

Exhibit 3

Privacy Act Notice



DEPARTMENT OF VETERANS AFFAIRS
Records Management Center
P.O. Box 5020
St. Louis, MO 63115

July 22, 2016

MEGAN K TLUSTY
C/O BLOOMBERG LP
731 LEXINGTON AVE
NEW YORK, NY 10022

In reply, refer to:
376/276/PLR
File Number: 061509164
Dorian Baldwin

Re: Privacy Act Request

To Whom It May Concern:

This is an Acknowledgement letter that your request will be processed under the Privacy Act. In your request you asked for it to be processed under the Freedom of information Act (FOIA). After, reviewing your request for claims file or service treatment records retrieved by a personal identifier (i.e. Social Security Number or name of veteran) the request will be processed under the Privacy Act. Below I have attached the differences between the Privacy act and FOIA.

Differences between the Privacy Act and FOIA Act

- FOIA is an information access law; Privacy Act is an information protection law with limited access provisions.
- The Privacy Act, unlike the FOIA, applies only to U.S. citizens and permanent residents.
- Anyone may submit a FOIA request for any type of record, but a PA request may only be made by the individual retrieved by a personal identifier (or his or her legally authorized representative) covered by the requested records.
- Privacy Act protection does not apply to an individual once he/she has died, that is a FOIA request.
- Response Times, The Privacy Act 5 U.S.C. § 552a does not impose a response time for agency responses to requests. FOIA 5 U.S.C. § 552 has hard guidelines for response of the following; 20-day-time-limit for response with up to 10 days for approved extension.

Privacy Act Continued

- The Privacy Act guarantees individuals the right to access and/or view and obtain a copy of their own information, including Personally Identifiable Information (PII), contained in a VA or VBA System of Records.

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- *Sussman v. DOJ*, No. 03-3618, 2006 WL 2850608, at *5 (E.D.N.Y. Sept. 30, 2006) (“The Privacy Act . . . does not allow for ‘constructive exhaustion,’ and prohibits a requester from filing an action without having obtained a response from the agency.”); *Anderson v. USPS*, 7 F. Supp. 2d 583, 586 n.3 (E.D. Pa. 1998) (citing Pollack for proposition that “Privacy Act contains no section equivalent to the ‘constructive exhaustion’ provision of the FOIA,” but alternatively finding that access suit must be dismissed for failure to exhaust administrative remedies)
- Several courts have recognized that jurisdiction to consider a Privacy Act access claim exists only if the government has failed to comply with a request for records; once a request is complied with and the responsive records have been disclosed, a Privacy Act access claim is moot. See *Campbell v. SSA*
- See also *Jacobs v. Reno*, No. 3:97-CV-2698-D, 1999 U.S. Dist. LEXIS 3104, at *14-15 (N.D. Tex. Mar. 11, 1999) (dismissing access claim as moot where plaintiff had received access to records and finding no eligibility for award of attorney fees and costs based on plaintiff’s assertion that his lawsuit may have caused agency to comply with Privacy Act when it would not otherwise have done so, “particularly when § 552a(d)(1) imposes no deadline for agency compliance and absent evidence of extended and unjustified delay”), *aff’d*, 208 F.3d 1006 (5th Cir. 2000)

<http://www.justice.gov/sites/default/files/opcl/docs/1974privacyact-2012.pdf>

<http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/amended-foia-redlined.pdf>

Thank you for your interest in the Department of Veterans Affairs. Customer service is very important to us. If you have questions regarding this letter, please call our customer service line at 1-888-533-4558 and refer to the assigned case number.

Sincerely yours,

Records Management Center Director