

**FY 2006 Annual Privacy Training
Philadelphia VA Medical Center**

Completion Deadline: March 31, 2006

**Return completed form to:
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Privacy Officer
Room B-202 ~ Extension 6270**

Module One: Privacy and Release of Information

Privacy Statutes

VHA must comply with all applicable privacy and confidentiality statutes and regulations. Specifically, there are six statutes that govern the collection, maintenance and release of information generally from VHA records.

The VHA Handbook 1605.1 establishes guidance on privacy practices and provides VHA policy for the use and disclosure of individually identifiable information and individuals' rights in regard to VHA data. When following VHA privacy policies, all six statutes are to be applied simultaneously. VA health care facilities should comply with all statutes so that the result will be application of the most stringent provision for all uses and/or disclosures of data and in the exercise of the greatest rights for the individual.

There are six applicable statutes that govern the collection, maintenance and release of information generally from VHA records:

- The Freedom of Information Act (FOIA), 5 U.S.C. 552
- The Privacy Act (PA), 5 U.S.C. 552a
- The VA Claims Confidentiality Statute, 38 U.S.C. 5701
- Confidentiality of Drug Abuse, Alcoholism and Alcohol Abuse, Infection With the Human Immunodeficiency Virus (HIV), and Sickle Cell Anemia Medical Records, 38 U.S.C. 7332
- The Health Insurance Portability and Accountability Act (HIPAA)
- Confidentiality of Healthcare Quality Assurance Review Records, 38 U.S.C. 5705

Compliance

The following will describe the scope of applicable privacy and confidentiality statutes and regulations.

All VHA employees shall comply with all Federal laws, regulations, VA and VHA policies. Employees shall conduct themselves in accordance with the rules of conduct concerning the disclosure or use of information in the VA Standards of Ethical Conduct and Related Responsibilities of Employees. Employees who have access to VHA records shall be instructed on an ongoing basis on the requirements of Federal privacy and information laws, regulations, and VA and VHA policy.

The Privacy Act requires that information about individuals that is retrieved by a personal identifier may not be collected or maintained until proper notifications are given to Congress, the Office of Management and Budget (OMB), and published in the Federal Register. Each Veterans Integrated Service Network (VISN) and VA Medical Center or VA Health Care System shall designate a Privacy Officer and a Freedom of Information Act (FOIA) Officer.

De-identified Information

De-identified information is not considered to be individually identifiable; therefore, the provisions of the Privacy Act, HIPAA, and VA Confidentiality statutes do not apply. VHA considers health information not individually identifiable only if:

- An experienced statistician determines that the risk that the information can be used to identify an individual is very small.

- Several identifiers are removed from the information (See VHA Handbook 1605.1, Privacy and Release of Information, Appendix B).

Use of Information

VHA employees must use or access information only as legally permissible under applicable confidentiality and privacy laws, regulations, and policies. All VHA employees can use health information contained in VHA records in the official performance of their duties for treatment, payment, and health care operations purposes. However, VHA employees must only access or use the minimum amount of information necessary to fulfill or complete their official VA duties.

The use of health information for other purposes such as research requires additional authority such as the veteran's written authorization. This is a change from past practice.

VHA employees may use a limited data set for the purpose of research, public health, or health care operations. Contact the local privacy officer or the VHA Privacy Officer for guidance on limited data sets.

Disclosure of Information

VHA employees can disclose individually identifiable information from official VHA records only when:

- VHA has first obtained the prior written authorization of the individual who the information pertains to is obtained; or
- Other legal authority permits the disclosure without written authorization.

Individually identifiable information should be disclosed to requestors with the understanding that the information is confidential and should be handled with appropriate sensitivity.

VHA may disclose individually identifiable information related to VHA treatment of drug abuse, alcoholism, and sickle cell anemia, and testing or treatment for HIV only when 38 U.S.C. Section 7332 also permits the disclosure.

Data Use Form

Sharing of individually identifiable information within VHA or between VHA and other VA components, or VHA and VA Contractors shall be conditioned on the completion of a data use form, which specifies the conditions for the provision of data.

Violation of the terms of the agreement may result in termination of the party's right to future access of such data, and may require additional legal action, or, in the case of VA employees, disciplinary or other adverse action.

Legal counsel should be consulted upon learning of any violation of this agreement.

