

FECA & The Privacy Act

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Disclaimer

- ▶ This is NOT a comprehensive Privacy Act presentation—it is specific to OWCP records maintained in DOL/GOVT-1, a government-wide System of Records (SOR).
- ▶ OWCP has authority over the disclosure of the record (even when it is in the temporary physical custody of another agency).
- ▶ If you need Privacy Act advice regarding records maintained by your own agency under your own SOR, or under an OPM government-wide SOR, contact your Office of General Counsel.



Overview

FECA Records

Overview of the Privacy Act

Overview of DOL/GOVT-1

Application of DOL/GOVT-1 to Requests for FECA Records

Examples of Records Requests

FECA Records

FECA RECORDS ARE **CONFIDENTIAL RECORDS** SUBJECT TO:

The Privacy Act of 1974

DOL/GOVT-1

20 C.F.R. § 10.10 - All records relating to claims for benefits, including copies of such records maintained by an employer, are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974 or under the routine uses provided by DOL/GOVT-1 if such release is consistent with the purpose for which the record was created.

FECA Records

- ▶ What is a FECA Record?
 - ▶ Entire OWCP claim files
 - ▶ Documents within OWCP claim files
 - ▶ Documents originating from the FECA claims process
 - ▶ Documents created for the purpose of administering FECA claims
 - ▶ Documents/information collected pursuant to DOL's statutory authority to administer FECA claims
 - ▶ Information retrieved from these documents, even if set down in another document

5 U.S.C. § 552a – any record which is contained in a system of records—a group of records under control of an agency from which information is retrieved by the name of the individual or some identifying number, symbol or other “identifying particular” (e.g., OWCP claim file numbers) assigned to the individual.

FECA Records

ALL FECA RECORDS, **INCLUDING EMPLOYING AGENCY COPIES**, ARE:



**Official OWCP Records
Controlled by OWCP**

20 C.F.R. § 10.11 – All records relating to claims for benefits filed under the FECA, including any copies of such records maintained by an employing agency, are covered by the government-wide Privacy Act system of records entitled DOL/GOVT-1 (OWCP, Federal Employees' Compensation Act File). This system of records is maintained by and under the control of OWCP, and, as such, all records covered by DOL/GOVT-1 are official records of OWCP.

FECA Records

RECORDS RETENTION

Copies of FECA records in possession of employing agencies are subject to the records retention schedule in **DAA-GRS-2016-0015-0012 and 0013**.

- Destroy **original** forms (CA-1s, CA-2s, etc. with wet signatures) **15 years** after compensation ceases or claim filing deadline passes.
- Destroy **copies** of papers in DOL's possession **3 years** after compensation ceases or claim filing deadline passes.

Copies of FECA records in agency possession may be destroyed per that agency's information sanitization procedures.

FECA Records

FECA RECORDS MAY ONLY BE DISCLOSED IN ACCORDANCE WITH:

The Privacy Act of 1974

DOL's Interpretation of its Routine Uses in DOL/GOVT-1

DOJ OLC Opinion – “In light of the importance of FECA records to the processing and adjudication of claims, DOL reasonably concluded that the question of when and how to disclose FECA records ‘aris[es] under’ FECA, and falls within the Secretary’s jurisdiction. . . . DOL has authority to control the disclosure of FECA records. . . .”

See https://www.justice.gov/sites/default/files/olc/opinions/2012/11/31/ctrl-discl-feca-recs_0.pdf.

The Privacy Act

APPLIES TO:

- Records in “systems of records”
- Records retrieved by name or other identifying particular assigned to an individual (such as FECA records)

5 U.S.C. 552a(a)(4): The term record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history that individual that is maintained by an agency, including, but not limited to, his education, financial contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual...

5 U.S.C. 552a(a)(5): The term “system of records” means a group of 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.

The Privacy Act



Disclosure with Consent

- ▶ **Disclosure** → This includes written and oral disclosures. This includes disclosures from paper file copies, from ECOMP, and from AQS/ARi.
- ▶ **Consent** → Is there a valid signed waiver from the FECA claimant that authorizes disclosure of the his/her FECA file?

5 U.S.C. § 552a – “No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains . . .”

The Privacy Act

PRIVACY ACT AUTHORIZATION AND WAIVER

I, _____, authorize the U.S. Environmental Protection Agency (EPA) and the United States Department of Labor, Office of Workers' Compensation Programs (OWCP) to disclose to the following individuals and/or entities: _____ any information regarding my claim for compensation filed with the Department of Labor's Office of Workers' Compensation (OWCP) under the Federal Employees' Compensation Act, OWCP File No. _____:

This authorization is effective on the date it is signed, and is effective until specifically revoked by me in writing.

A copy of this authorization shall have the same force and effect as the signed original.

