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*Privacy Act
Luncheon
12/16/75*

December 2, 1974

Dear Bill:

Thank you very much for the information that you and Larry will both be attending on Monday, December 16, the luncheon of the Privacy Committee Seminar.

Your attendance will be most welcome by the participants.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable William B. Saxbe
The Attorney General
Washington, D. C. 20530

PWBuchen:red

bcc: Doug Metz



THE WHITE HOUSE
WASHINGTON

Has Doug been advised
of this?

After informing him,
return to me for
reply.

P

Yes
I called to advise



THE ATTORNEY GENERAL
WASHINGTON

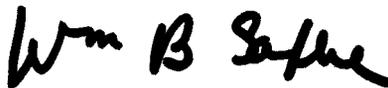
November 27, 1974

Dear Mr. Buchen:

I am pleased to accept your invitation to attend the opening luncheon of the Seminar on Privacy jointly sponsored by the President's Comestic Council Committee on the Right of Privacy and the Council of State Governments.

I would also like to bring with me Deputy Attorney General Laurence H. Silberman.

Sincerely,



William B. Saxbe
Attorney General

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D. C. 20500



DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

Privacy

December 11, 1974

The Honorable Nelson A. Rockefeller
Vice President - Designate
Room 5600
30 Rockefeller Plaza
New York, New York 10020

Dear Governor:

Congratulations on your Senate confirmation! I trust that you will let this office know as soon as you are ready to be briefed on the Privacy Committee's program and plans. The Committee staff is looking forward to your assumption of the Chairmanship and will be glad to do whatever it can to prepare the way.

The Committee jointly with the Council of State Governments is sponsoring a Privacy Seminar in Washington December 15-17. We had hoped that you would have been confirmed and available to participate in the program, but press reports, unfortunately, are to the contrary.

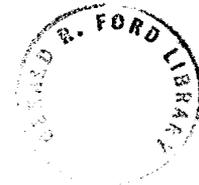
Sincerely,



Douglas W. Metz
Acting Executive Director

DWM/fme

bcc: Philip W. Buchen



Privacy

December 13, 1974

MEMORANDUM FOR: JACK MARSH
FROM: PHIL BUCHEN
SUBJECT: Liaison with Governor Rockefeller

Among matters on which the Governor and his staff may want to be briefed soon after confirmation, one involves the Domestic Council Committee on the Right of Privacy.

I know that the Committee staff, headed by Acting Director Douglas W. Metz, is eager to have a meeting of the Cabinet-level Committee occur fairly soon, with the new Vice President as Chairman, and to have the Chairman and the Committee consider the results of the work in which the staff has been busily engaged.



Privacy

THE WHITE HOUSE
WASHINGTON

January 21, 1975

Dear Alan:

You were thoughtful and generous in your comments to me, and I thank you very much.

I indeed welcomed seeing you again at the luncheon when you so ably dealt with the subject of great interest to me and the entire audience.

Very best wishes to you, as always.

Sincerely yours,



Philip W. Buchen
Counsel to the President

Professor Alan F. Westin
Department of Political Science
Columbia University
New York, New York 10027



Columbia University in the City of New York | New York, N.Y. 10027

DEPARTMENT OF POLITICAL SCIENCE

420 West 118th Street

December 31, 1974

Mr. Philip Buchan
The White House
Washington, D.C. 20005

Dear Phil:

It was a pleasure sitting next to you at lunch two weeks ago and exchanging ideas about the privacy issues.

Now that Congress has passed a Privacy Protection Act, I wanted to let you know how much those of us who have worked in this area over the years appreciate the key role that was played by the Domestic Council Committee on the Right of Privacy during your leadership there. The fact that there is sensible new legislation from Congress, and that many other initiatives are also under way, is a tribute to the effective way you, and Doug Metz now, have moved the Executive Branch into a constructive rather than oppositional role in this area.

I hope that you will continue your nutureship of the privacy cause from your present vantage point in the White House. Thoughtful privacy policies need all the friends they can get.

With best personal regards for a happy and prosperous new year,

Sincerely,



Alan F. Westin
Professor of Public Law
and Government

AFW:lc



Privacy

January 22, 1975

Dear Mr. van der Zwaag:

Thank you very much for your kind invitation to address the joint meeting in Grand Rapids of the A.S.M. and D.P.M.A. on April 21, 1975, or at some other suitable date.

Unfortunately, I do not think my work here will permit me to return to Grand Rapids, and therefore I must decline your invitation.

However, I am sending your letter to Douglas Metz, Acting Director of the Domestic Council Committee on the Right of Privacy with a request that he provide you with suggestions for a speaker. He knows of persons in your area who are well informed on the matter of handling confidential data within computer systems.

Sincerely yours,

Philip W. Buchen
Counsel to the President

P.S. Give my best regards to all my friends at Bradford Paper Co.

