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FEDERAL DATA BANKS AND
CONSTITUTIONAL RIGHTS -

A STUDY OF DATA SYSTEMS ON INDIVIDUALS MAINTAINED
BY AGENCIES OF THE UNITED STATES GOVERNMENT -

→ SUMMARY AND CONCLUSIONS PREPARED BY THE STAFF OF THE
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE



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PREFACE

"Federal Data Banks and Constitutional Rights" represents the culmination of years of study and intensive investigation by the Constitutional Rights Subcommittee. This survey and analysis of the data systems containing personal information about individuals maintained by agencies of the Federal Government grew out of the increasing public and Congressional concerns about government invasions of privacy that came into focus in the mid-1960's. The knowledge that the Federal Government was rapidly taking advantage of new and startling developments in data processing and telecommunications heightened fears that the privacy and individual liberties of American citizens would be soon overwhelmed by the government's voracious appetite for personal information about each of us.

A government called upon to manage an increasingly complex modern society and to satisfy ever-widening demands of the people for services has come to require more and more information, as well as more and more effective means to handle it. Only in the last few years has it become widely recognized that the new information technology gives government great opportunities to do ill, as well as good. The Founding Fathers knew well that with power comes the ability to do harm. The fundamentals of our constitutional system require us always to ensure that governmental power is sufficiently constrained by law so that as much as is humanly possible the power of government is used for good alone, and that our nation continues to have a government subject to the people, and not the reverse. We have slowly come to the realization that this is true no less for information practices as it is for other of Government's activities.

The subcommittee's early investigations of government data banks and individual rights disclosed not only a disturbing absence of laws to control the new information capabilities of government, but an equally disturbing absence of knowledge of what data banks the government had, what they contained, and what they were used for. As the subcommittee prepared for its 1971 hearings on "Federal Data Banks, Computers and the Bill of Rights," it began to discover, often by the merest chance and good fortune, all manner of peculiar data banks. A Secret Service memorandum asking, among other things, for information on persons who make anti-government remarks or embarrassing statements about government officials was sent to the subcommittee in an unmarked envelope. A Department of Health, Education, and Welfare blacklist on scientists and advisors was disclosed by the scientific community which became concerned about the unexplained failure of prominent persons to be appointed to advisory boards for which they were eminently qualified. A magazine article revealed the Army computer system of political surveillance.

These accidental discoveries of worrisome data banks persuaded me that a comprehensive survey of government data banks was a necessary

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precondition to any legislative activity to protect privacy. Accordingly, in 1970 I directed the staff to commence a government-wide survey in preparation for the 1971 hearings. The task proved far more extensive and difficult than I had expected.

Although the survey was just getting underway at the time of the hearings in the spring of 1971, some tentative conclusions were already apparent. As I stated then:

The replies we are receiving are astounding, not only for the information they are disclosing, but for the attitudes displayed toward the right of Congress and the American people to know what Government is doing.

In some cases, the departments were willing to tell the subcommittee what they were doing, but classified it so no one else could know. In one case, they were willing to tell all, but classified the legal authority on which they relied for their information power.

Some reports are evasive and misleading. Some agencies are high-minded and take the attitude that the information belongs to them and that the last person who should see it is the individual whom it is about.

* * * * *

The subcommittee has discovered numerous instances of agencies starting out with a worthy purpose but going so far beyond what was needed in the way of information that the individual's privacy and right to due process of law are threatened by the very existence of files.

Now that the survey has been completed, these preliminary observations have been substantiated. The most significant finding is that there are immense numbers of government data banks, littered with diverse information on just about every citizen in the country. The 54 agencies surveyed were willing to report 858 of them, containing more than 1¼-billion records on individuals.

Finding out about these systems has been a difficult, time-consuming, and frustrating experience. The inherent aversion of the Executive Branch to informing Congress and the people about what they are doing is not restricted to matters of high-policy, national security, or foreign policy. An attitude approaching disdain infects even requests for basic non-sensitive data such as this survey sought. The subcommittee met evasion, delay, inadequate and cavalier responses, and all too often a laziness born of a resentment that anyone should be inquiring about their activities. Some agencies displayed their arrogance by not replying at all. With others, extracting information was like pulling teeth. These remarks should not detract from our appreciation for the fine cooperation the subcommittee received from a great many agencies.

The most basic lesson the subcommittee's survey teaches is the absolute necessity of replacing this voluntary survey approach with a statutory requirement that all federal data banks be fully and accurately reported to the Congress and the American people. This study of Federal Data Banks and Constitutional Rights also demonstrates the need for requiring:

- explicit statutory authority for the creation of each data bank, as well as prior examination and legislative approval of all decisions to computerize files:

- privacy safeguards built into the increasingly computerized government files as they are developed, rather than merely attempting to supplement existing systems with privacy protections;
- notification of subjects that personal information about them is stored in a Federal data bank and provision of realistic opportunities for individual subjects to review and correct their own records;
- constraints on interagency exchange of personal data about individuals and the creation of interagency data bank cooperatives;
- the implementation of strict security precautions to protect the data banks and the information they contain from unauthorized or illegal access;
- continued legislative control over the purposes, contents and uses of government data systems.

This study of "Federal Data Banks and Constitutional Rights" is intended as an aid to the Congress in evaluating a number of pending legislative proposals designed to meet these needs.

In the pages that follow, the results of the survey are discussed in more detail. The survey as a whole is intended to be used as a working document for Congress, the Executive and the public. By including a minimum of commentary in favor of reprinting pertinent parts of the agencies' own responses, the survey allows the systems and their users to speak for themselves. To my mind what they have to say is profoundly disturbing.

Hopefully the survey will provide a spur to more intensive public investigation and increased self-correction and improvement by the agencies themselves and the executive branch as a whole. This study is also intended to serve as a necessary foundation for legislative work before this Congress and in the future.

Many people have worked on this project, and they deserve the thanks of the subcommittee for what must have often seemed a thankless task. The survey was conceived and prepared by Marcia MacNaughton, a long-time and invaluable professional staff member. She was aided by Judith Futch, subcommittee counsel. The study was continued and completed by Dorothy Glancy, staff counsel, to whom fell the task of analyzing and collating the many responses into a coherent whole. Many research assistants and legal interns contributed to the survey. Among them were Charles E. Bohlen, Herbert S. Kerr, Jonathan Lowe, James L. Stuart, as well as Cecilia Benton, Debbie Coleman and Betsy Cohen. The work of typing the survey materials and questionnaires was shared by all the subcommittee's secretarial staff; but an unusual burden fell on Lydia Grieg, Chief Clerk, and Sylvia Muszalski. The long manuscript was prepared for printing by George Downs, Sr., who was assisted by Corabel Price and Frank Eichhof, all from the Government Printing Office. The work of the survey was done under the general direction and supervision of Lawrence M. Baskir, Chief Counsel and Staff Director. The subcommittee owes each of these a debt of gratitude for their work on this important study.

SAM J. ERVIN, Jr.,

Chairman, Constitutional Rights Subcommittee.

CONTENTS

| | Page |
|---|------|
| Preface..... | iii |
| Historical Context..... | 1 |
| Legislative Context..... | 7 |
| The National Data Center Proposal..... | 7 |
| Government Dossiers and Data Banks..... | 10 |
| Census Forms and Federal Questionnaires..... | 12 |
| Rights of Federal Employees..... | 14 |
| The Freedom of Information Act..... | 17 |
| Federal Data Banks Legislation..... | 18 |
| The Fair Credit Reporting Act..... | 19 |
| Criminal Justice Information Systems..... | 19 |
| Financial Privacy..... | 20 |
| Electronic Data Collection..... | 20 |
| Special Privacy Committee Proposals..... | 23 |
| Conclusion..... | 23 |
| Privacy and the Constitutional Rights Subcommittee..... | 25 |
| Origin of the Survey..... | 26 |
| Summary of Findings..... | 31 |
| Number of Records..... | 32 |
| Computerization..... | 33 |
| Categories of Data Banks..... | 33 |
| Blacklists..... | 33 |
| Statutory Authority..... | 35 |
| Subject Notification and Review..... | 36 |
| Access by Other Agencies..... | 37 |
| Public Access..... | 39 |
| Security Precautions..... | 40 |
| Sources of Information..... | 42 |
| Conclusion..... | 42 |
| Tabular Summaries..... | 43 |
| Table 1—Number of Data Banks, Computerization and Number of Records..... | 43 |
| Table 2—Categories of Data Banks..... | 44 |
| Table 3—Statutory Authority..... | 45 |
| Table 4—Subject Notification..... | 46 |
| Table 5—Subject Review..... | 47 |
| Table 6—Access by Other Agencies..... | 48 |
| Table 7—Public Access..... | 50 |
| Table 8—Security Precautions..... | 51 |
| Table 9—Sources of Information..... | 52 |

THE HISTORICAL CONTEXT¹

This study of the impact of Federal data banks on Constitutional Rights is essentially a study of privacy and how it has been eroded by governmental collection and dissemination of information about people. In the context of this study, privacy refers to the capacity of the individual to determine what information about that individual will be collected and disseminated to others. Privacy also involves a subjective sense of self-determination and control over personal information. It is bound up with fundamental concepts of individualism and pluralism which are basic to our society and institutions.

It is important to note at the outset of this study of Federal Data Banks and Constitutional Rights that the word "privacy" nowhere appears in the Constitution. Nor does any discussion of a right to privacy appear in any of the documents left by the framers of the Constitution and the Bill of Rights. Privacy is, rather, one of those rights reserved to the people, which are implicit in the entire scheme of constitutional government limited to the exercise of only those powers expressly conferred upon it by the people through the Constitution.

