



INFORMATION BLOCKING EXCEPTION #2: Privacy

Official Title – Privacy Exception: When will an actor’s practice that is likely to interfere with the access, exchange, or use of electronic health information in order to protect an individual’s privacy not be considered information blocking?

Exception applies if an actor engages in practices that are reasonable and necessary to protect an individual’s privacy, provided certain conditions are met.

Objective of the Exception – This exception recognizes that if an actor is permitted to provide access, exchange, or use of EHI under a privacy law, then the actor should provide that access, exchange, or use. However, an actor should not be required to use or disclose EHI in a way that is prohibited under state or federal privacy laws.

Key Conditions of the Exception:

- ✓ **Precondition not satisfied:** If an actor is required by a state or federal law to satisfy a precondition (such as a patient consent or authorization) prior to providing access, exchange, or use of EHI, the actor may choose not to provide access, exchange, or use of such EHI if the precondition has not been satisfied under certain circumstances.
- ✓ **Health IT developer of certified health IT not covered by HIPAA:** If an actor is a health IT developer of certified health IT that is not required to comply with the HIPAA Privacy Rule, the actor may choose to interfere with the access, exchange, or use of EHI for a privacy-protective purpose if certain conditions are met.
- ✓ **Denial of an individual’s request for their EHI consistent with 45 CFR 164.524(a) (1) and (2):** An actor that is a covered entity or business associate may deny an individual’s request for access to his or her EHI in the circumstances provided under 45 CFR 164.524(a)(1) and (2) of the HIPAA Privacy Rule.
- ✓ **Respecting an individual’s request not to share information:** An actor may choose not to provide access, exchange, or use of an individual’s EHI if doing so fulfills the wishes of the individual, provided certain conditions are met.

Addressed on: [Page 25844 of final rule](#). For a detailed explanation of this exception also please reference our detailed [cheat sheet](#).