

Sample Privacy Act Complaint

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOHN DOE)
 c/o Mark S. Zaid, Esq.)
 1275 K Street, N.W.)
 Suite 770)
 Washington, D.C. 20005)
)
 Plaintiff,)
)
 v.)
)
 FEDERAL BUREAU OF INVESTIGATION)
 935 Pennsylvania Avenue, N.W.)
 Washington, D.C. 20535)
)
 Defendant.)
 _____)

C.A. No. _____

COMPLAINT

The plaintiff brings this action for injunctive, declaratory and monetary relief pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a et seq., the Freedom of Information Act, 5 U.S.C. § 552(a) et seq., the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

Jurisdiction

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 552a(g)(1), 552(a)(4)(B), and 28 U.S.C. § 1331.

Venue

2. Venue is appropriate in the District under 5 U.S.C. §§ 552a(g)(5), 552(a)(4)(B), and 28 U.S.C. § 1391.

Parties

3. Plaintiff John Doe is a citizen of the United States and the District of Columbia and resides in the District of Columbia.

4. Defendant Federal Bureau of Investigation (“FBI”) is an agency within the meaning of 5 U.S.C. § 552a(a)(1), and is in possession and/or control of records pertaining to John Doe.

Facts

5. In or around July 1998, John Doe applied for a position with the Executive Office of the President. He was subsequently offered a position requiring a security clearance conditional upon his successfully passing a background investigation. The FBI conducts the background investigation of applicants for the office in question.

6. The background investigative portion was conducted by FBI Special Agent Peter Raub

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(phonetic), who contacted John Doe to obtain names for references. Special Agent Raub, who had indicated to John Doe that he disliked background investigations and would soon be transferred to a different position, conducted an inappropriate, unprofessional and, to some extent, illegal background investigation of John Doe. Those individuals who were interviewed by Special Agent Raub reported that he was biased and “gunning” for John Doe.

7. In or around November or December 1998, Special Agent Raub interviewed Ms. Nina Sirrianni, a schoolmate of John Doe. Following her interview by Special Agent Raub, Ms. Sirrianni refused to speak or associate with John Doe. Upon information and belief, Ms. Sirrianni’s decision was based on false, distorted and/or defamatory information concerning John Doe that was provided her by Special Agent Raub.

8. In or around December 1998, Special Agent Raub interviewed Thomas Donovan, a friend of John Doe. Special Agent Raub falsely told Mr. Donovan that he had reports that John Doe behaved aggressively towards women, and pressed him for any negative information that supported that allegation. None was provided.

9. In or around December 1998, Special Agent Raub interviewed Phillip Heuschen and Claud Hammon. Mr. Heuschen was told by Special Agent Raub that John Doe had been charged with assault, and insisted on being told stories about John Doe’s violent behavior. Mr. Hammon was provided information that was designed to portray John Doe as a sexual harasser.

10. In or around December 1998, Special Agent Raub interviewed Shoon Murray, one of John Doe’s professors. During the interview, Special Agent Raub sought to ascertain whether John Doe had a problem with women, and falsely and intentionally insinuated John Doe had had several run-ins with the law.

11. After receiving comments from his references, John Doe contacted Chuck Easley of the Executive Office of the President Security Office and informed him of Special Agent Raub’s conduct. He assured John Doe that he would have the opportunity to address any problems that might arise in the investigation before any decision was made.

12. John Doe provided FBI Special Agent Holly Heisner and a male colleague a copy of feedback he received from his references concerning the conduct of Special Agent Raub. The male agent said that they would forward it to their superiors and that John Doe would not be informed if disciplinary action was taken against Special Agent Raub. The male agent added that he would like to sit Special Agent Raub down in a room somewhere and ask him what he was thinking. They apologized for his actions, said that he was not supposed to conduct interviews for background checks in that manner and that there would be no reprisals from the FBI against John Doe.

13. On or about April 22, 1999, John Doe was informed that his FBI background investigation had determined that he was unsuitable for employment. John Doe was never provided an opportunity to respond to the inaccurate and defamatory findings described by Special Agent Raub. As a result, he resigned from his position.

14. John Doe is now an applicant for employment at another federal agency which also requires a security clearance. In order for him to obtain employment at this agency, and many others, John Doe will be required to undergo a background investigation. The current potential employer, as well as any other future federal employers, will be provided unfettered access to John Doe’s FBI application files and the negative, false and unfavorable information compiled by Special Agent Raub. This information will negatively impact upon John Doe’s ability to gain federal employment.

