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# Chapter 7. Freedom of Information Act (FOIA) and Privacy Act (PA)

## 1. General Information on the FOIA and PA

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**Introduction** This topic contains general information on the Freedom of Information Act (FOIA) and Privacy Act (PA), including:

- definitions of FOIA and PA terms
  - processing FOIA and PA requests
  - charges and fees for processing FOIA and PA requests
  - timeframes for responding to FOIA and PA requests
  - the language to use in interim responses to FOIA and PA requests, and
  - controlling FOIA/PA requests.
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**Change Date** Updated February 2013

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**a. Definitions of FOIA and PA Terms** The following definitions apply to this chapter:

- **Individual:** A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. Nonresident foreign nationals *do not*, in their right, qualify as an “individual” for Privacy Act (PA) purposes.
  - **Any Person:** Defined by the Freedom of Information Act (FOIA) as any person including foreign citizens, partnerships, corporations, associations, and foreign, state and local governments, but not Federal government agencies, who request records.
  - **Maintains:** To collect, keep, use, disseminate, or any combination of these record-keeping functions. (*Note:* As used in the PA and VA regulations, this word connotes control over and, therefore, responsibility and accountability for, systems of records.)
  - **Possession:** Records actually in VA files and which are used for VA functions.
  - **Control:** The ability to disclose or amend a record.
  - **Written Consent:** May be provided through a VA form or through the acceptance of a letter authorizing disclosure.
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## 1. General Information on the FOIA and PA, Continued

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**a. Definitions of FOIA and PA Terms**  
(continued)

- ***Routine Use***: This term is unique to the PA and is defined as the disclosure of a record for a reason that is compatible with the purpose for which it was collected. A routine use is one that is relatable and necessary to a purpose for collecting the record. To be effective, a routine use must be properly published in the *Federal Register*.
- ***Valid Consent***: Consent provided by the individual who is the subject of the record involved.
- ***Validation Requirement***: Signature of the individual who is the subject of the record; a statement that authorizes a particular release of information.
- ***FOIA Request***: A written request that includes the signature and date of the requester and reasonably describes the records being sought. The request may be addressed to the FOIA Officer.
- ***Reasonably Described***: A description of the records sought is considered sufficient if it enables a professional employee who is familiar with the subject matter to locate the record in a reasonable period of time.
- ***Search***: To review, manually or by automated means, agency records in order to locate records that are responsive to a request.
- ***Reason for Request***: The FOIA requires the disclosure to any person (except fugitives, or foreign governments seeking intelligence agency information) for any reasonably described agency record upon receipt of a written, signed and dated request. VA may not require the requester to provide a reason for the request.
- ***Limitation on Records***: VA is not required to create or analyze records for a requester. A request cannot be applied to a record created or received after the receipt of the request.
- ***Agency Record***: Any item, collection, or grouping of information about an individual that is maintained by the Department, such as, but not limited to, his or her education, financial transactions, personal history, or medical history, and that contains his/her name or identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voice print or a photograph. (*Note*: This definition does *not* distinguish between data and information. Both are within the scope of the definition.). Records so defined are considered an agency record that an individual may request under the provisions of the FOIA.

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## 1. General Information on the FOIA and PA, Continued

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### a. Definitions of FOIA and PA Terms (continued)

- **Access:** The process of permitting individuals to see or obtain copies of records about themselves from a PA system of records.
  - **Disclosure:** Providing information from a system of records, by any means, to anyone other than the individual by whose name or other identifier the record is retrieved.
- 

### b. Processing FOIA and PA Requests

The following table shows the steps needed to process a FOIA or PA or request.

Step	Action
1	Know the laws and regulations pertaining to FOIA and PA.
2	Determine the type of information requested and if the information requested is contained within a VA record.
3	Provide only the information that is requested.
4	Release the documents within the appropriate time limits.
5	If access is denied, afford the requester his/her appeal rights.
6	Document all actions.

**Reference:** For more information on the FOIA, see the [FOIA Home web site](#).

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## 1. General Information on the FOIA and PA, Continued

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### c. Charges and Fees for Processing FOIA and PA Requests

Fees for processing FOIA requests and for making records available under the PA will be charged in accordance with VA regulation 38 CFR 1.577(f). No fees will be charged for any search or review of the record.

Fees will be waived as required by VA regulation 38 CFR 1.577(g).

When an individual requests such services as certification, authentication, or other special services not required under the PA, fees in addition to those required for copying, will be assessed in accordance with VA regulation 38 CFR 1.526(i) or (j), or any other applicable law.