Mr. Donald van der Zwaag
W. J. Bradford Paper Company
P. O. Box 1014-B
Holland, Michigan 49423

cc: Douglas Metz

PWBuchen:ed



THE WHITE HOUSE
WASHINGTON

*Privacy
Cmt*

February 12, 1975

MEMORANDUM FOR: JAMES T. LYNN
FROM: PHILIP BUCHEN *P.W.B.*
SUBJECT: Douglas W. Metz

As you move to filling vacancies on your staff, I recommend that you give careful consideration to Douglas W. Metz, who is described in the attached document.

I brought Doug into the Government from the Washington office of Booz, Allen & Hamilton, Inc. to be my deputy for the staff of the Domestic Council Committee on the Right of Privacy and I worked closely with him from April-August, 1974. Especially because OMB now has responsibility under the Privacy Act, his experience should be very valuable in this area. He is generally a very capable administrator and because of his legal education, has a lawyer's approach to problem solving.

I am thinking particularly that you might want to consider him to fill Bob Marik's old position. If you have any questions about Doug, I would be glad to answer them or try to find out the information.

Attachment



DOUGLAS W. METZ

Mr. Douglas W. Metz is currently serving as Acting Executive Director of the Cabinet-level Domestic Council Committee on the Right of Privacy on leave of absence as a vice president of Booz, Allen & Hamilton, Inc. He succeeded Mr. Philip W. Buchen upon Mr. Buchen's appointment as Legal Counsel to the President. With Booz, Allen, Mr. Metz was responsible for directing management consulting assignments for public agencies and private institutions in the United States and overseas.

Prior to joining the firm, Mr. Metz served as a Congressional administrative and legislative assistant. His military service includes duty as a Judge Advocate with the United States Air Force.

Mr. Metz received an A. B. degree in Political Science from Colgate University, graduating magna cum laude. He received a J. D. degree from the Law School of Wayne State University and served as an editor of its Law Review.

Mr. Metz is admitted to law practice in Michigan, the District of Columbia, the U. S. Court of Military Appeals, and the U. S. Supreme Court. Professional memberships include the American Bar Association, American Judicature Society, the American Society for Public Administration, the Judge Advocates Association, of which he has served as a director, and Phi Beta Kappa.



Tuesday 4/15/75

Meeting
4/16/75
10 a.m.

12:25 The following people will attend the Privacy Group meeting on Wednesday 4/16 at 10 a.m.:

Dick Parsons
Doug Metz
Lynn May
Peter Wallison
Bill Nichols
Walter Haase
Calvin Collier

*For file.
T.*



DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

AGENDA

STEERING GROUP MEETING

April 16, 1975 10:00 a.m. Mr. Buchen's Office

- I. Taxpayer Privacy Legislation
Tab A
- II. Consumer Privacy Rights Proclamation
Tab B
- III. Military Surveillance Legislation
Tab C
- IV. Proposal for Presidential Privacy Message
Tab D



TAB A



TAXPAYER PRIVACY LEGISLATION

President Nixon, at Vice President Ford's urging, repealed E. O. 11709 allowing Agriculture access to raw tax returns of farmers. Treasury, consistent with a Privacy Committee initiative, sent Congress a bill on September 11, 1974, to strengthen confidentiality protections for tax returns and tax return information. A rival bill was advanced by Weicker and Litton. President Ford, on September 20, 1974, circumscribed White House access to tax information by E. O. 11805. The President met with Weicker and Litton at their request and consented to codification of E. O. 11805, requested hearings on the question of access for purposes other than tax administration, and directed Commerce (Census and Bureau of Economic Affairs) and Justice (for nontax investigations) to prepare and transmit "white papers" justifying their need for access to IRS records.

Enactment, subsequently, of the Privacy Act poses the question of need now for special legislation safeguarding tax returns and tax return information. Treasury favors legislation, arguing: (1) that as a matter of public policy, Congress alone should set the conditions of disclosure (to third parties) of IRS records including the specific disclosures that IRS by rule-making would establish as "routine uses" under the Privacy Act; (2) that certain amendments to the IRS code are needed (e. g., extending confidentiality protections to partnerships and trusts, and extending criminal penalties to IRS contractors) to strengthen tax administration; and (3) that the effective date of the Privacy Act should be extended because of anticipated administrative difficulties in complying with the accounting for disclosure provisions of the Privacy Act.

Privacy Committee and OMB staff generally have resisted legislative proposals which would operate to weaken the Privacy Act. Some provisions of the Treasury bill would have such an effect. It is possible that many of Treasury's concerns about the Privacy Act could be dealt with administratively by OMB interpretation and guidance.

The Senate Finance Committee has scheduled hearings on the Weicker-Litton bill for April 21 and 28. Treasury, Commerce and Justice await guidance regarding their testimony.

The Weicker-Litton bill has three main objectives:

- (1) To restrict White House access--This objective has been accomplished by E. O. 11805 which the President would permit to be codified. The Weicker-Litton provision is close to that of the Executive order.