A data use form is not required for the sharing of individually identifiable information:

- To meet reporting requirements mandated by law, VA or VHA Central Office,
- For the performance of official VA duties within a VA Medical Center or within a Veterans Integrated Service Network (VISN),
- For official VA approved research purposes, and
- For claims adjudication.

A data use form can be incorporated into a business associate (BA) agreement between VA Offices or VA Contractors. A contract between the VHA and BA establishes the permitted and required uses and disclosures of such information by the BA. (See VHA Handbook 1605.1, Privacy and Release of Information, Appendix A for more information.)

Sharing of Information

VHA employees will request the following for sharing of individually identifiable information:

- Completion of a data use form from other Federal entities for auditing and oversight. A data use agreement in this situation is not required, but discretionary.
- The completion of a data use form from nongovernmental organizations or individuals requesting information for non-VA research purposes.

Safeguards

VHA employees shall ensure appropriate controls are followed to safeguard individually identifiable information, including protected health information, from loss, defacement and tampering and to ensure the confidentiality of information. Additionally, each health care facility will make certain appropriate administrative, technical, and physical safeguards are established:

- To ensure the security and confidentiality of individually identifiable information/records including protected health information/records, and
- To protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

Module Two: Veteran's Rights

Notice of Privacy Policy

A veteran has the right to receive a copy of the VHA Notice of Privacy Practices.

The Notice of Privacy Practices includes the uses and disclosures of his/her protected health information that may be made by VHA, as well as the individual's rights, and VHA's legal duties with respect to protected health information. There is one Notice of Privacy Practices for all of VHA. It can be obtained from http://www1.va.gov/health_benefits/.

Any individual who has questions or needs additional information regarding the Notice of Privacy Practices should be referred to the VA health care facility Privacy Officer or to VHA at 1-877-222-8387 or <http://www.va.gov>.

Right to a Copy

A veteran has a right to obtain a copy of his or her own record. A veteran's request for a copy of his or her record must be submitted in writing to the VHA facility with the record and must be signed. Except for rare circumstances, veterans may gain access to any information pertaining to them that is contained in any system of records. Veterans do not have to state a reason or provide justification for wanting to see or to obtain a copy of the requested information.

All requests for copies will be delivered to, and reviewed by, the facility Privacy Officer or designee. VA employees should refer all requests from veterans for copies of their records to the appropriate office in their facility.

Any denial or refusal to provide a veteran a copy of his record must be stated in a signed letter to the veteran that provides the veteran his appeal rights to the Office of General Counsel.

For more information see the VHA Handbook 1605.1, Privacy and Release of Information, Individual's Right of Access or contact your facility Privacy Officer.

Right to Request an Amendment

The veteran has the right to request an amendment to any information in his/her record. The request must be in writing and adequately describe the specific information the veteran believes to be inaccurate, incomplete, irrelevant, or untimely; and the reason for this belief. The written request should be mailed or delivered to the VA health care facility that maintains the record. The VA health care facility Privacy Officer will review and process the request. Requests should be processed within specific timeframes.

If the veteran requests amendment of clinical or health information in a medical record, the facility Privacy Officer will refer the request and related record to the health care provider or physician who is the author of the information to determine if the record should be amended. When a request to amend a record is approved, the Privacy Officer will complete the process. The veteran will be advised that their request has been approved and amendment changes will be recorded on original document.

When a request to amend a record is denied, the Privacy Officer will promptly notify the veteran making the request of the facility's decision. The written notification must state the reasons for the denial and should outline the veteran's right to appeal the decision.

Accounting of Disclosures

A veteran may request a list of all disclosures of information, both written and oral, from records pertaining to the individual. VHA facilities and programs are required to keep an accurate accounting for each disclosure of a record to any person or to another agency. An accounting is not required to be maintained in certain circumstances, including when disclosure is to VHA employees who have a need for the information in the performance of their official duties for treatment, payment, and health care operations.

The request for an accounting of disclosures must be in writing and adequately identify the VHA system of records for which the accounting is requested. The written request should be mailed or delivered to the VA health care facility that maintains the record. A request for an accounting of disclosures or disclosure summary should be delivered to the Privacy Officer or designee for processing.

