


DO/ISS 77-291

1 September 1977

MEMORANDUM FOR: Assistant for Information, DDA

STATINTL FROM:


Chief, Information Services Staff, DO

SUBJECT: H.R. 8279 - Amendment to Privacy Act
of 1974

1. I have recently received a copy of H.R. 8279 (95th Congress, First Session) to amend the Privacy Act of 1974. I feel the proposed changes are serious enough to merit an early alert to your office that CIA needs to make a detailed study of the implications of the proposed amendment to the Privacy Act. This need stems from the apparent omission from the proposed amendment of the general exemptions available to the Central Intelligence Agency under 5 U.S.C. 552a(j). The general exemption just quoted embraces the concept of protecting intelligence sources and methods from unauthorized disclosure. The omission of such a fundamental concept in the proposed amendment is of concern to the entire Agency as well as to the Directorate of Operations. We are also concerned with the apparent changes regarding the routine use of records and with the provisions dealing with conditions of disclosure.

2. I have not attempted to make a detailed comparison between the proposed amendment and the current law; however, my staff is available to give advice and guidance regarding Directorate of Operations equities vis-a-vis the proposed amendment.


STATINTL

ADMINISTRATIVE - INTERNAL USE ONLY

STATINTL

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95TH CONGRESS
1ST SESSION

H. R. 8279

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 1977

Mr. GOLDWATER (for himself and Mr. KOCH) introduced the following bill;
which was referred to the Committee on Government Operations

A BILL

To amend the Privacy Act of 1974.

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

3 SECTION 1. Section 552a of title 5, United States Code,
4 is amended to read as follows:

5 “§ 552a. Information maintained on individuals

6 (a) DEFINITIONS.—For purposes of this section—

7 “ (1) the term ‘agency’ means agency as defined in
8 section 552 (c) of this title;

9 “ (2) the term ‘individual’ means a citizen of the
10 United States or an alien lawfully admitted for perma-
11 nent residence;

I

1 “(3) the term ‘record’ means any item, collection, or
2 grouping of information about an individual including,
3 but not limited to:

4 “(A) normal directory information, such as
5 the individual’s name, address, telephone number,
6 business address, or similar information,

7 “(B) other numbers, symbols, fingerprints,
8 voiceprints, photographs, or identifying particulars
9 assigned to, or associated with, the individual,

10 “(C) information relating to the individual’s
11 background, education, finances, health, criminal
12 history, or employment history, or

13 “(D) any other attributes, affiliations, or char-
14 acteristics associated with, or assigned to, the
15 individual;

16 “(4) the term ‘individually identifiable record’
17 means a record which could be reasonably expected to
18 directly or indirectly identify the individual or individ-
19 uals to whom it pertains;

20 “(5) the term ‘statistical record’ means a record
21 which is collected or maintained by a Federal agency or
22 pursuant to a Federal research contract or grant, or a
23 subcontract thereof, for a research or statistical reporting
24 purpose only and which is not used, in whole or in part,
25 in individually identifiable form, to make any decision or

1 to take any action directly affecting the individual to
2 whom the record pertains (except within the context of
3 the research plan or protocol or as provided by section
4 8 of title 13) ;

5 “(6) the term ‘accessible record’ means an individ-
6 ually identifiable record, except a statistical record,
7 which is:

8 “(A) systematically filed, stored, or otherwise
9 maintained according to some established retrieval
10 scheme or indexing structure and which is, in prac-
11 tice, accessed by use of, or reference to, such retrieval
12 scheme or indexing structure for the principal pur-
13 pose of retrieving the record, or any portion thereof,
14 on the basis of the identity of, or so as to identify,
15 an individual, or

16 “(B) otherwise readily accessible because:

17 “(i) the agency is able to access the record
18 without an unreasonable expenditure of time,
19 money, effort, or other resources, or

20 “(ii) the individual to whom the record
21 pertains is able to provide sufficiently specific
22 locating information so as to render the record
23 accessible by the agency without an unreason-
24 able expenditure of time, money, effort, or
25 other resources;

1 “(7) the term ‘system,’ or ‘subsystem,’ means any
2 collection or grouping of accessible records as defined by
3 paragraph (6) (A) of this subsection;

4 “(8) the term ‘maintain’ includes collect, obtain,
5 maintain, possess, process, use, disseminate, or disclose;

6 “(9) the term ‘routine use’ means the use or dis-
7 closure of an individually identifiable record for a
8 purpose which is:

9 “(A) compatible with the purpose for which
10 the information in the record was collected or
11 obtained, and

12 “(B) consistent with the conditions or reason-
13 able expectations of use and disclosure under which
14 the information in the record was provided,
15 collected, or obtained; and

16 “(10) the term ‘collateral use’ means the use or
17 disclosure of an individually identifiable record for a
18 purpose which:

19 “(A) would not be considered a routine use
20 as defined by paragraph (9) of this subsection,
21 and

22 “(B) is specifically authorized by statute:
23 *Provided, That such statute:*

24 “(i) was enacted after January 1, 1975,

1 “(ii) establishes specific criteria for the use
2 or disclosure of specific types of information.

