

include p. 519851
+
p. 410955
with this

93RD CONGRESS
2^D SESSION

S. 3418

IN THE SENATE OF THE UNITED STATES

MAY 1, 1974

Mr. ERWIN (for himself, Mr. PERCY, and Mr. MUSKIE) introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To establish a Federal Privacy Board to oversee the gathering and disclosure of information concerning individuals, to provide management systems in Federal agencies, State, and local governments, and other organizations regarding such information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 TITLE I—FEDERAL PRIVACY BOARD

4 ESTABLISHMENT OF BOARD

5 SEC. 101. (a) There is established in the executive
6 branch of the Government the Federal Privacy Board which
7 shall be composed of five members who shall be appointed
8 by the President by and with the advice and consent of the

1 Senate from among members of the public at large who are
2 not officers or employees of the United States. Not more
3 than three of the members of the Board shall be adherents
4 of the same political party.

5 (b) The Chairman of the Board shall be elected by
6 the members of the Board every two years.

7 (c) Each member of the Board shall be compensated at
8 the rate provided for GS-18 under section 5332 of title 5 of
9 the United States Code.

10 (d) Members of the Board shall be appointed for a term
11 of three years. No member may serve more than two terms.

12 (e) Vacancies in the membership of the Board shall be
13 filled in the same manner in which the original appointment
14 was made.

15 (f) Vacancies in the membership of the Board, as long
16 as there are three members in office, shall not impair the
17 power of the Board to execute the functions of the Board.
18 Three members of the Board shall constitute a quorum for
19 the transaction of business.

20 (g) Members of the Board shall not engage in any other
21 employment during their tenure as members of the Board.

22 FUNCTIONS OF THE BOARD

23 SEC. 102. The Board shall—

24 (1) publish an annual Data Base Directory of the
25 United States containing the name and characteristics
26 of each personal information system;

1 (2) consult with the heads of appropriate depart-
2 ments, agencies, and instrumentalities of the Government
3 in accordance with section 103 (5) of this Act;

4 (3) make rules to assure compliance with title II of
5 this Act; and

6 (4) perform or cause to be performed such research
7 activities as may become necessary to implement title II
8 of this Act, and to assist organizations in complying with
9 the requirements of such title.

10 POWERS OF THE BOARD

11 SEC. 103. (a) The Board is authorized—

12 (1) to be granted admission at reasonable hours to
13 premises where any information system is kept or where
14 computers or equipment or recordings for automatic data
15 processing are kept, and may, by subpoena, compel the
16 production of documents relating to such information
17 system or such processing as is necessary to carry out its
18 functions, except that the production of personal informa-
19 tion shall not be compelled without the prior consent of
20 the data subject to which it pertains;

21 (2) upon the determination of a violation of any
22 provision of this Act or regulation promulgated under
23 this Act, to, after opportunity for a hearing, order the
24 organization violating such provision to cease and desist
25 such violation;

1 (3) to delegate its authority under this title, with
 2 respect to information systems within a State or the Dis-
 3 trict of Columbia, to such State or District, during such
 4 period of time as the Board remains satisfied that the
 5 authority established by such State or District to carry
 6 out the requirements of this Act in such State is satis-
 7 factorily enforcing those provisions;

8 (4) to conduct open, public hearings on all peti-
 9 tions for exceptions or exemptions from provisions, appli-
 10 cation, or jurisdiction of this Act, except that the Board
 11 shall not have authority to make such exceptions or ex-
 12 ceptions but shall submit appropriate reports and rec-
 13 ommendations to Congress; and

14 (5) to the fullest extent practicable, to consult with
 15 the heads of appropriate departments, agencies, and in-
 16 strumentalities of the Government in carrying out the
 17 functions of the Board under this Act.

18 (b) The Board may procure such temporary and inter-
 19 mittent services to the same extent as is authorized by sec-
 20 tion 3109 of title 5, United States Code, but at rates not to
 21 exceed \$100 a day for individuals.

