

The Freedom of Information Act (FOIA)

First enacted in 1966, the Freedom on Information Act (FOIA; 43 C.F.R. 2; 383 DM 15; 5 U.S.C. 552) established a statutory right of access to government information, inherent in the democratic ideal: “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold governors accountable to the governed.” The premise is that everyone has a right to be knowledgeable about their government, openness is essential to accountability, and it is in the public’s interest to disclose information that demonstrates the effectiveness and efficiency of governmental operations. FOIA provides that any person has a right to access Federal agency records, except to the extent that such records (or portions of those records) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions, or as protected under the Privacy Act (see below). The statutory exemptions relate to records (hard-copy or electronic) that may be excluded from public access, in particular if they are classified or trade secrets, related to internal personnel rules or medical files (invasion of privacy), Federal government pre-decisional or deliberative materials (including draft documents and attorney-client communications), law enforcement records, business or financial records, or specific geological and geographical information related to wells. These exemptions are not automatically barred from being disclosed, but may be withheld or released at the discretion of the agency. The Federal agency must describe any document being withheld and justify under what exemption it is being barred from release and describe the specific FOIA appeals process.

The Privacy Act

The Privacy Act, first passed into law in 1974 (5 U.S.C. 552 ff), protects the privacy of American citizens during Federal agency administrative processes. In general, the provisions of the Privacy Act apply to personnel administration, payroll, records management, security, procurement, information systems design, computer operations, and communications management. A “record” contains a person’s name or some other identifier, plus as little as one item of information about the person, including such things as an individual’s education, financial transactions, medical history, employment history or criminal history. When a record is under the control of an agency and is contained in a system of records retrieved by a personal identifier, it is protected by the provisions of the Privacy Act. The statutory exemptions under the Privacy Act relate to records that can be excluded, including if the records are classified, CIA or criminal investigation-related, law enforcement-related, medical records, or of a financial nature.

Comparison Chart for FOIA and the Privacy Act

ISSUE	FOIA	PRIVACY ACT
Purpose	Disclosure law - to inform the inquiring public about Federal Executive Branch decisions	To protect the privacy of individuals included in a system of Federal records
Who can request?	Anyone	Only the U.S. citizen (or an alien admitted for permanent residence in the U.S.) may access Privacy Act records pertaining to him/her
What information can be obtained?	Any record maintained by the Federal Executive Branch agency, unless an exception applies	Only records pertaining to the person requesting access or a third party with permission
If part of a record is excluded from release, can the <u>entire</u> record be excluded?	No, review and sanitize (redact) parts that cannot be released	Yes, if available under FOIA, cannot be denied under the Privacy Act
Records subject to the Act	All records kept by any agency in the Executive Branch of the Federal government	Personal information maintained in a system of records and accessed by a personal identifier, except for records maintained by the CIA, or for national security, or for law enforcement

For additional information of either FOIA or the Privacy Act, detailed training on specifics is widely available, and regularly offered.