

Controlling the Data Banks

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CONGRESSIONAL CONCERN about preserving civil liberties has been, over the years, a sometimes thing, so many people will be surprised if the current surge of legislative interest in protecting individual privacy actually produces much legislation. There are growing indications, however, that this year Congress might really follow through on at least one major privacy issue by enacting a measure to regulate data banks and protect citizens against the improper or undisclosed collection and use of personal information by the government.

The need for controls has been amply documented. After four years of work, Sen. Sam J. Ervin's Subcommittee on Constitutional Rights has just released a landmark study which itemizes 858 federal data banks containing over 1.2 billion records on identifiable individuals. Over 86 per cent of these files are computerized. Various data banks hold information on citizens' employment records, medical problems, driving habits, criminal histories, financial dealings, military service and other sensitive subjects. At least 29 files concentrate on derogatory information. In more than 42 per cent of the cases, citizens are not notified that such records about them are being kept. And only 16 per cent of all these data banks have been expressly authorized by law. All this is doubly awesome because the study is incomplete. It does not include the White House "enemies lists" or the records maintained by some agencies which refused to cooperate.

Clearly some basic rules need to be set before the government's penchant for collecting information grows any further out of hand. Last year an HEW advisory committee proposed several fundamental principles: that there should be no files whose existence is undisclosed; that citizens should be able to review and correct almost all records about themselves; that information gathered for one purpose should not be used for another without the subject's consent; and that extensive efforts should be made to protect the security and confidentiality of all files. These principles have been incorporated in the Koch-Goldwater bill in the House and in Senate

measures sponsored by Sen. Ervin and several colleagues. On both sides of the Capitol, useful hearings have already been held. The legislative efforts have received a strong assist from Vice President Ford, who pushed the Office of Management and Budget to submit some specific recommendations to the Hill.

For all this progress, however, the hard work is just beginning. Major disagreements have surfaced about the way that basic policies should be applied to governmental files as different as, for instance, the FBI's investigative dossiers and the masses of inactive records in the National Archives. Agencies have already started lobbying for exemptions for national security files, personnel records, census data and other categories. Indeed, some modifications will be required. For example, notifying the subjects of all files would be self-defeating for law enforcement agencies; for the Archives it would be impossible. But Congress should resist the pressures to write such broad, permanent exemptions into a law. The prudent course would be to authorize an oversight board to make exemptions in accord with strict guidelines and with ample opportunity for public comment before any data-collecting is allowed to proceed in secrecy.

Another major issue is how ambitious legislation should be. Some bills would reach not only federal files but also state, local and private data banks. Ultimately those files should also be subject to controls, since citizens can be hurt just as badly by the misuse of private records as by federal mistakes. Yet Congress may not know enough about the multitude of nonfederal files to deal intelligently with them all at once. The difficulties encountered in trying to regulate credit reporting and limit the traffic in arrest records suggest that a careful, step-by-step approach is best outside the federal domains. By reforming the policies for federal agencies and federal aid recipients, this Congress can set a strong example for the states and give citizens far more assurance that they won't be hurt by information lurking somewhere in a data bank.