Subsequent amendments to the Constitution buttressed what Justice Brandeis described as the right of the individual to be "let alone"² by expressly prohibiting certain kinds of particularly feared governmental interferences with individual privacy. The first amendment shields individual freedom of expression, religion, and association from an officious government. The third, fourth, and fifth amendments forbid unwarranted governmental intrusion into the private persons, homes and possessions of individual citizens. The ninth amendment expressly reserves to "the People" rights, such as privacy, not enumerated in the Constitution. The fourteenth amendment's guarantee that citizens cannot be deprived of life, liberty or property without due process of law, provides an additional bulwark against governmental interference with individual privacy.

As a legal concept, an independent right of privacy was first prominently discussed by the renowned Judge Cooley in his *Treatise on the Law of Torts*, originally published in 1879. In discoursing on "The Right of Privacy," Judge Cooley asserted that "The right to one's person may be said to be a right to complete immunity: to be let alone."³ Then, in 1890, Samuel D. Warren and Louis D. Brandeis published an article, "The Right to Privacy," that was to become a classic—and generated an interest that has burgeoned ever since. The authors were inspired by personal outrage over frequent abuses by a then novel breed of snooper—the photographer, professional and amateur.⁴ Warren and Brandeis were concerned about non-governmental invasions of privacy and the right of an aggrieved individual to sue for damages another person who invaded his privacy.

¹ This historical introduction is based on a report prepared by Eileen M. Bartscher of the Science Policy Research Division, Congressional Research Service, Library of Congress.

² *Olmstead v. United States*, 277 U.S. 438, 478 (1927) dissenting opinion.

³ Thomas M. Cooley, *A Treatise on the Law of Torts* . . . , 1888 ed., p. 29.

⁴ *Harv. L. Rev.* 193 (1890).

At the end of the nineteenth century, government was apparently not yet perceived as sufficiently intrusive to arouse protest. Considering the government's relatively minimal ability to store, interrelate and disseminate what information it did collect, this lack of interest in governmental invasions of privacy is not surprising. Moreover, the existence of the frontier meant that individuals who wanted to get away from the government and its data collection, for whatever reason, could go West and leave the past behind.

It took the scientific and technological revolutions of this century, together with the trend toward centralizing more and more power in government, to bring the privacy issue to the fore. In other words, it was the greatly increased governmental capacity to create massive Federal data banks containing intimate details about the personal lives of individuals, which raised the issue of the impact of these data banks on constitutional rights as a major social and political concern.

The rapid development of information-gathering and communications technologies in the latter half of the nineteenth century set the stage for the privacy controversy which followed over a hundred years later. Photography processes and equipment became easier, less expensive and more mobile. Wiretaps were invented with the telegraph in the 1860's. Telephones and telephone-line taps followed, as well as microphones and various sound-recording devices. By the early 1900's, electronic surveillance was an established method of investigation on the part of both police and private detectives.

Early in this century, some Members of Congress and aggrieved parties in the courts protested against invasions of privacy; but the issue of surveillance—by camera, wiretap, sound-recording, etc.—remained unresolved during the first half of the twentieth century. In congressional debate on these issues, the propriety of surveillance frequently became entangled with law enforcement and national security issues. Ambivalence marked the public's response, which was an odd combination of awe in the face of sophisticated technology, respect for police and security functions, fear of persecution of unpopular views and activities, and indifference.

Also in the early decades of the twentieth century, new technologies of recording and assessing individual personality became available. Polygraphs and personality tests began to be used to record and to measure the most intimate recesses of the human personality. Polygraphs (so-called "lie-detectors") were developed as a police tool in the late 1920's. Personality tests, based on the then newly created sciences of psychology and psychoanalysis, gained respectability through their extensive use by the military during World Wars I and II. Such techniques did not arouse much public antagonism in these years of limited application.

At the same time, communications technologies—from the typewriter to new printing processes, to radio and swifter mail service based on faster means of transportation—brought more and more current information into the hands of more and more people. The technologies of information dissemination were themselves developing concurrently with the development of new methods of collecting information. The public response was generally enthusiastic.

By mid-century (1945-1965), the United States was characterized by even more rapid technological advances and increased reliance on

"scientific" methods. Electronic surveillance devices became more powerful, more versatile, smaller and cheaper. Polygraphs became an increasingly popular personnel tool among both private and public employers. Personality tests were embraced by many groups and accepted as a routine procedure in schools, industry and government. Communications technologies developed apace. Most important, computers became an integral part of the nation's record-keeping activities.

At about the same time, there was a growing demand for both administrative personal data and statistical information about individuals. The social service responsibilities of the federal government greatly expanded during the "New Deal" era; and these new mandates stimulated the need for facts on which to base planning, programming and budgeting decisions. In the many cases where the allocation of federal grants was made to depend on the population characteristics of a given area, the collection of highly detailed information about such population groups by the federal and state governments⁵ became essential. Added emphasis in the private sector on social and biomedical research began to involve the gathering of much personal data, sometimes shared with a financially supporting federal agency.⁶ In the private sector, business concerns began to collect detailed information about many aspects of their operations, particularly for tax and marketing purposes. During this period, too, a mobile population discovered the convenience of credit cards. The success of the credit reporting industry in marketing information about consumers has given rise to predictions of an efficient "cashless society," and also to apprehension about "financial privacy."

As Americans began to relinquish more and more personal information in response to numerous governmental and private sector requirements, fears of losing privacy and freedom began to be articulated. Labor, in particular, voiced its opposition to the use of lie detectors in business, and in the early 1960's both Congress and the executive branch began to investigate the use and propriety of polygraphs. Personality tests roused the ire of conservative groups alarmed at their potential for producing conformity among schoolchildren. As their use became pervasive, however, diverse groups began to object to these tests as being unreliable, unscientific, and an infringement of individual rights. In the mid-1960's several best sellers, including *The Organization Man* (1965), *The Brain Watchers* (1962), *The Naked Society* (1964), and *The Privacy Invaders* (1964), aroused public opinion by focusing on growing trends toward depersonalization and loss of individual privacy.

About this same time, computers began to produce noticeable effects on American society. Congressional hearings noted the growing use of automatic data processing by the federal government, and its impact on established patterns of data collection and interagency information sharing. Soon after the Internal Revenue Service adopted computer procedures in 1963, citizens became obliged to indicate their Social Security number on tax forms. By the mid-1960's, too, growing numbers of state and local law enforcement agencies began to automate

⁵ U.S. Department of Health, Education and Welfare, Secretary's Advisory Committee on Automated Personal Data Systems, op. cit., p. 91.

⁶ Ibid., p. 92.

various aspects of their operations, such as fingerprint identification, analysis of crime characteristics, and retrieval of criminal histories. The computerization of consumer reports by the credit industry made "credit checks" on individuals feasible within seconds. The trend towards centralizing and manipulating information, especially personal information, in computerized data banks began to be viewed with apprehension by a growing number of both politicians and private citizens.

The anxieties generated by these privacy concerns were galvanized in the mid-1960's by discussion in the Executive Branch of proposals for a computerized federal statistical center, a "National Data Center."⁷ This plan was labeled in the press, and before Congress, as a giant step towards centralization of power, de-personalization, and realization of the totalitarian society George Orwell portrayed in his novel, *1984*. Proponents of the "National Data Center" idea defended the concept at committee hearings during the 89th and 90th Congresses as a means to improve the efficiency of government functions and private research efforts. However, when Congress and the public expressed unqualified objection to this national data bank proposal, which would have had profound effects on personal privacy and individual freedom from government control, the proposal was abandoned.

The legislative response to privacy concerns during the period 1965 to 1972 is the subject of the next section. However, it is important to note here the broad scope of Congressional activity. Some of the subjects considered during this period include:

- Creation of a National Data Center
- Data banks currently maintained by Federal agencies
- Use of data banks to collect political intelligence
- Surveillance methods of Federal law enforcement agencies
- Commercial credit bureaus
- Census questions
- Unsolicited mail
- Criminal arrest records
- Privacy of federal employees

It is important also to note that of the many legislative proposals pertaining to these privacy issues which were introduced in the 89th through 92nd Congresses, only two major public laws were enacted which directly address the problem: the "Omnibus Crime Control and Safe Streets Act of 1968" (P.L. 90-351) contains provisions that limit the legal use of wiretaps to police-related activity under specified conditions; the "Fair Credit Reporting Act" (P.L. 91-508), approved three years later, in 1971, gives credit customers the right to receive notification of consumer agency reports that result in negative actions taken against them, to know the content of their files, and to challenge disputed data.