#### *Notes:*

- The office releasing the records is responsible for assessing, collecting, and depositing fees.
  - Payments may be by check or money order made payable to the Department of Veterans Affairs.
  - Payments must be deposited with the Agent Cashier. The office depositing the check must ensure that the payment is identified as a FOIA or PA payment.
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### d. Timeframes for Responding to FOIA and PA Requests

Current law requires that VA make a determination within *20 business days*.

The law also states that if a request is received by a component that is not the custodian of the requested records; the request must be forwarded to the appropriate component *within 20 business days* of the date of receipt by the agency.

If a request is forwarded, the receiving office should process the request *within 20 business days* after receipt of the referral or *30 days* of the receipt of the request by the agency, **whichever is earlier**.

In the event the request cannot be completed within the 20 business day time period, an interim letter must be sent to the requester explaining the reason for the delay.

The law states that the period for responding begins on the date of receipt of the request by the office in possession of the requested records.

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## 1. General Information on the FOIA and PA, Continued

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### e. Language to Use in Interim Responses to FOIA and PA Requests

In the event an interim response is required in processing a FOIA or PA request, the following language shall be used in responding to the requester:

“This acknowledges receipt of your recent Freedom of Information Act (FOIA) – Privacy Act request, and informs you of the decision to grant you access to the requested records if found and not exempted from disclosure by law. Any releasable sections of the requested records shall be provided to you after deletion of the parts that are exempt. You may expect to receive a response as promptly as possible. Our statewide telephone number is: 1-800-827-1000.

Sincerely yours,

FOIA – Privacy Act Officer”

**Note:** Use of this interim response will ensure that VA meets the timeliness requirement of the law.

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### f. Controlling FOIA/PA Requests

Public Contact Teams (PCTs) at the regional offices use the FOIAXpress tracking system to efficiently track and process FOIA requests. However, access to this tracking program is limited and unavailable to the National Call Centers and National IRIS Response Center.

In order to provide FOIA or PA status information to callers, all PCTs shall establish an End Product (EP) 510 upon *receiving* a FOIA or PA request. This EP shall be **continued** until the FOIA or PA request is *completed*.

In addition, upon completion of the FOIA or PA request, and prior to clearing the EP, a note will be placed in the appropriate system to reflect that the request has been closed and identify what was sent to the requester..

**Example:** “FOIA/PA rec’d 8/7/09, sent DD-214, completed 8/20/09.”

## 2. Duties of the FOIA Officer and PA Officer

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**Introduction** This topic provides a description of the duties of the FOIA and PA Officers.

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**Change Date** Updated February 2013

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- a. Responsibilities of the FOIA Officer and PA Officer**
- The responsibilities of the FOIA and PA Officers are:
- being familiar with all laws and regulations concerning the release of information (The Office of General Counsel can provide legal assistance.)
  - reviewing all initial requests for records submitted under both the Privacy Act and Freedom of Information Act and making a determination to grant or deny the request
  - maintaining a listing of any FOIA requests received (*VA Form 70-7259, Action on Request Under Freedom of Information Act*), may be used.
  - preparing any reports required or responding to FOIA/PA questions as necessary
  - providing space to permit public review of records subject to the FOIA
  - determining whether to charge the requester fees for complying with a request
  - providing the VA FOIA Officer with copies of responses to requests forwarded by the VA FOIA Officer
  - ensuring that responses to FOIA requests include the information as contained in *VA Handbook 6300.3* (See 2.d.3), and
  - ensuring that all personnel processing requests collect, maintain, use, and disclose records retrieved by personal identifier in the manner prescribed by the Privacy Act of 1974 and *VA Handbook 6300.5*.
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- b. FOIAXpress Tracking System**
- All FOIA Officers must use the FOIAXpress tracking system to track and process FOIA requests.
- The use of FOIAXpress allows VA to fulfill the requirements of the “Open Government Act,” which is to:
- assign FOIA tracking numbers
  - track FOIA requests and provide requesters with the status of the request
  - enter the final disposition for each FOIA request, and
  - generate the agency’s annual FOIA report
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### 3. FOIA Exemptions

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**Introduction** This topic contains information on the various exemptions under the FOIA, including information on the:

- general policy for disclosure
  - nine exemptions under 38 U.S.C. 552(b), and
  - determining whether an exemption applies.
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**Change Date** Updated February 2013

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**a.General Policy for Disclosure** It is the general policy of VA to disclose information from Department records to the maximum extent permitted by law. There are circumstances; however, when VA is not required to disclose a record in response to a FOIA request or may be precluded by law from disclosing a record.

When such an occasion arises, FOIA permits records or information, or segregable portions thereof, to be withheld under any of the nine exceptions.

