

The Continuing Problem of Privacy

By ARLEN J. LARGE

WASHINGTON—Barry Goldwater Jr., a California Congressman and the Senator's son, boasts that the almost-ended 93rd Congress will be known as "The Privacy Congress."

All year, members of Congress have been making speeches and holding hearings on the virtues of curbing the computerized snoopers of big government and big business. "A society numbered, punched and filed by government cannot be free," is one of the snappy 1974 sayings of Sen. Sam Ervin.

Complaints about a numbered society focus on the ubiquitous Social Security number, which is being used increasingly as a "universal identifier" in business and government, including state and local government. When your number gets into computers used variously for phone-company billing, drivers licenses, voting rosters, income-tax records and bank accounts, there'll be no place to hide.

So one of the privacy-protection bills introduced earlier this year provided that unless some federal law requires it, as with an income tax return, nobody could make you give out your Social Security number at all.

There's a good chance that a privacy-protection bill will be enacted by Congress during the lame-duck session this year. But it won't include any restriction on current government or business use of Social Security numbers in data banks. The Senate committee considering the bill had second thoughts and took out the provision after being told it would have a devastating effect on data-bank costs throughout the economy.

The backdown on Social Security numbers shows how hard it is for "The Privacy Congress" to go much beyond speechmaking on the evils of data banks that know too much about everybody. The federal bureaucracy would be at least potentially affected by the pending privacy bill, but it naturally doesn't want to be inconvenienced and is resisting the legislation. Sen. Ervin recalls that when he tried to make an inventory of data banks in federal agencies, he met "evasion, delay, inadequate and cavalier responses, and all too often a laziness born of a resentment that anyone should be inquiring about their activities."

But in many cases federal agencies ask people all those nosy questions to carry out laws passed by Congress itself. In a recent discussion of privacy problems Associate Supreme Court Justice William Rehnquist observed that when Congress sets up, say, a student loan program, the government automatically wants more dope on the student. Justice Rehnquist continued:

"I think few would disagree with the proposition that the government is present

in the lives of all of us today in a way that would have been inconceivable even 50 years ago. From this there flows at least a rebuttable presumption that the government will know more about each of us than it did 50 years ago, and that in a very real sense we will have that much less privacy."

When Congress Acts . . .

When Congress tries to solve a problem, it sometimes authorizes giant invasions of privacy as a consequence. In 1970, in pursuit of big-time swindlers and tax cheats, it gave Treasury agents authority to trace checks drawn on personal bank accounts and to otherwise run barefoot through a person's financial records. And deciding that secret political fund-raising is bad, Congress in 1971 required public disclosure of the name of everyone who gives a federal candidate more than \$100. That has had some very salutary effects on the behavior of politicians and donors alike, but some legal experts think the invasion of privacy is so gross as to be unconstitutional.

Moreover, Congress seems no more willing than the bureaucracy to inconvenience itself on privacy matters. Among other things, the pending privacy bill is in-

tended to make it easier for someone to find out if he's mentioned in a federal file or data bank somewhere, to inspect what it says about him and to make corrections. The idea is borrowed from a 1970 law giving people access to their own files kept by private credit-reporting companies. The perfectly sensible point is to keep errors in someone's file from swirling through computer after computer in government and business, making that person's Social Security number a red flag of misery.

Some of the juiciest files the government maintains on people are kept by the

The time is ripe for some kind of privacy legislation, but how to draft it?

House Internal Security Committee, which tries to monitor persons with suspicious politics. Someone who thinks his name is in that file might understandably be curious about what it says, and whether it's the truth. But if he asks the committee to see his file he's turned away, unless he can get the information through his own Congressman. The new privacy bill wouldn't change that. Congress doesn't like pests.

Executive Branch resistance to privacy

legislation doesn't have to be very strong for the lawmakers to cave in. Sen. Ervin has been pushing a statutory ban on the kind of Army spying on civilians that occurred during the 1960s, but the Army says the bill isn't needed because the spying has stopped. The bill is dead. Another Ervin bill would forbid the Civil Service Commission to ask federal job applicants impertinent questions about their sex lives and religious beliefs; the bill has repeatedly passed the Senate, but Civil Service officials always persuade the House to kill it.

