

134613

United States General Accounting Office

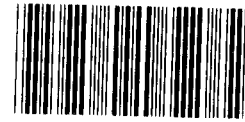
GAO

Briefing Report to the Chairman,
Subcommittee on Government
Information, Justice, and Agriculture,
Committee on Government Operations,
House of Representatives

November 1987

PRIVACY ACT

Privacy Act System Notices



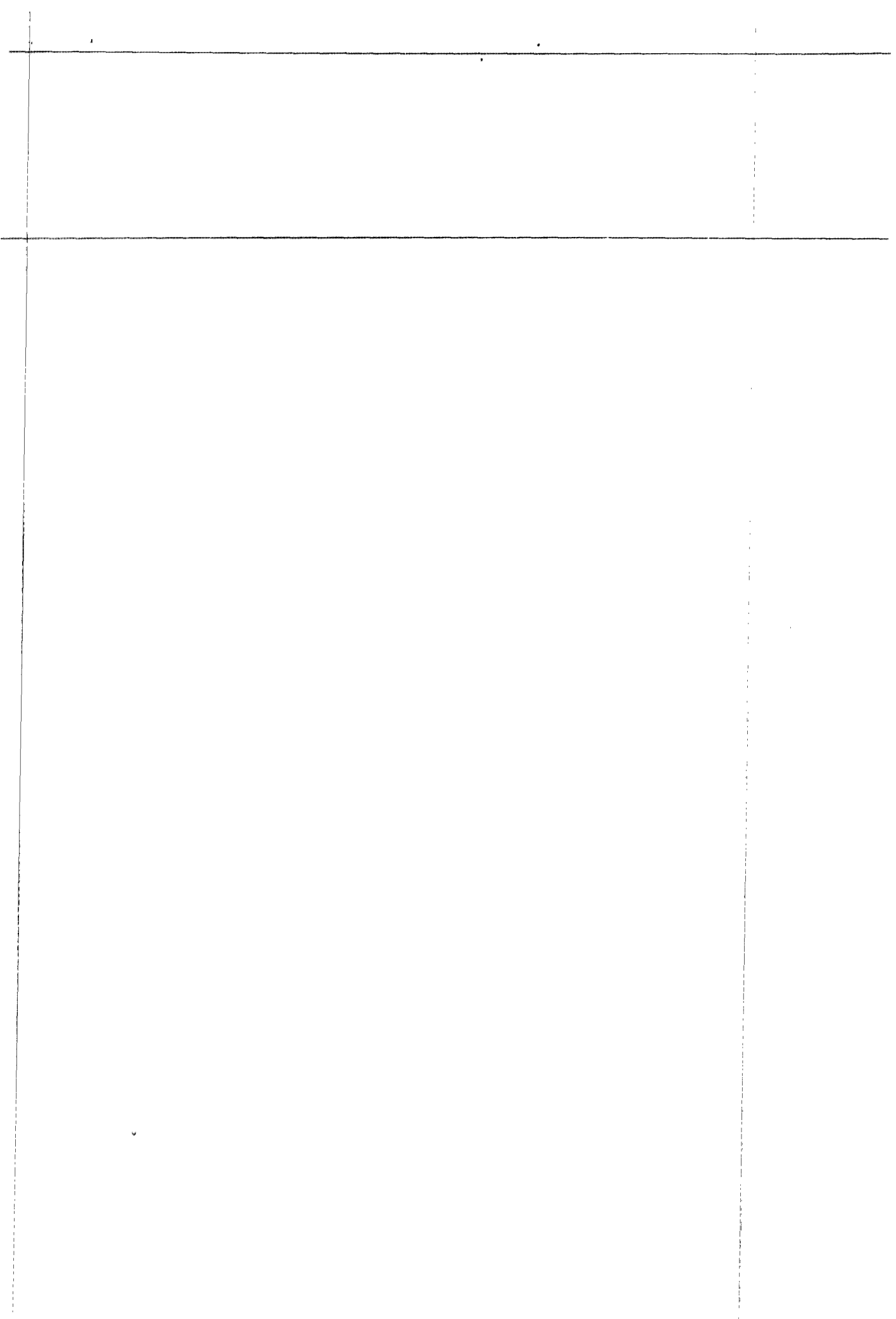
134673

RESTRICTED—Not to be released outside the General
Accounting Office except on the basis of specific
approval by the Office of Congressional Relations.

