

# *Privacy in the Era of Open Government*



***Presented to:***  
***Sunshine Week Participants***  
***Census Bureau***  
***Department of Commerce***

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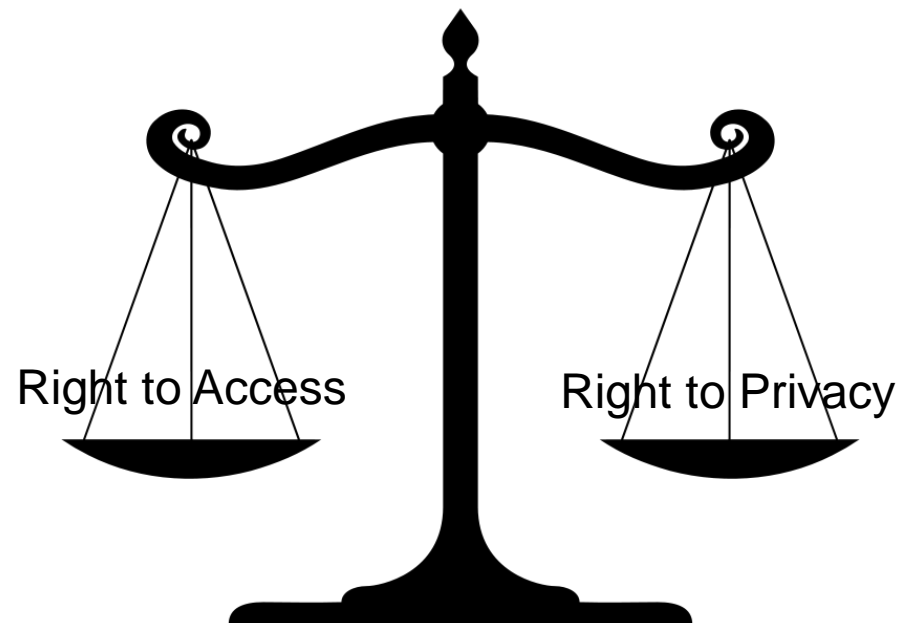
# *Agenda*

- Achieving the Right Balance
  - Commerce Office of Privacy and Open Government (OPOG) Programs
- First Things First
  - Freedom of Information Act (FOIA) and the Privacy Act (PA)
- Examining the Privacy Landscape
  - An Overview of Key Privacy Laws, PA Policy Objectives, Agency Requirements, OMB Guidance
- Understanding Personally Identifiable Information (PII)
- Understanding Privacy Requirements of the Open Government Directive
- Finding Privacy in the Commerce Open Government and Strategic Plans
- Moving Forward
- Questions

# *Achieving the Right Balance*

## **Commerce Office of Privacy and Open Government Programs (OPOG)**

- Directives Management
- Federal Advisory Committee Act (FACA)
- Open Government
- Freedom of Information Act (FOIA)
- Privacy





## Office of Privacy Open Government

Privacy ♦ FOIA ♦ Open Government  
FACA ♦ Directives/Administrative Orders

# *First Things First!*

**Both the FOIA and the Privacy Act  
give you the right to request access  
to records held by agencies of the  
federal government.**



## *Key Privacy Laws*

- Privacy Act of 1974 (5 U.S.C. 552a)
- Freedom of Information Act (FOIA, 5 U.S.C. 552)
- E-Government Act of 2002
- Federal Information Security Management Act (FISMA, 44 U.S.C. § 3541)
- Trade Secrets Act (18 USC 1905)
- Additional privacy laws regulate other areas, such as government access to bank and other financial records, identity theft, trade secrets, health records, and education records.

## *Privacy Act Policy Objectives*

- Expands 1<sup>st</sup> party access to information- individuals have an increased right of access to agency records maintained on themselves unless an *exemption* applies.
- Restricts 3<sup>rd</sup> party access to records- meaning that the PA prohibits disclosure of PA information to 3<sup>rd</sup> parties unless one of twelve *exceptions* apply.
  - Some common PA exceptions include: “need to know” within agency; disclosure required by the Freedom of Information Act; routine uses (which must be listed in an applicable SORN); disclosure pursuant to a court order.
- Provides for the amendment of inaccurate information

# *Privacy Act Agency Requirements*

- Maintain only relevant and necessary information
- Collect information directly from the source
- Provide a Privacy Act Statement when collecting information
- Publish new and amended System of Record Notices in the Federal Register
- Establish rules of conduct for those who work with records protected by the PA
- Establish appropriate administrative and technical controls on PA information