3 “(b) ACCESS TO RECORDS.—Each agency that main-
4 tains accessible records shall make those records available to
5 the individuals to whom they pertain as follows:

6 “(1) Except as provided under paragraphs (3)
7 and (5) of this subsection, each agency that maintains
8 an accessible record shall, upon receipt of a request which
9 reasonably describes such accessible record from the
10 individual to whom it pertains:

11 “(A) After receipt of satisfactory assurance
12 that the requesting individual is who he purports to
13 be—

14 “(i) make such accessible record, or a copy
15 of all or any portion thereof, available to that
16 individual in a form which is comprehensible to
17 him and which reflects, as accurately as can be
18 reasonably expected, the context or manner in
19 which the agency maintains and uses that
20 record;

21 “(ii) to the extent that the agency can be
22 reasonably expected to be aware of substantially
23 similar or derivative versions of such accessible
24 record which it maintains, and to the extent
25 that such substantially similar or derivative ver-

1 such substantially similar or derivative versions
2 of such accessible record, or a copy of all or any
3 portion thereof, available to that individual in
4 a form which is comprehensible to him and
5 which reflects, as accurately as can be reason-
6 ably expected, the context or manner in which
7 the agency maintains and uses that record.

8 “(B) Upon request by an individual who has
9 been granted access under subparagraph (A), the
10 agency shall provide the individual with an ac-
11 counting of the actual uses and disclosures made
12 of such record within a reasonable period of time
13 prior to the request as follows:

14 “(i) The agency shall provide the individ-
15 ual with an accounting of all of the prior recip-
16 ients of such record to whom the agency could
17 be reasonably expected to propagate a correc-
18 tion pursuant to paragraphs (1) through (4)
19 of subsection (f).

20 “(ii) The agency shall provide the individ-
21 ual with an accounting of any other prior
22 recipients of such record of which the agency
23 could be reasonably expected to be aware but to
24 whom the agency could not be reasonably ex-

1 pected to propagate corrections pursuant to such
2 paragraphs.

3 “(iii) In providing the accounting pur-
4 suant to divisions (i) and (ii) of this sub-
5 paragraph, the agency shall take reasonable
6 affirmative steps to inform the individual, in a
7 form comprehensible to him, of:

8 “(I) the date, nature, and purpose of each
9 disclosure, and

10 “(II) the name and address of the person
11 or agency to whom the disclosure was made.

12 “(2) When an agency grants an individual access
13 to an accessible record or an accounting of the uses and
14 disclosures of such record pursuant to paragraph (1) of
15 this section, the individual to whom the record pertains
16 may, upon his request, be accompanied by a person of
17 his own choosing, except, that the agency may require
18 the individual to furnish a written statement authorizing
19 discussion or disclosure of that individual's record, or its
20 uses and disclosures, in the accompanying person's
21 presence.

22 “(3) Nothing in this section shall be construed as
23 requiring an agency to grant an individual access to in-
24 formation within a record which is:

1 “(A) (i) specifically authorized under criteria
2 established by an Executive order to be kept secret
3 in the interest of national defense or foreign policy,
4 and

5 “(ii) is, in fact, properly classified pursuant to
6 such Executive order;

7 “(B) investigatory information compiled for
8 law enforcement purposes, but only to the extent
9 that the production of such information would:

10 “(i) interfere with enforcement proceed-
11 ings;

12 “(ii) deprive a person of a right to a fair
13 trial or an impartial adjudication;

14 “(iii) constitute an unwarranted invasion
15 of personal privacy;

16 “(iv) disclose the identity of a confidential
17 source and, in the case of a record compiled by
18 a criminal law enforcement authority in the
19 course of a criminal investigation, or by an
20 agency conducting a lawful national security
21 intelligence investigation, confidential informa-
22 tion furnished only by the confidential source;

23 “(v) disclose investigative techniques and
24 procedures; or

1 “(vi) endanger the life or physical safety
2 of law enforcement personnel;

3 “(C) contained in or related to examination,
4 operating, or condition reports prepared by, on
5 behalf of, or for the use of an agency responsible
6 for the regulation or supervision of financial
7 institutions;

8 “(D) information compiled in reasonable
9 anticipation of civil action or proceeding;

10 “(E) investigatory material compiled solely
11 for the purpose of determining suitability, eligibility,
12 or qualifications for Federal civilian employment,
13 military service, Federal contracts, discretionary
14 Federal grants, or access to classified information,
15 but only to the extent that the disclosure of such
16 material would reveal the identity of a source who
17 furnished information to the Government under an
18 express promise that the identity of the source would
19 be held in confidence, or, prior to September 27,
20 1975, under an implied promise that the identity
21 of the source would be held in confidence;