Confidential Communications

The veteran has the right to request and receive communications confidentially from VHA by an alternative means or at an alternative location. VHA considers an alternative means to be an in person request, and an alternative location to be an address other than the individual's permanent address listed in Veterans Health Information Systems and Technology Architecture (VistA).

VHA shall accommodate reasonable requests from the individual to receive communications at an alternative address entered in VistA for one of the five correspondence types below:

- Eligibility or enrollment,
- Appointment or scheduling,
- Co-payments or veteran billing,
- Medical records, and
- All other.

Requests to split communications under a correspondence type will be considered unreasonable and therefore denied (all or none to one address).

Right to Request Restriction

The veteran has the right to request VHA to restrict its use or disclosure of individually identifiable health information to carry out treatment, payment, or health care operations. The veteran also has the right to request VHA restrict the disclosure of individually identifiable health information (IIHI) to the next of kin, family, or significant others involved in the individual's care. This request must be in writing and be signed by the veteran.

VHA is not required to agree to such restrictions, but if it does, VHA must adhere to the restrictions to which it has agreed.

All requests for restrictions of individually identifiable information should be referred to the VHA Privacy Officer or facility Privacy Officer.

Rights of Deceased Individuals

VHA employees must protect IIHI about a deceased individual in the same manner and to the same extent as required for the IIHI of living individuals for as long as VHA maintains the records.

However, the personal representative (e.g. Executor of the Estate) of a deceased individual has the same rights as the deceased individual. VHA employees must disclose the IIHI of the deceased individual under the right of access provisions to the personal representative. A personal representative may also request amendments to the deceased individual's records.

Other disclosures of a deceased individual's information are discussed in Module 4.

Module Three: Purposes Requiring No Authorization

Use and Disclosure

The authority for sharing information for treatment, payment, and healthcare operations for use within VA and disclosure outside VA are dependent upon the requesting party.

VHA: Individually identifiable information, with the exception of Psychotherapy Notes, may be used on a need to know basis within VHA for purposes of treatment, payment, and/or health care operations without the written authorization of the individual.

VA Entities: VHA employees may disclose or share individually identifiable information excluding health information to any component of VA that needs the information for the purposes of fulfilling the agency's mission without written authorization. VHA may disclose individually identifiable health information within VA for the purposes of treatment, payment, and/or health care operations without the written authorization of the individual as long as a business associate agreement is in effect. Before disclosing such information contact the VHA HIPAA (Program Management Office) PMO to confirm the existence of a business associate agreement.

VA Contractors: VHA employees may disclose non-veteran individual identifiable information to a VA contractor for the purposes of fulfilling the contract. Prior to release of any veteran individually identifiable information to a VA contractor, contact the VA health care facility Privacy Officer.

All contracts that provide for the maintenance of a system of records on behalf of the VA to accomplish a Department function, or provide for the disclosure of information from a VA system of records to the contractor, must include wording that makes the provisions of the Privacy Act apply to the contractor.

When a contract provides for access to, or maintenance of, information protected by other confidentiality statutes, (e.g., 38 U.S.C. 5705 and 7332) the contract will provide notification to the contractor that the records are protected by these confidentiality provisions which restricts the disclosure of the information and the purposes for which the information may be used.

Non-VA Entities: VHA employees may disclose individually identifiable health information (IIHI), excluding 38 U.S.C 7332 Protected Information, to non-VA healthcare providers (e.g. physicians, hospitals, and nursing homes) for treatment purposes and it does not require a written authorization from the patient.

Intramural Research

All Research within VHA must be conducted by a VHA investigator who is a VHA employee. A Research and Development (R&D) Committee must approval all research activities conducted by VHA investigators.

VHA individually identifiable health information involving non-employee research subjects may be used by a VHA Investigator for research purposes provided:

- There is a prior written authorization signed by the research subject. A prior written authorization may be incorporated into an informed consent for participation in research, or

- If there is no prior written authorization, there is an Institutional Review Board (IRB) or Privacy Board waiver of authorization.

VHA individually identifiable information involving employee research subjects only may be used by a VHA investigator for all official research purposes without authorization.

Extramural Research

VHA has the authority to disclose individually identifiable information to non-VHA Investigators.

VHA may disclose the individually identifiable health information of research subjects who are not VHA employees to non-VHA Investigators for research purposes provided there is a prior written authorization. A prior written authorization may be incorporated into an informed authorization notice (e.g. Consent to Participate).