- (2) To restrict Congressional access--Both the Weicker-Litton and Treasury bills circumscribe Congressional access, however, Weicker-Litton is more restrictive. The Privacy Act exempts Congress from its provisions.
- (3) To limit access by other agencies to tax administration purposes only--Weicker-Litton would deny Commerce (Census and BEA) and Justice (for nontax cases) access to tax returns. The Privacy Act would allow these and other agencies specified in the Treasury bill access through its "routine use" and "law enforcement" exceptions.

Both bills, it should be noted, would weaken the Privacy Act by restricting taxpayer access largely to a copy of his own tax return.

Alternative Strategies

Option 1--Oppose legislation on the grounds that the Privacy Act plus Executive Order 11805 provide adequate remedies.

Pros

- . The Congress and the President have taken significant steps to protect tax returns. Should Congress wish to impose restrictions greater than the Privacy Act on its own access (as the President did), it may act by Congressional resolution;
- . Interagency transfers and uses permitted under the Privacy Act but which Weicker-Litton would deny are vital to the accomplishment of the missions of agencies such as Commerce and Justice. Such access is consistent with the recently expressed intent of Congress in passage of the Privacy Act;
- . Support of legislation might open "Pandora's box" for unforeseen extraneous and ill-considered amendments which could dilute the Privacy Act or hamstring tax administration.



Cons

- . Opposition to legislation avoids recognition that Weicker-Litton have a popular subject and will push aggressively for some type of special legislation;
- . Opposition puts the President on the defensive in the face of previously announced support for legislation on this subject.

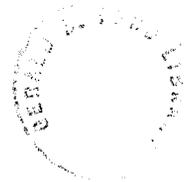
Option 2--Support legislation to codify restrictions on White House and Congressional access, but oppose legislation which would serve to amend the Privacy Act.

Pros

- . This option recognizes that agreement in principle exists on restricting White House and Congressional access;
- . Legislation of this scope allows Privacy Act sanctioned access to IRS records by Commerce, Justice, and also, as justified, by other agencies;
- . Support for legislation places the President in a leadership position, consistent with past actions.

Cons

- . (Same as for Option 1)



TAB B



PRESIDENTIAL PROCLAMATION ON CONSUMER RIGHTS OF PRIVACYBackground

Following formal action of the Privacy Committee, the Office of Consumer Affairs, in the Fall of last year, developed a statement of consumer privacy rights in consultation with business and consumer representatives. The purpose of the statement was to provide one umbrella for implementing voluntary, company by company initiatives in behalf of consumer privacy. This approach was selected because of wide variations in record-keeping practices of companies and the desire for prompt action pending further study on alternative approaches, including legislation. Because of the varying methods of information use by business, each subscribing company would issue and publicize its own implementing policies. The Office of Consumer Affairs would be available to assist companies in the implementation of the "code." Subscribing companies would keep and report statistics resulting from operations as a basis for evaluation of the program.

A Presidential Proclamation would inaugurate the program. Because of its voluntary nature, it would not have a basis in statutory law or a prior Executive order. Instead, the President's inherent authority to seek voluntary action from cooperating members of the private sector serves as the basis for the Proclamation. Although this Proclamation was originally intended to be issued in September or October 1974, it was determined to be in the President's best interest to wait until some time after the November 1974 Congressional elections and the conclusion of the 93rd Congress. Now that both events have passed, companies and consumer groups are awaiting the issuance of the Proclamation. In conjunction with a proposed Presidential signature ceremony, the implementation plan includes having a number of top corporate executives simultaneously participate by signing the "code" to initiate a drive for involving other companies.

In the process of clearance, questions have been raised about the "code's" potential effectiveness because of its generality, its relation to the Fair Credit Reporting Act, and legal implications. A revision is being undertaken to address these concerns and to emphasize more strongly the obligation of each company to take effective steps to develop and publicize implementing policies and practices. Senator Proxmire, in addition, has written the President about the proposed Proclamation requesting more information and inquiring about the Administration's stand on consumer privacy legislation.



Issue

Should the Administration, via a Presidential Proclamation or some other means, formally initiate a private sector voluntary program of self regulation to protect consumer privacy rights in business records not covered by the Fair Credit Reporting Act?

Pros

- . Fulfills expectations of groups having worked with the Office of Consumer Affairs;
- . Provides a measure of immediate privacy protection while buying time for further study by Administration and Congress in face of growing threat of legislation;
- . Stabilizes a consensus on basic privacy principles in a sector having widely varying practices in the handling of consumer information;
- . Manifests leadership by the President;
- . Proclamation, or "code" can be strengthened to emphasize implementation responsibilities.

Cons

- . Should properly be considered by new Privacy Protection Study Commission;
- . Could be publicly construed as weaker approach that undercuts Proxmire-Koch-Goldwater efforts for legislation;
- . Lacks formal policing mechanism and guaranteed remedies;
- . Opens door to uncertain legal consequences.