General descriptions of the nine exemptions are provided below per M211MR, Part II, 7.3.b-j. It is emphasized that these are *general* descriptions. For a detailed description, refer to *VA Handbook 6300.3 (Section 4)*.

**Notes:**

- These exceptions may be invoked in denying a request only after careful review and consideration of all factors surrounding the request. Even if an exemption applies, VA should disclose the information, unless there is foreseeable harm of the type protected by the exemption or a statute that precludes disclosure.
  - If you receive a request that may meet the exemption criteria, review the request carefully before making a determination. If necessary, contact the VA FOIA Officer for guidance, advice, and assistance.
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**b.Exemption 1 - 5 U.S.C. 522(b)(1)** This exemption permits withholding of information that is classified for national security purposes.

**Note:** VA has a limited number of these records.

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### 3. FOIA Exemptions, Continued

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**c.Exemption 2 -** This exemption permits withholding of records or manuals reflecting investigatory techniques and procedures when their release might enable a requester to circumvent regulations applying to an investigation of the requester.  
**5 U.S.C.**  
**552(b)(2)**

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**d.Exemption 3 -** This exemption permits withholding of records or information if a law specifically exempts the material from disclosure. VA may use this exemption when the requested records or information are covered by VA's Confidentiality Statutes.  
**5 U.S.C.**  
**552(b)(3)**

*Reference:* For more information on this exemption, see [VA Handbook 6300.3 \(4.b.\(3\)\)](#).

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**e.Exemption 4 -** This exemption permits withholding of trade secrets and other confidential business information furnished to VA from outside the Government.  
**5 U.S.C.**  
**552(b)(4)**

*Reference:* For more information on this exemption, see [VA Handbook 6300.3 \(4.b.\(4\)\)](#).

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**f. Exemption 5** This exemption permits withholding of records that are “deliberative” if VA can articulate that the Department would be harmed by releasing the records. It does not apply to purely factual parts of a document, but only to those portions reflecting advice, recommendations, and options. This exemption also permits withholding documents that are covered by other privileges, such as attorney-client or attorney work-product privileges.  
**-5 U.S.C.**  
**552(b)(5)**

*Reference:* For more information on this exemption, see [VA Handbook 6300.3 \(4.b.\(5\)\)](#).

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### 3. FOIA Exemptions, Continued

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**g.Exemption 6 -** This exemption permits withholding records and information about individuals, the disclosure of which would be a “clearly unwarranted invasion of personal privacy.” VA claims records, medical records, and personnel files (pertaining to living individuals) are among many Department records that contain information that can be withheld under this exemption.

**5 U.S.C.  
552(b)(6)**

**Reference:** For more information on this exemption, see [VA Handbook 6300.3 \(4.b.\(6\)\)](#).

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**h.Exemption 7 -** This exemption permits the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that one of six types of harmful circumstances is present. These circumstances are as follows:

**5 U.S.C.  
552(b)(7)**

- Interference with law enforcement proceedings can be reasonably expected.
  - A person would be deprived of a fair trial or an impartial adjudication.
  - An unwarranted invasion of personal privacy could be reasonably expected.
  - Revealing a confidential source and information could be reasonably expected.
  - Techniques and procedures for law enforcement investigations or prosecutions would be disclosed or guidelines for law enforcement investigations or prosecutions would be disclosed, provided such disclosure could be reasonably expected to risk circumvention of the law.
  - Endangering the safety or life of any individual could be reasonably expected.
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**i.Exemption 8** This exemption permits withholding records relating to the examination of banks and other financial institutions by agencies that regulate or supervise them.

**-5 U.S.C.  
552(b)(8)**

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**j.Exemption 9 -** This exemption permits withholding records relating to geological and geophysical information and data, including maps, concerning wells.

**5 U.S.C.  
552(b)(9)**

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### 3. FOIA Exemptions, Continued

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**k. Determining  
Whether an  
Exemption  
Applies**

It is the general policy of VA to disclose information from Department records to the maximum extent permitted by law. If you receive a request that may meet the exemption criteria, review the request carefully before making a determination. If necessary, contact the VA FOIA Officer for guidance, advice, and assistance.

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## 4. Redaction Guidelines

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**Introduction** This topic provides guidelines for the redaction process.

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**Change Date** Updated February 2013

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**a. General Policy on Redaction** Under the FOIA amendments, when VA redacts electronic and paper records, the FOIA officer must note the location and extent of any deletions on the record itself.

This provision applies to electronic records to the extent VA has the technology to comply. When the electronic record disclosure cannot reflect the nature and extent of deletions, then the response letter should describe the electronic redactions.