## *OMB Privacy Guidance*

- [M-03-22](#) Guidance for Implementing the Privacy Provisions of the E-Gov Act,
- [M-06-15](#) Safeguarding Personally Identifiable Information (PII)
- [M-06-16](#) Protection of Sensitive Agency Information
- [M-06-19](#) Reporting Incidents Involving Personally Identifiable Information
- [M-07-16](#) Safeguarding Against and Responding to the Breach of Personally Identifiable Information (PII)
- [M-11-02](#) Sharing Data While Protecting Privacy



## *Understanding PII*

- Personally identifiable information (PII) is not always easy to recognize. OMB has defined PII as
  - *“information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”*
- PII is essentially, any information that permits the identity of an individual to be directly or indirectly inferred

## *Understanding PII (cont.)*

### *Sensitive PII*

- PII which if lost, compromised, or disclosed without authorization, could result in harm, embarrassment, inconvenience, or unfairness to an individual.
  - SSN, date of birth, etc.
  - Medical, criminal, employment info
  - Biometric information such as fingerprints
- \* Context can make otherwise ordinary PII sensitive

# Open Government Directive

OMB M 10-06

- Transparency:
  - Promotes accountability by *providing the public with information about what the government is doing*
- Participation:
  - Allows members of the public to *contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society*
- Collaboration:
  - Improves the effectiveness of Government by *encouraging partnerships and cooperation within the Federal Government, across levels of government, and between the Government, private institutions and the public*

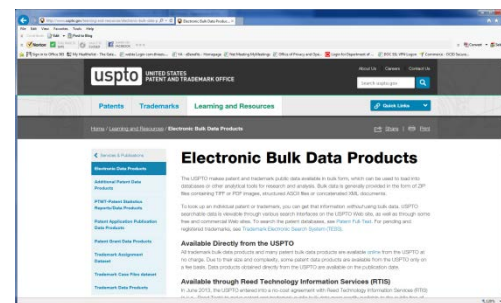
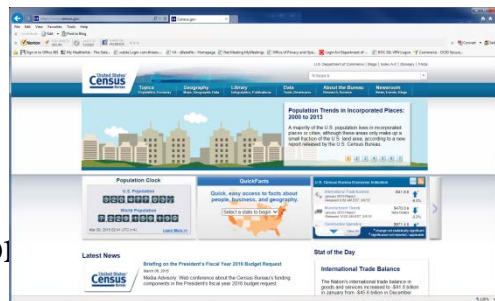
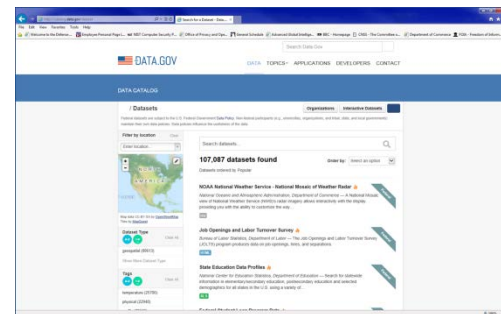
## *Open Government Directive (cont.)*

With respect to information, the presumption shall be in favor of openness to the extent permitted by law and subject to valid:

- *Privacy*,
- Confidentiality,
- National Security,
- or other restrictions.

# Open Government Directive (cont.)

- Publish Government Information Online
- OMB Open Government Working Group establishes Privacy and Security Working Group – December 2009
  - Review existing department/agencies privacy practice
  - Recommend privacy best practice and way ahead for Open Government information publication
  - Determine impact of Mosaic effect on Datasets published in Data.gov
- Implement share best practices for privacy and mosaic effect review (2010)





# *Commerce Open Government Plan*

## **Bureau/Operating Unit (BOU) OG Plan required additional information**

1. Open Data
- 2. Privacy**
3. Whistleblower Protection
4. Websites
5. Transparency
6. Public Notice
7. Records Management
8. Freedom of Information Act (FOIA) Requests
9. Proactive Disclosures
10. Congressional Requests
11. Declassification
12. Participation
13. Collaboration