If there is no prior written authorization, the authority for disclosing the data for research becomes very complicated depending on the requestor.

VHA may disclose the individually identifiable information of research subjects who are VHA employees, including employee health information, to non-VHA Investigators for research purposes without written authorization, subject to certain provisions.

VA Entities

The VHA Handbook 1605.1 regulates the disclosure of individually identifiable information from VHA records to VA entities without prior written authorization for purposes other than treatment, payment, or healthcare operations.

Within VHA facilities there are several non-VHA systems of records that are subject to the provisions of the Privacy Act of 1974, VA confidentiality statutes and/or HIPAA.

For example, VHA employees generate medical records regarding a patient's claim for disability; these medical disability records are technically under the control of the local VBA Regional Office. Please see the VHA Handbook 1605.1, Privacy and Release of Information, Appendix C for a list of all non-VHA systems of records that are normally maintained within a VHA facility.

It is the policy of VHA that should a question arise concerning right of access, amendment or release of non-VHA records/information, the non-VHA System Manager (e.g., VBA, HRMS) who has responsibility over these records will be contacted. Whether or not right of access, amendment or release of the information is granted will be determined based on federal privacy and confidentiality statutes, VA regulations, and official policies of the non-VHA entity. Facility Privacy Officers should work with these offices to determine how to process such requests.

Module Four: Purposes Requiring Authorization

Authorization Requirements

A written authorization signed by the individual to whom the information or record pertains is required when VA health care facilities:

- Need to utilize individually identifiable health information for a purpose other than treatment, payment, and/or health care operations and other authority does not exist;
- Disclose information for any purpose where other legal authority does not exist; and
- To conduct marketing.

When an authorization of the individual is required for use or release of individually identifiable information, the request and authorization must be in writing, contain an expiration date or event, identify the individual to whom the requested information pertains, identify the permitted recipient or user, describe the information requested, and contain the signature of the individual whose records will be used or disclosed.

Additional Authorization Requirements

Authorization may be given on VA Form 10-5345, Request for and Authorization to Release Protected Information, or in correspondence with a release signed by the individual.

If the authorization fails to meet all of the content requirements, has expired, is known to have been revoked, or is known to be false, the authorization will be considered invalid and requested information will not be disclosed. Unless it is explicitly covered in the authorization, information regarding HIV, sickle cell anemia, or drug/alcohol treatment must not be disclosed.

Disclosure

Individuals or third parties may request VHA to disclose any record. The following outlines how a disclosure request should be processed:

- The request must be in writing and describe the record sought so it may be located in a reasonable amount of time.
- If the requestor is the individual to whom the records pertain, follow the guidelines as discussed in Module 2.
- If the requestor is other than the individual to whom the records pertain (third party), determine what information or record is requested and for what purpose:
- If the record requested does not contain individually identifiable information, process the request in accordance with FOIA policy as discussed in Module 7.
- If the record requested contains individually identifiable information, VHA employees should review the applicable paragraphs of the VHA Handbook 1605.1, Privacy and Release of Information for guidance.
- VHA employees should process requests from a third party for individually identifiable information within the time standards (e.g. 20 workdays) and charge the applicable fees as outlined in the VHA handbook.

If the policy for a request for individually identifiable information is unclear, VHA employees should contact their facility Privacy Officer.

Other Disclosures Requiring Authorization

VHA has several policies for the disclosure of individually identifiable information for certain purposes. Discussed below is the VHA disclosure policy for the release of information from claims folders, providing medical opinions, and release of psychotherapy notes.

Requests for release of medical or health information in veterans' claims folders are normally handled by the FOIA/PA Officers at Veterans Benefits Administration (VBA) Regional Offices. VHA health care providers are required, when requested, to provide descriptive statements and opinions for VA patients with respect to patients' medical condition, employability, and degree of disability.

VHA employees may use psychotherapy notes to carry out treatment, payment, and/or health care operations; to train students or participants in mental health programs; and in defense of a legal action. VHA employees may not disclose psychotherapy notes for any other purpose without the prior written authorization of the individual to whom the notes pertain.

Module Five: Release of Information Outside of VA

Individual Authorization

If VHA employees receive a request for individually identifiable information that is accompanied by a valid written authorization, disclosure should be made in accordance with the authorization. Disclosure when a valid written authorization signed by the individual is provided, though not mandatory, is made unless information is deemed to be sensitive.