22 “(F) testing or examination material used
23 solely to determine individual qualifications for
24 appointment or promotion in the Federal service

1 the disclosure of which would compromise the
2 objectivity or fairness of the testing or examination
3 process;

4 “(G) evaluation material used to determine
5 potential for promotion in the armed services,
6 but only to the extent that the disclosure
7 of such material would reveal the identity of a
8 source who furnished information to the Govern-
9 ment under an express promise that the identity of
10 the source would be held in confidence, or, prior to
11 September 27, 1975, under an implied promise that
12 the identity of the source would be held in
13 confidence; or

14 “(II) authorized by statute to be withheld
15 from the parent or legal guardian of the individual
16 to whom the information pertains and the requesting
17 individual is, in fact, the parent or legal guardian of
18 the individual to whom the information pertains.

19 “(4) Any reasonably segregable portion of an
20 accessible record shall be provided to any individual
21 requesting such record pursuant to paragraph (1) (A),
22 (1) (B), or (1) (C) of this subsection, and any rea-
23 sonably segregable portion of the accounting of the
24 uses and disclosures of such record shall be provided to

1 any individual requesting such accounting pursuant to
2 paragraph (1) (D) of this section, after deletion of the
3 portions which are exempt under this subsection.

4 “(5) While it may not deny access to an accessible
5 record to the individual to whom the record pertains,
6 except as provided in paragraph (3) of this subsection,
7 an agency may establish special procedures for the dis-
8 closure of information pursuant to paragraph (1) of this
9 subsection if the agency believes that the disclosure of
10 such information would adversely affect the health of
11 the individual to whom it pertains or the safety of any
12 other individual.

13 (e) AMENDMENT OF RECORDS.—Each agency that
14 maintains accessible records shall permit the individuals to
15 whom the records pertain to request amendment of those
16 records as follows:

17 “(1) When an individual has been granted access
18 to an accessible record, or a substantially similar or
19 derivative version thereof, pursuant to subsection (b)
20 (1) of this section, the agency shall also permit that
21 individuals to request amendment of that record, or the
22 substantially similar or derivative versions thereof,
23 and—

24 “(A) not later than 10 days (excluding Satur-

1 days, Sundays, and legal public holidays) after the
2 date of receipt of such request, acknowledge in writ-
3 ing such request; and

4 “(B) promptly, either---

5 “(i) make any correction of any portion
6 thereof which the individual believes is not
7 accurate, relevant, timely, or complete; or

8 “(ii) inform the individual of its refusal to
9 amend the record, or the substantially similar
10 or derivative versions thereof, in accordance
11 with his request, the reason for the refusal, the
12 procedures established by the agency for the
13 individual to request a review of that refusal by
14 the head of the agency or an officer designated
15 by the head of the agency, and the name and
16 business address of that official.

17 “(2) The agency shall permit the individual who
18 disagrees with its refusal to amend his record, or the
19 substantially similar or derivative versions thereof, to
20 request a review of such refusal, and not later than 30
21 days (excluding Saturdays, Sundays, and legal public
22 holidays) from the date on which the individual requests
23 such review, complete such review and make a final
24 determination unless, for good cause shown, the head of

1 “(3) If, after the review made pursuant to para-
2 graph (2) of this subsection, the reviewing official also
3 refuses to amend the record, or the substantially similar
4 or derivative versions thereof, in accordance with the
5 individual’s request, the agency shall—

6 “(A) permit the individual to file with the
7 agency a concise statement setting forth the reasons
8 for his disagreement with the refusal of the agency,
9 and

10 “(B) notify the individual of the provisions for
11 judicial review of the reviewing official’s determina-
12 tion under subsection (k) of this section.

13 “(4) In any disclosure which contains information
14 about which the individual has filed a statement of dis-
15 agreement pursuant to paragraph (3) of this subsection
16 and which occurs after the filing of such statement, the
17 agency shall—

18 “(A) clearly identify any portion of the record
19 which is disputed, and

20 “(B) provide copies of the statement and, if
21 the agency deems it appropriate, copies of a concise
22 statement of the reasons of the agency for not
23 making the amendments requested, to persons or
24 other agencies to whom the disputed information has
25 been disclosed.

1 “(d) LIMITATIONS ON DISCLOSURE.—No agency shall
2 disclose any individually identifiable record by any means
3 of communication to any person, or to another agency, unless
4 such disclosure would be—

5 “(1) pursuant to a written request by, or with
6 the prior written consent of, the individual to whom
7 the record pertains;

8 “(2) required under section 552 of this title;

9 “(3) to those officers and employees of the agency
10 who have a need for the record in the performance of
11 their duties: *Provided*, That such disclosure is—

12 “(A) necessary and proper for the performance
13 of the agency’s own mission and functions, and

14 “(B) a routine use as defined by subsection
15 (a) (9) of this section;

16 “(4) to a person other than an officer or employee
17 of the agency:

18 *Provided*, That such disclosure is—

19 “(A) a routine use as defined by subsection
20 (a) (9) of this section, and

21 “(B) certified by the designated official under
22 subsection (j) of this section as meeting the require-
23 ments in subsection (a) (9) of this section;

24 “(5) a collateral use as defined by subsection (a)

25 (10) of this section: *Provided*, That such disclosure
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1 is certified by the designated official under subsection
2 (j) of this section as meeting the requirements in sub-
3 section (a) (10) of this section;

4 “(6) to the Bureau of the Census for purposes of
5 planning or carrying out a census or survey or related
6 activity pursuant to the provisions of title 13;

7 “(7) to the National Archives of the United States
8 as information which has sufficient historical or other
9 value to warrant its continued preservation by the
10 United States Government, or for evaluation by the
11 Administrator of General Services or his designee to
12 determine whether the information has such value;

13 “(8) a disclosure of a statistical record in a form
14 which is not individually identifiable;

15 “(9) to another agency or to an instrumentality
16 of any governmental jurisdiction within or under the
17 control of the United States for a civil or criminal law
18 enforcement activity if the activity is authorized by
19 law, and if the head of the agency or instrumentality
20 has made a written request to the agency which main-
21 tains the record specifying the particular portion desired
22 and the law enforcement activity for which the record
23 is sought;

24 “(10) to a person pursuant to a showing of com-

1 any individual: *Provided*, That, upon such disclosure,
2 notification thereof is transmitted to the last known
3 address of the individual to whom the record pertains;

4 “(11) to either House of Congress, or, to the extent
5 of matter within its jurisdiction, any committee or sub-
6 committee thereof, any joint committee of Congress or
7 subcommittee of any such joint committee;

8 “(12) to a Member of Congress is response to an
9 inquiry from that Member which is made at the express
10 request of—

11 “(A) the individual to whom the record per-
12 tains and that individual is a constituent of the
13 Member, or

14 “(B) a relative or legal representative of the
15 individual to whom the record pertains, and

16 “(i) the requesting relative or legal rep-
17 resentative of the individual to whom the record
18 pertains is a constituent of the Member, and

19 “(ii) the individual to whom the record
20 pertains is incapacitated or otherwise clearly un-
21 able to request the Member’s assistance himself;

22 “(13) to the Comptroller General, or any of his
23 authorized representatives, in the course of the perform-
24 ance of the duties of the General Accounting Office; or

1 “(14) pursuant to the order of a court of com-
2 petent jurisdiction.

3 “(c) COLLECTION AND MAINTENANCE OF INFORMA-
4 TION.—

5 (1) Each agency that collects or maintains in-
6 dividually identifiable records shall—

7 “(A) collect information to the greatest extent
8 practicable directly from the individual to whom the
9 information pertains when such information may
10 affect determinations about an individual's rights,
11 benefits, or privileges under Federal programs;

12 “(B) take reasonable affirmative steps to enable
13 individuals from whom it requests information about
14 themselves or others to decide whether to supply
15 that information in as informed and uncoerced a
16 manner as is reasonably possible and, to that end,
17 the agency shall make available to the individual,
18 unless the individual has already been notified within
19 a reasonable period of time prior to the request and
20 has been offered a retention copy of, the following
21 information:

22 “(i) the authority which authorizes the
23 solicitation of the information;

24 “(ii) whether such disclosure is mandatory

1 or voluntary and the consequences to the in-
2 dividual of not providing the information,

3 “(iii) the principal purpose or purposes for
4 which the information is intended to be used,

5 “(iv) any routine or collateral uses of the
6 information which could be reasonably expected
7 to influence the individual's decision,

8 “(v) the scope, techniques, and sources of
9 any procedures for verification of the informa-
10 tion, and

11 “(vi) the title, business address, and busi-
12 ness telephone number of a responsible agency
13 official who can assist the individual in his deci-
14 sion or answer any questions which the individ-
15 ual may have;

16 “(C) collect or maintain in its records only
17 such information about an individual as is relevant
18 and necessary to accomplish a purpose of the agency
19 required to be accomplished by statute or by Execu-
20 tive order of the President;

21 “(D) maintain all records which are used by
22 the agency in making any determination about any
23 individual with such accuracy, timeliness, complete-
24 ness, and relevance as is reasonably necessary to
25 assure fairness in the determination, although this

1 provision shall not prohibit any agency or compo-
2 nent thereof which performs as its principal function
3 any activity relating to the enforcement of criminal
4 laws, from maintaining unverified or otherwise po-
5 tentially inaccurate, untimely, incomplete, or irrele-
6 vant information: *Provided*, That such information
7 is clearly identified as such to all users or recipients
8 of that information;

9 “(E) establish reasonable administrative, tech-
10 nical, and physical safeguards to assure the integrity,
11 confidentiality, and security of such individually
12 identifiable records so as to minimize the risk of sub-
13 stantial harm, embarrassment, inconvenience, or un-
14 fairness to the individual to whom the information
15 pertains; and

16 “(F) take reasonable affirmative steps to serve
17 notice on an individual when any record on such
18 individual is made available to any person under
19 compulsory legal process when such process becomes
20 a matter of public record.