22 **REPORTS**

23 **SEC. 104.** The Board shall report, annually, on its ac-
 24 tivities to the Congress and the President.

1 TITLE II—STANDARDS AND MANAGEMENT SYS-
2 TEMS FOR HANDLING INFORMATION RELAT-
3 ING TO INDIVIDUALS

4 SAFEGUARD REQUIREMENTS FOR ADMINISTRATIVE, STATIS-
5 TICAL-REPORTING AND RESEARCH PURPOSES

6 SEC. 201. (a) Any Federal agency, State or local gov-
7 ernment, or any other organization maintaining an informa-
8 tion system that includes personal information shall—

9 (1) collect, maintain, use, and disseminate only
10 personal information necessary to accomplish a proper
11 purpose of the organization;

12 (2) collect information to the greatest extent pos-
13 sible from the data subject directly;

14 (3) establish categories for maintaining personal
15 information to operate in conjunction with confidentiality
16 requirements and access controls;

17 (4) maintain information in the system with ac-
18 curacy, completeness, timeliness, and pertinence as nec-
19 essary to assure fairness in determinations relating to a
20 data subject;

21 (5) make no dissemination to another system with-
22 out (A) specifying requirements for security and the
23 use of information exclusively for the purposes set forth
24 in the model required under section 202 by inclusion
25 limitations on access thereto, and (B) determining that

1 the conditions of transfer provide substantial assurance
2 that those requirements and limitations will be observed;

3 (6) transfer no personal information beyond the
4 jurisdiction of the United States without specific author-
5 ization from the data subject or pursuant to a treaty or
6 executive agreement in force guaranteeing that any
7 foreign government or organization receiving personal
8 information will comply with the applicable provisions
9 of this Act with respect to such information;

10 (7) afford any data subject of a foreign nationality,
11 whether residing in the United States or not, the same
12 rights under this Act as are afforded to citizens of the
13 United States;

14 (8) maintain a list of all persons having regular
15 access to personal information in the information
16 system;

17 (9) maintain a complete and accurate record,
18 including identity and purpose, of every access to any
19 personal information in a system, including the identity
20 of any persons or organizations not having regular
21 access authority;

22 (10) take affirmative action to establish rules of
23 conduct and inform each person involved in the design,
24 development, operation, or maintenance of the system
25 or the collection or use of any personal information con-

1 tained therein, of the requirements of this Act, including
2 any rules and procedures adopted pursuant to this Act
3 and the penalties for noncompliance;

4 (11) establish appropriate safeguards to secure
5 the system from any reasonably foreseeable threat to its
6 security;

7 (12) comply with the written request of any in-
8 dividual who receives a communication in the mails,
9 over the telephone, or in person from a commercial
10 organization, who believes that the name or address
11 or both, of such individual is available because of its
12 inclusion on a mailing list, to remove such name or
13 address, or both, from such list; and

14 (13) collect no personal information concerning
15 the political or religious beliefs, affiliations, and activi-
16 ties of data subjects which is maintained, used or dis-
17 seminated in or by any information system operated
18 by any governmental agency, unless authorized by law.

19 (b) (1) Any such organization maintaining an infor-
20 mation system that disseminates statistical reports or research
21 findings based on personal information drawn from the
22 system, or from systems of other organizations, shall—

23 (A) make available to any data subject or group
24 (without revealing ~~such~~ secret) methodology and
25 materials necessary to validate statistical analyses; and

1 (B) make no materials available for independent
2 analysis without guarantees that no personal information
3 will be used in a way that might prejudice judgments
4 about any data subject.