TAB C



MILITARY SURVEILLANCE LEGISLATION

Background

The Privacy Committee last year formally endorsed the concept of legislation but withheld specific endorsement of the pending Ervin bill. Then Vice President Ford expressed similar views in a letter to Senator Ervin assuring him that DoD had been asked to prepare "needed substitute language." DoD developed an unofficial draft alternative but left others to advance it. Late in the last Session the Ervin bill was reported to the full Judiciary Committee with no action taken. Senator Tunney, succeeding Senator Ervin as Subcommittee Chairman, plans to push the Ervin bill. Congressman Steelman, pursuant to action of the House Republican Privacy Task Force, has introduced the Ervin bill. Continued press and civil libertarian interest has been expressed not only in the facts surrounding the Army's surveillance overseas of members of the Berlin Democratic Club (now a court case), but in allegations that domestic military surveillance files have not been destroyed.

Issue

Should DoD be directed to undertake formal sponsorship of legislation to codify its regulations banning military surveillance of civilian political activities?

Pros

- . Consistent with prior positions of the President and the Privacy Committee;
- . Enhances public and Congressional credibility in Administration's privacy initiatives;
- . Responds to Congressional and media interest in statutory bans on unnecessary and illegal surveillance.

Cons

- . Opens up complex questions of permissible exceptions to ban; could constrict DoD's flexibility in securing posts, bases, and installations in the United States and overseas;
- . Risks tying hand of President to cope with any future domestic disturbances;
- . Problem eliminated by regulations.



TAB D



PRESIDENTIAL MESSAGE ON PRIVACY LEGISLATION

On the 12th of last August I pledged this Administration to hot pursuit of tough laws to prevent unwarranted invasions of personal privacy, both in and outside of government. The six intervening months have produced substantial progress toward this objective. However, much remains to be done.

Continued revelations of actual and alleged privacy violations have roused public concern and produced hundreds of proposals at the Federal, State and local levels to add new privacy legislation to the law books. The protection of personal privacy will remain a priority issue for the immediate future until needed legal and administrative safeguards are established to protect what Justice Brandeis characterized as "the right most valued by civilized men."

As we redouble our efforts to strengthen privacy protections, we must be mindful that complete isolation and, hence, perfect privacy are not possible in modern society. In pursuing privacy safeguards, therefore, we must carefully weigh this against society's interests in freedom of information about government activities, freedom of the press, law enforcement, national defense and foreign policy and the business information needs of the marketplace.

We have already made significant progress at the Federal level in defining concepts and approaches to resolve situations in which conflicts exist between privacy and other social values.



Recent Progress with Promise

The Administration and the Congress have taken important initial steps toward curbing abuses and redressing imbalances in the administration of laws that have led to unwarranted invasions of personal privacy.

A key development was the establishment early last year of the Domestic Council Committee on the Right of Privacy to provide needed policy formulation and coordination of various Executive branch initiatives. As Vice President, I chaired that cabinet-level Committee, a responsibility I have now given to Vice President Rockefeller. The Privacy Committee quickly established communication with and among key Congressional committees and Federal agencies, and helped stimulate a coordinated Federal approach on nearly two dozen important privacy initiatives.

The results of this effort, and that of the positive partnership of many individuals within and outside of government, have been significant. Administrative and legislative actions have included:

- . Rescission of an Executive order that gave the Department of Agriculture direct access to the income tax returns of farmers;
- . Cancellation of the FEDNET plan for a massive Federal data network capable of linking the vast computerized files of many Federal agencies;



- . Enactment of the Family Educational Rights and Privacy Act guaranteeing student and parent access to school records and restricting disclosures of such records;
- . Establishment of a new policy mandating Federal agency privacy safeguard plans for new or modified computer and telecommunications systems containing personal information; and
- . Issuance of an Executive order restricting White House access to income tax returns.

Regrettably, time and circumstances did not permit enactment of needed new laws dealing with criminal justice information and Federal tax records.

Early this year, following revelations of alleged charter transgressions by the CIA, I appointed a Commission headed by the Vice President to conduct a full inquiry and to report its findings and recommendations to me and to the American people.

We have seen, in addition, efforts to broaden the scope of interest in privacy protection to encompass State and local governments. A seminar last December, sponsored by the Council of State Governments and the Domestic Council Privacy Committee, revealed an intense interest in privacy



protection on the part of State and local legislators and administrators, and a desire to develop a coordinated strategy for its pursuit in Statehouses, city halls and county governments all across the country. These efforts, moreover have been extended to the private sector. Plans are now underway to seek voluntary cooperation of private businesses in the protection of individual privacy and confidentiality of personal information not now regulated by the Fair Credit Reporting Act.

Of special significance is legislation I signed into law on December 31, 1974.