When whole records or volumes of records are withheld, generally, VA must provide the requester with a reasonable estimate of the volume of records not being disclosed.

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## 5. General Key Points for FOIA/PA

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**Introduction** This topic contains information on general key points applicable to both the FOIA and PA, including:

- the FOIA/PA Officer
  - a definition of *sensitive information*
  - FOIA/PA requests from first party requesters
  - FOIA/PA requests from third party requesters
  - general points on release of information
  - verifying identity
  - Veterans' rights
  - service organizations
  - change of address
  - incompetent beneficiaries, and
  - accepting informal claims from POAs not recognized in the electronic record
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**Change Date** Updated February 2013

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**a. FOIA/PA Officer** Every VBA field station has a FOIA and PA Officer. Ensure you know the identity of that person.

**When in doubt about a release of information, always consult your FOIA/PA Officer.**

Requests for “sensitive” information *must* be referred to the FOIA/PA Officer at your station.

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**b. Definition: Sensitive Information** *Sensitive information* is information that may have an adverse effect on an individual or a member of the individual’s family.

It may be information that:

- could be prejudicial to a person’s mental or physical health
  - may require explanation or interpretation by an intermediary to preclude misinterpretation and adverse reactions or retaliatory consequences toward others, or
  - could be construed as personally embarrassing or harmful to an individual or family member.
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## 5. General Key Points for FOIA/PA, Continued

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### c. FOIA/PA Requests From First Parties

It is not acceptable to provide a first-party requester a copy of anything that he/she requests without a dated written request under the claimant's signature.

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### d. FOIA/PA Requests From Third Parties

FOIA/PA requests from third parties *must* be in writing, signed by the requester, and dated except for:

- the current benefit amount
- location of the National Cemetery in which a Veteran is buried, and
- a deceased individual's Veteran status, service dates, and branch of service.

A FOIA request received via fax containing the requester's signature *may* be accepted.

FOIA requests received electronically through e-mail or IRIS generally cannot be accepted because of the lack of the requester's signature. In these cases, you must contact the requester, acknowledge receipt of the request, and ask the requester to:

- provide a written request by fax or letter to the appropriate VA office for processing, or,
  - scan a signed copy of the written request to the appropriate VA FOIA Service mailbox.
- 

### e. General Points on Release of Information

- The current amount of monthly public funds (VA benefits) paid to a VA beneficiary (Veteran, spouse, child, etc.) is considered *public information* and can be released to anyone (See 38 CFR 1.502).
  - The type of benefit received, disabilities, personal identifiers such as address, claim number, and Social Security number *cannot* be verified for or released to any third party *without* the written consent of the individual to whom the record pertains, or to the individual's fiduciary, unless the release falls under an exception as provided by law.
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## 5. General Key Points for FOIA/PA, Continued

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**e. General Points on Release of Information**  
(continued)

- Records of deceased Veterans *may* be released to next of kin, if disclosures will not be injurious to the physical or mental health of the person on whose behalf the information is sought or cause repugnance or resentment toward the decedent.
  - Records of living persons maintained in a deceased Veterans claims folder may *not* be released without the written consent of the living individual or the individual's fiduciary.
  - The person requesting an individual's address contained in a VA record may be advised that VA *cannot* disclose the address of the beneficiary but may, *under certain conditions*, forward a letter for the person to the beneficiary.
  - Spouses have *no* inherent right of access to a living individual's personal information contained within VA records without the consent of the individual. **Example:** You may not release information from a Veteran's record to the spouse (except as noted in **M27-1, Part I, Chapter 7, 5,d**) without the Veteran's approval or consent. VA may *not* disclose to a Veteran the address of, or other personal information about a spouse, former spouse, or other dependent without the permission of the spouse or dependent, even though such information may be in the Veteran's claims file.
- 

**f. Verifying Identity**

**Always** validate the identity of the caller if he/she claims to be the Veteran or other recipient of VA benefits before providing any potentially protected information.

**Note:** In cases where you receive a telephone call referred or transferred from another VA office, you still must validate or verify the identity of the caller before providing any potentially protected information. This verification **must** be in done in **every** instance.

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**g. Veterans' Rights**

A Veteran has a right to review and acquire a copy of the VA record(s) about himself/herself that is retrievable by his/her name or other identifier.

A Veteran has the right to require VA to amend a record that is not accurate, timely, complete, or relevant.

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## 5. General Key Points for FOIA/PA, Continued

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### h. Service Organizations

A service organization representative may ask for a copy of a Veteran's record *only* if the service organization holds a valid power of attorney.

Service organizations may *not* be granted access to information for members of a Veteran's family if the power of attorney covers the Veteran *only*.

