



OFFICE *of* GOVERNMENT INFORMATION SERVICES

June 22, 2016

Katherine Race Brin
Chief Privacy Officer
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

NATIONAL
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Dear Ms. Brin:

I write to you in your role as Chief Privacy Officer for the Federal Trade Commission (FTC). Specifically, I write to inform you of and ask for your assistance with a Privacy Act issue that affects how the Office of Government Information Services (OGIS) carries out its statutory duties.

Created by the OPEN Government Act of 2007 and opened in September 2009 as the Freedom of Information Act (FOIA) Ombudsman, OGIS has the statutory mandate to review FOIA policies, procedures and compliance of administrative agencies, and to offer mediation services to resolve disputes between FOIA requesters and agencies. 5 U.S.C. § 552(h)(1)-(3). We advocate for neither the requester nor the agency, but for the FOIA process to work as intended.

As you know, the Privacy Act of 1974 protects FOIA and Privacy Act request and appeal files, prohibiting agencies from sharing information contained in those files without prior written consent of the requester or the existence of a routine use allowing such disclosure. Before OGIS facilitators can contact your agency FOIA units to discuss a FOIA or Privacy Act request or appeal, we must first obtain a signed and dated consent from the requester authorizing OGIS and any Federal department, agency or component to share with one another information and records related to the request.

Since opening our doors six years ago, OGIS has obtained the consent of several thousand requesters. However, that step increases the time between the receipt of a request for assistance and our contacting the agency to try to begin facilitating a resolution to a dispute.

Moreover, requiring consent can be an obstacle when it is an agency seeking OGIS's assistance. Agencies must obtain consent from the requester before discussing an issue with OGIS; this may complicate situations in which agencies seek to prevent or resolve a dispute or to ask



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OGIS for help with difficult requests or requesters. Obtaining consent also may not be feasible when records are relevant to an OGIS review of an agency's policies, procedures or compliance.

To date, 12 cabinet-level departments and eight agencies have revised their Privacy Act system of records notices (SORNs) to include an OGIS routine use.

I write to request that you do the same by adding a routine use to your SORN. OGIS worked with the Department of Justice (DOJ) Office of Privacy and Civil Liberties to develop a model routine use (copy of DOJ SORN is attached for reference) that agencies can use for this purpose:

To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. § 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

OGIS has observed that when an agency's Privacy Act SORN contains a routine use allowing the agency and OGIS to share information, efficiencies are built into the FOIA administrative process.

In the interest of transparency—and because this issue is important to our stakeholders—OGIS posts all of its correspondence with other agency officials on its website; this letter will also be posted. We ask that you respond to this request by July 22, 2016, and let us know your willingness to amend your agency's FOIA/PA SORN to include the OGIS-DOJ language provided in italics above. I would be happy to discuss this matter and answer any questions. I can be reached at Nikki.Gramian@nara.gov and at 202-741-5772.

Sincerely,

Nikki Gramian
Acting Director

Enclosure: Copy of DOJ FOIA/PA SORN
cc: Sarah Mackey, Chief FOIA Officer, FTC