RELEASED

GAO/GGD-88-15BR

540669/134673





United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-223140

November 30, 1987

The Honorable Glenn English
Chairman, Subcommittee on Government
Information, Justice, and Agriculture
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This briefing report responds to your November 1986 request that we determine selected agencies' compliance with the Privacy Act's requirements for maintaining complete, accurate, and timely system notices. As you know, a system notice is published in the Federal Register and describes a system of records maintained by the agency that contains personal information on individuals. As agreed with your office, we randomly selected and reviewed 53 system notices issued by eight civilian agencies. A notice was considered to be accurate, complete, and timely if it reflected the current status of the system of records at the time of our review.


Our analysis showed that 24 of the 53 notices were current. The remaining 29 system notices needed to be updated to reflect current conditions. Because Office of Management and Budget (OMB) guidance instructs agencies to annually review and update system notices, Privacy Act officers agreed that these deficiencies should have been corrected. They said they are in the process of updating all of their system notices. Details on our objective, scope, and methodology and the results of our analysis are provided in appendixes I and II.

As requested by your office, we did not obtain official agency comments on this report. However, the contents of the report were discussed with an official from OMB and with Privacy Act officers from each of the eight agencies, who generally agreed with its contents and whose comments were considered in preparing the final report.

B-223140

As arranged with your office, unless you publicly announce the contents of the report earlier, we plan no further distribution until 30 days after the report date. At that time, we will send copies to interested parties and make copies available to others upon request. If you have any questions, please contact Richard Caradine on 275-3532 or me on 275-8676.

Sincerely yours,

A handwritten signature in cursive script that reads "L. Nye Stevens". The signature is written in dark ink and is positioned below the typed name.

L. Nye Stevens
Associate Director

CONTENTS

		<u>Page</u>
APPENDIX		
I	OBJECTIVE, SCOPE, AND METHODOLOGY	4
	BACKGROUND	5
	SOME SYSTEM NOTICES NEED TO BE REVISED	6
	System changes needing advance notice	7
	Systems with minor administrative changes	8
	Deleted systems	8
II	LIST OF SYSTEMS REVIEWED BY AGENCY	10

ABBREVIATIONS

OMB Office of Management and Budget

PRIVACY ACT SYSTEM NOTICES
AT EIGHT AGENCIES

A basic premise of the Privacy Act of 1974 is that information about individuals should not be maintained in secret files. Accordingly, the Privacy Act instructs agencies to publish in the Federal Register a notice of each system of records covered by the Privacy Act which, among other things, describes the categories of records maintained. OMB also instructs agencies to insure that the published notices are updated to reflect any changes in the system. This briefing report, prepared at the request of the Chairman of the House Government Operations' Subcommittee on Government Information, Justice, and Agriculture, provides the results of our review of system notices issued by eight agencies.

OBJECTIVE, SCOPE,
AND METHODOLOGY

Our objective was to review Privacy Act system notices and determine whether they were complete, accurate, and timely as provided for by Privacy Act requirements and Office of Management and Budget (OMB) instructions. To accomplish our objective, we randomly selected 53 system notices issued by eight civilian agencies in which the Chairman's office expressed an interest -- the Departments of Agriculture, Commerce, Education, Health and Human Services, Justice, State, Transportation and the Veterans Administration. The selected system notices were published in the Federal Register's Privacy Act Issuances, 1985 Compilation, the most recent edition available. Since our sample was limited, our results are not projected either to the agencies selected or to the federal government. Appendix II provides a list of the systems included in our review.

Our work was conducted from April to August 1987, in accordance with generally accepted government auditing standards. Our work to determine the accuracy of system notices consisted of the following:

- review of applicable policies, procedures, and guidance relating to the Privacy Act requirements to publish notices;
- review of 53 selected system notices;

- discussions with Privacy Act officers and other officials at each of the eight agencies who were knowledgeable about the Privacy Act and/or the characteristics and current status of the systems of records selected for review; and
- discussions with the OMB senior policy analyst responsible for OMB's Privacy Act responsibilities.

