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|  | **DEPARTMENT OF VETERANS AFFAIRS**  **Veterans Benefits Administration**  **Washington, D.C. 04202** |

May 10, 2016

VBA Letter 20-16-01

Director (00/21)

All VBA Facilities

ATTN: All VBA Regional Offices and Centers

SUBJ: Privacy Act – Requests for Records

# Purpose

This letter establishes general Veterans Benefits Administation (VBA) policy for responding to Veterans’ and their surviving spouse-claimants’ requests for their VBA claim records.[[1]](#footnote-1) Moving forward:

* With the exception of the criminal investigation records identified below, VBA facilities should respond to requests for records under the Privacy Act without delaying the release by redacting personal identifiable information (PII) of third parties that is properly included in requested records. [[2]](#footnote-2) A third party is any individual, other than the claimant, identified in the claimant’s record.
* VBA facilities will continue to redact third party PII from any federal or military criminal investigation record released in conjunction with a request for records.[[3]](#footnote-3) Criminal investigation records include investigatory material compiled by any federal agency for law enforcement purposes ***or*** maintained by a federal agency or component thereof which performs as its principal function any activity pertaining the enforcement of criminal laws. *See* 5 U.S.C. § 552a(j)-(k).

**NOTE:** Except with the written consent of the Veteran or an individual with a right of access, VBA may not disclose any record by any means of communication to any third party that is not the Veteran or an individual with a right of access, unless authorized by law. Disclosures of the Veteran’s records to the Veteran, or to an individual with a right to access under the Privacy Act, generally do not require a written request.

# Authority

5 U.S.C. §§ 552, 552a; 38 C.F.R. §§ 1.550-1.582

# Background

This policy represents a change from the prior VBA practice of redacting certain information from VBA claim records prior to release. VBA has concluded that principles of transparency and accountability demand that Veterans and their surviving spouse-claimants enjoy unfettered access to the information relied upon by VBA to decide their claims. Moreover, a policy of prompt and complete access is consistent with relevant legal authority.

1. **VBA’s Strategic Plan and MyVA Principles.**

[VBA’s strategic plan](http://www.benefits.va.gov/TRANSFORMATION/docs/strategic-plan-fiscalyear2014-2020.pdf) and vision for the future focus on achieving a Veteran-centric, readily accessible service organization. In addition, the [MyVA Transformational Plan](http://www.blogs.va.gov/VAntage/wp-content/uploads/2015/06/MyVA_TransformationalPlan_June2015.pdf) reiterates the importance of modernizing VBA’s culture, improving or eliminating processes that impede great customer service, and rethinking internal structures to become more Veteran-centric and productive. VBA has concluded that providing Veterans and their surviving spouse-claimants prompt access to their complete claim records is critical to increase transparency and improve customer service.

In addition, VBA is working towards affording Veterans and their surviving spouse-claimants online access to their claim records, regardless of whether VBA has received a request for the records. VBA will notify field employees and external stakeholders when this access is available, and will provide additional instructions at that time to further improve customer service to Veterans and their surviving spouse-claimants.

1. **The Privacy Act, 5 U.S.C. § 552a, implemented by 38 C.F.R. §§ 1.575-1.582.**

VBA must follow the Privacy Act, which protects “records” pertaining to individuals that a federal agency maintains in a “system of records.”  The Act defines “record” as any “item, collection, or grouping of information about an individual that is maintained by an agency” within its system of records. *See* 5 U.S.C. § 552a(a)(4). A system of records is a file, database, or program from which personal information is retrieved by the individual’s name or other personal identifier. § 552a(a)(5). Importantly, the Privacy Act affords individuals the right to access records about them, as maintained by a federal agency. Upon request from an individual to access his or her record, VBA must provide the requestor an opportunity to review the record and have a copy made of all or any portion of the record. *See* 5 U.S.C. § 552a(d). As such, providing claimants complete access to their claim records is consistent with the Privacy Act. *See* Voelker v. IRS, 646 F.2d 332, 333-35 (8th Cir. 1981).

