are indigent and that the
Commission’s resources permit a waiver
of all or part of the fee, the General
Counsel may, in his or her discretion, waive or reduce the copying fee. (e) All fees shall be paid before any copying request is undertaken.

§ 426.109 Procedures for maintaining accounts of disclosures.

(a) The Office of the General Counsel shall maintain a log containing the date, nature, and purpose of each disclosure of a record to any person or to another agency. Such accounting also shall contain the name and address of the person or agency to whom each disclosure was made. This log need not include disclosures made to the Commission’s employees in the course of their official duties, or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Commission will retain the accounting of each disclosure for at least five years after the disclosure or for the life of the record that was disclosed.

(c) The Commission will make the accounting of disclosures of a record pertaining to you available to you at your request. Such a request should be made in accordance with the procedures set forth in § 426.104. This paragraph (c) does not apply to disclosures made for law enforcement purposes made under 5 U.S.C. 552a(b)(7).

Subpart B—[Reserved]


Joseph Heck,
Chairman.

[FR Doc. 2018–09209 Filed 5–1–18; 8:45 am]

BILLING CODE 3510–YE–P