During the past decade, faced with public and Congressional outrage over invasions of privacy, several executive agencies have expressed concern over the effects of statistical and behavioral research on individual privacy. In 1966, the Bureau of the Budget issued the report of the "Task Force on the Storage of and Access to Government Statistics," which briefly considered the questions regarding privacy and confidentiality raised by the National Data Center pro-

⁷ The legislative history of this concept is traced in the section below.

posal. The task force recommended that Congress define statutory standards governing the disclosure of personal information collected by the government, and that these standards be enforced by the Director of the Federal Statistical System.⁸ One year later, the Office of Science and Technology issued a paper on "Privacy and Behavioral Research" that discussed the ethical responsibilities of social scientists engaged in studies of human behavior, especially research sponsored by the federal government. In 1971, an evaluation of federal statistical systems was published by a special presidential commission as a two-volume report on *Federal Statistics* containing several chapters on privacy considerations. The commission recommended that public confidence in federal data gathering be increased by strengthening legal safeguards and by establishing an independent advisory board to handle public grievances.⁹

In July 1973 an advisory committee appointed by the Secretary of Health, Education and Welfare issued a report on *Records, Computers, and the Rights of Citizens*. This HEW advisory committee examined the potential privacy hazards of computer-based record-keeping and the trend towards using the Social Security number as an all-purpose identifier. The HEW advisory committee concluded that excessive use of the Social Security number should be curtailed, in part to allay public fears of governmental intrusion and surveillance. The HEW advisory committee also recommended that citizens be informed as to the nature of information concerning them in government files, and be given meaningful rights to access, control, and correct such data.¹⁰

The response of America's private sector to privacy issues from 1965 to 1972 has included:

- Law review and journal articles discussing the impact of information technology on civil liberties. (The law schools of Columbia University and Duke University have devoted entire issues of their respective periodicals to privacy considerations.)¹¹
- Newspaper and magazine articles focusing on "the assault on privacy."¹²
- Computer industry speeches, publications and the like reflecting an awareness of the privacy problem with an added emphasis on the development of physical security measures.¹³
- Studies by private research organizations of privacy-related issues. (In 1967, for example, the Rand Corporation published the first of a two-part annotated bibliography on privacy and computers, as well as a paper by Paul Armer entitled "Social Implications of the Computer Utility." The Stanford Research Institute published in 1973 a study of *Computer Abuse*.)

⁸ U.S. Bureau of the Budget, Task Force on the Storage of and Access to Government Statistics; Report, Washington, 1966, Annex.

⁹ U.S. President's Commission on Federal Statistics, *Federal Statistics*; Report, Vol. I, Washington, 1971, p. 3.

¹⁰ U.S. Department of Health, Education, and Welfare, Secretary's Advisory Committee on Automated Personal Data Systems, op. cit., xix-xxxv.

¹¹ Columbia Human Rights Law Review, vol. 4, Winter, 1972; *Privacy, Law and Contemporary Problems* (Duke University School of Law) Vol. 31, Spring, 1966.

¹² The following three articles illustrate some popular literature on the privacy issue in recent years. (A) A Government Watch on 200 Million Americans? U.S. News and World Report, May 16, 1969: 56-59. (B) Packard, Vance. Don't Tell It to the Computer. New York Times Magazine, Jan. 8, 1967: 4. (C) The Invasion of Privacy. Saturday Review, Apr. 17, 1971: 18.

¹³ To cite the International Business Machines Corporation as an example, see: (A) Watson, Thomas J. Technology and Privacy; Address before the Commonwealth Club of California, San Francisco, Calif. Apr. 5, 1968. (B) Privacy: A Special Report. Think (The IBM Corp.) v. 35, May-June 1969: 12-32. (C) The Considerations of Physical Security in a Computer Environment. IBM, 1972, 37 p.

This period was also marked by the appearance of many books, sensational and scholarly, on the subject of privacy rights in a technological age. The earlier books tend to catalog and comment upon the many current privacy-invading devices and techniques. Among these texts, a comprehensive treatment is provided by Alan Westin's *Privacy and Freedom* (1967) and by Arthur Miller's *The Assault on Privacy* (1971).

Beginning in 1970, concern turned to the impact of computer technology on society. This trend reflects the growing national focus on proper control of an immensely powerful tool for the manipulation of information lest it erode our freedoms. For example, Malcolm Warner and Michael Stone, British authors of *The Data Bank Society: Organizations, Computers, and Social Freedom* (1970), have called for re-evaluation of goals, new restrictions on the collection and exchange of information, and improved security measures. In their opinion, the controlled use of computer technology will expand personal freedom rather than restrict it.¹⁴

In 1972 the National Academy of Sciences published *Databanks in a Free Society*, an important empirical study which summarizes the results of a three-year project challenging some widely held assumptions about the effects of computerization on large-scale personal information systems. Based partly on fifty-five detailed on-site visits, the authors, Alan Westin and Michael Baker, assessed the impact of automatic data processing on the practices and policies of many organizations. Their analysis featured these two conclusions:

(1) The new capacity of the computer to store, consolidate, and share confidential information has not led, inevitably, to greater collection and manipulation of such data.

(2) In computerizing files on individuals, organizations have generally adhered to their traditional administrative policies regarding the collection and sharing of data. The most sensitive personal information is still maintained in manual files.¹⁵

The report recognizes, however, that computers have brought about a dramatic and increasing expansion of information networks with attendant impact on individual privacy. Proper legal restraints on data-sharing have become imperative. Other policy suggestions include publication of "A Citizen's Guide to Files," new limits on the collection of personal information, development of effective technological safeguards, limits on the use of the Social Security number, and the establishment of "information-trust agencies" to hold particularly sensitive bodies of personal data.

In light of this general historical background, the next section will focus more specifically on the legislative response to these privacy concerns.

¹⁴ Warner, Malcolm, and Michael Stone. *The Data Bank Society: Organizations, Computers and Social Freedom*. London, George Allen & Unwin Ltd., 1970. p. 224.

¹⁵ Westin, Alan F., and Michael A. Baker. *Databanks in a Free Society: Computers, Record-Keeping, and Privacy*. New York, Quadrangle Books, 1972. p. 341-342.

THE LEGISLATIVE CONTEXT (1965-72)¹⁶

The rapid social, political and technological developments, described in the previous section, led the Congress to become increasingly concerned about the Federal Government's growing and apparently unrestrained "information power." Reacting to widespread public anxiety about government recordkeeping, the Congress began to inquire into the information policies and practices of the Federal Government which was fast becoming a comprehensive repository of vast amounts of personal data about individual citizens. During the past decade the Congress has repeatedly asked such questions as:

- What personal information should be collected by the Federal Government?
- What means should be used to obtain it?
- Who should have access to it?
- To what extent and under what conditions should information gathered for one purpose be made available for another?
- What rights do citizens have with respect to these data banks?

This study of Federal Data Banks and Constitutional Rights is a part of an expanding legislative inquiry into governmental infringement of individual privacy. The general legislative background of various aspects of the privacy issue, which were considered by the past four Congresses (meeting between 1965 and 1972), is particularly important to an understanding of this study.¹⁷ The development of the Constitutional Rights Subcommittee's interest in privacy is the subject of the next section, "Privacy and the Constitutional Rights Subcommittee."

The National Data Center Proposal.

The current legislative controversy over the impact of Federal data banks on individual privacy began in the mid-1960's when, as mentioned in the preceding section, a national data bank called the "National Data Center" was proposed to collect and centralize planning and research data on the population.

In the years following the second World War the federal government markedly increased in size and added many new dimensions

¹⁶ This section is based on a report prepared by Eileen M. Bartscher, Science Policy Research Division, Congressional Research Service, the Library of Congress.

¹⁷ Legislative Proposals Related to Privacy (1965-72):

| | CONGRESSES | | | |
|-------------------|-----------------|-----------------|-----------------|-----------------|
| | 89 (1965-66) | 90 (1967-68) | 91 (1969-70) | 92 (1971-72) |
| House bills..... | 13 | 80 | 139 | 77 |
| Senate bills..... | 2 | 10 | 11 | 10 |
| Total..... | 15 | 90 | 150 | 87 |

Source: U.S. Library of Congress. *Digest of Public General Bills and Resolutions*. Washington, 1965-72.

to its activities. As the planning, programming, and budgeting functions of federal agencies became more complex, the use of and demand for statistical data in machine-readable form also grew. By the late 1950's, the supply of such statistical information could not equal the demand from academic and private research groups as well as from government agencies. In 1959 the American Economic Association recommended that the Social Science Research Council explore the problem of developing and preserving important bodies of "microdata" information about individual Americans. One year later the Council created a Committee on the Preservation and Use of Economic Data, chaired by Richard Ruggles.

After four years of study, the committee submitted a report to the Social Science Research Council, which subsequently, referred it for review to the Bureau of the Budget. The "Ruggles Report," as it came to be known, included the following recommendations:

First, . . . that the Bureau of the Budget, in view of its responsibility for the Federal statistical program, immediately take steps to establish a Federal Data Center.

Second, . . . that the Office of Statistical Standards of the Bureau of the Budget place increased emphasis on the systematic preservation in usable form of important data prepared by those agencies engaging in statistical programs.

Third, . . . that at an early date the Social Science Research Council convene representatives from research institutions and universities in order to develop an organization which can provide a clearinghouse and coordination of requests for data made by individual scholars from Federal agencies.¹⁸

Shortly after receiving this report, the Bureau of the Budget hired Edgar S. Dunn of Resources for the Future, Inc., to evaluate the above recommendations and to study ways of implementing them. The Dunn critique, submitted in December 1965, strongly supported the proposal for a National Data Center. It cited numerous deficiencies in the present Federal statistical system and discussed the functions and technical requirements of the proposed center.

As the recommendations of these two reports became more widely known, Congress responded with sharp concern over the implications for privacy and other civil liberties inherent in the process of centralizing data on individuals. On June 14, 1966 Dr. Dunn appeared before the Senate Subcommittee on Administrative Practice and Procedure, to answer questions about the contents of what subcommittee chairman, Senator Edward V. Long termed a "single machine age information reservoir."¹⁹ Dr. Dunn stressed the fact that only traditional records containing non-sensitive information would be stored in the proposed center. He argued that the issue of individual privacy in such a system was basically specious and that the public good would be greatly served by the centralized collection of relevant data for planning, administration, and program evaluation.

¹⁸ U.S. Congress. House. Committee on Government Operations. Special Subcommittee on Invasion of Privacy. *The Computer and Invasion of Privacy. Hearings, 89th Congress, 2d session. July 26-28, 1966.* Washington, U.S. Govt. Print. Off., 1966. Appendix 1, p. 195.

