

West Virginia Executive Branch Privacy Policy: Individual Rights

Understanding the Individual Rights Policy

Question:

Do I have the right to access my private information, (PI)?

Answer:

The Individual Rights Policy enables individuals to access the private information ,(PI), that Executive Branch agencies maintain about them. It allows them to correct inaccurate information.

Access rights are an important part of our commitments both to privacy and open government. By enabling access to PI, we help ensure that our citizens understand our information collection practices.

Providing individuals with the right to access and correct their PI also benefits us. By allowing individuals to access and correct their PI, we help maintain the accuracy of the PI we are using in our everyday processes.

The Individual Rights Policy also ensures that individuals have the ability to ask privacy-related questions and lodge privacy-related complaints. The ability to seek redress is a key component of our fair information practices program.

Tip 2: Individual Rights of Access are Guaranteed by Many Laws

Question: Am I guaranteed access to my private information?

Many West Virginia and Federal laws guarantee individuals the right to access private information (PI). For example, Departments subject to the HIPAA Privacy Rule are required to provide access to each person's personal health information. Have you ever thought about why these requirements exist?

Whenever a person's PI is going to be used to make important decisions about the person – such as how to treat a medical problem, or whether the person is eligible for insurance – it's critical that the PI be accurate and complete.

Providing individuals with access to their PI helps ensure accuracy by allowing the individuals to periodically verify the information about them. If PI is inaccurate, the person can object and explain the error.

Because it's so important for PI that's used for decision-making to be accurate, we see access rights mandated laws. Other laws that include access rights are the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), and the Family Educational Rights and Privacy Act (FERPA).

Tip 3: Limits on Individual Access Rights

Question: Are there limits on access to my private information?

Although the Executive Branch agencies are committed to respecting individual rights of access to private information (PI), those rights are limited. In particular, a Department can generally deny an individuals' access request if:

- ✓ The cost of providing the access is unreasonable.
- ✓ Providing access would compromise another person's privacy.
- ✓ Providing access would expose other sensitive information, such as an investigation.
- ✓ Providing access would violate a law or department policy.

Of course, Departments may never deny access to PI where the person has a specific legal right of access, such as under the HIPAA Privacy Rule.

If you want to deny someone's request for access to PI, you should first consult with your Privacy Officer. Your Privacy Officer can help you decide if access is necessary. Your Privacy Officer can also help you satisfy an access request in a reasonable manner.

Tip 4: FOIA vs. Individual Rights

Question: Could someone FOIA my private information?

Both the Individual Rights Policy and the West Virginia Freedom of Information Act provide individuals with access to government records. Have you ever thought about how they differ?

FOIA provides all citizens with the right to access government records. FOIA requests can be used by a citizen to obtain his or her own records. The requests can also be used to provide broad access to many different types of government records, including information about government employees, department meetings and other documents that contain no PI at all.

The Individual Rights Policy provides individuals with the right to access their own PI, even if FOIA is not applicable. For example, individuals cannot generally use FOIA requests to obtain human resources files for Executive Branch workers. But a worker could access her own file using the Individual Rights Policy.

Tip 5: Accessing Your Own PI

Question: Who is responsible for updating my private information?

Every Executive Branch worker has the right to access his or her private information (PI) under the Individual Rights Policy. Did you know that you have a *responsibility* to access your PI as well?

Each Department tries to keep PI appropriately accurate, complete and up-to-date. In many cases, however, the Department has to rely on individuals to use their ability to access and correct PI to assist with maintaining accuracy.

If your PI has changed – if you have a new address or phone number, for example – you have a responsibility to make sure your information is updated in State systems.

Tip 6: Correcting PI

Question: Can I correct my private information?

Sometimes private information (PI) in our systems is inaccurate. Inaccuracies exist because PI changes when people move, marry, divorce, *etc.* Inaccuracies also exist because of human errors. For example, an individual may incorrectly remember his Social Security number or insurance policy number. Or the number may be incorrectly entered by a State employee.

The Individual Rights Policy provides individuals with the ability to access and correct their PI. In many cases, PI can be corrected easily. Your Department has many established procedures for updating information. However, in some cases, PI cannot be easily updated. For example, if PI is contained in a tax lien, a court order may be required to change the information.

If you are responsible for data corrections, you should verify with your manager the types of documentation required in order to change PI in our systems.

Tip 7: Individual Redress

Question: What is individual redress?

The Individual Rights Policy requires each Department to provide “an appropriate means of individual redress.” This means that each Department must have a formal process for handling privacy-related questions and complaints. The Policy requires the process to be easily accessible and simple to use.

- ✓ Everyone has a right to understand the Department’s privacy and security practices. Everyone also has a right to ask questions about and raise objections to the collection and use of private information (PI).
- ✓ Each Department must have a process for helping individuals with privacy-related questions and complaints. **Never discourage a person from asking a question or making a complaint.**
- ✓ If someone has a question about our privacy practices, you can provide the person with a copy of the applicable Privacy Notice.
- ✓ You should refer all other questions – as well as all complaints – to your Privacy Officer immediately.

Tip 8: Accuracy of PI

Question: What can I do to ensure the accuracy of private information?

Each Department strives to maintain the accuracy and completeness of all the private information (PI) it stores. Here are some simple steps you can take to help us meet our accuracy goals:

- ✓ If you collect PI from individuals, be sure you capture their information accurately. For example, always ask people to spell their names for you. Read back numbers that you've captured, so the person can verify that you've gotten the numbers right.
- ✓ If you collect forms from individuals, verify that the forms are legible while the person is still there. If letters or numbers aren't clear, ask the person to give you the information again.
- ✓ If you learn that an individual will have a PI change, remind the person to access and update the records. For example, if a person says she's moving in a few weeks, suggest that she come back and update her records when her new address is established.
- ✓ Encourage people to ask questions so they understand the information you need. Similarly, you should be willing to explain to people what you're looking for so that you get the right information, especially if there's any possibility of confusion about the PI needed. For example, you may be talking with a retired worker's spouse about medical benefits, and she may want to provide you with her husband's Social Security number instead of her own. Being clear when the PI is collected may enhance the accuracy of the information in the file!
- ✓ When in doubt, double-check!

Tip 9: Accuracy of Third Party Data Sources

Question: How can I minimize harm if I receive inaccurate information?

When we obtain private information (PI) from third parties, we must always be careful to consider the accuracy of the information. Third party data suppliers generally do not guarantee the accuracy of the records they provide. Databases containing public records, telephone directory information, Internet-sourced information, and even consumer reports often contain inaccurate or out-of-date information.

Given that errors do occur, it is up to each Department to minimize the possible harm that might come from relying on an incorrect record. Recognizing that errors exist is the first step. Other ways to minimize the possible harm from inaccuracies include:

- ✓ Checking online data source file dates, to confirm that you are using the most current file updates,
- ✓ Verifying negative information against multiple data sources,
- ✓ Verifying aggregated online information with original public records filing, or
- ✓ Contacting the data supplier to confirm any questionable information.

The likelihood of errors increases when individuals have common names, or when the same name is used by multiple people in a household. (For example, when a father and son have the same name, their records are often mixed.) Similarly, victims of identity theft often have great difficulty correcting their personal information across all of the third party data compilers.

If an individual alleges that there is an error in third party information, be sure to refer that person to the Privacy Officer so that an investigation can be conducted. Understanding that errors do exist can go a long way to helping treat people's PI with the respect it deserves!