

REPORTING RELEASES IN VIOLATION OF THE PRIVACY ACT

1. **PURPOSE.** To provide information on what to do in response to a release of personal information in violation of the Privacy Act of 1974 (PA).
2. **REFERENCES.**
 - a. 5 U.S.C. 552a, The Privacy Act of 1974
 - b. DoDD 5400.11-R, Department of Defense Privacy Program
 - c. AR 340-21, The Army Privacy Program
 - d. Memorandum, Office of the Secretary of Defense, *Safeguarding and Responding to the Breach of Personally Identifiable Information*, June 5, 2009
3. **BOTTOM LINE.** When an individual's personally identifiable information has been released without authorization, the incident must be reported to the PA officer on post, who will verify a valid breach has occurred, report it through the proper channels, and notify the individual whose information was released.
4. **DISCUSSION.** PA protects personal information of Army service members and federal employees. It specifically protects Personally Identifiable Information (PII). This consists of information that can be used to trace an individual's identity. Examples include a name, Social Security number, date of birth, home address, and medical information. Medical information is also protected by the Health Insurance and Portability Act (HIPAA), an entirely separate act. Disclosure under the PA is not permitted with notable exceptions (such as consent of the individual that is the subject of the record).
 - a. When an individual's PII has been released to a third party in violation of PA, the first step is to report it. The release should be reported to the PA Officer at Fort Knox. The PA Officer is currently [REDACTED] DSN 464-7500. The PA Officer assists with determining if a valid breach has occurred, reporting the incident through the proper channels, and notifying the individual.
 - b. A valid breach occurs when an individual's PII is released without authorization. This requires three elements. First, the individual's whose PII was released must be a U.S. citizen or permanent resident. Second, the PII must have been kept in a system of records. A system of records is any group of records from which information is withdrawn using a personal identified, such as your name or Social Security number. Third, the PII must have been released without authorization. This means that the individual that is the subject did not authorize it and it does not fall under any of the twelve exceptions in the PA. Examples of common exceptions include statistical research, "routine use", and information used for law enforcement purposes. The release of the PII may be through print, electronically, disclosure, and even through emails.
 - c. Once the PA Officer has determined that a valid breach has occurred, he must report it through the proper channels. He must report the PII released, the individuals involved, and a brief synopsis of what happened to the U.S. Computer Emergency Readiness Team

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(USCERT) within one hour and the U.S. Army PII Incident Reporting System within twenty-four hours. In doing so, he also categorizes the release as either high or moderate.

- d. When the PA Officer has reported the breach through the proper channels, he must also notify the individual that is the subject of the PII. In coordination with the Staff Judge Advocate, the PA Officer sends a letter notifying the individual of what information was released, the circumstances surrounding it, and what steps he can take to protect himself. The letter must be sent as soon as possible, but no later than ten days from the PA Officer's notification of the breach.
- e. The PA provides for both civil and criminal penalties for certain releases of PII. If a civil court finds that the release of PII was intentional or malicious, then the United States can be made to pay actual damages resulting from the release of the PII, as well as court and attorney's fees. In no case is the plaintiff entitled to less than one thousand dollars though. Similarly, if a criminal court finds that the officer or government employee of the agency responsible released the information knowingly and willfully, the defendant will be convicted of a misdemeanor and made to pay up to five thousand dollars in fines. This includes contractors, who are considered government employees of the agency.