

New privacy law giving headaches to U.S. agencies

By Phil Gailey
Knight News Service

WASHINGTON — Your right to privacy and the public's right to know what the government is up to — both good principles — may be about to clash.

A new federal law designed to protect citizens from invasion of privacy by the federal government became effect yesterday.

But already it has stirred concern that it might undercut the 6-year-old Freedom of Information Act (FOIA), which is supposed to give the public greater access to government information.

"It's like creating a Frankenstein," one government official said of the Privacy Act of 1974. "You don't know how much good or bad it's going to do until you turn it loose."

The intention of the law is good, nearly everyone agrees.

It allows citizens to find out what kind of information about them the government has stored in its files and data banks, and gives them the right to challenge, correct or amend the material.

Perhaps its most important provision, some of the law's architects believe is the requirement that all federal agencies annually publish in the Federal Register a description of their record systems, including categories of individuals on whom files are maintained and how the information is used.

Police intelligence and investigation data are exempt from the privacy law, although criminal records and arrest sheets will be available to the person involved. Also exempt is the data relating to employment eligibility, civil-service tests and federal contracts.

A chief concern of government watchdog groups is that the Privacy Act may be used by federal agencies to circumvent the FOIA.

"The important thing is going to be the kind of action the Executive Branch takes to implement the privacy law," said Larry Sims of the Reporters Committee for Freedom of the Press.

"We're going to be watching to see if they use the Privacy Act to diminish the Freedom Information Law. If they do, there are going to be confrontations. Nearly everyone agrees that there are going to be problems making the two laws mesh.

For example, Sims said, because of different exemptions in the two laws, a request turned down under the Privacy Act can be honored under the FOIA.

The FOIA requires that, with certain exceptions, all government records should be available for public inspection.

However, the Privacy Act prohibits the disclosure of information "that would constitute a clearly unwarranted invasion of personal privacy" unless disclosure of the material is required by the FOIA.

"I don't think the two laws are in direct conflict," said Walter Haase, deputy associate director for information systems in the Office of Management and Budget (OMB), which will monitor the enforcement of the privacy law.

"The objectives of the two laws are different and they are not legally incompatible, but I can see where we may have some sticky cases."

Haase said the privacy law makes it clear that "a person's permission (to allow the government to release information in his file) is not required if the information is available under the FOIA."

The law authorizes the OMB to monitor the enforcement of the privacy law, but the primary responsibility for complying with the new privacy requirements rests with the individual federal agencies.

Haase said from the beginning everyone has known the new privacy law will present problems and conflicts that Congress will have to face in considering amendments.

"But there are more questions than answers at this point and we won't really know what the problems are until it has been in effect for some time," he added.

Among some of the other areas of potential conflict

- The Federal Reports Act of 1942, designed to minimize federal paperwork by allowing government agencies to exchange information collected from one source for different purposes, could be hampered.

- Federal agencies may have trouble using personal data to evaluate impact of social and economic programs.

- A trend toward consolidating information among federal agencies in the name of efficiency could be slowed.

Some early signs of problems already have arisen.

For one thing, the privacy law will make tougher for state and local authorities to catch tax evaders from the ranks of the almost 5 million military and federal employees.

The OMB has been making available to state and local governments income data on these military personnel and federal employees. Under the privacy law, however, federal agencies are prohibited from disclosing personal or confidential information about an individual without his written permission.

One of the early problems, government officials say, is an over-reaction to the law by some federal agencies.

"We're having a lot of trouble with the Social Security people," said one official in the Department of Health, Education and Welfare.

Social Security recipients continually their congressmen or local newspaper seeking help because of a lost government check, federal redtape and delays.

The HEW official said some local Social Security offices have put out the word they won't be able to respond to such requests from congressmen and newspapers without the person's written permission.

"That's ridiculous," the HEW official said. "If an individual writes to a congressman or to a newspaper for help with a Social Security problem, obviously that's written permission."

The problem, he added, will be with telephone inquiries.

Federal officials who deliberately violate the Privacy Act will have to pay a fine of up to \$5,000, and the law provides authority for individuals to bring damage suits and other civil actions against government officials.

So far, 79 federal agencies have announced the names of 8,000 record systems, including a Pentagon file on persons who keep pets on military bases — presumably in the event of a rabies outbreak — and a Justice Department file on persons who have applied for government parking places.

A Senate subcommittee found 858 data banks in 54 agencies, the majority of them not authorized by legislation.

The subcommittee concluded, "The increasing use of computers and sophisticated information technology . . . has greatly magnified the harm to individual privacy that can come from any collection . . ."