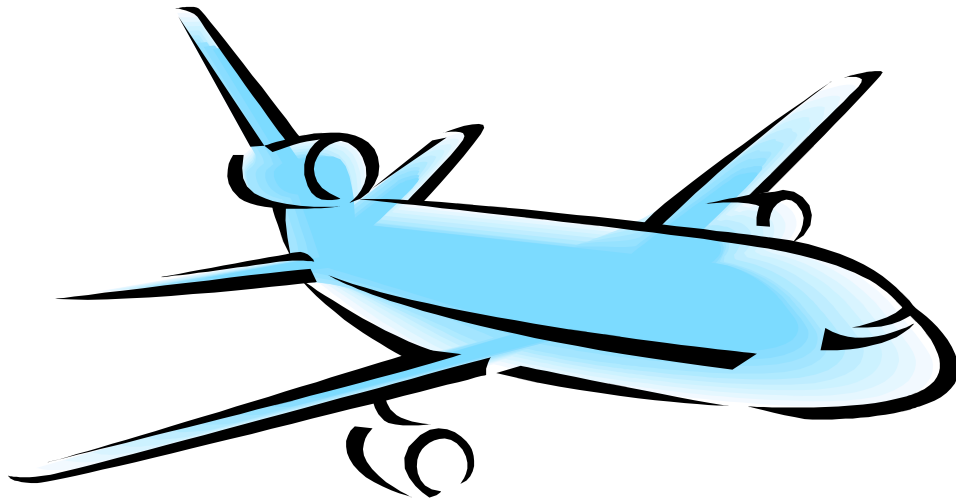


Information Provided By
PRIA, FOIA, and The Privacy Act



A Discussion Of Legal and Other Information
Provided By AFS-620

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PRIA, FOIA, and THE PRIVACY ACT

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CHAPTER ONE

1-1. Actions Required To Be Reported By PRIA:

For the purposes of completing requests for information by AFS-620, the FAA defines reportable legal actions as: “Summaries of FAA legal enforcement actions ‘resulting in a finding’ by the Administrator, of a violation that was ‘not subsequently overturned’.”

“Resulting in a finding” means that the case has been fully adjudicated and closed. In other words, only fully adjudicated and closed enforcement cases are required to be, and in fact, are reported by PRIA for the 5-year period preceding the date on the application.

1-2. Actions NOT Reported By PRIA:

PRIA does NOT provide information concerning accidents or incidents in which the pilot may have been involved, any type of administrative action such as a warning letter, as well as enforcement cases that are still open, pending, cases under appeal, or reopened, when reporting on a pilot’s performance record. FAA’s Office of Chief Council has determined that doing so could be unfair to the pilot because:

1. These reports may or may not involve pilot error.
2. Pilots identified in accident and incident reports do not receive the same due process protections enjoyed by legal enforcement actions; and
3. Open cases that have not been fully reviewed by FAA, NTSB, or possibly by a U.S. Court of Appeals, could eventually be dropped or dismissed by the court.

1-3. Information that CAN Be Released Through FOIA:

Through FOIA, ANY enforcement action, whether still open or fully adjudicated and closed, can be reported. A requester must have followed the proper guidelines when making the request, and one of the existing FOIA exemptions for denial must not apply.

A FOIA request can be made for your own records or for a third person, provided the request has been made in an acceptable and appropriate manner, and the third person has been positively identified by the requestor. There are no official forms associated with FOIA requests. A letter of request is to be composed with the words: ‘FREEDOM OF INFORMATION ACT’ plainly visible. See paragraph 1.5 for specific instructions.

Specific details concerning the requested information must be included. In addition, the subject of the request does not have to give consent for the release of the information, is not required to be notified of the request, and there is no requirement to provide the subject with a copy of the information sent to the requestor, as is required with PRIA.

Through FOIA, information that can be provided includes accidents, incidents, and enforcement actions. Certain ‘proposed’ or ‘alleged’ information contained in open or pending cases, however, if the case is still in the investigatory stage and FOIA exemption 7 applies, may be withheld until the case has been fully adjudicated and closed.