21 (2) No agency, or officer, employee, agent, or
22 contractor thereof, shall collect or maintain information:

23 “(A) describing the content of any publica-
24 tion, speech, or other expression of belief or argu-
25 ment by an individual in the exercise of rights

1 guaranteed by the first amendment, unless such
2 information is compiled pursuant to an authorized
3 investigation of the sedition or espionage under sec-
4 tions 792 through 797 and sections 2381 through
5 2386 of title 18, or unless such information would
6 be legally admissible evidence in a criminal prose-
7 cution and is compiled pursuant to an authorized
8 investigation of a violation of the criminal laws of
9 the United States;

10 “(B) describing the forum in which an indi-
11 vidual publishes, speaks, or otherwise exercises his
12 first amendment rights of speech, association, or
13 religion, unless such information is compiled pur-
14 suant to an authorized investigation of a violation of
15 the laws of the United States; or

16 “(C) otherwise describing the way any indi-
17 vidual exercises his rights guaranteed by the first
18 amendment, except to the extent that such informa-
19 tion is limited to collecting and maintaining the
20 time, place, and observed associations of an indi-
21 vidual which are compiled pursuant to and in the
22 course of an authorized investigation of a violation
23 of the laws of the United States.

24 (3) The provisions of subparagraphs (A), (B),

1 and (C) of paragraph (2) shall not prohibit an agency
2 from collecting or maintaining—

3 “(A) a specific item of information which is
4 expressly required by statute, or which is expressly
5 authorized by the individual to whom it pertains,
6 to be collected or maintained, or

7 “(B) information the collection or mainte-
8 nance of which would be a reasonable and proper
9 library, bibliographic, abstracting, or similar
10 reference function.

11 “(f) PROPAGATION OF CORRECTIONS.—

12 “(1) Each agency that maintains individually iden-
13 tifiable records shall attempt to assure the accuracy,
14 timeliness, and completeness of the records maintained
15 by the sources and the prior recipients of the information
16 in its records by taking reasonable affirmative steps to
17 notify such sources and prior recipients who have, within
18 a reasonable period of time, provided information to, or
19 received information from, an individually identifiable
20 record maintained by the agency of all—

21 “(A) corrections of that individually identifi-
22 able record made pursuant to subsection (c) (1)

23 (B) (i) of this section;

24 “(B) statements of disagreement regarding

1 information contained in that individually identifi-
2 able record made pursuant to subsection (c) (3)
3 of this section, together with, if such exists, the cor-
4 responding statement of the agency's position made
5 pursuant to subsection (c) (4) (B) of this section;
6 and

7 " (C) corrections of erroneous information con-
8 tained in that individually identifiable record which
9 are normal updates, changes, or modifications of
10 that information made in the performance of the
11 agency's functions, provided that—

12 " (i) such corrections are made pursuant
13 to subsection (e) (1) (D) of this section,

14 " (ii) such corrections could be reasonably
15 expected to affect the outcome of any deter-
16 mination on the individual if known to either
17 the sources or prior recipients of the erroneous
18 information, and

19 " (iii) the sources and prior recipients of the
20 erroneous information could not be reasonably
21 expected by the agency to otherwise become
22 aware of such corrections through normal
23 means.

24 " (2) The agency shall not be required to notify,

1 pursuant to subparagraph (A), (B), or (C) of para-
2 graph (1) of this subsection—

3 “(A) a prior recipient who received the
4 erroneous information pursuant to section 552 of
5 this title, or

6 “(B) a source of the erroneous information
7 who provided the information as an individual
8 acting on his own behalf and not in an official ca-
9 pacity as a representative, officer, employee, or
10 agent of an agency or other organization.

11 “(3) Notwithstanding the provisions of paragraph
12 (2) of this subsection, the agency shall also take rea-
13 sonable affirmative steps to notify any person specifically
14 named by the individual to whom they pertain of cor-
15 rections or statements of disagreement or agency posi-
16 tion as enumerated in subparagraph (A), (B), or (C)
17 of paragraph (1) of this subsection.

18 “(g) FAIRNESS IN DETERMINATIONS.—In addition
19 to the provisions of subsection (e) (1) (D) of this section,
20 agencies shall take reasonable affirmative steps to reconsider
21 any determinations which were made on the basis of er-
22 roneous information after receipt of—

23 “(1) a correction made by an individual pursuant
24 to subsection (c) (1) (B) (i), or

1 “(2) a correction or a statement of disagreement
2 or agency position which has been propagated pursuant
3 to subsection (f) of this section.