15. John Doe has attempted to attain access to his FBI files since July 1999 so he can challenge any erroneous and/or false information. Despite all efforts, the FBI has not permitted John Doe the opportunity to even review his application file.

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First Cause of Action (Privacy Act/Freedom of Information Act—Denial of Access to Records)

16. John Doe repeats and realleges the allegations contained in paragraphs 1 through 15 above, inclusive.

17. By letter dated July 23, 1999, John Doe, through his attorney, submitted a request to the FBI under the Privacy and Freedom of Information Acts for copies of all information maintained about himself.

18. By letter dated August 2, 1999, the FBI acknowledged receipt and assigned John Doe's request #902327-000.

19. On several occasions throughout 1999 and 2000, John Doe's attorney Mark S. Zaid has contacted the FBI for an update on the processing of his files. Upon information and belief, there are approximately 300 pages responsive to John Doe's request. Despite Mr. Zaid's notification to the FBI that John Doe requires access due to pending federal employment, no documents have been released.

20. John Doe has exhausted all required and available administrative remedies.

21. John Doe has a legal right under the Privacy and Freedom of Information Acts to obtain the information he seeks, and there is no legal basis for the denial by the FBI of said right.

Second Cause of Action (Privacy Act—Improper Dissemination)

22. John Doe repeats and realleges the allegations contained in paragraphs 1 through 15 above, inclusive.

23. The FBI, through the actions of Special Agent Raub, disseminated information protected by the Privacy Act concerning John Doe to Nina Sirrianni, Thomas Donovan, Phillip Heuschen, Claud Hammon, Shoon Murray and unknown others. This information included, but is not limited to, John Doe's arrest record, inaccurate and defamatory information surrounding any run-ins with law enforcement and inaccurate and defamatory information regarding John Doe's conduct towards women.

24. In violation of section (d)(1) of the Privacy Act, the FBI failed to secure written authorization from John Doe prior to providing the specific information detailed above. Nor was disclosure permitted by a routine exception.

25. As a result of the FBI's violations of the Privacy Act, John Doe has suffered adverse and harmful effects, including, but not limited to, mental distress, emotional trauma, embarrassment, humiliation, and lost or jeopardized present or future financial opportunities.

Third Cause of Action (Privacy Act—Improper Dissemination)

26. John Doe repeats and realleges the allegations contained in paragraphs 1 through 15 above, inclusive.

27. Prior to disseminating information and records concerning John Doe, the FBI failed to make reasonable efforts to ensure that the information and records were accurate, complete, timely and relevant for agency purposes in violation of 5 U.S.C. § 552a(e)(6). The FBI compiled information concerning John Doe's alleged arrest record, alleged run-ins with law enforcement, alleged conduct towards women and his alleged failure to repay unpaid debts. The information and records that were disseminated to unauthorized individuals were irrelevant, false, malicious and defamatory, incomplete, inaccurate, and untimely.

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28. The FBI, its employees and officers, including Special Agent Raub, knew or should have known that their actions were improper, unlawful and/or in violation of the Privacy Act.

29. The FBI, its employees and officers, including Special Agent Raub, acted intentionally or willfully in violation of John Doe's privacy rights.

30. As a result of the FBI's violations of the Privacy Act, John Doe has suffered adverse and harmful effects, including, but not limited to, mental distress, emotional trauma, embarrassment, humiliation, and lost or jeopardized present or future financial opportunities.

WHEREFORE, plaintiff John Doe requests that the Court award him the following relief:

- (1) Declare that the FBI violated the Privacy and Freedom of Information Acts;
- (2) Order the FBI to immediately disclose the requested records in their entireties to John Doe;
- (3) Award John Doe any actual damages under 5 U.S.C. § 552a(g)(4)(A), the exact amount of which is to be determined at trial but is not less than \$1,000;
- (4) Invoke its equitable powers to expunge all records or information maintained by the FBI that is inaccurate and/or derogatory to John Doe;
- (5) Award plaintiff reasonable costs and attorney's fees as provided in 5 U.S.C. §§ 552a(g)(3)(B) and/or (4)(B), 552 (a)(4)(E) and/or 28 U.S.C. § 2412 (d);
- (6) Refer those FBI officials responsible for violating the Privacy Act for prosecution under 5 U.S.C. § 552a(i)(1);
- (7) expedite this action in every way pursuant to 28 U.S.C. § 1657 (a); and
- (8) grant such other relief as the Court may deem just and proper.

Date: May 15, 2000

Respectfully submitted,

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