

Technology Breeds Insecurity: Privacy Becomes a Federal Policy

Save to myBoK

by Donald D. Asmonga

German poet and playwright Bertolt Brecht once said, "Today, every invention is received with a cry of triumph which soon turns into a cry of fear." Brecht died in 1956, but his statement remains relevant. The emergence of the so-called information age can be attributed to the development and widespread use of computers and computer technologies that have enabled massive amounts of information to be collected, stored, and transmitted with relative ease.

As a result, however, Americans have noticed a continuing tension between their desire for personal privacy and the data demands of the information age. Recently, there has been a considerable amount of federal activity related to privacy. Here's an overview.

Fears of the Future

Brecht's "cry of fear" is emerging as a push to enact policy to restore our personal privacy. According to an NBC News/Wall Street Journal poll, the loss of personal privacy is the greatest concern for the next century. At 29 percent, loss of personal privacy leads fears of overpopulation (23 percent), terrorist acts on American soil (23 percent), racial tensions (17 percent), world war (16 percent), global warming (14 percent), widespread availability of guns (13 percent), and economic depression (13 percent). In our rush to embrace the information age, we have freely offered personal information about ourselves to others who may not have our best interests at heart.

The Privacy Act of 1974 was the first real law to establish rules for how the federal government uses an individual's personal information. In 1988, interest was rekindled when Congress passed the Video Privacy Protection Act, prompted by the nomination hearings of Supreme Court nominee Judge Robert Bork. A member of the press obtained Judge Bork's video rental records from his local video store and then disclosed them to the public.

In recent years, considerable discussion has centered on the issue of medical records and access to personal health information. Passing health information privacy legislation has been the primary goal of AHIMA's public policy agenda. The beginning of the federal effort to pass health information privacy legislation began in 1997 with Representative Gary Condit's (D-CA) introduction of HR 52, the Fair Health Information Practices Act of 1997.

AHIMA played an integral role in the development and introduction of HR 52 and remains centrally involved with the health information privacy developments occurring today. Our federal focus spans from the halls of Congress to the Department of Health and Human Services' development of the privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA).

Today, if one accesses THOMAS, the Library of Congress' legislative Web site (<http://thomas.loc.gov/>), and enters the keyword "Privacy," a list of 289 bills appears. "Confidentiality" will bring up 292 bills. These numbers are truly indicative of the breadth of interest in this important issue. The bills address subjects such as financial privacy, wireless privacy, student privacy, Internet privacy, telephone privacy, consumer privacy, genetic privacy, and medical privacy. Other than HIPAA, Congress has also included prescriptive privacy provisions in the Financial Services Modernization Act of 1999 (PL 106-102).

On February 8, 2000, President Clinton issued executive order 13145 to prohibit discrimination in Federal employment based on genetic information while calling for Congress to include similar provisions drafted by Rep. Louise Slaughter (D-NY) and Sen. Thomas Daschle (D-SD) in the Patients' Bill of Rights.

Privacy Commission Proposed

Because of the great interest in privacy and the varying and conflicting positions held by interested parties as privacy advocates, industry, and individuals, several members of Congress have proposed the establishment of a federal privacy commission to review the broad range of privacy issues. Leading the effort are Representatives Asa Hutchinson (R-AR) and Jim Moran (D-VA), who introduced the Privacy Commission Act on March 15, 2000. A joint press release cited five specific reasons to establish a privacy commission:

1. There have been no commissions that have investigated the privacy issue in a comprehensive fashion since the advent of the Information Revolution and the pervasive impact of the Internet on American society.
2. There are inadequate protections with regard to medical records, and many consumers are concerned about the possibility of a health identification number.
3. With new changes in financial laws, there must be a review of the firewalls and protections between the healthcare, insurance, and financial industries.
4. The use of Social Security numbers as personal identification numbers goes far beyond what they were originally intended for.
5. The shift from an industry-focused economy to an information-focused economy calls for a reassessment of the most effective way to balance personal privacy and information use.

Additionally, Representatives Hutchinson and Moran stated that the bipartisan, 17-member panel would have 18 months to:

- study the current laws relating to the protection of individual privacy and existing efforts addressing this issue
- conduct field hearings around the country to receive comments from the public, business leaders, and the community
- identify the potential threats posed to individual privacy in the "cyber age," and submit a report to Congress on its findings, including any legislative recommendations for the reform or augmentation of current laws and regulations

Because of the lack of prescriptive privacy provisions, the technology industry appears to be coalescing behind the bill, because its passage will act as a delay for any substantive legislation and provide additional time for industry self-regulation. Further, Congress would have more time to escape the controversies of the privacy issue. Combined with an earnest desire to explore the privacy issue, these factors bode well for the passage of the Privacy Commission Act in the 106th Congress.

As our technological capabilities expand, however, the tension between personal privacy and business needs will undoubtedly grow. Ultimately, Congress will be unable to escape the need to act in a comprehensive manner.

Donald D. Asmonga is AHIMA's government relations manager. He can be reached at dasmonga@ahima.org.

Article Citation:

Asmonga, Donald D. "Technology Breeds Insecurity: Privacy Becomes a Federal Policy." *Journal of AHIMA* 71, no. 5 (2000): 16-17.