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This information includes items such as the proposed enforcement action(s) against the alleged violator, the sanction(s) being considered as a result of the alleged violation(s), and the regulation(s) that was/were violated.

The justification for this withholding action is taken from FAA ORDER 1270.1 Freedom Of Information Act, Exemption number 7. All other information, however, is included in the request.

NOTE: Requests for information that have been entered as a result of the Aviation Safety Action Program (ASAP) pertaining to airmen, are NOT releasable under FOIA.

1.4. Information That CAN Be Released Through The Privacy Act:

Under the Privacy Act, information may be released under two general conditions:

1. An ***“Individual”*** may request their own records concerning accidents, incidents, or FAA enforcement information. An individual requesting verification of medical certification information must contact FAA Medical Certification AAM-331 at (405) 954-4821. An individual requesting airman certification information must contact Airmen Certification AFS-760 toll free at (866) 878-2498.
2. A ***“Third Party (Company or other individual)”*** may request records including verification of the medical certificate, pilot or mechanic certificate, or any other authorized certificate held by an airman (generally under 14 CFR Part 91), accident and incident information, and FAA enforcement information.

NOTE: Requests for information that have been entered as a result of the Aviation Safety Action Program (ASAP) pertaining to airmen, are NOT releasable under the Privacy Act.

1.5. How To Request Information In Accordance With The Privacy Act Or FOIA:

An instruction sheet is available on the PRIA Web site that provides direction for any company or individual airman, for the completion of a request for information in accordance with the Privacy Act or FOIA. Visit: http://www.faa.gov/pilots/lic_cert/pria/

On the first, or ‘home’ page, you will find a hyperlink that states **‘more.’** Click there and you will be taken to a second page that contains the instructions that will allow you to prepare and submit your request. You may FAX your request to: (405) 954-4655.

Since our response may be configured in different ways, be sure to state the specific information that you want, such as: (1) verification of the medical and airmen certificates; (2) accident and incident information; or (3) any and all information concerning enforcement cases.

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CHAPTER TWO

2-1. A Summary Of FAA Enforcement Actions:

“Letter of Investigation” - Most *enforcement actions* are preceded with a *letter of investigation* (LOI) from the Inspector. This informs the airman that an investigation has been initiated, and that he/she may present additional facts or circumstances that may be relevant to the case, if they desire. The LOI is the first step the FAA takes to investigate a possible alleged violation of the CFRs. The LOI is generally NOT added to the EIS record, so the airman does not need to be concerned with expunction.

Most *letters of investigation* will lead to one of four general outcomes:

1. A *no action* letter to the airman indicating that no action will be taken;
2. A *corrective action* for the airman in the form of remedial training;
3. An *administrative action* which is NOT an enforcement, only a warning; or
4. A formal *enforcement action* against the airman including *civil penalties, suspensions and revocations*.

“Enforcement Action” is a term for the official action taken by the FAA toward those found, through FAA investigations, to be in violation of FAA regulations. There are two categories of enforcement action: **“administrative actions”** and **“legal actions.”**

“Administrative Actions” are the least forceful, and generally results from a minor technical violation with no impact on aviation safety. According to the FAA, “The purpose for administrative enforcement action is to provide the FAA Inspector with an administrative means for disposing of minor types of [potential] violations, **[but which are NOT actual violations]**, which do not require the use of legal enforcement sanctions.” (FAA Order 2150.3A)

“Legal Action” comes in two forms:

1. **“Certificate Action”** resulting in a suspension or revocation of the certificate; or a
2. **“Civil Penalty”** resulting in a monetary fine against the certificate holder.

“Certificate Actions:”

“Certificate Actions” consist of either a **“suspension”** or the **“revocation”** of a holder’s certificate, or both. Suspensions can be for a **“fixed”** or an **“indefinite”** period of time. Certificate suspensions for a **“fixed”** number of days are issued as a disciplinary action against the violator in an effort to deter future violations, and are usually specified on the Order of Suspension itself.