The Privacy Act of 1974

The Privacy Act of 1974 is a landmark statute and represents the first codification of fundamental principles designed to safeguard privacy in the collection of personal information by the Federal government.

It requires all Federal agencies (including the FBI and the CIA) annually to identify publicly all systems of records they maintain about individuals; thereby prohibiting secret record-keeping systems in the Federal government.

It establishes minimum standards of regulation for the gathering, use, disclosure and security of personal information.

It guarantees to the individual, with some exceptions, the right to see his record and to contest its accuracy, relevancy, timeliness and completeness.

It establishes constraints on the disclosure of personal information by agencies.



It provides administrative and judicial machinery for implementation of its requirements, and civil remedies and criminal penalties for violations.

And it establishes a two-year Privacy Protection Study Commission to review a wide range of public and private record systems not covered by the Act and to recommend needed changes in laws or regulations that will better protect personal privacy.

Of course, legislation of this type and complexity cannot be completely free of imperfections, and I will not hesitate, based upon assessments of operational experience under the Act, to urge needed amendments to assure the full realization of its objectives.

Toward Privacy Protection for All Americans

The Privacy Act of 1974 and the Family Educational Rights and Privacy Act are major achievements that reflect months of reasoned debate and consultation between the Congress and the Executive branch. Now, as we turn to other important pieces of privacy legislation, I am confident that the same cooperative spirit will prevail.

Because we live today in a society in which bigness and complexity are the rule -- where big organizations and complicated laws and regulations have a profound effect on our everyday lives -- decency, fairness and straightforwardness, which in turn build confidence and trust, are now more valuable than ever. As a people we must have confidence that our political

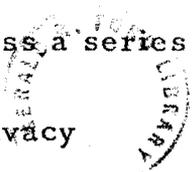


and social institutions are serving us well. We must be able not only to trust what they tell us, but to hold them accountable when they fail to keep their promises.

Laws and administrative actions to protect personal privacy are means of building such trust and accountability. They aim to assure the American people that institutions that collect, record, and use personal information about them do so openly and according to established rules. They seek to define areas of an individual's private life that are immune from trespass without his consent. They attempt to give the individual a central role in determining whether information about him is accurate and complete, and to hold record-keeping institutions to any promises they make not to disclose personal information to someone else.

Of course, some trading off is always necessary. Information gathering for law enforcement purposes, for example, cannot be so open as to allow criminals to stay one step ahead of the police. Sometimes an individual would prefer that a government agency, or a bank, or a credit bureau use information in a record about him rather than make him fill out still another form. And some individuals would prefer having their Social Security numbers available to anyone who wants them so that they will not be confused with the other John and Mary Smiths who live down the street and across town.

During the next few months, I shall submit to the Congress a series of legislative proposals to protect these and other personal privacy



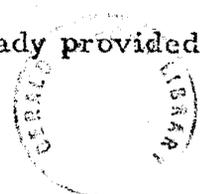
interests in areas that either were not addressed in legislation enacted last session, or were not addressed in enough detail.

Specifically:

- . To help protect the first Amendment rights of American citizens, I am requesting the enactment of legislation to codify existing regulations prohibiting military surveillance of civilian political activities.

- . To encourage the proper exchange of criminal justice information while providing safeguards for personal privacy interests, I will urge the Congress to enact HR-61. This comprehensive bill would help provide the necessary balance between the legitimate needs of authorized agencies to have access to criminal justice information and the Constitutionally guaranteed privacy rights of an individual, and it would provide civil sanctions and criminal penalties for the unauthorized use of such information.

- . To curtail the accelerating use of the Social Security number as a personal identifier, and thus to ward off the danger of uncontrolled leakage of information on individuals and widespread easy access to it, I am proposing a statutory clarification of the authorized uses of the Social Security number. This proposal will extend and strengthen safeguards already provided in the Privacy Act of 1974.



- . To protect the confidentiality of information that taxpayers furnish to the Internal Revenue Service, the Treasury Department asked the 93rd Congress to amend the Internal Revenue Code to restrict by statute the authority to inspect returns and to disclose taxpayer information. While time did not permit the Congress to act on the Treasury proposal, I ask your strong support for a similar proposal that I plan to introduce this session.

- . To assure that customer records maintained by banks and financial institutions are kept confidential and free from unauthorized use or transfer, I shall propose a new law that balances the confidentiality interests of consumers against legitimate Federal agency needs for access to records about their finances.

- . To help assure that accurate reports on individuals are maintained and furnished by credit reporting companies, I shall ask the Congress to enact legislation amending and strengthening the Fair Credit Reporting Act of 1970. Although passage of this Act represented an important step forward, it clearly did not do enough to protect the personal privacy of credit users.

- . To protect the personal privacy of the dependent poor in our society, I shall ask the Congress to revise recent amendments to the Social Security Act which put the Federal government in the role of enforcing alimony and child support obligations and which substantially undermine longstanding protections for the confidentiality of public assistance and social service case records.

