

disclosures, consistent with the Privacy Act's requirement that individuals be made aware of how their records may be disclosed, even if the FTC anticipates that there may often be very limited or no disclosure of an individual's records to third parties as part of the agency's investigatory or remedial efforts.

Developing fixed categories of access for certain entities or individuals, as EPIC suggests, would not appear to confer significantly greater protection, if any, for an individual's records than limiting disclosures to those that are "reasonably necessary." The determination of when disclosure is "reasonably necessary" will logically depend on a case-by-case evaluation of the specific circumstances of the breach, including how much of an individual's information, if any, it is reasonably necessary to disclose, and the specific nature of the entities to whom such information needs to be disclosed, in order to investigate or respond to a breach.⁵ Amending a routine use to accommodate disclosures in response to a breach is not a viable option when there is a clear need to respond rapidly and effectively in investigating and mitigating the breach, in light of the prior notice and comment requirements of the Privacy Act for routine use amendments.

Second, EPIC's comment advocates that consumers be notified as soon as possible after a security breach results in their personal information being accessed by an unauthorized person, and before notifying any other agency, entity or individual. That issue, however, is outside the scope of a routine use notice under the Privacy Act. The Act requires that agencies notify individuals about the establishment of a Privacy Act system of records, the routine uses of such systems of records, and additional notice at the time that information in such a system is collected from individuals.

Nothing in the Act, however, governs or provides criteria for determining when notice of a data breach to affected individuals would be appropriate or not. Guidance on that issue has been issued to all Federal agencies by the Office of Management & Budget (OMB), in conjunction with the President's Identity Theft Task Force, chaired by the Attorney General and co-chaired by the FTC Chairman.⁶ As stated in that

guidance, agencies must consider various factors in determining whether notice is appropriate in a given case. The routine use published by the FTC neither addresses nor is it intended to supersede or supplant such guidance, or any other applicable guidance that may later arise in applicable statute, rule or policy regarding when notice to individuals must or should be given.

Accordingly, after consideration of the above, the FTC has determined to adopt the routine use for data breach as originally published, and hereby amends Appendix 1 of its Privacy Act system notices, as published at 57 FR 45678, by adding the following new routine uses set forth in that Appendix:

* * *

To appropriate agencies, entities, and persons when (1) the FTC suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the FTC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the FTC or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FTC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

By direction of the Commission.

Donald S. Clark
Secretary

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Identity Theft Related Data Breach Notification" (Sept. 20, 2006) (attaching Memorandum from the Identity Theft Task Force, "Identity Theft Related Data Security Breach Notification Guidance" (Sept. 19, 2006), also reproduced in The President's Identity Theft Task Force, *Combating Identity Theft: A Strategic Plan* (Apr. 2007) at 73-82 (App. A)).

Time and Date: June 20, 2007: 9 a.m.-3:15 p.m.; June 21, 2007: 9 a.m.-3 p.m.

Place: Natcher Center, Building 45, National Institutes of Health, Bethesda Campus, Bethesda, MD.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning and afternoon of the first day the Committee will hear updates and status reports from its subcommittees as well as a briefing on the 5010 transaction data set.

On the morning of the second day the Committee will first hear updates from the Department on activities of the Data Council and the Office of the National Coordinator for Health Information Technology (ONCHIT) followed by Committee actions on selected topics from the subcommittees. The next item will be a briefing on the International Health Terminology Standards Development Organization (IHTSDO.) This briefing will be followed by a discussion of secondary uses of electronic medical record information which will continue after the noon break. There will be a short discussion of future agendas before the meeting adjourns.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458-4245. Information also is available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/>, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458-4EEO (4336) as soon as possible.

Dated: May 31, 2007.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (SDP), Office of the Assistant Secretary for Planning and Evaluation.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Fourth National Study of Older Americans Act Recipients

AGENCY: Administration on Aging, HHS.

⁵ For example, under FTC rules, disclosures to other law enforcement agencies may be made on a confidential basis for law enforcement purposes. See Commission Rule 4.11(c), 16 CFR 4.11(c).

⁶ See Memorandum for the Heads of Department and Agencies, from Clay Johnson, Deputy Director for Management, OMB, "Recommendations for