¹⁹ U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Administrative Practice and Procedure. *Invasions of Privacy. Hearings, 89th Congress, 2d session. Part 5.* Washington, U.S. Govt. Print. Off., 1967. p. 2388. (Hearings held Mar. 23-30; June 7-16, 1966.)

This reassurance did not allay congressional skepticism and concern. One month later the Special Subcommittee on Invasion of Privacy of the House Committee on Government Operations held hearings to consider the impact of computerized information systems on the individual. The special subcommittee described its objectives:

"What we are looking for is a sense of balance. We do not want to deprive ourselves of the rewards of science; we simply want to make sure that human dignity and civil liberties remain intact. We would like to know just what information would be stored in a National Data Center; who would have access to it; who would control the computers; and, most importantly, how confidentiality and individual privacy would be protected. Thought should be given to these questions now, before we awaken some morning in the future and find that the dossier bank is an established fact and that liberty as we know it vanished overnight."²⁰

Richard Ruggles and Edgar Dunn testified before this special subcommittee, along with other representatives from the academic and legal communities and government agencies. Much of the discussion focused on the problem of safeguarding information in data banks. Expert testimony summarized the state of computer technology and speculated on future trends.

In light of this congressional reaction, the Bureau of the Budget commissioned another study to further explore "measures which should be taken to improve the storage of and access to U.S. Government statistics."²¹ The Task Force on the Storage of and Access to Government Statistics, directed by Dr. Carl Kaysen, issued its report in October 1966. This paper reiterated the conclusions of the Ruggles and Dunn reports, with more consideration given to the organization and functioning of a National Data Center. In an annex entitled "The Right to Privacy, Confidentiality, and the National Data Center," the Committee recommended that Congress set standards of disclosure and that the responsibility for enforcement be given to a "Director of the Federal Statistical System."

Dr. Kaysen was among witnesses called before the Senate Subcommittee on Administrative Practice and Procedure which, in March 1967, launched a series of hearings on "computer privacy." Again, as proponents and critics of the National Data Center argued their points of view, the subcommittee attempted "to draw a balance between individual privacy and computerized efficiency."²²

In the midst of this public debate, in August 1967, the Joint Economic Committee issued a report which concluded that current statistical information did not meet the needs of the nation. The report recommended that immediate steps be taken towards integrating government statistical programs and advocated the establishment of a "national statistical servicing center."²³

²⁰ U.S. Congress. House. Committee on Government Operations. Special Subcommittee on Invasion of Privacy, op. cit., p. 3.

²¹ U.S. Bureau of the Budget. Report of the Task Force on the Storage of and Access to Government Statistics. Washington, 1966. p. 1.

²² U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Administrative Practice and Procedure. *Computer Privacy. Hearings, 90th Congress, 1st session. March 14 and 15, 1967.* Washington, U.S. Govt. Print. Off., 1967. p. 2.

²³ U.S. Congress. Joint Economic Committee. Subcommittee on Economic Statistics. *The Coordination and Integration of Government Statistical Programs; Report.* Washington, U.S. Govt. Print. Off., 1967 (90th Congress, 1st session. Joint Committee Print) p. 9.

This report did not, however, offset doubts that lingered in Congress after the thorough investigations of the House and Senate subcommittees. In 1968, a report by the House Committee on Government Operations entitled "Privacy and the National Data Bank Concept" summed up congressional response to the proposal. The committee concluded, on the basis of the testimony before it, that the National Data Center concept posed serious problems regarding the collection, use, and security of personal information. The committee strongly advised against establishing such a National Data Center until the technical feasibility of protecting automated files could be fully explored and privacy guaranteed. In a series of recommendations to the Bureau of the Budget, the committee proposed that future plans include an independent supervisory commission, to regulate the extent and operations of a National Data Center, and procedures by which the standing committees of Congress could access the data bank.²⁴ The National Data Center concept has not been revived as a realistic legislative proposal in succeeding Congresses.

Government Dossiers and Data Banks

In 1966, as debate over the proposed National Data Center gathered momentum, the Senate Judiciary Subcommittee on Administrative Practice and Procedure initiated a survey of "Government Dossiers" to determine "the amount, nature, and use of information which Government agencies currently maintain on individuals."²⁵ Analysis of the completed questionnaires (published one year later as a committee print) revealed that in the mid-1960's, Federal files contained more than three billion records on individual citizens.²⁶ Nearly one-half of these records were then retrievable by computer; they reportedly included over 27.2 billion names, 2.3 billion present and past addresses, 264.5 million criminal histories, 279.6 million mental health records, 916.4 million profiles on alcoholism and drug addiction, and over 1.2 billion financial records.²⁷ This study concluded that the majority of Government forms require some irrelevant information from individuals and that, in many instances, confidentiality provisions are non-existent or not meaningful.²⁸

Five years later, early in the Ninety-second Congress, the Senate Subcommittee on Constitutional Rights held hearings to conduct a broad review of the implications for civil liberties posed by the unfettered expansion and automation of Government files. In an introductory statement, delivered on the first of eleven days of hearings on "Federal Data Banks, Computers and the Bill of Rights," Chairman Sam J. Ervin, Jr., discussed the mixed blessings of computer technology. Despite the great benefits derived from information science, in terms of efficiency, he observed that "the increased use of government and private computer-based systems is making it vastly more economical to acquire and store information about people for

²⁴ U.S. Congress, House, Committee on Government Operations, *Privacy and the National Data Bank Concept*; Report, Washington, U.S. Govt. Print. Off., 1968, (90th Congress, 2d session, House, Report no. 1842) p. 8.

²⁵ U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Government Dossier*, (Committee print) Washington, U.S. Govt. Print. Off., 1967, p. 7.

²⁶ *Ibid.*, p. 9.

²⁷ U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Constitutional Rights, *Federal Data Banks, Computers, and the Bill of Rights*, Hearings, 92d Congress, 1st session, Part I, Washington, U.S. Govt. Print. Off., 1971, p. 574, Hearings held Feb. 23-Mar. 17, 1971.

²⁸ U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Government Dossier*, 1967, p. 8.

reasons which should give us serious pause."²⁹ Senator Ervin expressed confidence, however, that the Congress would be capable of "harnessing" computer technology to assure that it is used to benefit, rather than threaten, the public interest.

The first issue explored by the subcommittee in the 1971 hearings was the reported use of military computer systems to store personal dossiers on civilians involved in lawful political activity. The testimony of several former Army intelligence agents supported the validity of this charge. They detailed the scope of the Army's domestic intelligence operations, which had gradually extended to virtually all groups and individuals engaged in any form of political protest.³⁰ Assistant Secretary of Defense Robert Froehlke maintained that this activity was initiated in the late 1960's in response to the threats to domestic tranquility posed by racial tensions and violent anti-war sentiment. In retrospect, he admitted that these "crisis-oriented decisions" were "inappropriate";³¹ and he reported the adoption of new regulations by the Army and the Department of Defense to limit such activity in the future.³² At the hearings Professor Arthur R. Miller expressed the concern of many civil libertarians:

"It is not essential that dossiers, files, surveillance, actually are used to repress people. If these activities give the appearance of repression, that in and of itself has a chilling effect on the precious rights guaranteed to us by the Constitution . . . 1984 is a state of mind."³³

Included in the roster of witnesses called before the subcommittee were several high-ranking civil servants. Elliot Richardson, Secretary of Health, Education, and Welfare, described the general nature, extent and purpose of automated information systems under his jurisdiction. He discussed procedures in effect at the Department of Health, Education, and Welfare to ensure the privacy of personal information and expressed confidence that the computer could function as "a giant combination safe."³⁴ Department of Transportation Secretary John Volpe explained the history and benefit of the automated "National Driver Register," which helps to identify "problem" drivers making unlawful applications for drivers licenses. Assistant Attorney General William Rehnquist discussed the legal basis for the Department of Justice's data collecting activities. He and other Justice Department officials described the current state of computerized criminal information systems and strongly defended the necessity for their use by law enforcement officials.

This study of "Federal Data Banks and Constitutional Rights" represents the third segment of this Constitutional Rights Subcommittee inquiry into the impact of Federal data banks on individual privacy. As discussed below in greater detail, this study is the culmination of over four years of effort to find out the nature and scope of the data banks maintained by federal agencies.

²⁹ U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Constitutional Rights, *Federal Data Banks, Computers and the Bill of Rights*, Hearings, 92d Congress, 1st session, Part I, Washington, U.S. Govt. Print. Off., 1971, p. 3, Hearings held Feb. 23-25, Mar. 2-17, 1971.

³⁰ *Ibid.*, p. 184.

³¹ *Ibid.*, p. 431.

³² *Ibid.*, p. 392-398.

³³ *Ibid.*, p. 10-11.

³⁴ *Ibid.*, p. 785.

Census Forms and Federal Questionnaires

Congress in the mid-1960's also expressed increasing concern about the 1970 decennial census. The census provided a natural focus for the growing legislative concern over individual "rights to privacy" versus governmental prerogatives to collect and use personal information.

In August 1966, during the Eighty-ninth Congress, the House Committee on Post Office and Civil Service held a series of hearings on the questions proposed for the 1970 Census of Population and Housing. In testimony before the Committee, Representative Gallagher congratulated the Bureau of the Census on inaugurating a mail-out, mail-back system that would have the effect of increasing the privacy of returns. However, noting that the forms were machine-readable, he worried aloud that "the computerization of such information could lead to the premature establishment of a national data bank."³⁵ As a result of these hearings, the committee recommended that information on religious affiliation, social security number, the physically and mentally handicapped, and registration and voting records not be collected as part of the 1970 Census program. The Bureau of the Census, accordingly, eliminated these questions from consideration.