- . I shall request your support for legislation prohibiting cable television operators from disclosing information on the viewing habits of their subscribers, except pursuant to a court order.

- . Finally, I shall support legislation to assure that people who provide information about themselves for scientific studies and surveys will not have to worry about that information being used for any other purpose.

In connection with these legislative recommendations, I will also provide several new privacy protections by executive order. I intend, for example, to issue an order to strengthen existing safeguards for the privacy rights of Federal employees. Also, I will rescind Executive Order 9397 which directs Federal agencies to use the Social Security number as a record identifier.

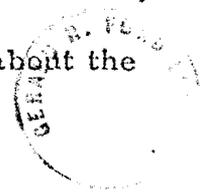


Other Privacy Concerns

I have not mentioned the important work of the National Wiretap Commission nor dwelt on the work of the Commission to investigate the activities of the Central Intelligence Agency within the United States, or the current investigations of intelligence agencies by the Congress. However, I shall act quickly after receiving and studying their recommendations. Consistent with my pledge of August 12, 1974, this Administration will not tolerate illegal and unwarranted encroachments on Constitutionally protected privacy rights in the name of national security.

Moreover, when I speak of including privacy protections in future legislation, I'm not talking only about the specific legislation I have recommended here. The citizens' right to personal privacy should be recognized in every piece of social legislation, and I urge the Congress to be vigilant in assuring that it is. My call in this message for legislation protecting the privacy interests of the dependent poor, for example, would be unnecessary if privacy considerations had been built into the 1972 and 1974 Amendments to the Social Security Act.

The widespread clamor for action will not simply evaporate. We cannot stand idly by, winking at reported abuses. Advances so recently made in behalf of personal privacy are unparalleled, considering the need and complexities associated with augmenting privacy protections in today's society. Indeed, I expect that someday history books will talk about the



last quarter of the 20th Century as a time in which new ways of organizing and transacting the business of our everyday lives captured the attention of the American people; as a time in which old values and new ways of doing things at first appeared to clash, but in which the American people and their leaders also strove mightily, and successfully, to assure that no matter how big and fast and complicated things got in our dealings with one another, we would never abandon our fundamental commitment to decency and fairness and candor. To me, preserving such virtues is what the protection of personal privacy is all about. It is an honor to be a partner with you in this effort for the common good of all our people.



THE WHITE HOUSE

WASHINGTON

September 11, 1975

MEMORANDUM FOR ROBERT T. HARTMANN

FROM: LYNN MAY

SUBJECT: Privacy Speech

The attached draft was prepared by the Domestic Council Committee on the Right of Privacy. I believe that its main points--the threat of big government to individual privacy and the need to develop affirmative means to strengthen the right of privacy--are the fundamental underpinnings of the President's privacy program. They also add another dimension to the President's efforts to reduce the pervasive influence of the Federal government and promote regulatory reform.

The link between the right of privacy and the campaign against big government is a delicate one, however, because many of the vocal privacy constituency tend to be liberal on most other issues, I believe that the attached draft establishes this link without turning off the privacy constituency by heavy handed rhetoric.

Attachment

bcc: Phil Kurland



DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

September 11, 1975

MEMORANDUM FOR: LYNN MAY 

FROM: QUINCY RODGERS

SUBJECT: Privacy Speech

As per our discussion, attached is a draft of remarks for consideration for a Presidential speech, prepared by Bob Belair and reviewed by other members of the staff. In the short time available, we have tried to concentrate on ideas rather than style, leaving the latter for the proven skill of the speech writers.

This speech stresses the development of the very important notion of the link between big government, which concentrates upon control of its services and government's consequent forgetfulness about privacy. It also addresses the Privacy Act of 1974, a timely event since the Act will shortly be effective. One can only do so much in a speech, of course.

However, there is a broader area which the President may wish to address at this time. Such a speech would increase emphasis on the role of science and technology in the breach of privacy. Additionally, it might focus on other things now underway within the government which bear on questions of privacy and governmental control. It would frame appropriate responses (to be worked out in conjunction with the various governmental officials concerned) to the following kinds of related events:

- 1) The series of hearings now underway in the Senate Judiciary Subcommittee on Constitutional Rights on the impact of science and technology on individual rights-which are focusing on
 - a) The Ford Rowen charges
 - b) The emergency preparedness procedures of government agencies.
- 2) The revelations of telephone intercepts by NSA
- 3) The activities of the Senate CIA Committee. Senator Church has repeatedly used rhetoric which casts intelligence investigation against a backdrop of concerns about over-bearing government and the integrity of our democratic programs. With public hearings now



announced and with the possibility of newspaper columns (James Reston rumored) in such themes, more attention will be paid to them.

- 4) The executive branch activity on intelligence activities and the drafting of guidelines by the Department of Justice for FBI activity. The Attorney General received favorable comment for this. The President might also.

There is no end to the privacy issues that can be addressed. But these four particularly troublesome areas will bear watching.