5 (2) No Federal agency shall—

6 (A) require any individual to disclose for statisti-
7 cal purposes any personal information unless such dis-
8 closure is required by law, and such individual is
9 informed of such requirement;

10 (B) request any individual to voluntarily disclose
11 personal information unless such request is specifically
12 authorized by law, and the individual is advised that such
13 disclosure is voluntary;

14 (C) make available to any person, other than an
15 authorized officer or employee of a Federal agency, any
16 statistical study or reports or other compilation of infor-
17 mation derived by mechanical or electronic means
18 from any file containing personal information, or any
19 manual or computer material relating thereto, except
20 those prepared, published, and made available for gen-
21 eral public use; or

22 (D) publish statistics of taxpayer income classified,
23 in whole or in part, on the basis of a coding system for
24 the delivery of mail.

1 (c) Any such organization maintaining or proposing
2 to establish an information system for personal information
3 shall—

4 (1) give notice of the existence and character of
5 each existing system once a year to the Federal Privacy
6 Board;

7 (2) give public notice of the existence and char-
8 acter of each existing system each year, in the case of
9 Federal organizations in the Federal Register, or in the
10 case of other organizations in local or regional printed
11 media likely to bring attention to the existence of the
12 records to data subjects;

13 (3) publish such annual notices for all its existing
14 systems simultaneously;

15 (4) in the case of a new system, or the substantial
16 modification of an existing system, shall give public
17 notice and notice to the Federal Privacy Board within a
18 reasonable time but in no case less than three months, in
19 advance of the initiation or modification to assure indi-
20 viduals who may be affected by its operation a reason-
21 able opportunity to comment; and

22 (5) assure that public notice given under this sub-
23 section specifies the following:

24 (A) the name of the organization;
25 (B) the general purposes of the system;

1 (C) the categories of personal information and
2 approximate number of persons on whom informa-
3 tion is maintained;

4 (D) the categories of information maintained,
5 confidentiality requirements, and access controls;

6 (E) the organization's policies and practices
7 regarding information storage, duration of retention
8 of information, and purging of such information;

9 (F) the categories of information sources;

10 (G) a description of types of use made of
11 information including all classes of users and the
12 organizational relationships among them;

13 (H) the procedures whereby an individual may
14 (i) be informed if he is the subject of information
15 in the system, (ii) gain access to such information,
16 and (iii) contest the accuracy, completeness, time-
17 liness, pertinence, and the necessity for retention
18 of such information;

19 (I) the procedures whereby an individual or
20 group can gain access to the information system used
21 for statistical reporting or research in order to subject
22 them to independent analysis; and

23 (J) the business address and telephone num-
24 ber of the person in charge of the
25 system.

1 (d) Any such organization maintaining personal in-
2 formation shall—

3 (1) inform any individual asked to supply personal
4 information whether such individual is required by law,
5 or may refuse, to supply the information requested, and
6 also of any specific consequences which are known to the
7 organization, of providing or not providing such informa-
8 tion;

9 (2) request permission of a data subject to dissem-
10 inate part or all of such information to another organiza-
11 tion or system not having regular access authority, and
12 indicate the use for which such information is intended,
13 and the specific consequences for the individual, which
14 are known to the organization, of providing or not pro-
15 viding such permission;

16 (3) upon request and proper identification of any
17 individual who is a data subject, grant such individual
18 the right to inspect, in a form comprehensible to such
19 individual—

20 (A) all personal information about that indi-
21 vidual except that, in the case of medical informa-
22 tion, such information shall, upon written authoriza-
23 tion, be given to a physician designated by the
24 individual:

1 (B) the nature of the sources of the informa-
2 tion; and

3 (C) the recipients of personal information about
4 such individual including the identity of all persons
5 and organizations involved and their relationship
6 to the system when not having regular access
7 authority;

8 (4) at a minimum, make disclosures which are
9 required by this Act to individuals who are data sub-
10 jects—

11 (A) during normal business hours;

12 (B) in person, if the data subject appears in
13 person and furnishes proper identification, or by
14 mail, if the data subject has made a written request,
15 with proper identification, at reasonable standard
16 charges for document search and duplication; and

17 (C) permit the data subject to be accompanied
18 by one person of his choosing, who must furnish
19 reasonable identification, except that an organiza-
20 tion may require the data subject to furnish a writ-
21 ten statement granting permission to the organiza-
22 tion to discuss that individual's file in such person's
23 presence;