During the Ninetieth Congress, the Subcommittee on Census and Statistics of the House Committee on Post Office and Civil Service convened to hear arguments for and against H.R. 10952, "a bill to amend title 13, United States Code, to limit the categories of questions required to be answered under penalty of law in the decennial censuses of population, unemployment, and housing, and for other purposes."³⁶ This legislation, introduced by Representative Jackson E. Betts of Ohio, proposed restricting coerced information on census forms to the following seven categories: (1) name and address; (2) relationship to head of household; (3) sex; (4) date of birth; (5) race or color; (6) marital status; and (7) visitors in home at time of census. All other questions would be answered voluntarily.

At the hearing Congressman Betts contended that the inclusion of many personal, mandatory questions on census forms contradicts the "constitutional intent" of the census, which is to count the people for congressional districting purposes.³⁷ He felt that a simplified form divided between required and optional questions would result in the collection of more information from a greater percentage of the population. After the hearing, no further action was taken on H.R. 10952, nor on the forty-four identical or similar bills introduced during the course of the Ninetieth Congress.

The Senate also expressed concern about enforcement of the census and approved S. 4062 on October 4, 1968. This bill would have eliminated the imprisonment penalty for refusal to answer or false response to "any census or survey conducted by the Department of Commerce," however, the House took no final action.

Legislative review of the decennial census intensified in the Ninety-first Congress (1969-1970). Congressman Betts introduced as H.R. 20 a modified version of his previous proposal. The modified bill provided for only six mandatory questions (excluding race) and the elimination of the imprisonment penalty for refusing to answer

³⁵ U.S. Congress, House, Committee on Post Office and Civil Service, 1970 Census Questions. Hearings, 89th Congress, 2d session, August 23-25, 1966. Washington, U.S. Govt. Print. Off., 1966, p. 7.

³⁶ U.S. Congress, House, Committee on Post Office and Civil Service, Subcommittee on Census and Statistics, Limit Categories of Questions in Decennial Censuses. Hearings, 90th Congress, 1st session on H.R. 10952, Oct. 24, 1967. Washington, U.S. Govt. Print. Off., 1968, p. 1.

³⁷ *Ibid.*, p. 2.

census questions or responding falsely. One hundred and thirty Members co-sponsored H.R. 20; and sixty-nine similar or identical bills were introduced during this Congress. Support for the Betts bill was not sufficient, however, to result in its passage by the House.

In April 1969, no fewer than three congressional committees were investigating controversies surrounding the 1970 decennial census. Before the House Post Office and Civil Service Subcommittee on Census and Statistics, Director A. Ross Eckler of the Bureau of the Census insisted that "every question included in the census has such important governmental uses that it qualifies for the census on that ground alone." The Subcommittee on Economic Statistics of the Joint Economic Committee also examined the nature and necessity of census questions. These hearings included a review of Federal statistical programs.

In the spring of 1969, the Senate Subcommittee on Constitutional Rights widened the scope of its concern about individual privacy to include the census and other Federal questionnaires. The basis of the Senate Constitutional Rights Subcommittee hearings on "Privacy, the Census and Federal Questionnaires" was S. 1791, a bill introduced by Senator Sam J. Ervin, Jr., to make it unlawful for any official of the United States Government to require disclosure of personal or financial activities for statistical purposes, except under authority of a specific act of Congress or provision of the Constitution. The Ervin bill required that the citizen be informed that disclosure of additional information is voluntary. At the same time, Senator Ervin expressed confidence in the cooperative spirit of the American public:

"It is my firm belief that Americans are a law-abiding people and that the great majority will respond as good citizens to their Government's reasonable request for disclosure of information, when the need to know is made clear, and when its methods are fair and just."³⁸

The Senate took no further action on S. 1791.

Meanwhile, on September 25, 1969, the House approved H.R. 12884, unanimously supported by the House Subcommittee on Census and Statistics. This bill was designed to broaden the possible scope of census questions; to give congressional committees with jurisdiction over the Bureau of the Census final authority over the content of census questionnaires; to eliminate the jail sentence penalty for either refusal to answer census questions or falsification of response; and to strengthen the confidentiality guarantees accorded census information. The Senate took no action on this legislation.

Although this congressional activity did not produce a specific federal statute, it was not without effect. In a letter to Senator Ervin, dated April 17, 1969, Secretary of Commerce Maurice Stans pledged the following changes in census policy:

- Proposed questions will be submitted to the appropriate committees of Congress two years in advance of future censuses;
- An increased number of representatives of the general public will be appointed to various advisory committees which contribute to the formulation of census questions;

³⁸ U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Constitutional Rights, Privacy, the Census, and Federal Questionnaires. Hearings, 91st Congress, 1st session on S. 1791. Washington, U.S. Govt. Print. Off., 1970, p. 8. Hearings held Apr. 24, 25; May 2; July 1, 1969.

- A blue-ribbon commission will be appointed to fully examine a number of important questions regarding the Census Bureau, including whether or not the decennial census can be conducted on a voluntary or a partially voluntary basis.³⁹

In the Ninety-second Congress (1971-72), the House Committee on Post Office and Civil Service issued a favorable report on H.R. 14153, a bill which provided for:

* * * a mid-decade sample survey of population to be taken every ten years, elimination of the jail sentence penalty for refusal to answer or false response to mandatory questionnaires and the extension of confidentiality provisions applicable to employees of the Department of Commerce to all employees of the Federal government.

No further action was taken on H.R. 14153, nor any of the other bills regarding census requirements brought before the Ninety-second Congress.

Rights of Federal Employees

For many years, certain administrative and personnel policies in Federal agencies have raised vigorous protest that individual rights such as privacy, which are guaranteed to all citizens by the Constitution, are denied to Federal employees. These protests relate to a variety of privacy-invasive practices, including a number of obtrusive data collection procedures such as requirements that Federal employees: provide data regarding their race, religion and national origin; report on their outside political, social and even sexual activities; unnecessarily disclose family financial assets; and submit to interviews, psychological tests and polygraphs designed to probe their personal feelings about religion, family and sex.

In the Eighty-ninth Congress, the Senate Subcommittee on Constitutional Rights conducted extensive hearings on this subject. The first focus of concern was psychological tests. The subcommittee convened four times in June of 1965 to examine the contents and validity of such tests, and to determine whether or not their administration threatens individual rights to privacy and due process.

The testimony reflected strong differences of opinion on the part of Government officials, legislators, psychiatrists, psychologists, writers, and law professors. Chairman John W. Macy of the Civil Service Commission defended the limited use of personality testing by qualified psychologist "in connection with medical determinations for employment or fitness for duty."⁴⁰ Dr. Arthur H. Brayfield, executive director of the American Psychological Association, in defining psychological tests as "a systematic refinement of the normal process of observation and evaluation,"⁴¹ stated: "I know of no other professional tool which has matched the effectiveness of psychological tests in assisting individuals to realize their civil and human rights—and personal potential."⁴²

Martin Gross, author of *The Brain Watchers*, who had extensively researched the subject of psychological testing, countered these views.

³⁹ *Ibid.*, p. 811.
⁴⁰ U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Constitutional Rights. Psychological Tests and Constitutional Rights. Hearings, 89th Congress, 1st session on Psychological Testing Procedures and the Rights of Federal Employees. June 7-10, 1965. Washington, U.S. Govt. Print. Off., 1966, p. 202.

⁴¹ *Ibid.*, p. 61.
⁴² *Ibid.*, p. 69.

He reported that a substantial number of psychologists believe that "personality testing is closer to alchemy and to other non-sciences than it is to the truth."⁴³ Professor Monroe Freedman also disputed the validity of psychological tests and argued against their use in Government employment as a violation of due process rights. In his judgment: "Whatever dubious good may come from dissecting, cataloging, and evaluating the personality characteristics of individual American citizens, it will never justify the great injury done to all of us, individually and as a society, in the process."⁴⁴

During the second session of the Eighty-ninth Congress, Senator Sam J. Ervin, Jr., introduced a bill to protect the constitutional rights of Federal employees. S. 3779 specifically prohibited any officer of an executive agency, to request or require Federal employees to submit to the following:

- (1) disclosure of race, religion, or national origin;
- (2) purchase of Government bonds or contribution to charity;
- (3) participation in political activities unrelated to work;
- (4) restrictions on patronizing certain business establishments;
- (5) reports on outside activity;
- (6) unnecessary disclosure of financial assets;
- (7) attendance at lectures designed to advise the employee on matters other than his work;
- (8) interrogation about misconduct without the presence of counsel or other selected persons;
- (9) interviews, psychological tests, or polygraphs which probe personal feelings about religion, close relationships, and sexual attitudes.

Thirty-five Senators cosponsored this proposal. Two substantially similar bills were introduced in the House. The Senate Subcommittee on Constitutional Rights held hearings on S. 3779 in September and October 1966. Testimony in support of the bill came from lawyers, academicians, and spokesmen for Federal employees. Civil Service Commissioner John Macy dissented, explaining his agency's reservations about the extent of the bill's provisions and penalties. No further action was taken on S. 3779.

During this same Congress, two other legislative committees which were investigating the general operations of the Federal Government to identify possible invasions of privacy, focused on the rights of Government employees. Testimony before the Senate Judiciary Subcommittee on Administrative Practice and Procedure revealed that the Post Office Department frequently installed "observation galleries" or "peepholes" in men's restrooms to guard against employee theft. The examining Subcommittee sharply criticized this practice and the Post Office abandoned the policy shortly thereafter.⁴⁵ A subcommittee of the House Committee on Government Operations undertook a "special inquiry on invasion of privacy." In the course of hearings held in both sessions of the Eighty-ninth Congress, this subcommittee thoroughly reviewed the practice and implications of personality testing in Federal agencies.

