

# The Privacy Act of 1974

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How it affects what you do as a Warden  
And  
How we have to handle  
Personally Identifiable Information (PII)

The Privacy Act of 1974 (Public Law 93-579) and US policies regarding PII wrap around everything we do as Consular officers, consular agents and wardens.

- Because of privacy concerns, Wardens, (and their alternates) must sign a Memorandum of Agreement committing them to safeguard names and other identifiers of the U.S. citizens whom they are to notify in cases of emergency.

## In particular,

- a) Access to information must be limited to wardens and authorized alternates.
- b) That storage and control of the information provided to wardens must be adequate to prevent access by unauthorized persons.
- c) That no dissemination of, or access to, the information provided to me by the U.S. Embassy shall be permitted except in accordance with my duties as a warden. Further, the information provided to me shall be returned to the Embassy/Consulate upon completion of my tenure as a warden.

# So What Can I say??

- Always ask yourself what is in the Public Domain, first!! You may disclose what is already in the media, but you may not disclose any other information without the waiver.
- Always ask yourself what is absolutely necessary to disclose to preserve the person's health and safety.
- DON'T share any information beyond what is absolutely necessary.

# Categories of US citizens:

- U.S. Citizens Arrested/Convicted Overseas: Unless arrest and/or conviction records in post's host country are matters of public knowledge or have received widespread media attention locally or stateside, you are not permitted under the Privacy Act to release information about an arrested and/or convicted U.S. citizen without either the latter's written permission or a determination that the release of the information falls under one of the exceptions to the Privacy Act.
- Deceased Individuals: The Privacy Act does not protect records pertaining to deceased individuals. However, next-of-kin may have a "common law" privacy interest in not having information about the deceased released, e.g., if it could embarrass, endanger or cause emotional distress to them.

# Categories of US citizens:

- Minors: The Privacy Act's protections apply to records pertaining to all U.S. citizens and LPRs, including minors. Information about a minor generally may be released to the minor's parent(s). [5 U.S.C. 552a\(h\)](#) of the Privacy Act – Rights of Legal Guardians – provides:
- "Rights of legal guardians: For purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual."
- Parents, however, do not have an absolute right to the information under the Privacy Act and the wishes of the minor may, in some cases, override those of the parent(s). Normally, if you have been advised by a minor age 14 or older that he or she does not want any information released to a parent or guardian, you should honor those wishes absent the presence of compelling circumstances affecting the health or safety of the minor child.

# Keeping Records & The Privacy Act

- Permits any U.S. citizen or lawful permanent resident (LPR) to access records about him or her contained in a Department of State “system of records,” to learn about certain disclosures of those records, and to request amendment of any inaccuracies (Written comments, even if of a derogatory or speculative nature, whether in the body of the text or in marginal notes, must generally be released.)
- Prohibits the disclosure of records from a Privacy Act “system of records” by any method (written, oral, or electronic) unless the individual to whom the records pertain has consented, in writing to the disclosure.
- Requires that the Department keep a written accounting of many disclosures.

# The Importance of a Privacy Act Waiver

- Unless an exception applies the Privacy Act requires “a written request by, or . . . the prior written consent of, the individual to whom the record pertains”, before any such records can be released.
- Form [DS-5505](#), Authorization for Release of Information Under the Privacy Act, known colloquially as the Privacy Act Waiver, or PAW, is the document to be used when seeking to obtain permission to release information on behalf of our citizens.

# Obtaining a Privacy Act Waiver:

- You should not pressure (or appear to pressure) a U.S. citizen/non-citizen national to sign a Privacy Act Waiver (PAW).
- Explain the individual's Privacy Act rights.
- Also note that it may be helpful to advise that a waiver can help facilitate the Department's communications to US citizens about emergency situations.

# Some guidelines:

- **Oral Waivers Are Not Acceptable:** A faxed written waiver, which is followed by the signed original, can be accepted. An "oral" waiver, however, may not.
- Note that the absence of a written waiver does not preclude you from simply passing messages on behalf of a U.S. citizen. For example, you can act upon a telephonic request from a U.S. citizen prisoner, for example, to relay a message to his attorney; however, a written waiver is required to transmit the prisoner's Privacy Act-protected file to that same attorney.

# Waiver Duration And Applicability:

- The Privacy Act is silent as to the temporal duration and scope of a Privacy Act waiver; however, as a general rule, the Department considers that a waiver granted in connection with a specific incident - e.g., arrest or illness – is limited to the duration of the incident.

# Personally Identifiable Information:

- Personally Identifiable Information is to be protected for all individuals, per Department policy. We are bound by privacy laws in the case of US citizens, but we are also bound by policy. Policy states that we are to safeguard all PII.
- Why? To protect against Identity Theft and fraudulent use of PII.

# The End

- If you ever have any questions and concerns, please just contact the ACS Office.
- Make sure you sign your Warden Agreement and hand it in!