Signature of Claimant

Name of Claimant

Date: _____

A valid waiver must contain the following:

- ▶ Who can disclose the records (here EPA, OWCP)
- ▶ To whom the records are to be disclosed
- ▶ OWCP claim number(s)
- ▶ Claimant signature

The Privacy Act

Statutory Exceptions to the “No Disclosure Without Consent” Rule



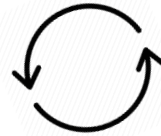
COURT ORDER

- ▶ Order must be signed by a judge (subpoena not sufficient)
- ▶ Order must be from a federal court (state court not sufficient)

5 U.S.C. § 552a(b)(11) – No disclosure without consent “unless disclosure of the record would be . . . pursuant to the order of a court of competent jurisdiction.”

The Privacy Act

Statutory Exceptions to the “No Disclosure Without Consent” Rule



ROUTINE USE

- ▶ Compatibility Required – Requestor’s use of FECA records must be compatible with processing/administering FECA claims.

5 U.S.C. § § 552a(a)(7), (b)(3) – No disclosure without consent “unless for a routine use,” defined as “the use of such record for a purpose which is compatible with the purpose for which it was collected.”

The Privacy Act

Statutory Exceptions to the
“No Disclosure Without Consent” Rule – 5 U.S.C. 552a(b)(1):
to officers and employees of the agency which maintains the record
on a “need to know” basis



***Agency “Need to Know” Does **NOT** Apply to
Employing Agency use of FECA Records***

- ▶ “Need to Know” applies to the agency which controls and maintains the records which, for FECA records, is DOL.

5 U.S.C. § 552a(b)(1) – No disclosure without consent unless “to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties.”

The Privacy Act

- ▶ Other statutory exceptions exist, but are rarely applicable. Some include:
 - ▶ To Census Bureau
 - ▶ Aggregate data for statistical purposes
 - ▶ NARA
 - ▶ Congress
 - ▶ Comptroller General
 - ▶ For compelling health or safety reasons (as determined by DOL)
 - ▶ For criminal law enforcement activity (as determined by DOL)

The Privacy Act

So . . . What Does This All Mean?



Absent a signed waiver, court order, or other statutory exception, FECA records can only be released pursuant to the routine uses established by DOL and listed in [DOL/GOVT-1](#).

DOL/GOVT-1

Routine Uses

- ▶ DOL/GOVT-1 is the government-wide System of Records (SOR) for FECA claim files.
- ▶ The routine uses for FECA records are listed in the System of Records Notice (SORN) for DOL/GOVT-1; some are also found in DOL's Universal Routine Uses which also apply to FECA records.
- ▶ DOL must determine if a routine use applies, *not* the agency seeking permission to disclose a record.
 - ▶ DOL/GOVT-1 SORN – <https://www.dol.gov/sol/privacy/dol-govt-1.htm>
 - ▶ DOL Universal Routine Uses – <https://www.dol.gov/sol/privacy/intro.htm>
 - ▶ See *also* 81 Fed. Reg. 47,418 (July 21, 2016).

DOL/GOVT-1

Routine Use Examples

- ▶ To the employing agency at the time of injury to verify billing, check the status of the claim, consider rehire, evaluate its safety and health program, etc. (b).
- ▶ To potential employers for return to work consideration (c).
- ▶ To rehabilitation agencies for evaluation (d).
- ▶ To physicians for use in treating the claimant (e).
- ▶ To health insurance or medical plans for clarification of billing responsibility (f).
- ▶ To labor unions assisting the employee before OWCP (g).
- ▶ To the employing agency OIG for investigating FECA fraud (s).
- ▶ To agencies including DOJ when they are asserting a litigation defense based on FECA exclusivity or defending an FTCA claim based on the same incident (b).

DOL/GOVT-1

Routine Uses Disclosures Are Limited

- ▶ When OWCP or an agency releases data from a FECA claim file pursuant to a routine use, they can only release that part of the record that is necessary to meet the routine use.
 - ▶ **Example #1** → The treating physician needs the medical on file to treat the claimant, but doesn't need the claimant's direct deposit information.
 - ▶ **Example #2** → The claimant's supervisor needs to know the claimant's work restrictions to facilitate return to work, but doesn't need the claimant's medical reports.
- ▶ It is a violation of the Privacy Act to disclose any information not covered by the routine uses to anyone

DOL/GOVT-1

Evaluating Requests for FECA file Information

When someone requests FECA file information, and they do not have a signed waiver from the claimant, or a court order, the Workers' Compensation Specialist must evaluate whether there is a routine use that allows for disclosure of the information.

- ✓ **Who** is requesting the information?
- ✓ **What** information do they want?
- ✓ **Why** do they want the information (compatibility)?

Human Resources

What, if any, FECA file information can the EA workers' comp staff provide to HR?

