STATEMENT OF PHILIP W. BUCHEN, EXECUTIVE DIRECTOR, DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY, INCORPORATING A COMMUNICATION OF THE VICE PRESIDENT TO THE SENATE GOVERNMENT OPERATIONS AD HOC SUBCOMMITTEE AND THE JUDICIARY SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS CONCERNING THE RIGHT OF PRIVACY, JUNE 19, 1974

Mr. Chairman, I appreciate this opportunity to present a communication by the Vice President to you and members of the two Subcommittees in joint session, to testify on the importance of protecting the right to privacy, and to review briefly the progress of the Domestic Council Committee on the Right of Privacy. Accompanying me is Douglas W. Metz, Deputy Executive Director of the Committee.

I would like first to read a letter from the Vice President to the Chairman:

Honorable Sam J. Ervin, Jr., Chairman
Government Operations Committee
Judiciary Subcommittee on Constitutional Rights
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

It is a distinct pleasure and honor for me to respond to your invitation to communicate with the Senate's Government Operations Ad Hoc Subcommittee and the Judiciary Subcommittee on Constitutional Rights as you undertake joint hearings on legislation to protect the right of privacy.

As each member of the Committees is aware, my concern for the protection of personal privacy was heightened by the intense investigation directed at me in connection with my nomination to be Vice President. Subsequently, the President afforded me an opportunity to continue my interest by naming me Chairman of the Domestic Council Committee on the Right of Privacy.

The Committee was given the challenging mandate to review a broad spectrum of privacy concerns and to make recommendations as soon as possible for new initiatives to advance the right of personal privacy.

There have been previous commitments, hearings, studies and recommendations to deal with privacy problems. Many findings have been ignored and too little actually done. The time has come for action. I will do all in my power to get results.

Currently the Congress has pending before it over 140 bills dealing with privacy issues. Legislation has already passed the Senate to control the maintenance and use of sensitive records about pupils in our schools and to protect the privacy of Federal employees. This session may consider bills to regulate the information practices of the Federal government and the collection and dissemination of criminal history records by States and the Federal government. Proposals have been

introduced in other problem areas including military surveillance of civilian politics, wiretapping and electronic surveillance, and amendments to strengthen the Fair Credit Reporting Act.

There is extensive activity at the State level. Since the beginning of this year, over 65 measures governing privacy have been introduced in State legislatures, some of which have already been enacted into law.

My first act as Chairman involved complaints about an Executive Order of the President that permitted the Department of Agriculture to review the income tax returns of farmers to obtain data for statistical purposes. The President asked me to look into the matter. I immediately discussed the Executive Order with Secretary Butz and recommended that it be withdrawn. The President accepted my recommendation.

Only a few weeks ago plans for the largest nonmilitary government data processing and communications procurement in American history were shelved, partly at my urging, so that the proper privacy safeguards could be developed. The contemplated system, known as FEDNET, without proper safeguards, could have escalated the fears of the people over the collection and dissemination of personal information.

introduced in other problem areas including military surveillance of civilian politics, wiretapping and electronic surveillance, and amendments to strengthen the Fair Credit Reporting Act.

There is extensive activity at the State level. Since the beginning of this year, over 65 measures governing privacy have been introduced in State legislatures, some of which have already been enacted into law.

My first act as Chairman involved complaints about an Executive Order of the President that permitted the Department of Agriculture to review the income tax returns of farmers to obtain data for statistical purposes. The President asked me to look into the matter. I immediately discussed the Executive Order with Secretary Butz and recommended that it be withdrawn. The President accepted my recommendation.

Only a few weeks ago plans for the largest nonmilitary government data processing and communications procurement in American history were shelved, partly at my urging, so that the proper privacy safeguards could be developed. The contemplated system, known as FEDNET, without proper safeguards, could have escalated the fears of the people over the collection and dissemination of personal information.

introduced in other problem areas including military surveillance of civilian politics, wiretapping and electronic surveillance, and amendments to strengthen the Fair Credit Reporting Act.

There is extensive activity at the State level. Since the beginning of this year, over 65 measures governing privacy have been introduced in State legislatures, some of which have already been enacted into law.