Suspensions of an **“indefinite”** period of time are issued to prevent a certificate holder from exercising the privileges of his/her certificate, until they have successfully demonstrated the various requirements to hold the certificate, usually with a re-examination by the FAA Inspector. This is also specified on the Order of Suspension.

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The most drastic measure is a certificate “*revocation*.” This is issued when the FAA has determined that a certificate holder is no longer qualified to hold an airman certificate. Orders of “*suspension*,” other formal enforcement events, and Orders of “*revocation*” may be appealed to the National Transportation Safety Board, and the Board’s decisions may be reviewed by a U.S. Court of Appeals.

PRIA will report a “*suspension*” after the case has been fully adjudicated and closed. In other words, OPEN cases are not reported by PRIA. Once fully adjudicated and closed, both “*suspensions*,” other formal enforcement events, and “*revocations*” will now become permanent entries on an airman’s EIS record, and are required to be reported by PRIA regardless of the previous 5 year reporting period, which is no longer in affect. These EIS records will remain on the PRIA report, even in cases where the airman has re-qualified, and has been issued another current and valid airman certificate.

“Civil Penalty:”

A “*civil penalty*” is basically a monetary fine issued either to an individual airman or to an air carrier. When it comes to civil penalties, air carriers are held to a higher standard. An air carrier can be subject to a penalty of up to \$11,000 for a single violation. Other certificate holders such as repair stations, pilots or mechanics, can receive a penalty of up to \$1,100 for each violation. Civil penalties have also become a permanent entry on an airman’s EIS record and subsequently on their PRIA report.

2-2. Accidents and Incidents:

Information concerning an individual’s accident and incident record is *not* reportable under the PRIA law, and will *not* be included in the PRIA report.

However, this information *is* available under a Privacy Act or FOIA request and many air carrier customers, at the time they make a PRIA request, will also submit an accompanying Privacy Act or FOIA request for the airman’s accident and incident record. This report is also available to an individual airman or to another third party.

Three protective features that a Privacy Act or FOIA request does *not* require, which *are* contained in a PRIA request are, that:

1. The subject is not required to sign a release for the requested information.
2. The subject is not required to be notified that a request has been made; and
3. The subject does not receive a copy of the provided information.

Even though the Privacy Act or FOIA does not contain the protective measures found in PRIA as listed above, the Privacy Act does provide for the right of an airman to request the identities of persons outside of U.S. Government agencies who have requested and received information pertaining to that individual, including law enforcement.

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2-3. Expunction:

Expunction is the permanent removal of certain actions from an airman's record after the appropriate period of time has lapsed. As mentioned above, *suspension actions*, *civil penalties* and *revocations* are no longer expungeable and remain as a permanent entry on an airman's EIS record.

2-3a. Expunction As Related To Formal Enforcement Cases:

Expunction applies to two general categories of enforcement actions. They are:

1. No Actions.
2. Administrative Actions.

"No Actions" - There are four basic categories of no actions. They are:

1. No Action Taken.
2. US Attorney Declines To Take Action.
3. FAA Action Has Been Reversed; and
4. Successful Reexamination of Qualifications (709 check rides)

These actions are expunged after 30 days, but no longer than 90 days.

"Administrative Actions" – There are two basic categories of administrative actions:

1. A Warning Notice; and
2. A Letter of Correction.

A warning notice or a letter of correction is processed by the FAA Inspector as an Enforcement Investigative Report (EIR) and is kept in the FAA's Enforcement Information System (EIS) computer file for a period of two years, as a matter of record.

Neither a warning notice or a letter of correction constitutes a finding of violation, and can be withdrawn if the issuing FAA Inspector decides that any type of administrative action concerning the case would be inappropriate. Once established in the EIS system, this information becomes reportable should a FOIA request be received. Administrative actions in this section, however, are NOT reportable on PRIA requests.

After 2 years have lapsed, the warning notice or letter of correction is then automatically expunged from the EIS computer records, and is no longer reportable. The date of expunction is determined from the "Expunction Calculation Date." If this date is not in the report, the "Final Action Date" is used.

Expunction will generally occur during the first working week of the month after the 2 year period has lapsed.