24 (5) upon receipt of notice from any individual
25 is a data subject, that such individual wishes to chal-

1 lence, correct, or explain information about him in such
2 system—

3 (A) investigate and record the current status
4 of such personal information;

5 (B) purge any such information that is found
6 to be incomplete, inaccurate, not pertinent, not
7 timely nor necessary to be retained, or can no longer
8 be verified;

9 (C) accept and include in the record of such
10 information, if the investigation does not resolve
11 the dispute, any statement (not more than two
12 hundred words in length) provided by such indi-
13 vidual setting forth his position on such disputed
14 information;

15 (D) in any subsequent dissemination or use of
16 disputed information, clearly note that such infor-
17 mation is disputed and supply the statement of
18 such individual together with such information;

19 (E) make clear and conspicuous disclosure to
20 such individual of his right to make a request under
21 this paragraph;

22 (F) at the request of such individual, following
23 any correction or purging of personal information,
24 furnish to past recipients of such information notif-

1 cation that the item has been purged or corrected;

2 and

3 (G) in the case of a failure to resolve a dispute,
4 advise such individual of his right to request the
5 assistance of the Federal Privacy Board.

6 (c) Each such organization maintaining a personal
7 information system on the date of the enactment of this Act
8 shall notify by mail each data subject of the fact not later
9 than two years following the date of enactment of this Act,
10 at the last known address of the subject. Such notice shall—

11 (1) describe the type of information held in such
12 system or systems, expected uses allowed or contem-
13 plated; and

14 (2) provide the name and full address of the place
15 where the data subject may obtain personal information
16 pertaining to him, and in the system.

17 (f) Data subjects of archival-type inactive files, records,
18 or reports shall be notified by mail of the reactivation,
19 accessing, or reaccessing of such files, records, or reports
20 not later than six months after the date of the enactment
21 of this Act.

22 (g) The requirements of subsections (a) (3) and (4)
23 and subsections (c) and (d) (1) and (2) of this section

24
25 information system that disseminates statistical reports or

(1) research findings based on personal information drawn from
2 the system, or from systems of other organizations, (2)
3 purges the names, personal numbers, or other identifying
4 particulars of individuals, and (3) certifies to the Federal
5 Privacy Board that no inferences may be drawn about any
6 individual.

7 EXEMPTIONS

8 SEC. 202. The provisions of this title shall not apply to
9 personal information systems—

10 (1) to the extent that information in such systems
11 is maintained by a Federal agency, and the head of that
12 agency determines that the release of the information
13 would seriously damage national defense;

14 (2) which are part of active criminal investigatory
15 files compiled by Federal, State, or local law enforce-
16 ment organizations, except where such files have been
17 maintained for a period longer than is necessary to com-
18 mence criminal prosecution; or

19 (3) maintained by the press and news media, ex-
20 cept information relating to employees of such
21 organizations.

22 USE OF SOCIAL SECURITY NUMBER

23 SEC. 203. It shall be unlawful for any organization to
24 require an individual to disclose or furnish his social security

1 business transaction or commercial or other activity, or to
2 refuse to extend credit or make a loan or to enter into any
3 other business transaction or commercial relationship with
4 an individual (except to the extent specifically necessary for
5 the conduct or administration of the old-age, survivors, and
6 disability insurance program established under title II of
7 the Social Security Act) in whole or in part because such
8 individual does not disclose or furnish such number, unless
9 the disclosure or furnishing of such number is specifically
10 required by law.