BACKGROUND

The Privacy Act of 1974 is the primary federal statute aimed at protecting individual privacy. It imposes governmentwide standards on how agencies collect, maintain, use, and disseminate personal information. Each agency is primarily responsible for its own implementation of the Privacy Act. Congress, however, assigned OMB responsibility for developing agency guidelines for implementing the act's provisions and for providing continuing assistance to and oversight of the agencies' implementation of the act. OMB has issued circulars to provide agencies with guidance and also offers advice by telephone when requested.

The act defines a system of records as a group of agency records from which information is retrieved by the name or other personal identifier assigned to an individual (e.g., social security number, claim or case number). Before each new or altered system can be implemented, the law requires agencies to prepare an advance report to Congress and OMB and to publish in the Federal Register a notice of the existence and character of the system. The system notice includes information on the name and location of the system; the categories of individuals covered by the system; each routine use of the records¹; and the policies and procedures used by the agency to store, retrieve, retain, and dispose of the records. OMB also instructs agencies to annually review and, if necessary, update their notices. The Office of the Federal Register publishes a compilation of federal agency Privacy Act system notices. The most recent compilation includes notices on over 3,700 civilian record systems in effect as of December 31, 1985.

OMB guidance differentiates between (1) changes to systems requiring advance reporting to Congress and OMB and public notice in the Federal Register before the change can be implemented; and

¹A routine use is a disclosure outside of the agency, without the consent of the subject individual, for a purpose compatible with the purpose for which the record was collected.

(2) minor changes requiring an annual update to the existing notice in the Federal Register. The changes requiring advance notification include changes that

- increase or change the number or types of individuals on whom records are kept;
- expand the types or categories of information maintained;
- alter the purpose for which the information is used;
- change the system's equipment configuration (either hardware or software) to create substantially greater access to the records in the system;
- exempt the system of records from public access; and
- add a new routine use.

A minor change does not affect the character or purpose of the system nor does it affect the ability of an individual to gain access to his or her record or to any information pertaining to him or her contained in the system. For example, changing the title of the system manager is considered a minor change. Agencies may choose to make one annual comprehensive publication consolidating such minor changes.

SOME SYSTEM NOTICES NEED TO BE REVISED

Privacy Act requirements and OMB guidance on the quality of system notices are aimed at providing the public with complete, accurate, and timely information on the nature of personal information collected and disseminated about individuals. Our analysis of 53 system notices disclosed that 29 needed to be updated to reflect current conditions and 24 were current.² Because OMB guidance instructs agencies to annually review and

²A notice was considered to be accurate, complete, and timely if it reflected the current status of the system at the time of our review. While 4 of the 24 notices did not reflect minor changes which were less than a year old, OMB instructions state that such changes could be made during the agency's annual update. Therefore, we considered these notices current.

update system notices, agency Privacy Act officers agreed these deficiencies should have been previously corrected. They said they are in the process of updating all of their system notices.

System changes needing advance notice

For 7 of the 29 system notices that needed updating, the agencies did not provide advance notice to Congress, OMB, and the public, as required. Four notices did not reflect changes in the categories of records or individuals in the systems, two did not include all routine uses, and one did not reflect a change to the equipment configuration, which expanded access to the records. The following are examples of these changes.

- The Foreign Service Grievance Board Records System, maintained by the Department of State, contains information on Foreign Service personnel from the Department of State, the Agency for International Development and the U.S. Information Agency who have filed a formal grievance. The Executive Secretary of the Grievance Board told us that in 1984, Department of Commerce and Agriculture personnel who worked in embassies and who filed a grievance with the Board were included in the record system for the first time. He was not aware that this change required a report of an altered system, but he agreed with our determination that this increased the categories of individuals covered by the system. He said that a report would be sent to Congress and OMB notifying them of the altered system and a notice would be published in the Federal Register.
- The system notice for the Department of Education's Defaulted Guaranteed Loans submitted to the Department of Justice states that records are stored on microfilm, although we were told by the system manager that more recent records are stored on computer with access from remote terminals. This expands access to the system. The system manager was unaware that this change required an advance report to Congress and OMB and a public notice before the change could occur. He agreed to make the required notifications.
- The Department of Agriculture's Forest Service maintains a system of records called "Check-Before-Using Pilot List." It contains the names of pilots who have committed safety violations while flying under Forest Service contracts. The system manager told us that the list is updated annually and provided to the Department of Interior. The system manager reported to the Forest Service Privacy Act officer on March 20, 1986, that the system notice was current even though

the external disclosure to Interior was not included as a routine use. The Privacy Act officer agreed that the notice was deficient and said that a report would be sent to OMB and Congress notifying them of the routine use disclosure provision.