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The expunged information includes all personal information concerning the airman such as name, address, date of birth, and/or FAA certificate number. After the airman's personal information has been expunged, the specific circumstances of the violation will remain on permanent record for statistical and research purposes, but in no way will be connectable to the airman.

Information that has been entered as a result of the Aviation Safety Action Program (ASAP) pertaining to airmen is NOT releasable under PRIA, FOIA or the Privacy Act.

2-3b. Expunction As Related To Accident and Incident Cases:

The expunction of accident or incident cases will expunge 5 years after the *date of the occurrence* or the *event date*. If an additional event occurs within 5 years, neither case will expunge until there is a 5-year period free of accidents or incidents.

Expunction will generally occur the first working week of the month after the 5 year period has lapsed.

2.4. Expunction reference:

FEDERAL REGISTER – Volume 56; Number 209; Dated Oct 29, 1991; Page 55788.

“Certificate Actions” – There are seven basic categories of certificate actions. They are:

1. Notice of Proposed Certificate Action.
2. Airman Stop Order.
3. Order of Suspension.
4. Order of Suspension with Waiver of Penalty.
5. Order of Revocation.
6. Emergency Order of Revocation; and
7. Amendments.

Certificate actions are more likely to occur when a serious violation of FAA regulations has been substantiated. Documents related to certificate actions, besides being maintained in the EIS and at the Regional Council's Office, are sent to AFS-760 Airmen Certification to be added to the airman's permanent microfilm records. AFS-760 then enters each action with its own reference number for more efficient identification.

IMPORTANT NOTICE REVIEW:

Records that will NEVER be expunged are Orders of Suspensions, Civil Penalties, and Revocations, all supporting documents as listed above, and Orders of Suspension that lead to, and result in, an Order of Revocation.

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These will remain in an airman's record indefinitely, including both medical and airman certificates, and can be expunged ONLY after official notification of the airman's death.

“Civil Penalties” – An Order assessing a *civil penalty* is sometimes issued to an airman.

The *civil penalty* then becomes reportable should a FOIA request be received, and will remain as a permanent entry on an airman's EIS record.

As with any other *certificate action*, a *civil penalty* is only reported on a PRIA request if the case has been fully adjudicated and closed.

CHAPTER THREE

3-1. A Final Review Concerning the Release of Information:

When AFS-620 (PRIA) responds to requests through the Pilot Records Improvement Act (PRIA), ONLY final *certificate actions* fully adjudicated and closed, resulting in a finding of a violation and not subsequently overturned, are required to be released by PRIA.

Enforcement information pertaining to *no actions*, *administrative actions*, or *certificate actions* that are in process (pending, open, or under appeal), are NOT released under PRIA; however, this information MAY be released when a Privacy Act or a FOIA request has been received.

The Privacy Act provides for the right of an airman to request the identities of persons outside of U.S. Government agencies who have requested and received information pertaining to that individual. Under a FOIA request, however, there are no such accounting provisions for an airman to know if another person has made a request concerning their records.

No actions and *administrative actions* are not included in the official FAA Enforcement Records Expunction Policy since they were already being expunged prior to the publishing of the official expunction policy.

Information entered as a result of the Aviation Safety Action Program (ASAP) is NOT releasable under PRIA, FOIA or the Privacy Act.

REFERENCES:

FAA Order 1270.1 FREEDOM OF INFORMATION ACT PROGRAM
FAA Order 2150.3A COMPLIANCE AND ENFORCEMENT PROGRAM
FAA Order 8300.10, Chapters 210, 211, 212, 213.
FAA Order 8700-1, Chapters 180, 181, 182.

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DISCLAIMER:

This article is not intended to provide an official document upon which actual legal interpretations can be made. It is, however, intended to explain and clarify the basic legal structure upon which the FAA builds its enforcement policy, and to define the specific information concerning the certificate holder that can or cannot be released through PRIA, FOIA, or the Privacy Act.

It is also intended to foster a better understanding of the FAA legal system for the benefit of the air carrier customer and the individual pilot when requesting records in accordance with the Pilot Records Improvement Act, and in understanding what information is or is not available to be reported.

SOURCE:

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