My first act as Chairman involved complaints about an Executive Order of the President that permitted the Department of Agriculture to review the income tax returns of farmers to obtain data for statistical purposes. The President asked me to look into the matter. I immediately discussed the Executive Order with Secretary Butz and recommended that it be withdrawn. The President accepted my recommendation.

Only a few weeks ago plans for the largest nonmilitary government data processing and communications procurement in American history were shelved, partly at my urging, so that the proper privacy safeguards could be developed. The contemplated system, known as FEDNET, without proper safeguards, could have escalated the fears of the people over the collection and dissemination of personal information.

In addition to these initiatives, I can report that the Administration is planning to submit to the Congress draft legislation that would prohibit "snooping" and monitoring of communications entering and leaving a citizen's home via cable television. It would forbid disclosure of identifiable information about the viewing habits of subscribers of cable television systems without their consent. Safeguards are essential to prevent the abuses of a "wired society" and to assure that advanced technology remains the servant of our society's most cherished freedoms.

In these hearings the Senate commences formal consideration of legislation with a scope which will impact the lives of every American in terms of his right to informational privacy. In our zeal to protect this right more adequately, we should not attempt to remedy all abuses within the four corners of one bill. Potential intrusions on personal privacy have too many facets and the public interests involved are too complex to permit all-inclusive remedies. The burden of legislating in this field requires a delicate balancing of the interests of each individual to control the gathering and use of information about him and the interests of government in obtaining the information needed to administer its services and enforce its laws.

I would hope that the legislation you act upon will embody several basic principles which provide the individual with fundamental safeguards to protect his privacy:

(1) The Federal government should not maintain any record-keeping system whose very existence is secret from either the elected representatives of the people or the public-at-large.

(2) The Federal government should collect from individuals only the amount and types of information that are reasonably necessary for public protection and for the provision of governmental services.

(3) The Federal government should provide a means for the individual to inspect his records and challenge the accuracy, timeliness, and relevance of their content in relation to the purpose for which the records are kept.

(4) The Federal government should use information collected from individuals only for purposes reasonably understood and intended at the time it is collected unless the government gives notice to or obtains the informed consent of the individual.

(5) The Federal government should act as a trustee for sensitive personal information it collects and in so doing provide reasonable safeguards to protect the security and confidentiality of such information in existing and future record-keeping systems.

These principles are not new. In one form or another they have been articulated by informed observers, researchers, concerned citizens and in studies such as the recent report of the HEW Secretary's Advisory Committee on Automated Personal Data Systems.

I have asked the Executive Director of the Domestic Council Committee on the Right of Privacy, my friend and colleague of long standing, Mr. Philip W. Buchen, to report to you and the Subcommittees in joint session about the plans and progress of the Committee which I chair and to provide his own thoughts concerning needs and opportunities for new legislative initiatives.

Privacy is a bipartisan cause. We can and should close ranks on this vital issue of growing and legitimate concern to the American people. Our zeal for this cause, however, should not tempt us to overlook the complexity of the problems involved or to resist study and debate on questions of the scope, timing, and suitability of different possible remedies for advancing the cause

of personal privacy without inhibiting government or business in its proper functions.

I want to express appreciation for your prompt and cordial response to my request that the staff of the Privacy Committee have access to the results of the questionnaire of the Subcommittee on Constitutional Rights sent to executive agencies to obtain information about the nature and content of their data banks. This survey, as well as the hearings you have held over the years, has yielded an enduring legacy of leadership and essential information vital to those formulating public policy so that Americans forever remain the masters rather than the servants of the record-keepers.

You and the Subcommittees can be assured of my continued cooperation and that of the Privacy Committee staff as you consider new legislation. Such a relationship now exists with Chairman Moorhead and the staff of the House Government Operations Subcommittee on Foreign Operations and Government Information, which is currently marking up legislation similar to that which you are taking up.

Let us begin now to work together so that we can celebrate our Nation's Bicentennial confident that we have vindicated the best hopes of the architects of our Constitutional liberties and have

added sound legislative and administrative structures to secure the right of privacy for future generations.

Sincerely yours,

Gerald R. Ford

Mr. Chairman, I would like to take this opportunity to bring the members of the Subcommittees up to date on the work of the Domestic Council Committee on the Right of Privacy.