Also, we are continuing with our plans to develop a number of our programs in a way which stresses their importance to themes of individuality.



DRAFT OUTLINE OF SPEECH ON INDIVIDUAL LIBERTY
GOVERNMENT REGULATION, AND PRIVACY

- I. In each period of our history the nation must meet important challenges (viz. political security in the first hundred years, economic security in the second century).
- II. In the third century we're faced with a new challenge: How can we effectively govern an increasingly large and complex society without sacrificing individual liberty and personal freedom.
- III. Our answer to this question must be guided by two fundamental principles.
 - A. Wherever possible we should seek ways to limit government regulation and involvement. Less government means less information that's collected, less monitoring of individuals, fewer expectations and requirements on individuals' conduct and thus more personal freedom and dignity.
 - B. We must seek affirmative means to define and strengthen the right of privacy. Privacy sets boundaries for government intrusion and gives people more control of their lives.
- IV. Less government and more privacy will strike a new balance between needs of the government and society, and needs of the individual and will preserve and build the kind of individual liberty that's basic to our democracy.



DRAFT OF SPEECH ON INDIVIDUAL LIBERTY, GOVERNMENT

DEREGULATION AND PRIVACY
(Introductory Remarks)

In every period of our history this country has had to confront and overcome great challenges. In our first hundred years we met the challenge of gaining independence, defining our social and political compact, and securing our borders. In our second hundred years we industrialized the nation and achieved unprecedented economic prosperity. As we begin our third century we perceive a new challenge, a challenge that strikes at the core of our philosophic and political tenets.

Simply put the challenge is this: How do we effectively govern an increasingly large, complex and highly organized society without sacrificing our personal liberty and freedom? Our answer to this question will go a long way toward determining the kind of society that we will pass on to future generations.

It is not immodest to note that our nation in its first two hundred years has achieved a remarkable record. We have been strong militarily. We have been productive economically. We have provided most of our citizens with a better quality of life than can be found anywhere else in the world. And let us never forget that we have done this while constructing a democracy that truly does rest on fundamental values of individual liberty and freedom.

Today, however, we face a new challenge. As our society grows larger, as our economy becomes more complex and as local, state and Federal governments impose more and more

economic and social regulation, and provide more and more vital services it becomes increasingly difficult to preserve individual liberty. For example --

- . Can we control our soaring crime rate and avail ourselves of modern law enforcement methods without sacrificing fundamental rights of citizenship.
- . Can we find ways to ensure our internal and external security without engaging in practices that impinge on First Amendment rights?
- . Can we as a society operate and coordinate our vast industrial and economic capability without stifling competition, smothering entrepreneurial opportunities and limiting the economic freedom of our citizens?
- . Can we properly administer our tax system without collecting or using information in ways that invade individuals' privacy?
- . Can we effectively administer a multitude of licensing and certification programs ranging from drivers' licenses to certification of physicians and surgeons without drastically infringing on individuals freedom and privacy?



- . And finally can we offer government gifts, loans, subsidies, credits and a host of other benefit programs without imposing unacceptable burdens on the privacy, integrity and freedom of the individual citizen?

Preserving and strengthening individual liberty in the environment of a modern state will not be easy but it is vital. If we are to be successful we must frame our effort around two overarching principles.

First we must seek whenever possible to limit the degree of governmental regulation and involvement in our lives. Second, we must find affirmative ways to strengthen the individuals' right of privacy and in so doing strengthen personal freedom and liberty.

There are many good reasons at this point in our nation's history for us to attempt to limit the size and scope of government activity. As regards many industries, there are good economic reasons for reducing the extent of government regulation. In regard to some government sponsored benefit programs there are not only good economic, but good administrative and social reasons for re-examining the size and the nature of these programs. But tonight I address an ever more compelling reason for attempting to limit our massive governmental welfare and regulatory apparatus. We must face one simple, inescapable fact: The larger government gets, the more it does or tries to do for its citizens, the more it intrudes into our lives and regulates our lives.

Today our government is far larger than it was at the beginning of this century, it does far more for us than it did at the beginning of this century. But who will deny that it also exerts far more influence and control over our lives than it did in years past? In early times the governments' principle expectation for citizen behavior was simply that the individual act in a lawful way. But today, in a society of governmental largess, a citizen's behavior is reviewed not only for criminal activity but also to examine eligibility for receipt of government controlled benefits. The government has an interest in monitoring the activities of a citizen receiving social security benefits or unemployment benefits, or welfare payments. The same is true for a student on scholarship, a businessman receiving government loans or holding government licenses, or a professional person regulated by a quasi-governmental association. Each time we construct a government benefit or regulatory program we give up a little bit of personal liberty in the bargain. This does not mean that we should abandon all forms of governmental regulation or benefits. Our benefit programs provide humanitarian and indispensable help to the sick, the aged, the needy, the young, the unemployed and the disadvantaged. Our conscience and our common sense demand continued commitment to the concept of some public social and regulatory programs. But we must assess the true costs of many of these programs

in terms of their impact on personal liberty and dignity.