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### i. Change of Address

Do *not* accept a change of address request over the telephone *without first* verifying that the caller is the Veteran or other VA beneficiary having entitlement to the funds or benefits being redirected.

*Note:* A Veterans' Service Organization (VSO) representative, agent, or attorney appointed for purposes of representation on a [VA Form 21-22a, Appointment of Individual as Claimant's Representative](#), has the legal authority to change a claimant's address in person, by telephone, or by letter. A Veteran can specify that his/her attorney or agent can change his/her address by checking block 11 on VA Form 21-22a,.

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### j. Incompetent Beneficiaries

Exercise special care when dealing with incompetent beneficiaries.

You may *not* change the address, or establish or change a direct deposit account for any claimant having a fiduciary. An address change request is to be sent to the Fiduciary Hub of jurisdiction via VAI. To set up or change direct deposit information, the fiduciary must complete SF 1199a, Direct Deposit Sign-up Form, to the Fiduciary Hub of jurisdiction.

This policy *must* be followed regardless of whether you have access to CFID command.

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## 5. General Key Points for FOIA/PA, Continued

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### **k. Accepting Informal Claims from POAs**

Title [38 CFR 3.155](#) states that a communication received from a service organization, an attorney, or agent may not be accepted as an informal claim if a POA was not executed at the time the communication was written.

When receiving a communication from a service organization, attorney, or agent who is not the POA of record desires to file an informal claim on behalf of a claimant, the PCR shall instruct the requester to fax the informal claim, along with a completed copy of [VA Form 21-22 “Appointment of Veterans Service Organization as Claimant’s Representative”](#) or [VA Form 21-22a “Appointment of Individual as Claimant’s Representative”](#) to the appropriate Triage Team at the regional office of jurisdiction.

The Triage Team will process the VA Form 21-22 or VA Form 21-22a certifying the POA and initiate appropriate claims processing procedures.

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## 6. Guidance on the Release of Information Pertaining to Veterans

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**Introduction** This topic contains guidance on the release of information pertaining to Veterans, including:

- what may or may not be disclosed about a living Veteran
  - what may or may not be disclosed about a deceased Veteran
  - dealing with powers of attorney (POAs)
  - processing inquiries from POAs, and
  - use of [VA Form 21-0845, Authorization to Disclose Personal Information to a Third Party](#)
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**Change Date** Updated February 2013

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**a. What May or May Not be Disclosed – Living Veterans** The following table provides guidance on what information pertaining to a living Veteran may and may not be disclosed if the Veteran’s name is provided.

<b>You may ...</b>	<b>You may not ...</b>
disclose the monthly amount of benefits the Veteran is currently receiving.	disclose how much the Veteran received in the past or the type of monetary benefit the Veteran receives (for example, compensation or pension).
confirm that the Veteran is an inpatient or is receiving outpatient treatment, or that the Veteran has been treated at a VA facility in the past.	disclose that the Veteran was/is being treated for drug/alcohol abuse, HIV Infection/AIDS, or sickle cell anemia.
provide his/her general hospitalization status (for example, critical, stable, and so forth).	disclose any other information about the Veteran’s treatment.
	verify that the individual is a Veteran.

**Important:** Because circumstances vary, decisions on disclosure should be made on a case-by-case basis.

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## 6. Guidance on the Release of Information Pertaining to Veterans, Continued

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**b. What May or May Not be Disclosed – Deceased Veterans**

If the name of the deceased Veteran is provided, you may provide:

- the location of the national cemetery where the Veteran is buried,
  - individual’s Veteran status, service dates and branch of service, and
  - copies of records pertaining to the decedent to next of kin, *provided* the disclosures will not
    - be injurious to the physical or mental health of the person on whose behalf the information is sought, or
    - cause repugnance or resentment toward the decedent.
- 

**c. Dealing With POAs**

When dealing with powers of attorney (POAs), our goal should always be to assist those individuals who are trying to help our Veterans; however, we must protect the privacy of our Veterans and beneficiaries, as they would expect from our organization.

*Notes:*

- This policy includes State Veterans Service Officers (SVSO) and County Veterans Service Officers (CVSOs).
  - In some cases, we might not be able to provide the information requested by the SVSO or CVSO. We should always err on the side of privacy and security of our caller’s information.
- 

**d. VSO Administrative Personnel (AP)**

Administrative personnel (AP) who work for VSOs have access to records at sensitive level “0” if they are shown as “certified” by the VSO on [VA Form 20-8824E, Common Security Services User Access Request](#).

