THE BENEVOLENT RECORDKEEPERS

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In principle, the Privacy Act of 1974 (P.L. 93-579) is a very good law; it calls upon the Federal government to follow fair information practices; it enlarges the area of Federal conduct which is open to public inspection and accountability; it casts a strong ray of light into all but a few corners of the bureaucracy; and it balances the government's need to know against the individual's right to know what those needs are.

In practice, the value of the Privacy Act must be proven through compliance and experience. The Act has enormous potential for restoring some of the badly-eroded credibility of public officials. It also contains the risk that failure to meet its goals will cause a further loss of public confidence. The phrase "recordkeeper" symbolizes all of us who must meet the challenges posed by the Act's provisions.

Because the law is both comprehensive and detailed, it responds to the abuse of personal information by regulating all uses of information whether there has been evidence of abuse or not. It governs all keepers of personally identifiable records whether or not the records are used to make determinations about individuals, and whether or not the ultimate use of the record is beneficial or detrimental. Mischief has been done, of course, with records first assembled by well-intentioned people for good purpose, and later used to reduce the margins of personal freedom and privacy. Major abuses which have come to light in recent years have related almost entirely to records maintained for administrative or intelligence purposes rather than records maintained for statistical purposes. The initial dialogue on the need for privacy legislation did not make this distinction automatically, because legislators remember well the controversy over statistical data banks and remain apprehensive about the pervasive capabilities of government computers. The Act itself recognized the distinction in several important ways; in the last analysis, we believe that the provisions of the Act which impact on statistical records, in contrast to other records, rested on a congressional willingness to trust the statistical recordkeepers. This confidence was extended to all agency record systems maintained solely for statistical purposes, and in a unique way to the Bureau of the Census.

The Act permits Federal agencies to disclose, without the consent of the individuals involved, records to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code. This provision not only recognized the Bureau's reputation for safeguarding personal information, it also acknowledged the very practical requirements of statistical programs which rely on the administrative records of other agencies in order to minimize the costs and burdens of information gathering. Although these provisions are certainly appropriate, the passage of the Privacy Act has nevertheless increased the burden of public accountability and quickened the tempo of self-examination.

As for accountability, the Act affects the Bureau directly in several respects. As with all agencies, we must make public notice of the character of every system of records we maintain, statistical and non-statistical; the latter relate primarily, of course, to records about employees and other individuals about whom records are maintained for administrative purposes, such as contractors and members of public advisory committees. Since the purpose of the notices is to inform the general public, our approach has been to strike a balance in favor of generalization rather than excessive detail.

The Bureau may also be affected by the procedures adopted by those agencies which make information available to Census for statistical use. Although individual consent is not needed in order to provide us with such records, the agency may, for certain record systems, have to keep an accounting of the transfer of the record, make the accounting available to the individual named in the record at his or her request, and forward to us any correction or notation of dispute which becomes attached to the original record in accordance with the Act. This would suggest the possibility, for example, that corrections made to administrative records of the Social Security Administration (SSA) would have to be carried forward into the statistical subsets of those records, whether maintained as separate systems within SSA or transferred in part to the Census Bureau. It is still unclear how far this provision might eventually really be carried, but it is doubtful that isolated corrections to administrative records should have any bearing on statistical operations.

There is, however, a corollary question; namely, whether an individual challenge as to a record's accuracy might lead to the correction of a class of records for many individuals that would significantly affect an analytical or research activity for which the class of records had been duplicated and set apart from administrative files. In this situation, the value of the research might well depend on incorporating more accurate information into the subset.

One general guideline for implementation is that when Agency A transfers records to Agency B, the receiving agency must treat them as if it had originally compiled them. This is consistent with our view that records of any kind which we

receive from other agencies or organizations become statistical records as defined in the Privacy Act as soon as the information enters our files. This view appears to be consistent with the Act and is reinforced by section 9 of title 13 which extends the confidentiality protection of the census code to personal information received from Federal agencies and private organizations as well as from individuals, to assist in carrying out title 13 work.

