



OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM-2023-0033]

Privacy Act of 1974; System of Records

AGENCY: Office of Personnel Management.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Office of Personnel Management (OPM) proposes to establish a new government-wide system of records titled “OPM/GOVT-11 Federal Fair Chance Act Complaint Records.”

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. This new system is effective upon publication in the Federal Register, except for the routine uses, which are effective [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit written comments through the:

- Federal Rulemaking Portal: <https://www.regulations.gov>

All submissions received must include the agency name and docket number for this *Federal Register* document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact:

Timothy Curry, Deputy Associate Director, Employee Services, Accountability and Workforce Relations, Office of Personnel Management, at (202) 606-2930 or

employeeaccountability@opm.gov. For privacy questions, please contact: Marc Flaster, Acting Senior Agency Official for Privacy, Office of Personnel Management, at (202) 606-2115 or privacy@opm.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, OPM proposes to establish a new system of records titled “OPM/GOVT-11 Federal Fair Chance Act Complaint Records.” This system of records will enable Federal agencies to collect and maintain complaint records pertaining to the Fair Chance to Compete for Jobs Act of 2019 or the Fair Chance Act, 5 U.S.C. 9201-9206 (“FCA” or “the Act”).

The FCA limits the circumstances in which agencies may request criminal history information from an applicant prior to extending a conditional offer of employment. In addition, the FCA requires OPM to establish a complaint process by which applicants for appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance with the requirements of the Act. Furthermore, the Act establishes requirements and procedures regarding penalties for violations.

The FCA directs OPM to establish and publish procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with 5 U.S.C. 9202. The complaint, or any other information, is submitted to and maintained by the employing agency until such time as the complaint is referred to OPM or OPM requests the records.

The records in this system of records include the applicant’s complaint or any other information submitted by the applicant and the agency’s investigative report, which includes the agency’s factual findings; a complete copy of all information gathered during the investigation, including documentary and testimonial evidence; any other information the agency believes OPM should consider; and any additional information OPM requests the agency provide. In addition, the records include OPM’s written notification to the agency and the subject(s) of the complaint regarding OPM’s assessment of the complaint, including whether to dismiss the complaint or that a violation may have occurred such that OPM is initiating adverse action proceedings under 5 CFR part 754, subpart B.

This proposed Government-wide system of records will include the complaint records in the custody and control of the agencies as well as those with OPM. OPM has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to 5 U.S.C. 552a(r) and OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act," dated December 23, 2016. This system of records will be included in the OPM's inventory of records systems.

Dated: September 11, 2023.

Kayyonne Marston,

Federal Register Liaison.

SYSTEM NAME AND NUMBER:

Office of Personnel Management, OPM/Government-wide-11 Federal Fair Chance Act
Complaint Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Employee Services, Accountability and Workforce Relations, Office of Personnel Management, and other Federal agencies are responsible for the records in this system of records. Records in OPM's custody are maintained at 1900 E Street NW, Washington, DC 20415. Other Federal agencies that receive Fair Chance Act complaints, or any other information, maintain records at their headquarters and field offices.

SYSTEM MANAGER(S):

Deputy Associate Director, Employee Services, Accountability and Workforce Relations,
Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Fair Chance to Compete for Jobs Act of 2019; 5 U.S.C. 9202; 5 CFR 754.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to permit OPM and other Federal agencies to collect and maintain records to administer the provisions of the Fair Chance Act (FCA) regarding complaints, or any other information, for alleged violations of the FCA. This includes conducting all activities related to complaints, or any other information, receipt, investigation, adjudication, and, where applicable, appeal of the final decision.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system of records are:

- Applicants for Federal civil service positions, other than positions excepted under 5 CFR 920.201(b), in a covered agency defined in 5 U.S.C. 105; and
- Agency employees who violate or have been alleged to have violated the Fair Chance Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system are:

- Full name;
- Phone numbers;
- Email addresses;
- Mailing addresses; and
- The applicant's complaint, or any other information provided;
- Any information provided by the applicant in support of the complaint;
- Documentation of the applicant's authorized representative;
- Information from current and potential parties and participants about the complaint and complaint process;
- Any records OPM creates when another agency refers a complaint to OPM;

- Correspondence or documentation issued by the t employing Federal agency; and
- Any other information related to the complaint and the complaint process, including OPM's processing of the complaint through the adjudication and any appeal.

RECORD SOURCE CATEGORIES:

Information contained in this system may be obtained from:

- a. The applicant to whom the records pertain.
- b. Supervisors, managers, and other agency officials.
- c. Federal employees (non-applicants) and others who provide information regarding the complaint.
- d. Investigators.
- e. The individual applicant/complainant's authorized representative.
- f. The employing Federal agency that received the complaint.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The records in this system of records are records of OPM and should be provided to those OPM employees who have an official need or use for those records. Therefore, if an employing agency is asked by an OPM employee to access the records within this system, such a request should be honored.