4 “(h) GENERAL NOTICE OF AGENCY SYSTEMS, POL-
5 ICIES, AND PRACTICES.—

6 “(1) Each agency that maintains individually iden-
7 tifiable records shall publish in the Federal Register at
8 least annually a notice which describes in detail, in
9 terms of systems and subsystems that most accurately re-
10 flects the context or manner in which the agency uses
11 the information, the existence and character of such sys-
12 tems and subsystems, which notice shall include—

13 “(A) the name and location of each system or
14 subsystem, as well as any substantially similar or
15 derivative systems or subsystems;

16 “(B) the authority for the maintenance of the
17 system or subsystem;

18 “(C) the categories of individuals on whom
19 records are maintained in the system or subsystem;

20 “(D) the categories of information or data
21 items maintained in the system or subsystem;

22 “(E) each use or disclosure of the records con-
23 tained in the system or subsystem, including the
24 categories of users and the purposes of such use or
25 disclosure;

1 “(F) the policies and practices of the agency
2 regarding storage, retrievability, access controls, re-
3 tention, and disposal of the information maintained
4 in the system or subsystem;

5 “(G) the title, business address, and business
6 telephone of the agency official responsible for the
7 system or subsystem;

8 “(II) the agency procedures whereby an indi-
9 vidual can request:

10 “(j) access to records pertaining to him in
11 the system or subsystem, and

12 “(ii) amendment of such records; and

13 “(I) the categories of sources of information
14 in the system, except to the extent that material so
15 published would be information to which an indi-
16 vidual would be denied access under subsections (b)
17 (3) (A) and (b) (3) (B).

18 “(2) The Office of the Federal Register shall an-
19 nually compile and publish the notices published pur-
20 suant to paragraph (1) of this subsection and the rules
21 published pursuant to subsection (j) of this section in
22 a form available to the public at low cost and which
23 is indexed, arranged, or otherwise prepared to enable
24 ease of use and reference by the public.

25 “(i) RIGHTS OF PARENTS AND LEGAL GUARDIANS.—

1 For the purposes of this section, the parent of any minor, or
2 the legal guardian of any individual who has been declared
3 to be incompetent due to physical or mental incapacity or
4 age by a court of competent jurisdiction, may act on behalf
5 of the individual.

6 “(j) AGENCY IMPLEMENTATION.—

7 “(1) The head of the agency shall designate one
8 official with the authority to oversee the agency’s im-
9 plementation of this section, and such designated official
10 shall—

11 “(A) be the head of an office designated or
12 created by the agency head, with as many com-
13 ponents, field offices, or other supporting structures
14 and staff as the agency head deems necessary;

15 “(B) issue such instructions, guidelines, and
16 standards, and make such determinations, as are
17 necessary for the implementation of this section;

18 “(C) take reasonable affirmative steps to assure
19 that all agency employees and officials responsible
20 for the collection, maintenance, use, and dissemina-
21 tion of individually identifiable records are aware
22 of the requirements of this section; and

23 “(i) the instructions, guidelines, standards,
24 and determinations, issued pursuant to subpara-

25 graph (B) of this paragraph
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1 “(ii) the rules promulgated pursuant to
2 paragraph (2) of this subsection, and

3 “(iii) the penalties for noncompliance.

4 “(2) In order to carry out the provisions of this
5 section, each agency that collects and maintains indi-
6 vidually identifiable records shall promulgate rules, in
7 accordance with the requirements (including general
8 notice) of section 553 of this title, which shall—

9 “(A) define reasonable times, places, and re-
10 quirements, for identifying an individual who re-
11 quests access to records pertaining to him before the
12 agency shall make those records available to the
13 individual;

14 “(B) establish procedures for the disclosure to
15 an individual upon his request for records pertaining
16 to him, including special procedures, if deemed nec-
17 essary, for the disclosure of information which would
18 adversely affect the health of the individual to whom
19 the records pertain or the safety of any other indi-
20 vidual;

21 “(C) establish procedures for reviewing a re-
22 quest from an individual concerning the amendment
23 of any records pertaining to that individual, for mak-
24 ing a determination on the request, for an appeal

25 within the agency or an initial adverse agency deter-

1 mination, and for whatever additional means may
2 be necessary for each individual to be able to exer-
3 cise fully his rights under this section; and

4 “ (D) establish fees to be charged, if any, to any
5 individual for making copies of records pertaining
6 to him, excluding the cost of any search for and
7 review of the records.

8 “ (k) CIVIL REMEDIES.—

9 “ (1) Whenever any agency:

10 “ (A) makes a determination under subsection
11 (c) of this section not to amend an individual's
12 record in accordance with his request, or fails to
13 make such review in conformity with that sub-
14 section;

15 “ (B) refuses to comply with an individual
16 request under subsection (b) (1) of this section;

17 “ (C) fails to maintain any record concerning
18 any individual with such accuracy, relevance, time-
19 liness, and completeness as is necessary to assure
20 fairness in any determination relating to the qualifi-
21 cations, character, rights, or opportunities of, or
22 benefits to, the individual that may be made on the
23 basis of such record, and consequently a determina-
24 tion is made which is adverse to the individual; or

25 “ (D) fails to comply with any other provision

1 of this section, or any rule promulgated thereunder,
2 the individual may bring a civil action against the
3 agency, and the district courts of the United States shall
4 have jurisdiction in the matters under the provisions of
5 this subsection.