The Justice Department itself has proposed legislative restrictions on the way old arrest and conviction records can be taken from federal-state data banks on criminals and passed around to employers and banks. But there's disagreement in the department over the bill's details. The FBI doesn't like the idea of keeping old criminal records from police officers, and news organizations worry that reporters might be denied access to court records. With all that trouble, the bill is bogged down.

Yet the atmosphere is ripe for some kind of action on legislation with a "privacy" label, and the catalyst, of course, is Watergate. What the Nixon White House did to the privacy of a California psychiatrist, and others, was already against the law, but it raised such a stark spectre of Big Brother government that more law is felt necessary. "In a certain way, I suppose that Richard Nixon may go down in history as the patron saint of privacy legislation," said Alan Westin, a Columbia University professor of government, in testimony before a Senate committee this year.

Both the House and Senate Government Operations Committees have drafted companion privacy bills that are similar, and floor action is scheduled in both Houses after the current election recess. More legislating is required to produce a final product, but its main points look fairly clear.

The final bill undoubtedly will require every federal agency that keeps files or computerized data on citizens to confess it publicly, and to explain what the information is for. This would carry out a dictum of President Ford, who's shown enthusiasm for the privacy-protection effort, that "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."

Congress earlier this year was startled to learn that plans were afoot to link the computers of several departments into a scary new system called Fednet. Protests from Congressmen and others, including Mr. Ford, then-Vice President, caused this plan to be shelved.

The bill also would let an individual inspect an agency's records about him and make corrections, but there are important exceptions. An investigatory file is apt to be what a person most wants to see, but that would be kept shut, as would files dealing with defense and foreign policy. And drafters excluded corporations, fearing big companies would be forever getting into fights with the Justice Department over material accumulated in files for potential antitrust cases.

First Amendment Guidelines

The final bill probably will set out new guidelines for federal agencies that poke into First Amendment areas, asking questions about religion or politics, but those questions won't be banned entirely. And agencies will face new restrictions on

transferring among themselves data-bank information about citizens. In some cases, such as when the Small Business Administration wants to see a credit rating kept on a loan applicant by the Federal Housing Administration, the applicant could deny permission for the data transfer.

The Senate committee's version of the bill also would set up an independent new federal privacy commission to study things like the control of Social Security numbers and to receive complaints about government invasions of privacy. This is strongly opposed by the administration. Whether the House will go along with creation of such a commission is perhaps the main unresolved feature of the privacy bill.

In all, it's a fairly modest piece of legislation, compared with the heat of the rhetoric about protecting privacy. The bill won't really require federal agencies to make any big retrenchment in their current data-collecting. "I don't think it's going to stop them from doing what they're doing now," observes Douglass Lea, director of the American Civil Liberties Union Privacy Project.

But Mr. Lea and some Congressmen say a hold-the-line bill is especially timely. Coming for sure are new generations of computers to handle national health insurance records, the files of a revamped welfare system and expanded criminal records. Columbia's Professor Westin argues that both government question-askers and computer engineers need firm privacy-protection ground rules now, before all those new questionnaires and computers are designed.

Senators Charles Percy of Illinois and Barry Goldwater of Arizona also think it would be a good idea to hold the line now on the use of Social Security numbers. Though the Government Operations Committee shrank from ordering a rollback of traffic in Social Security numbers, the two Senators intend to offer on the Senate floor an amendment that would allow government and business data banks to keep using the numbers if they're doing so now, but to prevent any new users from discriminating against people who won't give out their numbers. The amendment, for example, would forbid a phone company from trying to enforce any new data system based on Social Security numbers by charging a higher fee to an uncooperative customer.

Hold-the-line tactics like that, says the ACLU's Mr. Lea, will at least make government and business data planners think anew about the easy drift toward universal numbers that "make it easy to do a full field check." And he thinks the pending bill at least will let more people challenge the sometimes casual way the bureaucracy throws questions at people for no very good reason.

"It's the beginning of a process of democratizing the way the government collects its information," he says. "At some point somebody's going to be able to use this law by telling an agency: 'Hey, you don't need that doggoned data. Cut it out.'"

Mr. Large, a member of the Journal's Washington bureau, covers the Senate.