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ASSOCIATION of PUBLIC DATA USERS

The "Routine Use" Exception in the Privacy Act of 1974

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Under the Privacy Act of 1974 (the Act), the default rule is that an ***agency***[1] may not disclose an individual's records without first getting that individual's written consent. Of the 13 exceptions that Congress provided in the law, the *routine use* is the most flexible—and most misunderstood. It serves as a "policy escape valve" allowing agencies, if they follow the correct process, to add other disclosures where consent won't work. *Routine uses*, once in place, act as limitations: the language controls what an agency can legally do.

What is a Routine Use?

Don't let the awkward name mislead you. A *routine use* is NOT "normal daily tasks within the agency." Under the Act, a ***routine use*** is the *external disclosure* of a record for a purpose *compatible* with the original purpose for collecting the record.

- **External disclosure:** This is a disclosure outside of an agency (such as leaving the Dept. of Justice (DOJ), not just the FBI). Records can lose protections when they leave an agency (such as when transferred to Congress or the National Security Council).
- **Compatibility:** The disclosure must be *compatible* with the reason the record was originally created. The Act does not define ***compatible***, leaving its interpretation up to the agency, the Office of Management and Budget (OMB), and the courts.

It is useful to think of routine uses as falling into three categories of compatibility:

Category	Description of Disclosure	Practical Example
Directly Connected	Essential to the primary program for which data was collected.	Agencies share employee data with contractors to process payroll.
Necessary & Proper	Required to maintain program integrity, even if not aligned with the original collection purpose.	Medicare discloses records to DOJ to prosecute fraud.
Collateral/ Mandated	Required by other federal laws passed after 1974. In such a case, Congress has provided a substitute for direct compatibility.	IRS shares tax return information with HHS to determine eligibility for participation in a state children's health insurance program under Title XXI of the Social Security Act

1 A Privacy Act agency is a federal executive branch cabinet agency (or the highest level of a non-cabinet agency), excluding parts of the Executive Office of the President that are primarily advisory in nature.

How is a Routine Use Different than a "Need to Know?"

The Act also allows disclosures **within** the agency to employees who have a ***need to know*** the information to carry out their daily work. This **need to know** exception sounds like it should be a "**routine use**," thus the two are commonly confused.

The table below provides a quick summary of the differences:

Area	Need-to-Know	Routine Use
Who is accessing the record?	Officers or employees within the highest organizational level of the agency (such as within DOJ)	Any entity that is outside of the agency (such as another agency, or Congress)
For what purpose?	Recipient must need the record to perform official duties. Those duties do not need to be compatible with the original collection	Must be for a purpose compatible with the original collection, which is evaluated on a case-by-case basis
How is the public notified?	No notice is required	Agencies directly notify individuals at collection, and broadly notify the public through a notice in the *Federal Register*
How is it tracked?*	No tracking is required	Tracking occurs in the agency's required log, the *accounting of disclosures*

*Electronic disclosures may also be tracked with audit trails, data use agreements, and access controls

How Does an Agency Establish or Modify a Routine Use?

Agencies cannot simply invent routine uses; they must follow a formal administrative process to enable transparency, participation, and oversight:

- **Public Notice:** An agency must publish new or significantly modified routine uses in a System of Records Notice (SORN) in the *Federal Register*. The agency does not need to inform individuals directly of a change if their data has already been collected.
- **Specificity Standards:** Routine uses must be narrowly tailored. The agency must articulate to whom and for what purpose it will disclose the record. Descriptions must be clear enough that a member of the public can understand the impact. Vague or overly broad language is more likely to be challenged successfully in court.
- **The 30-Day Comment Period:** An agency may not disclose records under a new or modified routine use until 30 days after publication. This allows the public to provide comments that might persuade the agency to alter its plans. While the agency must consider public comments, it does not have to acknowledge, summarize, or justify rejecting them, regardless of how many there are.
- **Oversight:** The agency must report new and significantly modified routine uses to OMB and the Committees of jurisdiction in both houses of Congress.

ROUTINE USES ARE OPTIONAL The fact that an agency has published a routine use does not require the agency to make a disclosure. In each case, an agency must decide if the specific disclosure is compatible.