In accordance with provisions of the Act, the Bureau's statistical records, whether obtained directly from respondents or from other sources, may be exempted by public notice from the privilege of access by the individual as well as the right to challenge the accuracy and timeliness of the information. Such challenges would, of course, produce no direct benefit to the individual, and the occasional presence of records in the statistical system which are incomplete or not wholly accurate will not impact substantially on the utility of aggregate data so long as the limitations and errors associated with the data are adequately accounted for and noted when data are disseminated.

The Bureau is also accountable, along with other statistical agencies, to a requirement of the Act to inform respondents in writing at the time of data collection as to the legal authority for soliciting information, the intended uses of the information, and the effects on the individual, if any, of not providing all or part of the requested information. Compliance with this requirement will not begin at point zero, because there has been a trend for many years to be more explicit on these matters. The Bureau is not alone in its practice of informing respondents when an inquiry is mandatory or voluntary, but there are instances where the message is not sufficiently clear. The challenge here is to prepare the interviewers more fully than heretofore to explain not only the authorities for gathering and protecting personal information, but the reasons why the answers will contribute to the public good. This task is especially difficult for new interviewers who will work on one-time assignments. On the other hand, we would not want to go to the extreme in which the interviewer would at the outset issue a bold invitation to the respondent to refuse to cooperate and shut the door.

In addition to the censuses and surveys conducted by the Bureau under title 13, the Bureau's survey work for other departments and agencies represents a major program with more than $40 million of expenditures annually. There are three different types of legal authority that govern this work. First, a survey for another agency is based in part on title 31 of the U.S. Code, which provides broad authorization for Federal agencies to perform reimbursable services for each other. Title 31 does not, however, provide specific authority to collect information from the public. Second, authority to collect is either a function of title 13, or must be present in the sponsoring agency's enabling legislation. The present constellation of reimbursable work conducted by the Bureau represents authority of other agencies to collect information in at least 7 separate portions of the U.S. Code. Third, the authority to protect the information from disclosure is a separate matter, and must again be based on either title 13 or some provision of law that governs the activities of the sponsoring agency. For example, the Law Enforcement Assistance Administration (LEAA) now has a specific public law to protect statistical information, and this law is cited on several survey forms which are used by the Bureau as collecting agent for LEAA, the sponsor of the surveys. We have envisioned that these legal authorities, and the functions to which they relate will need to be set forth more clearly to respondents and to the general public. The human equation, however, will remain one of overriding importance; most respondents are more interested in getting the interview over with than in the statutes that legitimize the request for information. Respondent cooperation thus depends heavily on the image and demeanor of the interviewer, which in turn depends on how carefully we select and train them. Also of critical importance is the message to the respondent contained in an advance letter from the Director of the Bureau or on the questionnaire itself.

With regard to record transfers, agencies may transfer identifiable personal information to the Bureau notwithstanding the limitations on their transfers to other agencies. However, because of the prohibitions against disclosure contained in title 13, the Bureau must continue to deny access to its identifiable information even if otherwise permitted by the Privacy Act.

We have not anticipated that the Act will create any major difficulties in our ability to obtain administrative records from other agencies for statistical use, although the long-standing cooperative relationship we have had with the Internal Revenue Service has been affected by publicity on the uses of tax returns and by legislative proposals to shut off the flow of tax return information to virtually all Federal agencies, including the Census Bureau.

The exemption for the Bureau in the Privacy Act may emphasize a perception sometimes held by other Federal agencies or by private survey organizations that the Census Bureau has a dominating role within the Federal statistical system. As a practical matter, our central role in data collection is a historical by-product of three influences. First the Constitutional mandate to take the decennial census every 10 years means simply that we have the best national population sampling frame in existence--one which, by law, cannot be borrowed. Second is the obligation placed by law on the Federal government to avoid or minimize duplicative data collection mechanisms. Third is the fact that as a permanent statistical agency for more than 70 years, the Bureau pioneered in the development of sampling theory and statistical methodology and has maintained the expertise and research capability that contributed to dramatic improvements in the quality and accuracy of statistical work in the

past few decades. With this background, it is understandable that both the Congress and the Executive Branch have directed more and more statistical activity toward the Census Bureau. Short of an abrupt departure from pattern, we would expect this trend to continue, and perhaps to be reinforced by the Privacy Act. The Congress will probably continue to pass laws that require statistical data collection whenever such data appear to be essential for making informed program and policy decisions.