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## 6. Guidance on the Release of Information Pertaining to Veterans, Continued

### d. VSO Administrative Personnel (AP) (continued)

The following step table provides the procedure for handling inquiries from VSO administrative personnel:

Step	Action
1	Review systems to determine if a POA is of record.
2	If there is no POA reflected in system, or POA shown is not affiliated with administrative personnel, follow current procedures
3	If POA is of record, review “Sensitive Level Check” in Share
4	If sensitive level “1” or above: <ul style="list-style-type: none"> <li>Inform administrative personnel we are unable to provide requested information because the sensitive level of the claimant is above “0”</li> </ul>
5	If sensitive level is “0”, treat administrative personnel as first party and follow procedures for providing information to a first party

For CVSO administrative personnel, once you have determined the CVSO is accredited with the organization that holds POA (through the [Office of General Counsel web site](#)); follow same procedures as outlined above.

### e. Use of Form VA 21-0845

[VA Form 21-0845, Authorization to Disclose Personal Information to a Third Party](#), allows the NCCs, NPCC, NIRC and ROs to release specified information normally protected under privacy provisions to family members or other designated persons who are not powers of attorney, agents, or fiduciaries.

A Veteran may only designate one person or one organization on the form. In addition, only one form may be valid at a time.

### Processing Inquiries From POAs

Follow the procedures in the table below to process inquiries from a POA, SVSO or CVSO:

*Continued on next page*

## 6. Guidance on the Release of Information Pertaining to Veterans, Continued

**Processing  
Inquiries From  
POAs**  
(continued)

Step	Action				
<b>1</b>	Obtain the identity of the POA by asking for applicable identifying information, such as the POAs: <ul style="list-style-type: none"> <li>• name</li> <li>• organization</li> <li>• county represented, if applicable, and</li> <li>• telephone number</li> </ul>				
<b>2</b>	Validate the identity of the POA: <ul style="list-style-type: none"> <li>• Go to Office of General Counsel Accreditation website (<a href="http://www4.va.gov/ogc/apps/accreditation/index.asp">http://www4.va.gov/ogc/apps/accreditation/index.asp</a>)</li> <li>• Use Accreditation Search Feature to verify the identity of the requester prior to completing any inquiry.</li> </ul>				
<b>3</b>	Review all appropriate system to verify that the organization identified by the caller is the valid POA. <table border="1" style="width: 100%; margin-top: 10px;"> <thead> <tr> <th style="text-align: left;">If ...</th> <th style="text-align: left;">Then ...</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">POA is shown in our system</td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <li>• treat as if POA is the first party, and</li> <li>• ask for the Veteran's                             <ul style="list-style-type: none"> <li>– full name</li> <li>– Social Security number (SSN) or claim number, and</li> <li>– branch of service</li> </ul> </li> </ul> </td> </tr> </tbody> </table>	If ...	Then ...	POA is shown in our system	<ul style="list-style-type: none"> <li>• treat as if POA is the first party, and</li> <li>• ask for the Veteran's                             <ul style="list-style-type: none"> <li>– full name</li> <li>– Social Security number (SSN) or claim number, and</li> <li>– branch of service</li> </ul> </li> </ul>
If ...	Then ...				
POA is shown in our system	<ul style="list-style-type: none"> <li>• treat as if POA is the first party, and</li> <li>• ask for the Veteran's                             <ul style="list-style-type: none"> <li>– full name</li> <li>– Social Security number (SSN) or claim number, and</li> <li>– branch of service</li> </ul> </li> </ul>				

*Continued on next page*

## 6. Guidance on the Release of Information Pertaining to Veterans, Continued

### Processing Inquiries From POAs (continued)

Step	Action	
	<b>If ...</b>	<b>Then ...</b>
	POA does not know any identifying information	<ul style="list-style-type: none"> <li>• inform the POA that we will need either:               <ul style="list-style-type: none"> <li>– a written request from the Veteran (or claimant)</li> <li>– the Veteran/claimant to call VA, or</li> <li>– a call back when the <i>unknown</i> information is located.</li> </ul> </li> </ul>
	POA's organization is not showing in our system	tell the POA we do not show the organization as having POA. ( <b>Note:</b> The on-site organization will usually then get the information entered into our system.)
<p>Important: The only information you may provide to an organization not holding POA is the identity of the actual, valid POA (if one is shown in the system) and the claims file location.</p>		

## 7. Procedures for Handling PA Requests

**Introduction** This topic contains general information on procedures for handling PA requests and information on:

- how to handle and analyze requests, and
- descriptions of records types.

**Change Date** Updated February 2013

**a. General Information for Handling Privacy Act Requests** The PA applies to any VA record about an individual that is retrieved by the individual’s name or other identifier, regardless of the storage media, such as paper or computer disk.

