

## PRIVACY ACT

P.L. 93-579

the subject individual. For example, by sending him a copy of the information and affording him an opportunity to affirm, deny or explain it. Such review may constitute compliance with subsection 201(a)(2). This section reflects the committee's adoption of the conclusion of the COSATI panel that "Information should not be collected on a hearsay basis or from people who have only a tenuous association with the data subject and therefore are not in a position to report data from a high probability that it will be accurate."

*Subsection 201(a)(3).* Requires that each Federal agency shall inform any individual requested to disclose personal information for any purpose whether that disclosure is mandatory or voluntary, by what statutory authority it is solicited, what uses the agency will make of it, what penalties and specific consequences for the individual, which are known to the agency, will result from the nondisclosure, and what rules of confidentiality will govern the information.

This requirement, in various forms, has been universally recommended by commentators and government and private groups, the HEW Report, information specialists, congressional witnesses and others, as basic to the protection of the individual from the arbitrary information power of the Federal Government.

The Committee intends it to remedy the many documented complaints from citizens that they were pressured, coerced, or induced by deceptive means into responding to governmental questionnaires seeking highly personal information for administrative programs, or for census and other statistical and research purposes of the Federal agencies; that they were not told and, furthermore, were frequently unable to learn, even with legal assistance, whether compliance was voluntary or mandatory, what statutes authorized it, what penalties attached to nonresponse, or exactly why the Federal Government wanted the information in the first place.

The section anticipates that Federal requests or requirements for personal information henceforth shall be accompanied by written or oral notices presented in obvious or highly visible manner, which use the specific terms "mandatory" or "voluntary" in describing the nature of the individual's desired response, and providing the other requisite information concerning the authority of the agency to conduct the survey, initiate the inquiry, or, in the case of administrative programs, to ask particular questions of the applicant. The Committee believes that an agency should be able to communicate to the individual, without intimidation, whether he is required to comply with a request for information and what the likely consequences are of his refusal. To further clarify the consequences of these options, the notices should also include an explanation of the limits on the agency's ability to keep information confidential; for example, under compulsory legal process.

The Committee is not impressed with executive branch arguments and those of some information users which hold that such candor on the part of government represents "poor psychology" and will destroy the integrity of statistical surveys and other data programs, or that it will discourage cooperation with official inquiries. The Committee believes, rather, that just the opposite results will be obtained. Furthermore, the spirit of constitutional considerations of due process and self-incrimination should pervade the conduct of such inquiries for administrative, regulatory, or other such governmental data programs.

## LEGISLATIVE HISTORY

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In defining the purposes of this section, the Committee endorses the recommendations of the HEW report that "the requirement is intended to discourage organizations from probing unnecessarily for details of people's lives under circumstances in which people may be reluctant to refuse to provide the requested data. It is also intended to discourage coercive collection of personal data that are to be used exclusively for statistical reporting and research."

We also endorse the explanation of the COSATI panel of the need for such protections to avoid "the use of coercion or intimidation in the course of gathering information." We agree with the Panel that: "unless disclosure has been made mandatory by Act of Congress, personal information must never be extracted from an individual without securing his informed, express consent \* \* \* In gathering information from individual citizens, Federal agencies have an obligation to disclose to them the purpose for which the information is being collected, to state clearly the use or uses to which it will be put, to identify the governmental and non-governmental individuals and organizations that will be given access to it, and to indicate whether the individual's name will be associated, either directly or indirectly, with the information."

"The type of disclosure is particularly important when the individual's participation in a data-gathering activity is voluntary in character, and is one way of assuring that the voluntary consent of the individual is meaningful. It enables him to evaluate the risk he may be assuming by revealing personal information, and in some cases, permits him to weigh that risk against the advantages of participating in a particular governmental program. It also should contribute to preventing alienation and should encourage participation in the data-gathering process. For the same reasons, it is imperative that the agency's understanding with the individual be honored."

"When an individual is required to furnish information by act of Congress as is true for the decennial census, informed consent of the type described in the preceding paragraph is not necessary. Nonetheless, it is desirable to provide individual respondents with as much information concerning the data activity as possible."

Of particular concern to people subjected to governmental inquiries is the general lack of precise information afforded at the time of collection about the penalties for and consequences of nondisclosure. Where compliance is mandatory or where untrue response is punishable, with penalties ranging from \$100 to \$500 to \$1,000 and a year in jail, basic due process principles require that the individual be put on notice of such penalties. The same constitutional considerations require that where such penalties accompany demands for personal data, that demand must be based on statutory authorization.

The Committee considers it basic fairness that any agency provide whatever information it has at hand about the immediate consequence of not responding to an inquiry or particular question. While it may usually be convenient to provide this warning on the face of a written inquiry upon initial collection, in some cases, the Committee recognizes that it may be more practical to supply such information promptly at a later time upon request of a data subject who may voice objection or concern about some phase of a written or oral inquiry, or to some particular question. Clearly, the agency cannot be reasonably expected to tell all foreseeable or imaginable consequences of nondisclosure or disclosure. It can however, advise when nondisclosure will

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