11 TITLE III—MISCELLANEOUS

12 DEFINITIONS

13 SEC. 301. As used in this Act—

14 (1) the term "Board" means the Federal Privacy
15 Board;

16 (2) the term "information system" means the total
17 components and operations of a recordkeeping process,
18 whether automated or manual, containing personal in-
19 formation and the name, personal number, or other
20 identifying particulars;

21 (3) the term "personal information" means all in-
22 formation that describes, locates or indexes anything
23
24 transactions, medical history, criminal, or employment

1 record, or that affords a basis for inferring personal char-
2 acteristics, such as finger and voice prints, photographs,
3 or things done by or to such individual; and the record
4 of his presence, registration, or membership in an orga-
5 nization or activity, or admission to an institution;

6 (4) the term "data subject" means an individual
7 about whom personal information is indexed or may be
8 located under his name, personal number, or other
9 identifiable particulars, in an information system;

10 (5) the term "disseminate" means to release,
11 transfer, or otherwise communicate information orally,
12 in writing, or by electronic means;

13 (6) the term "organization" means any Federal
14 agency; the government of the District of Columbia;
15 any authority of any State, local government, or other
16 jurisdiction; any public or private entity engaged in
17 business for profit, as relates to that business;

18 (7) the term "purge" means to obliterate informa-
19 tion completely from the transient, permanent, or
20 archival records of an organization; and

21 (8) the term "Federal agency" means any depart-
22 ment, agency, instrumentality, or establishment in the
23 executive branch of the Government of the United

TRADE SECRETS

1
2 SEC. 302. In connection with any dispute over the ap-
3 plication of any provision of this Act, no organization shall
4 reveal any personal information or any professional, pro-
5 prietary, or business secrets; except as is required under
6 this Act. All disclosures so required shall be regarded as
7 confidential by those to whom they are made.

CRIMINAL PENALTY

8
9 SEC. 303. Any organization or responsible officer of
10 an organization who willfully—

11 (1) keeps an information system without having
12 notified the Federal Privacy Board; or

13 (2) issues personal information in violation of
14 this Act;

15 shall be fined not more than \$10,000 in each instance or
16 imprisoned not more than five years, or both.

CIVIL REMEDIES

17
18 SEC. 304. (a) The Attorney General of the United
19 States, on the advice of the Federal Privacy Board, or any
20 aggrieved person, may bring an action in the appropriate
21 United States district court against any person who has en-
22 gaged, is engaged, or is about to engage in any acts or prac-
23 tices in violation of the provisions of this Act or rules of the
24 Federal Privacy Board, or in violation of any order of the

1 (b) Any person who violates the provisions of this Act,
2 or any rule, regulation, or order issued thereunder, shall be
3 liable to any person aggrieved thereby in an amount equal to
4 the sum of—

5 (1) any actual damages sustained by an individual;

6 (2) punitive damages where appropriate;

7 (3) in the case of any successful action to enforce
8 any liability under this section, the costs of the action
9 together with reasonable attorney's fees as determined
10 by the court.

11 The United States consents to be sued under this section
12 without limitation on the amount in controversy.

13 JURISDICTION OF DISTRICT COURTS

14 SEC. 305. The district courts of the United States have
15 jurisdiction to enforce any subpoena or order issued by the
16 Federal Privacy Board under sections 102 or 103, respec-
17 tively, of this Act.

18 RIGHT OF ACTION

19 SEC. 306. (a) Any individual who is denied access to
20 information required to be disclosed under the provisions of
21 this Act is entitled to judicial review of the grounds for such
22 denial.

23 (b) The district courts of the United States have juris-
24 diction to hear and determine civil actions brought under
25 section (a) of this section.

EFFECTIVE DATE

1

2 SEC. 307. This Act shall take effect one year after the
3 date of its enactment.

4

AUTHORIZATION OF APPROPRIATIONS

5

6 SEC. 308. There are authorized to be appropriated such
7 sums as may be necessary to carry out the provisions of this
Act.

93D CONGRESS
2D SESSION

S. 3418

A BILL

To establish a Federal Privacy Board to oversee the gathering and disclosure of information concerning individuals, to provide management systems in Federal agencies, State, and local governments, and other organizations regarding such information, and for other purposes.

By Mr. EVERN, Mr. PERCY, and Mr. MCKEIN

MAY 1, 1974

Read twice and referred to the Committee on Government Operations