Before making a disclosure of any individually identifiable information (including health information) to an outside entity without an individual's authorization, VHA employees should determine:

- The type of information involved, and
- whether legal authority exists under the statutes and regulations to permit the disclosure. See your facility Privacy Officer if you have questions.

If legal authority is not found in all applicable statutes and regulations, VHA employees may not make the disclosure.

Disclosure is not mandatory under these provisions, and in questionable situations, the signed authorization of the individual should be obtained.

Non-VA Entities

Information can be disclosed to various non-VA entities.

Congress

VHA may disclose individually identifiable information, including health information, to a member of Congress, when responding to an inquiry from a congressional office that is made at the request of the individual to whom the information pertains. If prior written authorization form has not been provided, the member of congress needs to provide a copy of their original correspondence.

Individually identifiable information, including health information may be disclosed to the Chair of the Veterans' Affairs Committee or Subcommittee of the House of Representatives or the United States Senate without the individual's written authorization when the request for information is made part of the Committee oversight functions.

VHA employees may not disclose individually identifiable information upon an inquiry from a Member of Congress on behalf of the veteran by a third party (e.g., veteran's son) without an appropriate authorization.

Disclosure of health information requires written authorization for a purpose other than described above.

Courts, Quasi-Judicial Bodies and Attorneys

VHA employees may disclose individually identifiable information including health information pursuant to a court order from a Federal, State, or local court of competent jurisdiction.

A subpoena is not a court order and cannot be used to compel disclosure except in certain situations. Any subpoena for information received should be discussed with facility Privacy Officers.

The disclosure of individually identifiable information to courts, quasi-judicial bodies and attorneys without a court order is dependent on information requested and the purpose for the disclosure. Refer to VHA Handbook 1605.1, Privacy and Release of Information for further guidance.

Routine Reporting to Law Enforcement Entities Pursuant to Standing Request Letters

Individually identifiable information, excluding 38 U.S.C. 7332-protected information, may be disclosed to officials of any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of public health or safety only as authorized by law. (See VHA Handbook 1605.1, Privacy and Release of Information, Paragraph 21.)

The health care facility Director will acknowledge the receipt of an agency's standing request and advise the agency of the penalties regarding the misuse of the information. The standing request must be updated in writing every 4 years.

Next-of-Kin, Family and Significant Others

VHA employees may disclose the following information to the next of kin, family, or significant other of an individual without prior written authorization:

- General information on the individual's condition and location if in the Facility Directory,
- Individually identifiable information including health information when in the presence of the individual,
- Individually identifiable information including health information outside the presence of the individual when it is determined the disclosure is in the best interests of the individual, and
- HIV Status may be disclosed to the individual's spouse or sexual partner if certain conditions are met.

Non-VA Health Care Provider

VHA may disclose individually identifiable information, excluding 38 U.S.C 7332 protected information to resident care homes, assisted living facilities, and home health services for the purpose of health care referrals.

VHA may disclose individually identifiable health information, excluding 38 U.S.C 7332 protected information, to a non-VA health care provider (physicians or hospital), for treatment purposes.

VHA may disclose individually identifiable health information; excluding 38 U.S.C. 7332 protected information, to a non-VA health care provider for the purposes of VA paying for services.

VHA may disclose individually identifiable information to a non-VA provider caring for an individual under emergent conditions.

Organ Procurement Organization (OPO)

VHA may disclose relevant health information, excluding 38 U.S.C 7332 protected-information and the name and address for the patient to the local Organ Procurement Organization (OPO), or other entity designated by the OPO for the purpose of determining suitability of a patient's organs or tissues for organ donation.

If a patient has 38 U.S.C 7332 protected information VHA may not disclose individually identifiable health information without prior written authorization of the patient or personal representative.

Medical Care Cost Recovery

To recover or collect the cost of medical care from third-party health plan contracts, individually identifiable health information that is required by the health plan contract may be disclosed to the insurance carrier. A written authorization is required to disclose 38 U.S.C. 7332 - information for billing.

Public Health Authorities

VHA employees may disclose individually identifiable information, excluding 38 U.S.C. 7332 - protected information, to Federal, State, and/or local public health authorities charged with the protection of the public health or safety pursuant to a standing request or other applicable legal authority.

