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Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

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DATE: December 6, 2021

SUBJECT: **Analyzing the Privacy Act of 1974's Limitations on the Ability of the
Science and Technology Directorate to Maintain Records Containing
First Amendment Information**

I. Purpose and Background

The Privacy Officer of the Department of Homeland Security ("DHS") Science and Technology Directorate ("S&T") is seeking legal guidance regarding S&T's ability to carry out its statutorily authorized activities when those activities may involve the collection or maintenance of records describing how an individual exercises rights guaranteed by the First Amendment.

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S&T's authority to collect or maintain records¹ describing how an individual² exercises rights guaranteed by the First Amendment (hereinafter "First Amendment Information")³ is governed by subsection (e)(7) of the Privacy Act of 1974, codified at 5 U.S.C. § 552a, (hereinafter, "the Privacy Act") which prohibits the collection or maintenance of such records unless "expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity[.]"⁴ Unless S&T can avail itself of one of the aforementioned exceptions to subsection (e)(7) of the Privacy Act, S&T may not independently collect or maintain records that contain First Amendment Information.

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