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows:

- a. To the Department of Justice, including Offices of the U.S. Attorneys; another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body; another party in litigation before a court, adjudicative, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant and

necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:

- (1) OPM, the employing Federal agency, or any component thereof;
 - (2) Any employee or former employee of OPM or the employing Federal agency in their official capacity;
 - (3) Any employee or former employee of OPM or the employing Federal agency in their individual capacity where the Department of Justice or another Federal agency has agreed to represent the employee;
 - (4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, pursuant to 5 CFR part 295 or otherwise.
- b. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates or is relevant to a violation or potential violation of civil or criminal law or regulation.
 - c. To a member of Congress from the record of an individual in response to an inquiry made at the request of the individual to whom the record pertains.
 - d. To the National Archives and Records Administration (NARA) for records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.
 - e. To appropriate agencies, entities, and persons when (1) OPM or the employing Federal agency suspects or has confirmed that there has been a breach of the system of records; (2) OPM or the employing Federal agency has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, OPM or the employing Federal agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

- f. To another Federal agency or Federal entity, when OPM or the employing Federal agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.
- g. To contractors, experts, consultants, or volunteers performing or working on a contract or other assignment for OPM or the employing Federal agency when OPM or the employing Federal agency determines that it is necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use will have proper clearance, act on behalf of the relevant federal agency and understand the need to protect Privacy Act information.
- h. To the Merit Systems Protection Board or the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.
- i. To any source, including but not limited to a former employee or Federal agency, from which information is requested in the course of reviewing, investigating, and responding to a complaint, to the extent necessary to identify the individual, inform the source of the nature of the complaint, and to identify the type of information being requested.
- j. To the employing Federal agency and the employee who was the subject of the complaint, by OPM, to provide information to the employing agency concerning OPM's review and OPM's assessment regarding the complaint, including any decision to initiate adverse action proceedings or to dismiss the complaint.
- k. To the Office of Government Information Services (OGIS), NARA, to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h) to review administrative policies, procedures, and

compliance with the FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records in this system of records are stored electronically on OPM or Federal agency or cloud servers or on paper in locked file cabinets or locked offices with access restricted to those who have a need to know.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by the name or by any other personal identifier, or combination of identifiers, contained in this system of records.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records in this system of records are subject to General Record Schedule 2.3, Item 060, which requires that they be destroyed no sooner than 4 years but no later than 7 years after the case is closed or there is a final settlement on appeal, as appropriate. Agencies must select one fixed retention period, between 4 and 7 years, for all administrative grievance, adverse action, and performance-based action case files. Agencies may not use different retention periods for individual cases.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are protected from unauthorized access and misuse through various administrative, technical, and physical security measures. OPM and the other Federal agencies who maintain custody and control of records in this system of records are required to maintain security measures in compliance with the Federal Information Security Modernization Act of 2014 (Pub. L. 113–203), associated OMB policies, and applicable standards and guidance from the National Institute of Standards and Technology. Electronic records are protected by restricted access procedures, including passwords and sign-on protocols; paper records are in locked file cabinets or locked offices with restricted access. Only employees whose official

duties require access to the electronic or paper records are authorized to view, administer, and control these records.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to their records in this system of records may submit a request in writing to the Office of Personnel Management, Office of Privacy and Information Management -- FOIA, 1900 E Street NW, Room 5H25, Washington, DC 20415-7900 or by emailing *foia@opm.gov*; ATTN: Employee Services, Accountability and Workforce Relations. OPM may refer notification and access requests to the agency named in the complaint. In addition, if the individual is seeking notification of and access to records stored at the agency named in the complaint, or any other information, relating to a violation of 5 U.S.C. 9202, the individual may submit a request to that agency in accordance with the agency's FOIA and Privacy Act procedures. Individuals must furnish the following information to locate and identify the records sought:

1. Full name.
2. E-mail address or mailing address.
3. Name of the relevant agency named in the complaint.
4. Signature.

Individuals requesting access must also comply with OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Individuals may request that records about them be amended by submitting a request in writing to the Office of Personnel Management, Office of Privacy and Information Management -- FOIA, 1900 E Street NW, Room 5H25, Washington, DC 20415-7900 or by emailing *foia@opm.gov*; ATTN: Employee Services, Accountability and Workforce Relations. OPM may refer amendment requests to the agency named in the complaint. In addition, if the individual is seeking amendment of records stored at the agency named in the complaint, the

individual may submit a request to the agency in accordance with the agency's Privacy Act procedures. Individuals must furnish the following information to locate and identify the records sought:

1. Full name.
2. E-mail address or mailing address.
3. Name of the relevant agency named in the complaint.
4. A precise description of the records for which they are requesting amendment and the reason for the amendment.
5. Signature.

Individuals must also comply with OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

NOTIFICATION PROCEDURES:

See "Record Access Procedures."

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

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