An individual's infection with HIV may be disclosed from a record to a Federal, State, or local public health authority that is charged under Federal or State law with the protection of the public health.

VHA employees may disclose individually identifiable information including health information to the Food and Drug Administration (FDA) for the purpose of routine reporting and to carry out program oversight duties upon their official written request.

State Veterans Homes and Veteran Service Organizations (VSO)

VHA employees may disclose individually identifiable health information, excluding 38 U.S.C. 7332 - protected information, to a State Veterans Home for the purpose of medical treatment and/or follow-up at the State Home. VHA employees may disclose 38 U.S.C. 7332 - protected information to a State Veterans Home only with the written authorization of the individual. VHA employees may disclose individually identifiable information including health information to a Veterans Service Organization for purposes of obtaining benefits provided an appropriate Power of Attorney or a written authorization from the individual has been filed with the VA health care facility that maintains the information.

Other Non-VA Entities

VHA may also disclose individually identifiable health information to other non-VA entities such as:

- Other Federal Government Agencies
- Public registries
- Private registries
- Consumer reporting agencies, and
- Organ procurement organizations

Module Six: Operational Privacy Requirements

Agency Accounting of Disclosure Responsibilities

VA health care facilities are required to maintain an accounting of all disclosures. The accounting will:

- Include the date of each disclosure, nature or description of the individually identifiable information disclosed, purpose of each disclosure, and the name and, if known, address of the person or agency to whom the disclosure was made.
- Be retained for 6 years after the date of disclosure or for the life of the record whichever is longer.

Complaints

Individuals have the right to file a complaint regarding VHA privacy practices. The complaint does not have to be in writing, though it is recommended.

Complaints should be made to the VHA Privacy Officer, or the VA health care facility Privacy Officer, or designee. All privacy complaints must be investigated and a written response provided to the complainant. In addition, the Privacy Officer must enter the complaints into the Patient Violation Tracking System (PVTS).

Faxes

VA health care facilities shall only transmit individually identifiable information via facsimile (fax):

- Between VA health care facilities when no other means exists to provide the requested information. VA health care facilities should ensure individually identifiable information is sent on a machine that is not accessible to the general public, and
- Outside VA under medical emergency situations. The VA health care facility shall take reasonable steps to ensure the fax transmission is sent to the appropriate destination (e.g. call the requestor to ensure receipt). A confidentiality statement should be on the cover page when transmitting individually identifiable information. The statement should instruct the recipient of the transmission to notify VHA if received in error.

Email

Email messages must contain only non-individually identifiable information unless the data, and accompanying passwords or other authentication mechanisms are appropriately secured. (See VHA Handbook 6210, AIS Security.)

In accordance with VHA Directive 6210 any email message containing sensitive information, which includes all patient information must be secured. VistA email in MailMan is considered secured; therefore, it can contain patient information. However, only VHA employees with a need for the patient information should be sent the email in order to comply with the privacy policy. The subject line (SUBJ:) of the VistA email message is NOT to contain the full name or full SSN of the patient due to this information being available to System Administrators that do not have a need for it in the performance of their duties.

MS Outlook or Exchange typically has NOT been considered secured by the Office of Cyber Security; therefore, any emails sent via Outlook cannot contain patient information unless you can secure the message utilizing encryption, PKI or something similar.

Contracts

Any contract between VHA and a contractor for the design, development, operation, or maintenance of a VHA system of records or any contract that necessitates the creation, maintenance, use, or disclosure of individually identifiable information will conform to the Federal Acquisition Regulations (FAR).

Organizations or individuals with whom VHA has a contract for services on behalf of VHA where individually identifiable health information is provided to, or generated by, the contractors are considered business associates (See VHA Handbook 1605.1, Privacy and Release of information, Appendix A). Business associates must follow the privacy policies and practices of VHA.

All contractors and business associates and their employees must receive privacy training.

Penalties

Individuals who are convicted of knowingly and willfully violating the penalty provisions of the Privacy Act shall be guilty of a misdemeanor and fined not more than \$5,000.

In the event a health care facility employee is found criminally liable of a Privacy Act violation, a written report of the incident will be provided to the VA health care facility Director.

Any person who violates any provision of 38 U.S.C. 7332 shall be fined not more than \$5,000 in the case of a first offense, and not more than \$20,000 in each subsequent offense.