6 “(2) (A) In any suit brought under the provisions
7 of paragraph (1) (A) of this subsection, the court may
8 order the agency to amend the individual's record in
9 accordance with his request or such other way as the
10 court may direct. In such a case, the court shall deter-
11 mine the matter de novo.

12 “(B) The court may assess against the United
13 States reasonable attorney fees and other litigation costs
14 reasonably incurred in any case under this paragraph
15 in which the complainant has substantially prevailed.

16 “(3) (A) In any suit brought under the provisions
17 of paragraph (1) (B) of this subsection, the court may
18 enjoin the agency from withholding the records, or the
19 accounting of the uses and disclosures thereof, and order
20 the production to the complainant of any agency rec-
21 ords, or the accounting of the uses and disclosures thereof,
22 improperly withheld from him. In such a case, the court
23 shall determine the matter de novo. The court may ex-
24 amine the contents of any agency records, or any ac-

1 to determine whether the records or any portion thereof,
2 or any accounting of the uses and disclosures thereof,
3 may be withheld under any of the exemptions set forth
4 in subsection (b) (3) of this section, and the burden
5 is on the agency to sustain its action.

6 “(B) The court may assess against the United
7 States reasonable attorney fees and other litigation costs
8 reasonably incurred in any case under this paragraph in
9 which the complainant has substantially prevailed.

10 “(4) In any suit brought under the provisions of
11 paragraph (1) (C) or (1) (D) of this subsection in
12 which the court determines that the agency acted in a
13 manner which was intentional or willful, the court may
14 order the agency to act in a manner consistent with this
15 section, and, in addition, the United States shall be liable
16 to the individual in an amount equal to the sum of:

17 “(A) special and general damages sustained
18 by the individual as a result of the failure under
19 paragraph (1) (C) or (1) (D) of this subsection,
20 but in no case shall a person entitled to recovery
21 receive less than the sum of \$1,000 or more than the
22 sum of \$10,000 in excess of the dollar amount of
23 any special damages; and

24 “(B) the costs of the action together with rea-
25 sonable attorney fees as determined by the court.

1 “(5) An action to enforce any liability created un-
2 der this section may be brought in the district court of
3 the United States in the district in which the complain-
4 ant resides, or has his principal place of business, or in
5 which the agency records are situated, or in the Dis-
6 trict of Columbia, without regard to the amount in con-
7 troversy, within 2 years from the date on which the
8 cause of action arises, except that where an agency has
9 materially and willfully misrepresented any information
10 required under this section to be disclosed to an individ-
11 ual and the information so misrepresented is material to
12 the establishment of the liability of the agency to the
13 individual under this section, the action may be brought
14 at any time within 2 years after discovery by the indi-
15 vidual of the misrepresentation. Nothing in this section
16 shall be construed to authorize any civil action by reason
17 of any injury sustained as the result of a disclosure of a
18 record prior to the effective date of this section.

19 “(1) CRIMINAL PENALTIES.—

20 “(1) Any officer or employee of an agency, who
21 by virtue of his employment or official position, has
22 possession of, or access to, agency records which contain
23 individually identifiable information the disclosure of
24 which is prohibited under this section or by rules or
25 regulations established thereunder, and who knowing

1 that disclosure of the specific material is so prohibited,
2 willfully discloses the material in any manner to any
3 person or agency not entitled to receive it, shall be guilty
4 of a misdemeanor and fined not more than \$5,000.

5 “(2) Any officer or employee of any agency who
6 willfully maintains any collection or grouping of records
7 without meeting the notice requirements of subsection
8 (h) (1) of this section shall be guilty of a misdemeanor
9 and fined not more than \$5,000.

10 “(3) Any person who knowingly and willfully
11 requests or obtains any record concerning an individual
12 from an agency under false pretenses shall be guilty of
13 a misdemeanor and fined not more than \$5,000.

14 “(m) GOVERNMENT CONTRACTORS AND GRANTEEES.—

15 “(1) Any contractor or recipient of a Federal grant,
16 or any subcontractor thereof, who performs any func-
17 tion on behalf of a Federal agency which requires the
18 contractor or grantee to maintain individually identifia-
19 ble records shall be subject to the provisions of this
20 section, except that this provision shall not apply to:

21 “(A) the employment, personnel, or other
22 administrative records which the contractor or
23 grantee maintains as a necessary aspect of support-
24 ing the performance of the contract or grant but

1 which bear no other relation to the performance
2 of the contract or grant,

3 “(B) individually identifiable records:

4 “(i) which are neither required nor im-
5 plied by the terms of the contract or grant,

6 “(ii) for which no representation of Fed-
7 eral sponsorship or association is made, and

8 “(iii) which will not be submitted or other-
9 wise provided to the Federal agency with which
10 the contract or grant is established.

