

21st Century Framework for Revisions to the Privacy Act of 1974 and Other Federal Privacy Statutes

- Principles
- Problems
- What Can ISPAB Do About The Problems
- Next Steps

Principles

Increasing use of computers and sophisticated information technologies magnifies the potential harm to individual privacy that can occur from any collection, maintenance, use or dissemination of personal information.

Fair Information Principles

A synthesis of OECD and HEW Language

- 1. Lawful purpose:** Personal information should be collected only for lawful purposes.
- 2. Relevance:** Information should be collected only if it relevant for the purpose for which it is collected.
- 3. Primary use:** Information should be used only for the purpose for which it was collected.
- 4. Accuracy:** Only accurate information should be retained.
- 5. Timeliness:** Information should be kept only so long as it is timely.

Fair Information Principles

A synthesis of OECD and HEW Language

6. **Completeness:** Incomplete information should not be kept, especially if the incompleteness is misleading.
7. **Access:** Data subjects should have access to information about themselves, and should be able to challenge and correct it.
8. **Security:** Information should be protected against unauthorized loss, alteration, or disclosure, both internal and external to the data collector. Sensitive data requires greater protection.
9. **Transparency:** The existence of a database containing personal information should not be secret.
10. **Accountability:** Enforcement mechanisms and effective oversight should be available to ensure compliance with these principles.

Privacy Act of 1974

(See Discussion Draft)

- History
- State of information technology (or lack thereof) in late 1960's – early 1970's
- Legislative Intent

Privacy Act of 1974

(See Discussion Draft)

Underlying premise: government should not maintain dossiers on citizens who are not subjects of criminal investigations (or as required by other statutes).

Privacy Act of 1974

- Information may be gathered only to accomplish the proper purpose...
- The individual must be the source of the information to the greatest extent possible...
- The individual is to be notified as to the information maintained and its uses...
- No information may be collected regarding the individual's political or religious beliefs or affiliations...

Privacy Act of 1974

- Individual should have access to records containing personal information on him and must be allowed to correct erroneous information...
- Individual should control transfer of personal information from one agency to another...
- Individual must have notice of information systems...
- Agencies cannot maintain information concerning an individual's political or religious beliefs...
- Limits availability to agency employees who need access to perform duties...
- Agencies must maintain accounting of transfers to other agencies and outsiders...
- Agencies must make list and describe routine uses...
- Agencies must keep assure accuracy, timeliness and completeness...
- Provides for civil remedies

Privacy Act of 1974

PL 93-57 §2(b)

1. Permit an individual to determine what records pertaining to him are collected, maintained, used or disseminated...
2. Permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose...
3. Permit an individual to gain access to information pertaining to him...
4. Collect, maintain, use or disseminate information ... necessary for a lawful purpose... current... accurate... safeguards against misuse...
5. ...limit exemptions...
6. ...provide civil Remedies

Privacy Act of 1974

When broken down, each of the six enumerated purposes relates to the fair information principles

Problems arise in each of the six enumerated purposes...

Privacy Act of 1974

Legislative intent and effectiveness has been eviscerated over time

- Technologies & agency needs have changed
- Minimization principles have been diffused
 - Data matching, secondary uses and use of 3rd party data are commonplace and perceived necessary
- Insufficient Notice
 - The 1977 Privacy Protection Study Commission's Report found publication in the Federal Register to be of "limited impact."

Privacy Act of 1974

Legislative intent and effectiveness has been eviscerated over time

- Choice
 - No choice (perceived lack of alternatives for G-to-C services)
- Access
- Security
- Enforcement/Redress

Privacy Act of 1974

A huge loop hole:

- Increased use of information collected & maintained by private sector

ISSUES TO CONSIDER

- Definitions
- Minimization
- Notice
- Access
- Choice (in the G-to-C arena)
- Security/audit
- Remedies/enforcement
- Data Matching Provisions
- Use of 3rd Party Data

Privacy Act of 1974

Possible ISPAB Work Product

- Issue spot/raise awareness
- Partner with others provide guidance for implementation
- Partner with others provide guidance to inform policy changes
- Recommend specific policies/amendments

Privacy Act of 1974

Recommendation:

Form appropriate subcommittee to partner with DHS (and possibly others) to develop the roadmap for a 21st Century Framework for Revisions to the Privacy Act of 1974 and Other Federal Privacy Statutes.

Possible ISPAB Privacy-related Projects

- Chief Privacy Officer Guidance (framework for managing privacy activities within the federal government)
- Privacy Act of 1974 (influencing legal and policy issues involving privacy within the federal government)
- CRM (low priority)

Next Steps/Work Plan

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