Each individual generally has

- the right to review and acquire a copy of VA records about himself or herself that are retrievable by his or her name or other identifier, *and*
- the right to require VA to amend those records when the records are not accurate, timely, complete, and relevant.

**b. How to Handle and Analyze Requests** Upon receipt of an individual request, follow the steps in the table below:

Step	Action
<b>1</b>	Review the request: <ul style="list-style-type: none"> <li>• Is the request in writing and signed and dated by the Veteran?                             <ul style="list-style-type: none"> <li>– If <i>yes</i>, go to Step 2.</li> <li>– If <i>no</i>, inform Veteran, in writing, of this requirement.</li> </ul> </li> <li>• Does the request ask for an existing, clearly described record?                             <ul style="list-style-type: none"> <li>– If <i>yes</i>, go to Step 2.</li> <li>– If <i>no</i>, inform the Veteran, in writing, that record sought does not exist, or request a more detailed description of the record being sought (as applicable).</li> </ul> </li> <li>• Is the request for a VA record?                             <ul style="list-style-type: none"> <li>– If <i>yes</i>, go to Step 2.</li> <li>– If <i>no</i>, inform the Veteran that VA does not have access to the record and where the record may be obtained (if known).</li> </ul> </li> </ul>

Step	Action								
2	<p>Determine the type of record involved.</p> <p>Reference: For a description of the various types of records, see M27-1, I.7.6.c.</p>								
3	<p>Determine who is requesting the record and analyze the relationship between the requester and the agency record requested.</p> <table border="1" data-bbox="548 495 1398 1346"> <thead> <tr> <th data-bbox="548 495 976 533">If ...</th> <th data-bbox="976 495 1398 533">Then ...</th> </tr> </thead> <tbody> <tr> <td data-bbox="548 533 976 646">Veteran or dependent beneficiary requests own records</td> <td data-bbox="976 533 1398 646">Privacy Act and 38 U.S.C. 5701 rules apply</td> </tr> <tr> <td data-bbox="548 646 976 905">Veteran or dependent beneficiary requests access to claims file and file contains claims records of another claimant who shares the same file number</td> <td data-bbox="976 646 1398 905">Access is limited to those records that pertain to the requester. A request for records of another beneficiary should be considered under 38 U.S.C. 5701 and the PA and FOIA, <i>in that order</i>.</td> </tr> <tr> <td data-bbox="548 905 976 1346">a third party requests a Veteran's record</td> <td data-bbox="976 905 1398 1346"> <p>FOIA applies unless there is a 38 U.S.C. 5701 PA disclosure authority.</p> <p>VA will not disclose any information about a Veteran without the written consent of the Veteran to whom the record pertains (unless such disclosure is permitted under 38 CFR 1.576).</p> </td> </tr> </tbody> </table>	If ...	Then ...	Veteran or dependent beneficiary requests own records	Privacy Act and 38 U.S.C. 5701 rules apply	Veteran or dependent beneficiary requests access to claims file and file contains claims records of another claimant who shares the same file number	Access is limited to those records that pertain to the requester. A request for records of another beneficiary should be considered under 38 U.S.C. 5701 and the PA and FOIA, <i>in that order</i> .	a third party requests a Veteran's record	<p>FOIA applies unless there is a 38 U.S.C. 5701 PA disclosure authority.</p> <p>VA will not disclose any information about a Veteran without the written consent of the Veteran to whom the record pertains (unless such disclosure is permitted under 38 CFR 1.576).</p>
If ...	Then ...								
Veteran or dependent beneficiary requests own records	Privacy Act and 38 U.S.C. 5701 rules apply								
Veteran or dependent beneficiary requests access to claims file and file contains claims records of another claimant who shares the same file number	Access is limited to those records that pertain to the requester. A request for records of another beneficiary should be considered under 38 U.S.C. 5701 and the PA and FOIA, <i>in that order</i> .								
a third party requests a Veteran's record	<p>FOIA applies unless there is a 38 U.S.C. 5701 PA disclosure authority.</p> <p>VA will not disclose any information about a Veteran without the written consent of the Veteran to whom the record pertains (unless such disclosure is permitted under 38 CFR 1.576).</p>								
4	Determine whether information must be released or withheld.								
5	Determine whether release of the record is considered discretionary and may be released on this basis.								
6	Release documents but, if any portions are withheld, cite appropriate FOIA exemptions and provide appeal rights.								
7	Determine appropriate fees (if applicable).								
8	Document your actions.								