At the same time we must implement a second principle. We must find affirmative ways to broaden and strengthen the right of privacy. Privacy encompasses and protects individual liberty. It gives greater control of personal information about ourselves. It further helps to define those areas of action that are personal and so important to the individual that government and society cannot intrude.

The right of privacy is recognized in the First Amendment, the Fourth Amendment, Fifth Amendment, Sixth Amendment and Ninth Amendment to our Constitution. The concept of privacy is part of our common law and is articulated in numerous civil and criminal statutes. Confidential treatment of private information; proper treatment of personally identifiable information; freedom from arbitrary searches; freedom from compelled self incrimination; privacy in the home; privacy in relations with family members, clergymen and other intimate or important associations; freedom to make basic decisions about our lives; are all parts of the right of privacy.

September 27th of this year will mark the effective date of important privacy legislation. The 1974 Privacy Act is an attempt to provide privacy protections for the Federal government's collection, maintenance and use of personally identifiable information. The Act requires the Federal government to disclose the existence of every data system

that contains personally identifiable information. It generally prohibits collection of information concerning individuals' exercise of First Amendment rights. It requires that files on individuals be accurate, relevant, timely and complete. The Act gives everyone the opportunity to read his file and make corrections or rebuttals. It commands the government to use information only for the purpose for which it was collected. Finally it establishes an independent Privacy Protection Study Commission with a two year mandate to investigate a number of important privacy issues and present a report and recommendations to Congress.

Federal agencies and the Office of Management and Budget are making a valiant effort to comply with this Act. Agency notices published in the Federal Register over the last month identify thousands of data systems containing identifiable information about citizens and consume tens of thousands of pages in the Federal Register. The disclosure of such a massive record-keeping operation is admittedly disconcerting but it is also a necessary step in our efforts to better assess and control our record keeping practices. This Administration will make every effort to insure that Federal agencies make a sincere and active effort to faithfully implement this legislation.

The specific protections in the Privacy Act make a contribution to the privacy rights of all of us. In addition to this the Privacy Act reflects a growing awareness of a basic principle of informational privacy. This legislation

This Act is an experiment. Perhaps we will have to find yet better ways to handle this information. But we are making a start.

at least in part, embodies the concept that citizens have a cognizable interest in the collection and use of information about them. In a society as complex and highly organized as ours, information has become a vital resource and commodity. In the years to come this development will undoubtedly intensify. Our nation can increasingly be characterized not so much as an industrial society but as an informational society. Let it be noted that in 1974 and 1975 we took the first steps to re-establish the individual's control over the use of his personal information.

The Privacy Act also represents an effort by the representatives of the American people to make the Federal bureaucracy accountable to the people for the information it collects and maintains. The size of our government and its impact on the lives of every citizen makes it imperative that the people, through their representatives, make the government responsible and accountable. The Privacy Act is one specific and clear accomplishment toward this goal.

The Privacy Act is an important first step in establishing affirmative protections on individual privacy. But it is a first step. The nation's agenda of needed privacy related measures is a full one. One important next step will be the passage of legislation to strengthen the confidentiality of Federal income tax records. Every one of the nation's taxpayers ought to be able to rest assured that his or her income tax records is a private matter between that person and the Internal Revenue Service. Last year I signed an Executive order limiting

executive office access to tax files. Legislation of the kind that the Congress is now considering is needed to broaden and institutionalize confidentiality protections on tax records that cannot be accomplished through Executive order.

Other important issues await our attention.

The Congress must take responsible action to regulate the difficult area of law enforcement record keeping. Work remains to be done in the area of bank records and electronic transfer of financial information; in the area of medical records; credit records; and as regards the use of electronic surveillance. We want to share our recent experience with the 1974 Privacy Act with leaders in state and local government and the private sector. In so doing we can contribute to their effort to define the proper standards for informational privacy, in state local and private sector record keeping. We need to look at the individual in all of his societal roles--as family member, as employee, as patient, as consumer and in other basic roles--and ask ourselves if we have yet achieved a satisfactory degree of privacy, individual liberty and human dignity. This Administration will continue to propose and support affirmative measures to strengthen our vital rights of privacy.



The challenge is to effectively govern our large and highly organized society without sacrificing individual liberty. This will require all of our skill - all of our attention. It will require your efforts, as guardians of the law. But this is a challenge which I believe we can meet.

America has always cherished the notion that she provides a model for the world. The Pilgrims saw themselves as a "City on a Hill." The Founding Fathers were aware that a monarchical Europe watched the experiment they were attempting. So long as we guard against the arrogant notion that we have all of the answers for the peoples of the globe, it can be a healthy thing for us to become aware again of the power and responsibility of example. In this frame of mind, let us enter the future.