The Committee was established by the President on February 23, 1974. The Committee was charged with formulating by midyear an action plan for decision-making and implementation in the ensuing months. Because of the Congressionally created National Commission on Wiretapping and Electronic Surveillance, the President asked the Committee to defer recommendations in this area pending receipt of the Commission's report.

I was appointed Executive Director by the Vice President on March 15, 1974. The initial task was to form a small staff capable of rapid development of a comprehensive work program, mobilization of the executive agency resources, liaison with the Congress, and communications with informed and interested individuals and groups outside the Federal government.

As preparation for addressing the complexities and subtleties of privacy, the Privacy Committee staff sought, and continues to seek,

ideas and recommendations from the Congress, State governments, industry, citizens' groups, private individuals, academic experts, and Federal agencies not represented on our Committee.

In developing our work program we gave primary emphasis to action-oriented activities rather than additional research. We sought projects that met two criteria: first, the relative urgency of the need for immediate steps to protect personal privacy and second, the likelihood that substantial action could be obtained this year.

We identified over sixteen major projects meeting these criteria. In April, we selected eight for immediate consideration. These projects were assigned, in most instances, to interagency task forces composed of representatives of Federal agencies, and, where appropriate, individuals outside the Federal government.

The first project is reviewing Federal policy to cope with the problem of the growing use of the Social Security Number for purposes never envisioned by the founders of the Social Security system.

The second project seeks to define the needs for further protection of the consumer's right to privacy in the marketplace -- examining not only proposals to strengthen the Fair Credit Reporting Act but other initiatives affecting consumer privacy interests.

Another project is examining further executive and legislative safeguards to protect the confidentiality of personal information contained in the millions of records collected and used for statistical and research purposes.

The fourth project aims at greater restraints in government data collection by developing practical means of assuring that individuals are aware of their rights and obligations with respect to the information they are asked to provide to Federal agencies.

A further project is reviewing policy governing the dissemination and use of Federal mailing lists and the impact of these practices on the individual's right of privacy.

The sixth project is concerned with new initiatives for safeguarding the confidentiality of taxpayer data.

An additional project is developing policies to assure that personal privacy rights are given prominence in the planning, coordination and procurement of Federal data privacy and data communications systems.

The eighth project seeks to accelerate the development of guidelines and standards for data security in computer systems and networks.

Besides these efforts, the Privacy Committee staff is devoting a significant portion of its time to analyzing legislative proposals on privacy introduced in the Congress. These efforts have been supplemented by close collaboration with OMB in its preparation of a newly proposed

bill dealing with certain information systems of the Federal government, the text of which will shortly be made available to the House Government Operations Subcommittee on Foreign Operations and Government Information and to your Subcommittees.

Notwithstanding our orientation toward action, we have not overlooked the need for further research on the right to privacy and are seeking support for worthy longer-range studies from agencies such as the National Science Foundation.

The Privacy Committee staff is now reviewing the initial reports of some of the project task forces in preparation for a meeting of the Committee early next month. I, of course, cannot predict the outcome of our work and the extent of its acceptance. I am confident, however, that a new beginning has been made in the Executive Branch. The work of the Committee has developed a new awareness that the protection of privacy is an obligation of government more serious than ever before.

The work of the Committee has been aided immeasurably by the interest of many members of Congress and, in particular, the cooperation and assistance of many Congressional staff members. The staff of the Privacy Committee is aware that in length of Federal service we are junior to the individuals in the Congress and the Executive Branch who can properly be called pioneers in the cause of privacy. We wish to consider ourselves, however, their equals in dedication and zeal for

seeking sound and effective remedies against violations of what Mr. Justice Brandeis has called "the right most valued by civilized men" -- the right of privacy.

Nevertheless, we should not minimize the immensity of our common task and the difficulties in devising remedies for problems so complex and with so many facets and ramifications as those of intrusions on privacy interests. Deciding on the proper balance between privacy interests and the public need to collect information involves varying considerations for different kinds and uses of information. Controls of information practices ought to accommodate for situations where the problems are not alike and where the same remedies are not equally workable or useful.