Continued on next page

## 7. Procedures for Handling PA Requests, Continued

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**b. How to Handle and Analyze Requests**  
(continued)

**Note:** See your local PA/FOIA Officer for additional guidance.

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**c. Descriptions of Record Types**

The following is a brief description of the types of records involved in both the FOIA and PA.

- **FOIA Records:** All existing VA records. These records usually apply to laws, regulations, etc. (*Note:* It should be noted that under the provisions of the FOIA and PA, the government is not required to create records or documents.)
  - **PA Records:** Generally, these are any records that pertain to United States citizens that are filed and can be retrieved by an individual identifier such as name or Social Security number. These records relate to compensation, pension, vocational rehabilitation, education, life insurance and guardianship programs. Home loan files fall under the jurisdiction of the Loan Guaranty Service.
  - **38 USC 5701 Records:** All records pertaining to a claim by a Veteran for Title 38 benefits, including name and address information. These records are considered confidential and privileged under regulations. Deceased Veterans' records and those records that pertain to non-United States citizen Veterans are protected and governed by this law.
  - **38 USC 7332 Records:** These are protected medical records maintained by VA on individuals who have been treated at VA medical facilities for drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or HIV.
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## 8. Determining Appropriate Work Credit for FOIA/PA Requests

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<b>Introduction</b>	This topic provides guidance on determining the appropriate work credit when processing general or special correspondence.
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<b>Change Date</b>	Updated February 2013
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<b>a. General Information for Determining Work Credit</b>	<p>For any response to an FOIA or PA request, an appropriate End Product (EP) or DOOR WID (Distribution of Operational Resources Work Identifier) should be taken.</p> <p>It is extremely important that you do not take credit for the same response using both an EP and DOOR WID. Doing so will result in duplicate credit for the work performed.</p>
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<b>b. EP Credit Versus DOOR WID Credit</b>	<p>EP credit is taken if the FOIA/PA request is one that is associated with a claim number.</p> <p>DOOR WID credit is taken if the FOIA/PA request is not associated with a claim number or is a request for general information.</p> <p>In either case, the regional office completing the response receives appropriate credit for the work performed.</p>
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<b>c. Appropriate End Product</b>	An EP 510 should be used when the request is associated with a claim number.
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<b>d. Appropriate DOOR WID</b>	DOOR WID 7141.00 should be used when the request is not associated with a claim number or is a request for general information.
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## 9. Procedures For Use of FOIA Reading Room

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**Introduction** This topic contains information on procedures for use of the FOIA Reading Room, including information on:

- general provisions under 38 U.S.C. 552(a)(2)
  - the reading room requirements
  - the electronic reading room
  - the types of records that are available
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**Change Date** Updated February 2013

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**a. General Provisions – 5 USC 552(a)(2)** Under Title 5 U.S.C. 552(a)(2), each Federal agency must provide space for public inspection and copying for all records meeting the criteria of the FOIA and PA.

*Note:* This regulation applies to the designation of an actual reading room and the availability of an “electronic” reading room.

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**b. Reading Room Requirements** The space designated as the FOIA Reading Room should afford the requester with adequate privacy and be:

- removed from any noise source or high-traffic area, if practical
  - well ventilated and lighted, and
  - near an adequate photocopying source.
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**c. Electronic Reading Room** The VA Office of Information & Technology provides an electronic reading room website ([FOIA Reading Room](#)) for potential requesters. This site provides an extensive index of those documents available for review, along with an *FOIA Reference Guide*.

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*Continued on next page*

## 9. Procedures For Use of FOIA Reading Room, Continued

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### d. Types of Records to be Made Available

The following records shall be made available for public inspection and copying:

- final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases
  - those statements of policy and interpretations that have been adopted by the agency and are not published in the *Federal Register*
  - administrative staff manuals and instructions to staff that affect a member of the public
  - copies of all records, regardless of form or format, which have been released to any person under paragraph (3) of the FOIA and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records, and
  - a general index of the records referred to under Section (a)(2)(D) of the FOIA.
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## 10. References

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**Introduction** This topic provides references relative to the Freedom of Information Act and the Privacy Act.

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**Change Date** Updated February 2013

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**a. References** The following references are provided for more information on the FOIA and PA:

- [Title 5 United States Code, Section 552](#)
  - [38 United States Code, Section 5701](#)
  - [38 United States Code, Section 7332](#)
  - [38 Code of Federal Regulations \(1.500-1.584\)](#)
  - [VA Handbook 6300.3](#)
  - [VA Handbook 6300.4](#)
  - *MP-1, Part II, Chapter 24*
  - *DVB Circular 20-75-92*
  - *DVB Circular 20-75-92, Appendix A, and*
  - [Federal Register](#).
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