⁴³ *Ibid.*, p. 33.

⁴⁴ *Ibid.*, p. 174.

⁴⁵ U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Administrative Practice and Procedure. Invasions of Privacy. (Government Agencies) Hearings, 89th Congress, pursuant to S. Res. 39, S. Res. 190. Part 4. Washington, U.S. Govt. Print. Off., 1966, p. 1662. Hearings held Oct. 18-20, 1965; Feb. 2-4, 1966.

Very early in the Ninetieth Congress, Senator Sam J. Ervin, Jr., introduced S. 1035, a revised version of S. 3779, designed to protect Federal employees from coercive personnel practices. Among the important amendments incorporated into S. 1035 were provisions to exempt the Federal Bureau of Investigation from the bill's requirements and to establish a regulatory Board of Employee Rights.⁴⁶ Fifty-four Senators co-sponsored S. 1035, which was reported to the Senate by the Judiciary Committee in August of 1967. The Judiciary Committee's report to accompany S. 1035, advanced three important reasons for enacting this legislation:

- (1) To preserve the rights and liberties of those who work, or will work, for the Federal Government;
- (2) To attract the best qualified employees to Government service and retain them;
- (3) To set an example of concern about individual privacy expected to influence the policies of State and local government and private industry.⁴⁷

On September 13, 1967, the Senate approved S. 1035, with floor amendments. Although at least thirteen identical or similar bills had been introduced in the House during the Ninetieth Congress, the measure did not receive House action.

In the Ninety-first Congress, Senator Ervin introduced substantially the same legislation, S. 782, which was reported favorably by the Senate Judiciary Committee, and passed the Senate with a few qualifications pertaining to applications of the bill within the Central Intelligence Agency and the National Security Agency.⁴⁸ In the House, nine similar or duplicate bills were introduced during this term; but again the House took no final action.

In the Ninety-second Congress, hearings were again scheduled to investigate alleged invasions of Federal employees' privacy. In the spring of 1971, the Subcommittee on Employee Benefits of the House Committee on Post Office and Civil Service convened six times in public session "to pinpoint the problems facing many Federal employees and provide, hopefully, corrective legislation."⁴⁹ The legislative proposals considered by this subcommittee were substantially similar to the Federal employee privacy legislation introduced by Senator Ervin in previous Congresses and reintroduced as S. 1438 in the Ninety-second Congress. In addition, three proposals (S. 2156, H.R. 9449, H.R. 9783) specifically prohibited the use of polygraph tests as a personnel tool in Federal agencies. Although S. 1438 easily passed the Senate, the House again failed to take legislative action on these privacy proposals.

Also during the Ninety-second Congress, a Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce met to investigate the collection of information about Federal employees which took the form of monitoring office telephones of Federal Communications Commission employees. Hearings were held in March and May 1972 to examine the circumstances surrounding

⁴⁶ U.S. Congress, Senate, Committee on the Judiciary, Protecting Privacy and the Rights of Federal Employees; Report to Accompany S. 1035, Washington, U.S. Govt. Print. Off., 1967. (90th Congress, 1st session, Senate, Report no. 534) p. 11.

⁴⁷ *Ibid.*, p. 3-4.

⁴⁸ U.S. Congress, Senate, Committee on the Judiciary, Protecting Privacy and the Rights of Federal Employees; Report to Accompany S. 782, Washington, U.S. Govt. Print. Off., 1970. (91st Congress, 2d session, Senate, Report no. 3753) p. 1-2.

⁴⁹ U.S. Congress, House, Committee on Post Office and Civil Service, Subcommittee on Employee Benefits, Invasion of Federal Employees' Privacy, Hearings, 92d Congress, 1st session on H.R. 7199 and Related Bills, Washington, U.S. Govt. Print. Off., 1971, p. 1. Hearings held May 11-26, June 2, 1971.

a reported wiretap incident that took place at FCC headquarters in February 1970. Agency officials admitted monitoring the telephone of an employee suspected of leaking Commission agenda items; and they acknowledged the questionable legality of their action. Chairman Harley O. Staggers was emphatic in his conviction that the incident was unlawful. In closing the hearings, he reprimanded the Commission's representatives and pointed out that "a person does not sacrifice his right to privacy and his constitutional privileges by virtue of becoming a Government employee."⁵⁰

The Freedom of Information Act

The Eighty-ninth Congress enacted important legislation which significantly affects individual privacy when it passed the Freedom of Information Act, Public Law 89-487, in an effort to open up government to public scrutiny. Designed to ensure the public's "right to know," the Freedom of Information Act requires that all Government papers, opinions, records, policy statements and manuals be made available to any citizen, upon request, with the exception of nine specific categories of information. These exemptions expressly include "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."⁵¹ Despite this provision, some consequences of the Freedom of Information Act, such as the release of mailing lists by Federal agencies, have had controversial implications on individual privacy.

In the Ninetieth Congress, during the summer of 1968, one year after the Freedom of Information Act became legally effective, the House Subcommittee on Postal Operations explored certain privacy issues related to the Act. Timothy J. May, General Counsel of the Post Office Department, appeared before the committee to explain how the Act, in many instances, made mandatory the release of names and addresses to solicitors for commercial purposes. Interest in this problem led to the introduction, during the Ninety-first Congress of twenty-one House bills designed to protect the individual from unsolicited mail.

The Ninety-second Congress considered a number of legislative proposals, such as H.R. 8903, which would amend the Freedom of Information Act to prohibit Federal agencies from distributing lists of names and addresses of individuals—either employees or those having business with the agency—for commercial or illegal purpose.⁵² In connection with hearings on these proposals, the House Foreign Operations and Government Information Subcommittee conducted a survey of Federal agencies which revealed that the Freedom of Information Act was frequently cited as the authority for both releasing and withholding mailing lists from the public.⁵³ Representative Frank Horton, who introduced H.R. 8903, recommended his bill as a means "to clarify this situation by setting out a reasonable governmentwide policy, which protects individual privacy at the

⁵⁰ U.S. Congress, House, Committee on Interstate and Foreign Commerce, Special Subcommittee on Investigations, FCC Monitoring of Employees' Telephones, Hearings, 92d Congress, 2d session, March 28 and May 16, 1972, Washington, U.S. Govt. Print. Off., 1972, p. 81.

⁵¹ Public Law 487, 89th Cong.

⁵² U.S. Congress, House, Committee on Government Operations, Foreign Operations and Government Information Subcommittee, Sale or Distribution of Mailing Lists by Federal Agencies, Hearings, 92d Congress, 2d session on H.R. 8903 and Related Bills, June 13 and 15, 1972, Washington, U.S. Govt. Print. Off., 1972, p. 2.

⁵³ *Ibid.*, p. 61.

same time it adequately safeguards the public's right to know."⁵⁴ Testimony in support of the proposal came from private citizens, legislators, and some Federal agencies, such as the Federal Aviation Administration. Other executive branch spokesmen, from the Veterans' Administration and the Department of Defense, described the measure as unnecessary in light of existing regulations. The House took no further action on H.R. 8903.

Federal Data Banks Legislation

Other legislative amendments to the Freedom of Information Act more directly relating to Federal data banks were examined by the House Foreign Operations and Government Information Subcommittee in open hearings. Among these amendments were H.R. 9527, H.R. 15613 and related bills which required that "individual citizens be apprised of certain records which are maintained by Federal agencies."⁵⁵ These proposals generally required that Government agencies maintaining indexed records on an individual, which contain information about him from sources other than himself, shall:

- (1) Notify the subject that such records exist;
- (2) Refrain from disclosing the record, except when the subject expressly consents, or when required by law;
- (3) Keep an accurate record of all persons who inspect these files and the purpose of such inspections;
- (4) Allow the individual access to his record;
- (5) Permit the individual to make copies of this record at his expense, add any information he deems pertinent, or remove erroneous information.⁵⁶

These bills further provided for the creation of a "Federal Privacy Board" to administer the provisions of the legislation.⁵⁷

Representative Edward Koch, who introduced H.R. 15613, described his bill as a "draft" and welcomed comments upon it.⁵⁸ Spokesmen from several Government agencies, including the Civil Service Commission, the Justice Department, the Department of Defense, and the Veterans' Administration, testified that enactment of these proposals would place undue costs and administrative burdens on their operations.⁵⁹ This objection was supported by Dr. Allan Westin, who suggested that the legislative purpose of these bills would be better served by providing for the compilation of a "citizen's guide" to Government files to be published annually and widely disseminated.⁶⁰ Westin also recommended: special notification of individuals when records are kept which threaten their due-process rights, e.g., names placed in "derogatory files"; an experiment with open recordkeeping of previously confidential files; and periodic information-inventory statements from Federal Agencies.⁶¹ H.R. 9527 and H.R. 15613 did not move out of committee during the Ninety-second Congress. Nor did a similar bill, S. 975 which Senator Birch Bayh introduced in the Senate.

⁵⁴ *Ibid.*

⁵⁵ U.S. Congress, House, Committee on Government Operations, Foreign Operations and Government Information Subcommittee, Records Maintained by Government Agencies, Hearings, 92d Congress, 2d session on H.R. 9527 and Related Bills, June 22 and 27, 1972, Washington, U.S. Govt. Print. Off., 1972, p. 2.