The Bureau is presented with a particular challenge by section 5 of the Privacy Act which established the Privacy Protection Study Commission. The Commission is expected to examine, for example, the matching and analysis of statistical data, such as Federal census data, with other sources of personal data in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes in a way which results in the violation of the implied or explicitly recognized confidentiality of such information. The state of the art in this area is relatively primitive, and we have perceived no threat to confidentiality. Nonetheless, the perception of a problem is often a problem in itself, and we will have to devote increasing attention and concern to the manner in which we prepare and disseminate aggregate statistics and the ways in which microdata can be utilized.

The Commission is also invited to determine what specific categories of information, the collection of which would violate an individual's right of privacy, should be prohibited by statute from collection by Federal agencies. This question will receive more attention in the next few years whether or not the Commission addresses it, because concerns with statistical inquiries peak every 10 years before and during the decennial census.

As with the past several censuses, the Bureau is presented with the usual dilemma in planning for the 1980 census. We stand between strong pressures on the one hand to include more questions and produce more results in greater geographic detail than ever before, and pressures on the other side to stop prying into people's lives. Already, in 1975, there are legislative proposals to require the approval of the Congress for census questions, to limit the number of census questions that could be asked on a mandatory basis, or to make the entire set of inquiries a voluntary undertaking by removing the applicable penalties for refusal to cooperate. We oppose these measures, some of which could jeopardize the essential Constitutional purpose of the decennial census, which is to enumerate the whole population in order to apportion the United States House of Representatives. Even without new laws, a more thorough examination of the proposed census inquiries with congressional committees appears likely. The outcome of such reviews will depend in large part on our ability, with the articulate support of data users, to justify the utility of each inquiry.

Clearly, the Privacy Act and the temper of concerns that surrounded its passage, make public officials more accountable for the collection and handling of personal records. Even though the census law is often cited as being unusually clear on confidentiality, the Bureau of the Census has a large measure of discretion within the perimeter clearly set by law. There are constant choices which can reflect either a broad or narrow interpretation of what is acceptable, and many of the choices relate to the perception of what we do rather than its legality. For example, are we taking all reasonable precautions with the physical security of personal information? Are we taking an undue risk of adverse public reaction with a particular set of census or survey questions? Have we insured that in making available public use samples or summary tapes we have taken all necessary and desirable precautions for preventing potential disclosures by inference? Have we adequately protected records which are used in records matching studies? Have we sufficiently advised all employees, especially field interviewers, as to the safeguards, regulations, and policies that govern their conduct? Have we educated data users to maximize the utility of existing data as an offset to collecting new information? Are we sufficiently vigilant in maintaining the cooperation and confidence of the general public and respondents in particular?

These questions have been answered affirmatively many times, but because of their importance they resurface regularly through our public advisory committees, which bring an outside focus of objectivity to agency viewpoints. The results of serious inquiries along these lines should be reflected in sound policy which earns public support, and good statistical information practices which preserve the cooperation of the giver and the credibility of the receiver of personal information. The statistical and research community in general has an enormous stake in what happens to the basic contract of trust between the individual and the government. The Privacy Act will reinforce that contract if compliance is approached candidly. The very substantial burdens of implementation for some Federal agencies will cause difficulties, but will determine ultimately whether recordkeepers are viewed as benevolent or something else.

There is evidence that the credibility of government is at its lowest point in decades. Each allegation of abuse of personal information, true or not, and however far removed from statistical activity, has contributed to the erosion. Public officials have an opportunity under the Privacy Act to repair some of the damage. We earnestly hope that the statistical recordkeepers will be easily recognized in the forefront of the effort.