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THIS WEEK'S FEATURE

FOIA vs. the Privacy Act: Which Request Should You File?

Lt Col (Ret) Ryan Sweazey
President & Founder, Walk the Talk Foundation

THE SHORT ANSWER

When the records you want are about you, file under the Privacy Act, or under both statutes at once. The Freedom of Information Act (FOIA) opens federal records to anyone, but the Privacy Act gives a person asking about himself or herself cheaper access, fewer legal obstacles, and a right to correct what the agency holds.

THE TWO LAWS

- **FOIA, 5 U.S.C. § 552.** Any person may ask a federal executive agency for its records, about any subject. The agency must release them unless one of nine statutory exemptions applies.
- **Privacy Act of 1974, 5 U.S.C. § 552a.** Gives an individual (a U.S. citizen or lawful permanent resident) the right to see and amend records about himself or herself that an agency keeps in a "system of records," meaning a file retrieved by name or other personal identifier. The Act also limits how agencies disclose those records and creates civil remedies for violations.
- **Department of Defense rules.** FOIA requests follow 32 C.F.R. Part 286. Privacy Act requests follow 32 C.F.R. Part 310, which directs DoD to also run Privacy Act access requests through FOIA, so the requester gets the benefit of both statutes.
- **How they fit together.** Under § 552a(t), an agency cannot use a FOIA exemption to refuse Privacy Act access, and a Privacy Act exemption cannot be used to refuse FOIA access. Each statute is a separate door, and the agency must check both.

WHAT EACH REQUEST REQUIRES

	FOIA	Privacy Act
Who may file	Any person	The individual (U.S. citizen or permanent resident), or someone with that person's written consent
Records covered	Any agency record not exempt	Records about you in a system of records
What to submit	Written request that reasonably describes the records, following the agency's FOIA rules	Written request that names the system of records or describes the records and office, marked “Privacy Act Request”
Proof of identity	Generally none	Required under agency rules (§ 552a(f)(2)); typically a notarized signature or a declaration under 28 U.S.C. § 1746

	FOIA	Privacy Act
Fees	Search, review and copying, by requester category; noncommercial requesters get two hours of search and 100 pages free	Copying only; no charge for search or review (§ 552a(f)(5))
Response time	20 working days, extendable by 10 in unusual circumstances	No deadline for access in the statute; amendment requests acknowledged in 10 working days and decided “promptly”; appeals of a refusal decided in 30 working days (§ 552a(d))
Appeal	Statutory administrative appeal, then court	Appeal rights set by agency regulation for access; by statute for amendment

WHY THE PRIVACY ACT IS USUALLY THE BETTER TOOL

1. **Fewer grounds for withholding.** An agency may not deny you your own records by invoking a FOIA exemption, such as the deliberative-process exemption. Only the Privacy Act's own exemptions count, and an agency must adopt those by rulemaking for each system.
2. **Lower cost.** Fees are limited to copying. Search and review time, which can drive FOIA bills, is not charged.
3. **A right to correct the record.** Only the Privacy Act lets you demand amendment of inaccurate, irrelevant or incomplete records (§ 552a(d)(2)) and ask for an accounting of who received them (§ 552a(c)(3)). For a service member fighting a bad evaluation or a retaliatory file, correction matters as much as access.
4. **Real remedies.** Section 552a(g) allows suits to compel access or amendment, with attorney fees, and damages when an agency willfully or intentionally violates the Act. FOIA offers no damages.
5. **Little downside.** DoD processes Privacy Act access requests under FOIA as well, so a Privacy Act request rarely closes a door.

Where FOIA wins. The Privacy Act covers only records about you that sit in a system of records. Investigative systems, including many inspector general files, are often exempted under § 552a(j) and (k), and the Act sets no response deadline. When those limits bite, FOIA becomes the better path, with its 20-working-day clock and its route to court once you exhaust the appeal. FOIA is also the only option for records about other people, policies, or agency conduct.

Practical rule. For your own file, send one signed, identity-verified letter that cites both 5 U.S.C. § 552a and 5 U.S.C. § 552, and name the specific systems of records if you can find them in the published system of records notices.

SOURCES

1. Overview of the Privacy Act of 1974, U.S. Department of Justice
2. Individual's right of access, DOJ Privacy Act overview (§ 552a(t) interplay)
3. 32 C.F.R. § 310.1, DoD Privacy Program
4. DOJ Privacy Act request guidance (identity verification)
5. 6 C.F.R. § 5.29, Privacy Act fees limited to duplication

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Lt Col (Ret) Ryan Sweazey is the President and Founder of the Walk the Talk Foundation. All articles are posted on LinkedIn and online at walkthetalkfoundation.org. The Star Chamber podcast is available on Apple, Spotify, and YouTube.

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Questions or tips: francescagraham@walkthetalkfoundation.org or in the comments.