⁵⁶ *Ibid.*, p. 40.

⁵⁷ *Ibid.*, p. 41.

⁵⁸ *Ibid.*, p. 67.

⁵⁹ *Ibid.*, p. 89.

⁶⁰ *Ibid.*, p. 134.

⁶¹ *Ibid.*, p. 135-138.

The Fair Credit Reporting Act

These latter Federal data bank proposals were based on the general procedural model of the Fair Credit Reporting Act enacted by the Ninety-first Congress to curb abuses of reports on the credit-worthiness of individuals. During the Ninetieth Congress, both the Special Subcommittee on Invasion of Privacy of the House Committee on Government Operations and the Senate Judiciary Subcommittee on Administrative Practice and Procedure held hearings to ascertain how credit bureaus operate, the number and extent of their files, and the possibility of unauthorized access to personal information. During the Ninety-first Congress, the Subcommittee on Consumer Affairs of the House Committee on Banking and Currency held hearings on H.R. 16340, a bill "to enable consumers to protect themselves against arbitrary, erroneous, and malicious credit information." Congressional awareness of certain abusive practices in the burgeoning credit industry led to the final passage of the Fair Credit Reporting Act (P.L. 91-508). This legislation defines and provides penalties for illegal use of private files, requires that persons be notified of negative actions they may suffer because of information obtained from credit reporting agencies, and gives individuals the right to know "the nature and substance" of their files. In the event of dispute, the agency must reinvestigate any disputed fact and either delete it, if it cannot be verified; or make note of the consumer's disagreement in any subsequent report.

Criminal Justice Information Systems

As congressional interest in privacy grew more intense, data banks containing criminal justice information, such as arrest records, were perceived as particularly dangerous to individual privacy and civil liberties. During the 92nd Congress, as part of a general review of data banks and individual privacy, the Constitutional Rights Subcommittee explored the plans of the Law Enforcement Assistance Administration and the Federal Bureau of Investigation for computerized criminal justice records.⁶²

Also, during the Ninety-second Congress the House Committee on the District of Columbia considered abuses of criminal arrest records in connection with hearings on the privacy of police personnel files. There was no final action on the arrest records proposals, although the committee issued a favorable report to accompany H.R. 11773, a bill designed to protect Metropolitan police officers from harassment by excluding personal data, such as home address and telephone number, from records which are open to public inspection. This latter measure received final congressional approval on October 25, 1972, and became Public Law 92-543.

In 1972 a subcommittee of the House Judiciary Committee held hearings on H.R. 13315, a bill "to provide for the dissemination and use of criminal arrest records in a manner that insures their security and privacy."⁶³ H.R. 13315 included such provisions as:

⁶² The subcommittee has continued to investigate developing plans for computerization. Late in 1973 legislative drafting began both in the Constitutional Rights Subcommittee and in the Justice Department under then-Attorney General Elliot Richardson. Two proposals were introduced in February 1974: S. 2983, by Senator Ervin, and S. 2984, by Senator Hruska, on behalf of the Justice Department. Both bills had numerous bipartisan cosponsors. Later, in March 1974, the Constitutional Rights Subcommittee held hearings on the two proposals, with all Senators expressing a desire for legislative action before the end of the ninety-third Congress.

⁶³ U.S. Congress, House, Committee on the Judiciary, Subcommittee No. 4, Security and Privacy of Criminal Arrest Records, Hearings, 92d Congress, 2d session, on H.R. 13315, Washington, U.S. Govt. Print. Off., 1972, p. iv. (Hearings held Mar. 16, 22, 23 and Apr. 13, 26 1972.)

- Limitation of criminal arrest records to use by and among law enforcement agencies;
- Prohibition of release of such records after a period of two years (with certain exceptions), or if prosecution is not warranted, or if it has been ordered expunged by State law;
- Right of the record subject to access, and petition against, information contained in his file.⁶⁴

Spokesmen for national, state, and local law enforcement agencies, the International Business Machines Corporation, the American Civil Liberties Union, and the Georgetown University Law Center appeared before a subcommittee of the House Judiciary Committee to comment on this measure. Beyond these hearings, no further action was taken on H.R. 13315 during the Ninety-second Congress.

Financial Privacy

The issue of privacy versus law enforcement was also taken up during the Ninety-second Congress by the Senate Subcommittee on Financial Institutions. In the summer of 1972, this subcommittee met to examine the implications of two bills (S. 3814 and S. 3828) that would effectively amend the recently enacted "Bank Secrecy Act" (Public Law 91-508). The Act authorized the Secretary of the Treasury to require financial institutions to keep records which would help the Government to prosecute white-collar crimes, such as tax evasion and securities manipulation. The regulations, as they developed, oblige banks to keep photostatic copies of personal checks and other records which are to be available for inspection by law enforcement agencies without necessarily requiring a subpoena or confidentiality guarantees. Senator John Tunney, sponsor of S. 3814, felt that the Treasury Department had defied the legislative intent of the Bank Secrecy Act. He warned: "What, in essence has been done, is to give a Federal agency the opportunity to obtain a complete profile on the habits, and the actions, of every citizen in this country."⁶⁵ In rebuttal Treasury officials pointed out that they were following the "letter of the law," as defined by the Ninety-first Congress, and that they had independently exempted several classes of checks, as well as domestic items received by a bank for collection, from the records requirement.⁶⁶ They argued, as did a spokesman from the Department of Justice, that the provisions of S. 3814 and S. 3828 limiting law enforcement access to financial records would shield criminal activity. These two proposals were not reported out of committee during the legislative term.

Electronic Data Collection

In the late 1960's, Congress also became increasingly critical of methods used by Federal agencies to gather data, particularly law enforcement information. During the Eight-ninth Congress, the Senate Judiciary Subcommittee on Administrative Practice and Procedure launched a series of hearings to explore alleged "invasions of privacy" by the Government. The surveillance activities of the Post Office Department, the Food and Drug Administration, and the

⁶⁴ *Ibid.*

⁶⁵ U.S. Congress, Senate, Committee on Banking, Housing and Urban Affairs, Subcommittee on Financial Institutions, Amend the Bank Secrecy Act, Hearings, 92d Congress, 2d session on S. 3814 and S. 3828 Aug. 11 and 14, 1972, Washington, U.S. Govt. Print. Off., 1972, p. 25.

⁶⁶ *Ibid.*, p. 41-42.

Internal Revenue Service were among those examined by the subcommittee. As a direct result of these hearings, the Post Office closed up "observation galleries" installed in employees' restrooms; and the Postmaster General issued more rigid regulations regarding "mail covers," i.e. the recording of information—address, return address, postmark—on envelopes mailed to citizens under surveillance.⁶⁷ The Administrative Practice and Procedure Subcommittee also examined the Internal Revenue Service practice of seizing all classes of mail (including first class) sent to delinquent taxpayers. Shortly thereafter, Congress passed legislation forbidding the continuation of such "mail levies."⁶⁸

Much of the Administrative Practice and Procedure Subcommittees' attention focused on the type of electronic devices available for surveillance and their actual use by Federal agents. Testimony established that a wide range of monitoring tools, including wiretaps, "bugs," microphones, two-way mirrors, tape recorders, and countless other devices, have been employed by investigators from a broad spectrum of Federal agencies from the Food and Drug Administration to the Internal Revenue Service. Internal Revenue Commissioner Sheldon S. Cohen decried the illegal, unauthorized use of wiretaps by IRS employees; he did not disavow, however, use of all electronic equipment by inspectors:

"* * * we must weigh the desirability of restraint against our duty of administering and enforcing the revenue laws so that all taxpayers pay their allotted share of the tax burden. Therefore, we cannot categorically shirk from using certain legal investigative equipment and techniques, even though this might in some cases subject us to criticism."⁶⁹

Subcommittee Chairman Edward V. Long, on the other hand, found the trend towards data collection by means of electronic monitoring devices very worrisome:

"It is obvious that this blossoming of snooping gear is increasingly placing the constitutional right of privacy of the individual citizen in peril. Surveillance is becoming harder and harder to detect. Modern Americans are increasingly exposed, peered at, inquired about, and spied upon. They are fast becoming members of a naked society, denizens of a goldfish bowl."⁷⁰

It was Senator Long's view, shared by several of his colleagues, that Congress ought to pass legislation restricting the use of privacy-invasive equipment and techniques in both the private and public sectors.⁷¹ In the Eighty-ninth Congress, Senators and Congressmen introduced at least six bills pertaining to the control of electronic surveillance.

During the Ninetieth Congress, wiretapping was again the focus of several legislative proposals. In the spring of 1967, the Senate Judiciary Subcommittee on Administrative Practice and Procedure held hearings

⁶⁷ U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, Invasions of Privacy, (Government Agencies) Hearings, 89th Congress, pursuant to S. Res. 39, S. Res. 190, Part 4, Washington, U.S. Govt. Print. Off., 1966, p. 1652. (Hearings held Oct. 18-20, 1966, Feb. 2-4, 1966.)

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, Part 3, Washington, U.S. Govt. Print. Off., 1965, p. 1123. Hearings held July 13-Aug. 9, 1965

⁷⁰ *Ibid.*, Part 4, op. cit., p. 1644.

⁷¹ *Ibid.*, p. 1652.

on S. 923, "a bill to protect the right of privacy by prohibiting wire interception and eavesdropping, and for other purposes."⁷² The provisions of this bill broadly prohibited the manufacture, advertisement, distribution, and use of eavesdropping devices. An exception was made for Presidential prerogative to take any measure necessary (including wiretaps) to protect the national security; in this instance, however, information so obtained would not be admissible as evidence in judicial or administrative proceedings. Attorney General Ramsey Clark appeared before the committee in support of this measure. In his opinion:

"Public safety will not be found in wiretapping. Security is to be found in excellence in law enforcement, in courts and in corrections. That excellence has not been demonstrated to include wiretapping.

