

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, generally provides that any person has the right to request access to federal agency records or information. Federal agencies are required to disclose records upon receiving a written request for them, except for those records exempt from disclosure by any of the nine exemptions or three exclusions of the FOIA. This right of access is enforceable in court. In 1996, Congress passed the Electronic Freedom of Information Act (E-FOIA) Amendments. The E-FOIA amendments provide for public access to information in an electronic format and for the establishment of electronic FOIA reading rooms through agency FOIA sites on the Internet.<sup>1</sup>

The Privacy Act of 1974, 5 U.S.C. § 552a, is a companion to the FOIA. The Privacy Act establishes certain controls over how the executive branch agencies of the federal government gather, maintain, and disseminate personal information. Like the FOIA, the Privacy Act also provides public access to government information, but pertains only to records that federal agencies maintain about individual U.S. citizens and lawfully admitted permanent resident aliens. The FOIA, on the other hand, covers all records in the possession and control of federal executive branch agencies.

Together, the FOIA and the Privacy Act establish a presumption that records in the possession of executive branch agencies will be open and available to the public. These acts effectively replace the public's historic burden of proving that a government agency should make certain records available with a government burden to justify withholding such records. At bottom, the FOIA/PA regime ensures transparency in government operations and helps ensure that the executive branch is accountable to the public.

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<sup>1</sup> This assessment does not address FinCEN's current level of compliance with the E-FOIA Amendments for two reasons. First, because FinCEN currently is developing a revised public website, which effort necessarily must include certain such considerations. Second, the deficiencies in FinCEN's FOIA/PA program identified herein are serious enough that they deserve primary attention.

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