Generally, it has been assumed that criminal justice or law enforcement information (whether used by government or in the private sector) gives rise to problems requiring treatment different from that of information used to carry out social, health, or money benefit programs, to administer revenue and regulatory laws, to select and manage employees and outside contractors, and to conduct the multiplicity of other operations by government or business. However, even within the broad range of separate informational relationships between individuals and government or between individuals and business, where criminal detection and apprehension or enforcement of regulatory laws is not the

object, wide differences occur. Material differences occur in the kinds and volume of information used, in the manner of collecting and disseminating information, in the degrees of data sensitivity, in the uses made of the information, and in the risks of possible abuse.

Our Committee staff and one of our task forces is in the process now of using the valuable survey of Federal data banks by the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the United States Senate to propose a classification system for the varieties of information held by Federal departments and agencies. This survey has identified about 850 separate data banks in the Federal government which contain data on individuals, and many more information systems, including manual ones, are actually in existence. It was estimated in 1967 that the Federal government possessed about 3,111,500,000 individual person-records. We can be sure that by now this incredible number of records has grown even larger.

It is unnecessary to think of making all of the systems containing these records, or even the great bulk of them, subject to the same public notice requirements, to similar procedures for keeping each record item current, accurate, and relevant, and for allowing access, inspection, and correction by every information subject, and to uniform standards for safeguarding confidentiality and controlling use. I fear

that with remedies so comprehensive as these, preservation of the right of privacy may become bogged down in an administrative morass.

Therefore, I would urge that any legislation affecting files in the Federal government should not treat all record systems alike. Surely dormant or archival files should be distinguished from active files. Data used for statistical or research purposes should be distinguished from records dedicated to specific ongoing relationships between Federal agencies and individuals. The latter records which are subject to checking and correction on a transactional basis where only hard data is relied on and no administrative discretion is involved in granting or withholding benefits may be treated differently from more complex records which could be the basis for exercise of administrative discretion.

Possibly information supplied entirely by or at the request and with the knowledge of the data subject should be distinguished, at least for some purposes, from third-party information, the existence of which is unknown to the data subject. Also, distinctions may be appropriate for some purposes on the basis of relative sensitivity of different categories of data. Information derived from public records would not generally deserve such protection of confidentiality or such restrictions

on use as would information containing intimate details of personal behavior or health. Vaccination records are surely not so sensitive as records of mental illness.

Other appropriate distinctions for control of information practices may concern the relationship of the data subject to the users of particular data. The collection and management of information about individuals for personnel or contractual purposes involves different problems of awareness and access than occur in cases of persons at large about whom information is needed to administer programs for their benefit. If the relationship is one that in the public interest calls for regular testing or audits of information supplied or representations made, then another factor is injected that may expand the need to know so as to include otherwise confidential information.

The purpose of suggesting such distinctions is to urge legislation which varies the controls or procedures to fit the varying privacy risks and public needs involved and which more accurately balances private interests with the public interest according to the character and purposes of the information system involved and according to the relationship between the data subject and the users of the information.

There are practical limits to the niceties of distinctions and the refinements in controls or remedies that can be provided for in legislation. However, legislation that overlooks the complex realities of problems may prove unworkable and cause disservice to either private or public interests or to both such interests.

For the reasons stated, it would seem desirable to confine initial legislation to information practices of the Federal government rather than reaching at once into state government operations or into private business. Before claiming confidence in the workability and the effectiveness of particular controls to solve problems so complex as those posed by information systems everywhere in our society, it would seem prudent to gain experience from their application solely within the Federal government. The problems are certainly large enough in scope right here, and the groundwork done to arrive at solutions, however thoughtful, hardly promises assured success in all respects.

Even legislation affecting only Federal information practices should not go beyond what a single bill can reasonably accomplish to deal discretely with distinct features and problems of different information systems and of different informational relationships as discussed above. Yet there is certainly need now to make a strong start in laying down basic principles of fair information practices. Also procedures should be prescribed which adapt those principles in a flexible but effective manner to the different information systems covered. Then, after experience is gained, further legislation can be passed to expand effective application of those principles to additional Federal information systems, and, if necessary, to ones outside the Federal government.

In conclusion, I would stress again the importance of action this year by the Congress on legislation to implement the basic obligations of the Federal government to the individual with respect to fair information practice safeguards to protect personal privacy.

I thank you very much for your kind attention to this account of how the work of the Privacy Committee has gotten underway; also for your kindly allowing me to express my views of the demanding challenges posed by the privacy problems which arise in different ways from various kinds of information needs and uses.