## Office of Privacy Open Government

Privacy ♦ FOIA ♦ Open Government  
FACA ♦ Directives/Administrative Orders

# 2014 – 2018 Strategic and Open Government Plans

**FY 2014 – 2018**

## Strategic Goals and Objectives

### SUMMARY OF FY 2014 – 2018 STRATEGIC GOALS AND OBJECTIVES

<b>1</b> <b>TRADE AND INVESTMENT</b> Expand the U.S. economy through increased exports and inward foreign investment that lead to more and better American jobs	<b>2</b> <b>INNOVATION</b> Foster a more innovative U.S. economy—one that is better at inventing, improving, and commercializing products and technologies that lead to higher productivity and competitiveness
<b>1.1.</b> Increase opportunities for U.S. companies by opening markets globally (ITA, NOAA, NTIA, USPTO) <b>1.2.</b> Increase U.S. exports by broadening and deepening the U.S. exporter base (BIS, EDA, ESA, ITA, MBDA, OS) <b>1.3.</b> Increase high-impact inward foreign direct investment into the United States (EDA, ESA, ITA) <b>1.4.</b> Strengthen fair competition in international trade for U.S. firms and workers by addressing and resolving foreign unfair trade practices and enforcing international trade agreements (ITA)	<b>2.1.</b> Grow a more productive, agile, and high-value manufacturing sector through partnerships and collaborations that accelerate technology development and commercialization (NIST) <b>2.2.</b> Increase the capacity of U.S. regional economies to accelerate the production of value-added goods and services by providing services to and investments in businesses and communities (EDA, ESA, MBDA, NIST, USPTO) <b>2.3.</b> Strengthen the Nation's digital economy by championing policies that will maximize the potential of the Internet, expanding broadband capacity, and enhancing cybersecurity (NIST, NTIA, USPTO) <b>2.4.</b> Accelerate the development of industry-led skills strategies that result in a productive workforce for employers and high-quality jobs for workers (EDA, ESA, NIST) <b>2.5.</b> Accelerate growth of innovation-intensive economic sectors by building public and private capacity to invent, improve, and commercialize new products and services (EDA, NIST, USPTO)
<b>3</b> <b>ENVIRONMENT</b> Ensure communities and businesses have the necessary information, products, and services to prepare for and prosper in a changing environment	<b>4</b> <b>DATA</b> Improve government, business, and community decisions and knowledge by transforming Department data capabilities and supporting a data-enabled economy
<b>3.1.</b> Advance the understanding and prediction of changes in the environment through world class science and observations (NIST, NOAA) <b>3.2.</b> Improve preparedness, response, and recovery from weather and water events by building a Weather-Ready Nation (ESA, NOAA) <b>3.3.</b> Strengthen the resiliency of communities and regions by delivering targeted services to build capacity (EDA, ESA, NIST, NOAA) <b>3.4.</b> Foster healthy and sustainable marine resources, habitats, and ecosystems through improved management and partnerships (NOAA) <b>3.5.</b> Enable U.S. businesses to adapt and prosper by developing environmental and climate-informed solutions (ESA, ITA, NIST, NOAA)	<b>4.1.</b> Transform the Department's data capacity to enhance the value, accessibility and usability of Commerce data for government, business and the public (ESA, NIST, NOAA, NTIS) <b>4.2.</b> Improve data-based services, decision-making, and data sharing within the Department and with other parts of the federal government (BIS, ESA, ITA) <b>4.3.</b> Collaborate with the business community to provide more timely, accurate, and relevant data products and services for customers (ESA, NOAA)
<b>5</b> <b>OPERATIONAL EXCELLENCE</b> Deliver better services, solutions, and outcomes that benefit the American people	
<b>5.1.</b> Strengthen organizational capabilities to drive customer-focused, outcomes-driven mission performance (OS, All Bureaus)	

Note: ESA includes the Bureau of Economic Analysis (BEA) and the Census Bureau.

## Open Government Plan 3.0

- Ties Open Government directly with Strategic Goals (SG)
- Data and Privacy protection key elements
  - Make data easier to find, access, and use;
  - Collect and manage data more efficiently and less intrusively;
  - Protect data confidentiality;
  - Protect personal privacy; and
  - Protect national security interests.



## *Moving Forward*

- Continual review of existing laws, policies and procedures
- Track outcomes of National attention to Privacy
  - Consumer Data Privacy in a Networked World
  - Big Data and the Future of Privacy
  - Consumer Privacy Bill of Rights
- Increase the awareness of the consumers and producer
- Open conversations with public, industry and government partners to ensure understanding of the continual evolution of privacy requirements



# Questions