Systems with minor administrative changes

We found that minor changes to 12 systems of records were not reflected in the agencies' Privacy Act system notices, even though the changes had taken place more than 1 year before our review and should have been included in the annual update of system notices. Examples of the types of minor changes we found include changes in the system managers' titles and the location of the systems.

Deleted systems

We also found that 10 of the 29 system notices that needed updating continued to be published although 5 of the related record systems had been completely destroyed and 5 had been partially destroyed. Although OMB Circular A-130, dated December 12, 1985, does not specify that deletions of systems or parts of systems are considered "changes in the number or types of individuals on whom records are kept," we believe this type of change affects an individual's right and ability to obtain access to information covered by the Privacy Act. For example, without prior notification that records are to be destroyed, individuals would not have the opportunity to (1) obtain copies of pertinent records, (2) determine what types of records about themselves were maintained, and/or (3) determine whether any external disclosure of the information to third parties had taken place.

Privacy Act officers told us that although system deletions should be recognized in the Federal Register, they were confused by OMB guidance as to whether the advance reporting requirement applied.

We asked the OMB senior analyst who prepared Circular A-130 whether deleted systems met this criterion and required an advance report to Congress and OMB and a public notice in the Federal Register. He said he did not consider deleted systems when preparing the circular, although he agreed there was a need for advance public notice to meet the intent of the Privacy Act by allowing individuals the opportunity to obtain access to their records. He said he will consider revising OMB Circular A-130 to clarify the requirements that deleted systems be handled in the same manner as those changes requiring advance notice.

We discussed our findings on the 29 system notices that needed to be updated with departmental Privacy Act officers at each of the eight agencies. They said that pursuant to OMB guidance, the need for changes should be identified at the component level--office, bureau, or other suborganizational level--during the annual review. The Privacy Act officers pointed out that because of their limited resources, they cannot review each system and must therefore rely on the information provided them by component Privacy Act officers and individual system managers. They agreed that the requirements for updating system notices need to be reemphasized.

LIST OF SYSTEMS REVIEWED BY AGENCY

<u>System Number</u>	<u>Agency/System Name</u>	<u>System Status</u>
<u>Agriculture</u>		
USDA/ASCS-6	Cotton Loan Clerks	1
USDA/ASCS-17	Indemnity and Incentive Programs	1
USDA/APHIS-5	Veterinary Services Programs-Candidates for Animal Disease Control Positions in Foreign Countries	6
USDA/FS-8	Check-Before-Using Pilot List	3
USDA/OGC-25	Court Cases Brought by the Government pursuant to either the Agricultural Marketing Agreement Act of 1937, as amended, or the Anti-Hog-Cholera Serum and Hog Cholera Virus Act	1
USDA/OGC-29	Court Cases Brought by the Government pursuant to either the Naval Stores Act or the Tobacco Seed and Plant Exportation Act	1
USDA/OGC-61	Right-Of-Way-Acquisitions, Forest Service	7
<u>Commerce</u>		
Dept-3	Conflict of Interest Records, Appointed Officials	2
Dept-10	Executive Correspondence Files	5
NOAA-3	Commissioned Officer Official Personnel Folders	7
NOAA-8	Individuals Engaged in Weather Modification Activities	7

System Status Legend:

- 1 - System is current.
- 2 - Change in categories of records or individuals covered by system.
- 3 - Additional routine use.
- 4 - Change in equipment configuration that allows for increased access.
- 5 - Part of system deleted and records destroyed.
- 6 - Entire system deleted and records destroyed.
- 7 - Minor administrative change.