A VBA claims file, whether it is in an electronic format or is a paper record that has not yet been converted to electronic format, is a “record” within the Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records-VA (58VA21/22/28) system of records and is therefore subject to the Privacy Act. In addition to information received by VBA in conjunction with a claim for benefits, a VBA claims file includes any military Service Treatment Records (STRs) in VA’s possession, or available to VBA through its system of records. Among other matters, this system of records pertains to Veterans who have applied for disability compensation under 38 U.S.C. chapter 11, survivors who have applied for dependency and indemnity compensation under 38 U.S.C. chapter 13, and Veterans and survivors who have applied for pension under 38 U.S.C. chapter 15. Pursuant to the access provision of the Privacy Act, VA’s implementing regulations, and relevant case law, these claimants have an absolute right of access to their VBA claims file.

**VBA-Wide Access Policy**

Other than the exception for criminal investigation records created by a federal agency or a military department, VBA will respond to requests for records under the Privacy Act without delaying the release by redacting third-party PII that is properly included in requested records.[[4]](#footnote-4) When responding to requests for access by or on behalf of the claimant whose file is sought (i.e., first-party right of access under the Privacy Act), VBA will not redact third-party PII that is properly included in the claims file. Third-party PII that is “properly included” in the folder or record refers to information that VBA purposely included, and does **not** encompass information that was erroneously placed in the record as a result of a misfiled document(s). Examples of properly included third-party PII are:

* Social Security Numbers of individuals other than the Veteran, spouse-claimant, or other individual with a right to access;
* Names of Veterans Service Representatives (VSRs), Rating Veterans Service Representatives (RVSRs), Decision Review Officers (DROs), Veterans Health Administration employees, contracted VA examiners, or other third parties;
* Routing and account numbers for third parties’ bank accounts;
* Tax ID numbers of third parties.

This general access policy applies to all VBA business lines.

**Note:** Except for the changes set forth above, current procedures for responding to requests for records remain unchanged. Any local procedures for processing records requests received from Veterans, their surviving spouse-claimants, and/or an individual with a right of access should incorporate the VBA-wide access policy established in this letter. This letter does not change current procedures for establishing end-product credit and claim dates for records requests.

**Ensuring Accurate Folders**

Existing safeguards incorporated in VBA’s Veterans Claim Intake (VCIP) procedures, centralized mail procedures, and longstanding adjudication procedures provide protections to prevent the erroneous release of misfiled documents. In light of these safeguards, VBA has concluded that allowing Veterans and their surviving spouse-claimants prompt and complete access to their claim records is an appropriate policy that will greatly benefit claimants. As such, this letter does not require changes to existing claims intake, folder maintenance, or compensation and pension adjudication procedures.

**Claims and Document Intake**

VBA’s longstanding claims intake processes require employees to review, classify, apply a date stamp, and place proper controls on all incoming mail, prior to associating the mail with a claims folder. This well-established process imposes an important, initial safeguard to ensure that mail is associated with the correct claims folder. *See* M21-1, Part III, Subpart ii, 1.B.1-3; *see also* M21-1, Part III, Subpart ii, 1.C.1.a-c.

More recently, VBA has implemented additional safeguards to support increased automation and paperless claims processing. For example, under both VCIP and centralized mail processing:

* Regional office personnel conduct folder maintenance prior to shipping files for scanning to ensure documents are routed to the appropriate claim file. *See* M21-1, Part III, Subpart ii, 1.E-F (VCIP and Centralized Mail procedures).
* Document conversion vendors review Document Control Sheets and Shipping Manifests against physical files to ensure that the correct documents are uploaded into the claim file. Vendors notify VBA when misfiles are discovered. *See* M21-1, Part III, Subpart ii, 1.E-F (VCIP and Centralized Mail procedures).
* Document conversion vendors conduct Quality Assurance and Quality Control reviews prior to VBMS upload to ensure that source material is associated with the proper claim file.
* Document conversion vendors conduct Independent Verification and Validation post-upload to the claim file, and notify VBA of potentially misfiled documents.
* Centralized mail processing requires document conversion vendors to extract indexing values (i.e., name and file number) from source material. These data elements are presented to VBA personnel who validate the entries prior to uploading documents into the claim file. *See* M21-1, Part III, Supbart ii, 1.E (centralized mail procedures).

