



Tips and Tidbits
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When does typical gossip intersect with the Privacy Act? What personal information is protected by the Privacy Act? Under what circumstances may Privacy Act information be released?

The Federal workplace is widely known for having an active rumor mill. It is not at all uncommon to hear whisperings about a higher-up that has been chosen or passed over for a position, a boss who received a bad performance rating, or a co-worker who is being disciplined for some workplace misdeed. While the intent of gossip may not be malicious and may simply be to quell unbridled curiosity, participating in such seemingly harmless talk can have far reaching affects, to include civil ramifications, when the sharing of that wisdom infringes on protected information.

The Privacy Act at 5 U.S.C. §552a protects certain personal information from disclosure. Protected is any item, collection, or grouping of information about an individual that is maintained by an agency and includes education, financial transactions, medical, criminal, and employment history. Disclosing information of this nature to someone who does not have a reason to know it can open up the agency to civil liability. The Privacy Act allows an individual to bring a civil action against an agency for an unauthorized disclosure.

For example, if an employee learns through the course of performing his duties that one of his subordinates or supervisors is being disciplined, the Privacy Act prohibits the sharing of this information with anyone who does not have a legitimate need to know that information [in order to perform their duties]. The Privacy Act makes it a misdemeanor for an individual, who by virtue of his employment or official position has access to protected information, from knowingly and willfully disclosing it to someone not entitled to know it. Managers and supervisors who engage in workplace gossip can more easily fall into the trap of discussing matters protected by the Privacy Act simply because they have access to personal information that may indeed be Privacy Act-protected.

In order to be protected from disclosure, the agency must maintain the information in a system of records. That means the information is retrievable from an agency's record system by an individual's name, or some identifying number (such as Social Security number), or other identifying means assigned to the individual. Accordingly, under these parameters, almost all the personal information maintained by an agency on its employees, such as information in an employee's Official Personnel Folder (OPF), performance file, medical file, disciplinary file, or Office of the Inspector General (OIG)

investigative report *is* covered. With few exceptions, the Privacy Act makes it unlawful to disclose this information by any means (i.e. through conversation, electronically, etc) without the prior consent of the individual. Among the exceptions to the rule of nondisclosure are disclosures made:

- To those officers and employees of the agency that maintain the record and those who have an official need for the record;
- As a result of the “routine use” of the documents;
- To a law enforcement agency in response to a written request by the agency head or designee;
- To those acting on behalf of the health or safety of the subject;
- In answer to inquiries from both houses of Congress;
- If required by a court order; and,
- If required to be disclosed by the Freedom of Information Act

The most common exception is that the Privacy Act allows disclosure to those officers and agency employees who have a need to know the information in order to perform their duties.

Caution about engaging in workplace gossip should be exercised. Personal information collected by the agency is protected and is intended to be kept private. If access to personal information about an employee is granted by virtue of your position, that information should be safeguarded and the privacy of others in the workplace respected.

For additional information, please contact your servicing HR Specialist.

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