LIST OF SYSTEMS REVIEWED BY AGENCY

<u>System Number</u>	<u>Agency/System Name</u>	<u>System Status</u>
<u>Transportation</u>		
DOT/CG 678	Reserve Personnel Management Information System	1
DOT/FAA 824	Medical Exemptions-Public Docket	1
DOT/FAA 843	FAA World Magazine Address System	1
DOT/FRA 105	Employee Travel Records	7
DOT/FRA 112	Personnel and Pay Management Information System	1
DOT/OST 061	Records of Official Time Granted Employees for Performing Representational Functions	7
DOT/OST 101	Office of Inspector General, Management Information System	1
DOT/TSC 700	Automated Management Information System	1

Veterans Administration

16VA026	Litigant, Tort Claimant, EEO Complaint, and Third Party Recovery Files	7
68VA05	Employee Counseling Services Program Records	7

System Status Legend:

- 1 - System is current.
- 2 - Change in categories of records or individuals covered by system.
- 3 - Additional routine use.
- 4 - Change in equipment configuration that allows for increased access.
- 5 - Part of system deleted and records destroyed.
- 6 - Entire system deleted and records destroyed.
- 7 - Minor administrative change.

LIST OF SYSTEMS REVIEWED BY AGENCY

<u>System Number</u>	<u>Agency/System Name</u>	<u>System Status</u>
<u>Justice</u>		
Just/BOP-009	Federal Tort Claims Act Record System	2
Just/DEA-009	Medical Records	5
Just/DEA-017	Grants of Confidentiality Files	1
Just/CRM-001	Central Criminal Division Index File and Associated Records	1
Just/FBI-009	Identification Division Records System	1
Just/USM-009	U.S. Marshals Service Threat Analysis Information System	7
Just/USA-002	A. U.S.A. Applicant Files	7
Just/FCSC-10	Registration of Claims Against East Germany	1
Just/FCSC-13	General Personnel Files	7
<u>State</u>		
State-01	Biographic Register Records	2
State-07	Cryptographic Clearance Records	3
State-13	Foreign Service Grievance Board Records	2
State-29	Personality Index to the Central Foreign Policy Records	1
State-34	Public Affairs Applicants Records	5
State-38	Vendor Records	7

12

System Status Legend:

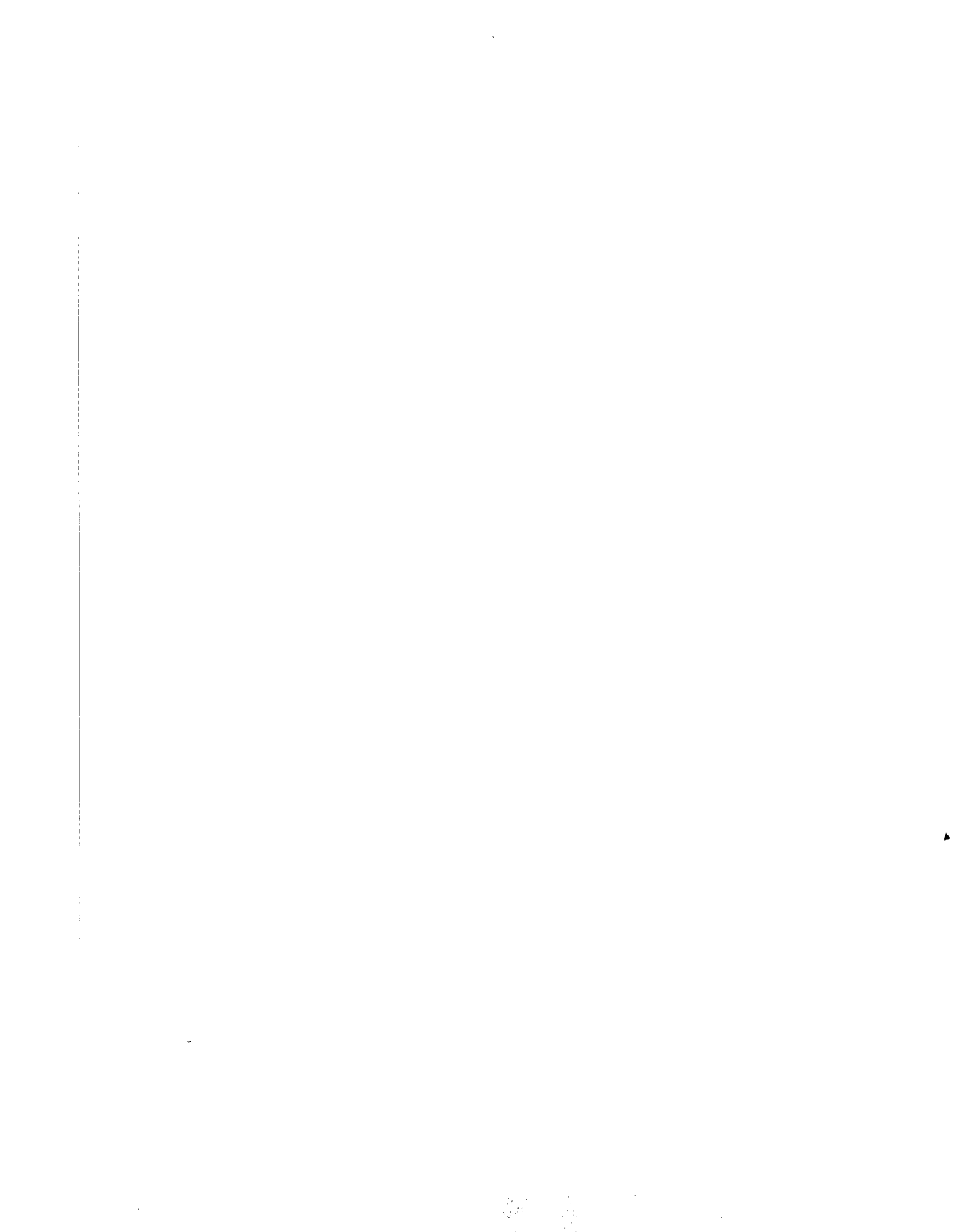
- 1 - System is current.
- 2 - Change in categories of records or individuals covered by system.
- 3 - Additional routine use.
- 4 - Change in equipment configuration that allows for increased access.
- 5 - Part of system deleted and records destroyed.
- 6 - Entire system deleted and records destroyed.
- 7 - Minor administrative change.

LIST OF SYSTEMS REVIEWED BY AGENCY

<u>System Number</u>	<u>Agency/System Name</u>	<u>System Status</u>
<u>Education</u>		
18-11-0019	Special Employment Programs	5
18-15-0004	Correspondence Files	7
18-40-0023	Defaulted Guaranteed Loans Submitted to Department of Justice	4
<u>Health and Human Services</u>		
09-90-0086	Medicare Mental Health Demonstration Evaluation	1
09-90-9999	Automated Litigation Tracking System	1
09-70-0015	Ambulatory Surgery Research Project	6
09-70-0024	Medicare/Medicaid Hospice Demonstration	6
09-70-0507	Health Insurance Utilization Microfilm	1
09-70-0524	Payments for Interns and Residents	6
09-60-0003	Hearing File and Attorney Fee File	5
09-60-0103	Supplemental Security Income Record	1
09-60-0117	Age at First Payment of Retirement Insurance Benefit	6
09-60-0196	Disability Studies, Surveys, Records, and Extracts (Statistics)	1
09-30-0014	Saint Elizabeths Hospital Financial System	1
09-30-0019	Saint Elizabeths Hospital Court-Ordered Forensic Investigatory Materials File	1
09-25-0067	Clinical Research: National Cancer Incidence Surveys	1
09-20-0087	Surveillance of Inadvertent Vaccination during Pregnancy	1

System Status Legend:

- 1 - System is current.
- 2 - Change in categories of records or individuals covered by system.
- 3 - Additional routine use.
- 4 - Change in equipment configuration that allows for increased access.
- 5 - Part of system deleted and records destroyed.
- 6 - Entire system deleted and records destroyed.
- 7 - Minor administrative change.



Requests for copies of GAO publications should be sent to:

**U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877**

Telephone 202-275-6241

The first five copies of each publication are free. Additional copies are \$2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

**United States
General Accounting Office
Washington, D.C. 20548**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested

**First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100**