



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Chairman
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The Chief of Staff

August 10, 2001

Ms. Brooke Dickson
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Dear Ms. Dickson

I am pleased to submit the Merit Systems Protection Board's comments on the Proposed Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, published by the Office of Management and Budget in the *Federal Register* on June 28, 2001 (66 FR 34489).

We appreciate that OMB has tried to make the Guidelines very general so that they may be applied uniformly to the wide variety of information disseminated by Federal agencies. We have some concern, however, over how the Guidelines, as proposed, might apply to certain information disseminated in the performance of the Board's statutory function of adjudicating Federal employee appeals of personnel actions and others matters within the Board's jurisdiction.

The end-product of a Board adjudication is a decision. Final Board decisions are distributed to the participants in the case, the Office of Personnel Management, the Office of Special Counsel, and publishers of Board decisions. Before MSPB launched its website in 1994, copies of decisions were made available or provided to other individuals or organizations only upon request. Now, however, we place final Board decisions on the MSPB website where they can be searched, viewed, printed, or downloaded by anyone with Internet access. It appears, therefore, that under the proposed Guidelines final Board decisions would come under the definition of an "information dissemination product" and our placement of them on the website, under the definition of "dissemination."

Because the proposed Guidelines also would require us to establish an administrative mechanism whereby affected persons can obtain correction of information disseminated by the agency, we are concerned that parties to a Board adjudicatory proceeding, and possibly other individuals who might be affected by the Board's decision in the

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proceeding, could be led to believe they can seek "correction" of the decision, or any information in it, through this new administrative mechanism for the correction of information disseminated by the agency. While I doubt that this is OMB's intent, the lack of an exclusion for the decisions of an administrative adjudicatory agency, such as the Board, could lead to such a result.

The proposed Guidelines appear to recognize this problem with respect to judicial proceedings by excluding "judicial process" from the definition of "dissemination." We ask that in the final Guidelines OMB provide an additional exclusion from the definition of "dissemination" for final decisions and other information produced in the course of an administrative adjudicatory proceeding. (While our principal concern is over the final decisions of the Board, there may be occasions when we will post other Orders issued in the course of a proceeding to our website because of public interest in the proceeding. The proposed Guidelines would not apply to our case records because they are protected by the Privacy Act and are released only in response to FOIA or Privacy Act requests, which are clearly excluded from the definition of "dissemination" in the proposed Guidelines.)

In its *Federal Register* notice, OMB requested comments on whether there should be specific guidelines with respect to information disseminated by Federal agencies through their websites. While the proposed Guidelines, for the most part, are sufficiently general to apply regardless of the method of dissemination, we believe there is one area where additional guidance from OMB would be helpful. Many agencies, including MSPB, do not operate their own websites but contract for this service. Our website, for example, is maintained by the Government Printing Office. We ensure that the information we transmit to GPO for placement on our website is accurate, complete, and in the proper format. We depend on GPO, however, to ensure the integrity of the information (protection against hackers, etc.) once placed on our website, which resides on a GPO server. We suggest that in the final Guidelines OMB address an agency's responsibilities for information it disseminates through a website maintained by a contractor.

Thank you for the opportunity to comment on the proposed Guidelines

Sincerely,


Terry Vann