11 “(2) The agency with which the contract or grant
12 is established shall, consistent with its authority, be
13 responsible for insuring that the contractor or grantee
14 complies faithfully with the provisions of this section.

15 “(3) For any contracts or grants agreed to on or
16 after the effective date of this section to which subsec-
17 tion (m) (1) of this section applies:

18 “(A) any such contractor or grantee, or any
19 employee of such contractor or grantee, shall, for
20 purposes of the criminal penalties of subsection (l)
21 of this section, be considered to be an employee of
22 the agency;

23 “(B) any such contractor or grantee shall, for
24 purposes of the civil remedies of subsection (k) of

1 this section, be considered to be an agency, except
2 that the damages, attorney fees, and litigation costs
3 under subsections (k) (2) (B), (k) (3) (C), and
4 (k) (4) shall be assessed against the contractor or
5 grantee instead of against the United States; and

6 “(C) no official or employee of any agency of
7 the United States shall include, or authorize to be
8 included, in any such contract or discretionary grant
9 any provision indemnifying the contractor or grantee
10 from the civil remedies of subsection (k) of this
11 section.

12 “(n) ARCHIVAL RECORDS.—

13 “(1) Each agency record which is accepted by the
14 Administrator of General Services for storage, process-
15 ing, and servicing in accordance with section 3103 of
16 title 44 shall, for the purposes of this section, be con-
17 sidered to be maintained by the agency which deposited
18 the record and shall be subject to the provisions of this
19 section. The Administrator of General Services shall not
20 disclose the record except to the agency which main-
21 tains the record, or under rules established by that agency
22 which are not inconsistent with the provisions of this
23 section.

24 “(2) Each agency record pertaining to an identifi-
25 able individual which was transferred to the National

1 Archives of the United States as a record which has suffi-
2 cient historical or other value to warrant its continued
3 preservation by the United States Government, prior to
4 the effective date of this section, shall, for the purposes
5 of this section, be considered to be maintained by the
6 National Archives and shall not be subject to the provi-
7 sions of this section, except that a statement generally
8 describing such records (modeled after the requirements
9 relating to records subject to subsections (h) (1) (A)
10 through (h) (1) (G) of this section) shall be published
11 in the Federal Register.

12 “(3) Each agency record pertaining to an identifi-
13 able individual which is transferred to the National
14 Archives of the United States as a record which has
15 sufficient historical or other value to warrant its continued
16 preservation by the United States Government, on or
17 after the effective date of this section, shall, for the pur-
18 poses of this section, be considered to be maintained by
19 the National Archives and shall be exempt from the re-
20 quirements of this section except subsections (h) (1)
21 (A) through (h) (1) (G) of this section.

22 (o) REPORT ON NEW SYSTEMS.—Each agency shall
23 provide adequate advance notice to Congress and the Office
24 of Management and Budget of any proposal to establish or
25 alter any system of records in order to permit an evaluation

1 of the probable or potential effect of such proposal on the
2 privacy and other personnel or property rights of individuals
3 or the disclosure of information relating to such individuals,
4 and its effect on the preservation of the constitutional prin-
5 ciples of federation and separation of powers.

6 (p) ANNUAL REPORT.—The President shall submit to
7 the Speaker of the House and the President of the Senate,
8 by June 30 of each calendar year, a consolidated report,
9 separately listing for each Federal agency the number of rec-
10 ords contained in any system of records which were ex-
11 empted from the application of this section under the
12 provisions of subsection (b) (3) of this section during the
13 preceding calendar year, and the reasons for the exemp-
14 tions, and such other information as indicates efforts to
15 administer fully this section.

16 “(q) EFFECT OF OTHER LAWS.—

17 “(1) Whenever an agency receives a request for
18 access to records which could be processed either under
19 the provisions of section 552 of this title or under the
20 provisions of this section, the agency shall process such
21 request under the provisions of this section, except that
22 in no instance shall the requesting individual receive less
23 information than he would receive if the request were
24 processed under section 552 of this title.

1 “(2) No agency shall rely upon any exemption
2 contained in section 552 of this title to withhold from
3 an individual any record which is otherwise accessible
4 to the individual under the provisions of this section.

5 “(r) MAILING LISTS.—An individual’s name and ad-
6 dress may not be sold or rented by an agency unless such
7 action is specifically authorized by law. This provision shall
8 not be construed to require the withholding of names and
9 addresses otherwise permitted to be made public.”.

10 SEC. 2. Section 552 (a) (3) of title 5, United States
11 Code, is amended by striking out “Except” and inserting
12 in lieu thereof “Except as provided under section 552a (q)
13 of this title, and except”.

95TH CONGRESS
1ST SESSION

H. R. 8279

A BILL

To amend the Privacy Act of 1974.

By Mr. GOLDWATER and Mr. KOCH

JULY 13, 1977

Referred to the Committee on Government Operations