A VHA employee who knowingly violates the provisions of HIPAA by disclosing individually identifiable health information shall be fined not more than \$50,000, imprisoned not more than one year, or both. Offenses committed under false pretenses or with the intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain or malicious harm have more stringent penalties.

In addition to the statutory penalties for the violations described above, administrative, disciplinary or other adverse actions (e.g., admonishment, reprimand, and/or termination) may be taken against employees who violate the statutory provisions.

Other Requirements

Other operational privacy requirements include:

- Designation of Privacy Official
- Training of Personnel
- Health Information from Non-VA Physicians and Facilities Establishing New Systems of Records

Establishing New Systems of Records

When personal information is retrieved by an individual identifier, a system of records subject to the Privacy Act comes into existence. The Privacy Act requires agencies to publish notices in the Federal Register describing new or altered systems of records.

Information concerning an individual cannot be collected or maintained in such a manner that information is retrieved by an individual identifier unless a system notice is first published in the Federal Register.

A list of published VHA systems of records only can be obtained at: <http://vaww.vhaco.gov/privacy>

You will only be able to access this address through the VA Intranet.

Computer Matching Programs

The Privacy Act includes requirements governing the conduct of VA computer matching programs.

The Privacy Act covers the computerized comparison of records from:

- Two or more automated systems of records, and
- A Federal agency's automated system of records and automated records maintained by a non-federal (State or local government) agency.

VA health care facilities will not participate in computer matching programs with other Federal agencies or non-Federal agencies as a "recipient agency" or a "source agency" unless the program is approved by the VA health care facility Director, VHA Privacy Officer, appropriate VA Central Office staff, and the VA Data Integrity Board and conducted in compliance with the Privacy Act (as amended by the Computer Matching Act), the OMB guidelines (65 FR 77677, December 12, 2000) and applicable Department guidance (VA Handbook 6300.7).

Module Seven: Freedom of Information Act (FOIA)

Access and Fees

The FOIA requires disclosure of VA records, or any reasonably portion of a record that may be segregated, to any person upon written request. VHA administrative records will be made available to the greatest extent possible in keeping with the spirit and intent of the FOIA.

Before releasing records in response to a FOIA request, the record will be reviewed to determine if all or only parts of it cannot be released.

Records or information customarily furnished to the public in the regular course of the performance of official duties may be furnished without a written request. A request for access to official records under the FOIA must be in writing over the signature of the requester and reasonably describe the records so that they may be located.

There are four categories of FOIA requesters. Specific levels of fees will be charged for each of these categories.

- Commercial use requesters,
- Educational and non-commercial scientific institutions requesters,
- Requesters who are representatives of news media, and
- All other requesters.

Time Limits for a FOIA Request

A request for records received at a health care facility will be promptly referred for action to the facility's FOIA Officer. The requester must be notified in writing within 20 workdays after receipt of the request whether the request will be granted or denied.

Exemptions from Public Access to VHA Records

There are nine exemptions that permit withholding of certain information from 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 a record should not or cannot be disclosed in response to a FOIA request. When such an occasion arises, the FOIA permits records or information, or portions that may be segregated to be withheld under one or more of the exemptions.

Annual Report of Compliance

The FOIA requires each agency to submit to Congress a report on or before March 1st of each year of its activities and efforts to administer the FOIA during the preceding fiscal year. The facility FOIA Officer is required to submit figures referencing FOIA requests annually to VHA CO (See VHA Directive, Annual FOIA Report).

Privacy Policy Annual Training

In order to receive credit for this training, a completed copy of this form should be returned to:
Timothy H. Graham, Privacy Officer, Room B-202

NAME: _____ **DATE:** _____ **PRODUCT LINE:** _____

INSTRUCTIONS: Answer the following questions by indicating whether the comment is true or false.

_____ Veterans do not have to state a reason or provide justification for wanting to obtain a copy of their health records.

_____ The Health Insurance Portability and Accountability Act and the Privacy Act do **not** govern patient privacy.

_____ Any individually identifiable health information related to VHA treatment of drug abuse, alcoholism, sickle cell anemia and HIV has special protection under 38 U.S.C. 7332.

_____ Employees who knowingly violate the privacy laws cannot be punished.

_____ The Privacy Officer for the Philadelphia VA Medical Center is Timothy Graham.