**Additional Safeguards**

In addition to the safeguards against potential misfiles in VBA’s claims and mail intake processes, VBA employees conduct multiple reviews that confirm the accuracy of the claim folder in the course of adjudicating claims. *See* M21-1, Part III, Subparts iii-v. Often, the claims adjudication process requires that a VSR review the claims folder when developing evidence, an RVSR again reviews the claims folder when rendering a decision, and an additional VSR reviews the folder at the time an award is authorized. These multiple reviews occur independent of any subsequent review of the claims folder by a DRO or the Board of Veterans’ Appeals in the course of appeals processing.

Again, it should be noted that all employees retain responsibility for correcting misfiled documents immediately upon discovery, and VBA provides employees with detailed instructions for doing so. For specific instructions, see:

* [*VBMS Standard Operating Procedures Editing Documents in the eFolder*](http://vbacodmoint1.vba.va.gov/bl/21/Transformation/docs/Adobe_Editor_SOP.docx);
* [*Deleting Documents from the eFolder*](http://vbacodmoint1.vba.va.gov/bl/21/Transformation/docs/Document%20Deletion%20TIP%20sheet.docx);
* [*Procedures for Handling Misfiled Documents*](http://vbacodmoint1.vba.va.gov/bl/21/Transformation/docs/Procedures%20for%20handling%20misfiled%20docs.doc);
* *[VBMS Job Aid – eFolder Fundamentals: Managing Duplicate Documents & Transferring Documents from One eFolder to Another](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp)*[;](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp)
* [*[VBMS Job Aid – eFolder Fundamentals: Associating Documents to Claims (Tagging Documents) & Bookmarking Documents](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp)*](http://vbaw.vba.va.gov/VBMS/Resources_Job_Aids.asp)[;](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp)
* [*Virtual VA User Guide*](https://virtualva.vba.va.gov/training/guides/virtualvauser.pdf); and
* [*VBMS User Guide*](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp).

**Questions**

For questions, please contact Gwendolyn Smith at foia.vbaco@VA.gov.

/s/

Danny G.I. Pummill

Acting Under Secretary for Benefits

1. A Veteran, his or her surviving spouse who has filed a claim for survivor benefits, an individual authorized by written consent of the Veteran or surviving spouse-claimant to access his or her record, an individual who has been substituted to continue the Veteran’s or surviving spouse-claimant’s claim, and/or the representative(s) of a deceased Veteran’s estate have a right of access to the record. For purposes of this letter, a “spouse-claimant” includes survivors who received an automated award of dependency and indemnity compensation under 38 U.S.C. § 1318 without filing a claim for benefits.

   [↑](#footnote-ref-1)
2. The policy set forth in this document does **not** apply to requests for information under the Freedom of Information Act (FOIA). VBA will continue to redact third-party PII when processing FOIA requests. [↑](#footnote-ref-2)
3. This exception to the general policy of full disclosure remains in effect pending VA’s coordination with other federal agencies regarding a long-term policy for releasing criminal investigation records. VBA will notify field employees of any future changes to this policy. [↑](#footnote-ref-3)
4. In cases where there is evidence that the requestor intends to utilize the requested information to commit a crime or harm another, VBA employees should withhold or redact information accordingly, and notify local management and other VA officials as appropriate. [↑](#footnote-ref-4)