- ▶ Disclosure is permissible only where it involves agency management of the FECA claim (compatibility).
 - ▶ **Routine Use (b)** – allows for disclosure to “Federal agencies that employed the claimant at the time of . . . injury . . . in order to verify billing, to assist in administering FECA, to answer questions about the status of the claim, to consider rehire, retention or other actions the agency may be required to take with regard to the claim.”
 - ▶ If HR requests FECA file information for any purpose other than processing/administering the FECA claim, then disclosure is not permissible (compatibility).

Human Resources

No Disclosure for EEO, Personnel, Disciplinary, or Other Administrative Matters

Employing Agency Handbook (CA-810), Chapter 9-2:

- ▶ You cannot “use copies of information from claim files in connection with EEO complaints, disciplinary actions or other administrative actions without the employee’s consent.”
- ▶ It is longstanding OWCP policy that documents in the FECA file may not be made available to, or used by, agency human resources officers for any kind of personnel action, and this generally includes termination procedures

Examples

Routine Use Disclosure – YES or NO???

Workers' Compensation Specialist (WCS)

- ▶ A Workers' Compensation Specialist's (WCS) accesses a FECA claimant's file to ensure that the CA-1 was appropriately submitted to OWCP? Was the WCS's access permissible?

YES, if assigned to the case/ authorized to access the file.

NO, if not assigned to the case/authorized to access the file.

Examples

Routine Use Disclosure – YES or NO???

WCS's SUPERVISOR

- ▶ A WCS' supervisor requests an employee's FECA claim file in order to monitor the WCS's work and complete the WCS's performance review? Is disclosure permissible?

NO

Examples

Routine Use Disclosure – YES or NO???

Claimant's Supervisor

- ▶ A FECA claimant's supervisor asks for the claimant's medical restrictions to determine whether any light duty assignments are available for the claimant.

YES

Examples

Routine Use Disclosure – YES or NO???

Claimant's Supervisor

- ▶ A FECA claimant's supervisor asks for all of the claimant's medical records to determine whether any light duty assignments are available for the claimant.

NO

Examples

Routine Use Disclosure – YES or NO???

RESTORATION (5 U.S.C. § 8151)

- ▶ Employee Relations requests a claimant's medical restrictions because it's month 11 and they are trying to establish that the claimant can go back to their former position in accordance with 5 U.S.C. 8151. Is disclosure permissible?

YES

See Routine Use B (retention, rehire)

Examples

Routine Use Disclosure – YES or NO???

TERMINATION

- ▶ ER/LR requests a claimant's medical restrictions for purposes of termination/removal because of those medical restrictions? Is disclosure permissible?

NO

See Routine Use B (no references to termination)

Examples

Routine Use Disclosure – YES or NO???

EEO Investigator

- ▶ An EEO investigator requests a FECA claim file for purposes of investigating a discrimination complaint? Is disclosure permissible?

NO

Examples

Routine Use Disclosure – YES or NO???

Office of General Counsel

- ▶ An OGC attorney asks for a claimant's FECA file? Can the WCS provide the file?

Usually no, but...

1) Yes, relevant portions of the file can be provided if the attorney is defending an FTCA claim involving the same incident or is raising a defense in litigation based on FECA exclusivity.

2) Relevant portions of the file can also be provided if the attorney is providing legal advice necessary for the proper adjudication of the FECA claim (for these situations, please consult our office!)

The WCS cannot disclose the file to OGC for EEO, Title VII, or other personnel matters.

Examples

Routine Use Disclosure – YES or NO???

Office of Inspector General

- ▶ An agency OIG requests documents from a FECA file for the purpose of investigating whether a FECA claimant made false statements in connection with A FECA claim, such as telling physicians they were in too much pain to walk when they were observed taking frequent jogs on weekends.

YES, if the parts of the file requested are relevant to the fraud investigation.

Examples

Routine Use Disclosure – YES or NO???

Occupational Safety and Health

- ▶ An agency OSH program wants information about a specific type of injury in order to investigate ways to reduce that type of injury. They ask for aggregate data showing the number, location, dates, and types of injuries, while withholding claimant names and personal identifying information.

YES—routine use (b)

Examples

Routine Use Disclosure – YES or NO???

Occupational Safety and Health

- ▶ An Occupational Safety and Health Program asks an employee who was injured at work to fill out a form documenting the accident—including the type of injury sustained and how it occurred—with the purpose of avoiding future such accidents. They also ask for a report from the employee's supervisor describing the incident.

Not a retrieval from the FECA file, so does not implicate DOL's Privacy Act policies

RESOURCES

Main DOL Privacy Act Systems Page

<https://www.dol.gov/agencies/sol/privacy/>

DOL/GOVT-1 Systems Notice

<https://www.dol.gov/agencies/sol/privacy/govt-1>

DOL Universal Routine Uses

<http://www.dol.gov/sol/privacy/intro.htm>

DOL's Assertion of Control

<http://www.dol.gov/sol/privacy/gov-wide.htm>

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