"Nothing so mocks privacy as the wiretap and electronic surveillance. They are incompatible with a free society and justified only when that society must protect itself from those who seek to destroy it."⁷³

The Ninetieth Congress found broader necessity for the legal use of wiretaps than did Attorney General Clark. Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197, 211, 18 U.S.C. §§ 2510 to 2520) represents an effort by Congress to safeguard, in statutory law, the privacy of innocent persons as well as the effectiveness of law enforcement activity against organized crime. This Act prohibits and provides legal penalties for all "interception and disclosure of wire or oral communications," unless such interception and disclosure is conducted: (1) by employees of a communications common carrier or the Federal Communications Commission in the normal performance of their duties; (2) by federal or state law enforcement officers acting under the authority of a court order; or (3) when one party to the conversation has given his consent and the purpose of the interception is legal and non-injurious. The act also prohibits the manufacture, distribution, possession, and advertising of wire or oral interception devices except in conjunction with these activities. The question of Presidential authority to wiretap in the interests of "national security" was left unanswered by the Act.

In the Ninety-first Congress the House Subcommittee on Foreign Operations updated a review of "telephone monitoring" by Federal agencies, i.e., the practice of allowing a third party to listen in on conversations between Government employees and private citizens. This surveillance is generally accomplished by allowing stenographers to overhear telephone conversations or by means of electronic interception equipment, such as transmitter cutoff switches, induction attachments, and tape recorders. Results of the subcommittee's questionnaire survey, published as a committee print, revealed that 52 of the 60 Federal agencies polled in the Washington area permitted some degree of monitoring.⁷⁴ The House report is objective in nature,

⁷² U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, Right of Privacy Act of 1967, Hearings, 90th Congress, 1st session on S. 923, Part I, March 20, 1967, Washington, U.S. Govt. Print. Off., 1967, p. 1.

⁷³ *Ibid.*, p. 48.

⁷⁴ U.S. Congress, House, Committee on Government Operations, Foreign Operations and Government Information Subcommittee, Availability of Information From Federal Departments and Agencies: Telephone Monitoring—Third Review, (Committee Print) Washington, U.S. Govt. Print. Off., 1970, p. 3.

summarizing the type, number, and operating costs of monitoring devices employed by each agency. The subcommittee's introductory comments, however, include the important observation that:

"It remains a fact that until the practice of monitoring is abolished, a citizen will never be able to know for sure to what extent, or for what underlying motive, he is unwittingly sharing his telephone calls with silent listeners."⁷⁵

Special Privacy Committee Proposals

Although suggestions that a special legislative committee which could focus on privacy issues were not new in the Ninety-first Congress, it is notable that in 1970 the House Committee on Science and Astronautics published as a Committee Print a paper by Rand scholar and computer expert Paul Armer, entitled "The Individual: His Privacy, Self-Image and Obsolescence." Presented at the committee's eleventh meeting with the Panel on Science and Technology, which was concerned about the impact of rapid technological change on man and society, the paper focused on the privacy problem introduced by the growth of electronic data banks. Armer's paper concluded: "The only way we can go about defining a balance between the individual's right to privacy and the common good is through the political process."⁷⁶ He specifically recommended the creation of a congressional committee dedicated to privacy concerns and the establishment of a Federal "privacy bureau" to register all data banks in the private and public sector, provide basic research, and propose legislation.⁷⁷

In the Ninety-second Congress, a similar concept was reflected in H.R. 164, which proposed the creation of a House "Select Committee on Privacy, Human Values, and Democratic Institutions." This committee, composed of nine members appointed by the Speaker, would be charged with studying the impact of technological invention, especially computer technology, on the Nation's social norms and political system. H.R. 164, considered and amended by the Committee on Rules, was debated in the House on February 8, 1972. Opponents of the resolution, while endorsing the goals of the proposed committee, argued that the scope of its concern fell within the jurisdiction of the House Committee on the Judiciary and the newly created National Commission on Individual Rights. Other objections included cost and office-space factors.⁷⁸ The measure was defeated that day by a roll-call vote (216-168).

Conclusion

These diverse congressional interests in privacy issues over the past decade intensified in the present Ninety-third Congress. In 1973, the publication of the Department of Health, Education, and Welfare's report on "Records, Computers and the Rights of Citizens" signaled greater executive branch interest in legislation to protect individual

⁷⁵ *Ibid.*, vi.

⁷⁶ U.S. Congress, House, Committee on Science and Astronautics, "The Individual: His Privacy, Self-Image and Obsolescence" by Paul Armer, (Committee print) Washington, U.S. Govt. Print. Off., 1970, p. 6.

⁷⁷ *Ibid.*

⁷⁸ Select Committee on Privacy, Human Values, and Democratic Institutions, Congressional Record, v 118, Feb. 8, 1972: 3190-3200.

privacy. In 1974, cooperation between the legislative and executive branches on privacy matters took the form of legislative proposals to control the use of criminal justice computers. Spurred by widespread concern about governmental infringement of individual privacy symbolized by the Watergate scandals, both houses of Congress have initiated numerous hearings and legislative proposals relating to criminal justice data banks, national security, wiretapping, as well as private and governmental data banks.

PRIVACY AND THE CONSTITUTIONAL RIGHTS SUBCOMMITTEE

As a part of its concern with the guarantees of personal liberty found in the Bill of Rights, the Constitutional Rights Subcommittee has been interested in individual privacy since the subcommittee's inception almost twenty years ago. Freedom of speech and thought, due process, fourth amendment rights and other liberties guaranteed by the Constitution are all part of the subcommittee's interest in privacy.

Among the first activities of the Constitutional Rights Subcommittee after its creation at the beginning of the Eighty-fourth Congress, were extensive hearings on "Security and Constitutional Rights." These 1955 hearings which focused on government security-loyalty programs were followed in the Eighty-fifth Congress by subcommittee hearings on "Wiretapping, Eavesdropping and the Bill of Rights" and "Freedom of Information and Secrecy in Government." During the Eighty-sixth Congress the subcommittee renewed hearings on all three of these privacy-related subjects.

Soon after Senator Sam J. Ervin, Jr., became chairman in 1961, the Constitutional Rights Subcommittee began to concentrate on governmental infringements of individual privacy. The subcommittee's work on questions of employee procedural rights led directly to a consideration of the kinds of information that the Federal government as an employer finds pertinent in actions involving its employees. The subcommittee found ever-increasing demands by the Federal government to learn about its employees, applicants for Federal employment, and their families, activities and associations. The subcommittee soon discovered that these efforts were not limited to government employees. There was widespread use of psychological testing and intrusive questionnaires seeking to learn all about citizens who were not employees or prospective employees of government.

These investigations resulted in a series of bills and hearings in the mid-1960's. Chief among these were hearings on "Psychological Tests and Constitutional Rights" in 1965; "Privacy and the Rights of Federal Employees" in 1966; and "Privacy, the Census, and Federal Questionnaires" in 1969. These hearings served to increase general interest in privacy. The subcommittee's initial privacy proposal, the Government Employees Privacy bill, passed the Senate numerous times in the years since the 1966 hearings and met little Senate opposition. However, it died in the House each time. Other privacy bills did not advance as far.

As these privacy-related studies were conducted, it became evident that each was merely part of a more general problem of individual privacy versus government accumulation of data. It also became apparent with the debate on the proposed National Data Center that the advent of computers introduced a new and ultimately a very

threatening element into the privacy problem. More and more citizens brought to the subcommittee's attention the fact that the programs intruding on privacy and other individual rights were utilizing computers to assist the government in its activities. Thousands of complaints about the use of computers in these programs urged further subcommittee investigation of the impact of computers on individual privacy.

The subcommittee by its chairman, Senator Ervin was particularly interested in this issue. In a speech before the American Management Association in March 1967, he pointed to the computer as a means of expanding government's ability to collect and use information, thus increasing the possibility of harm to individual rights.

The subcommittee's interest in individual rights, privacy and data banks has from the beginning resulted in a considerable amount of activity directed toward assisting individuals, changing administrative policies, and influencing the course of executive and legislative decision-making in these areas. The cancellation of the Department of Health, Education, and Welfare's scientific "blacklist", and the Army surveillance computer programs are two more familiar examples of the fruits of the subcommittee's involvement. Others include the end of funding for the SACB and the elimination of certain intrusive and unnecessary questions from the government employee applicant's form.

The controversy over the National Data Center introduced Congress to the computer, but it was the increasing concern on the part of individual citizens that sparked the subcommittee's particular interest. From that point the subcommittee became more and more concerned not only about data collection in itself, but also about the consequences that would follow as the computer was employed to store and interrelate government data. This focus eventually resulted in the 1971 hearings on "Federal Data Banks, Computers and the Bill of Rights." These hearings explored for the first time the use of computers in data collection about citizens.

Origin of the Survey

In early 1970, as preparation for hearings on "Federal Data Banks, Computers and the Bill of Rights" began, the subcommittee initiated the survey which is the subject of this report. On January 12, 1970 the first letter of inquiry went out to the Department of Health, Education, and Welfare. Eventually, the following 54 agencies were surveyed:

ACTION

Administrative Conference of the United States
 Administrative Office of the U.S. Courts
 Appalachian Regional Commission
 Civil Aeronautics Board
 Civil Service Commission
 Department of Agriculture
 Department of Commerce
 Department of Defense
 Department of Health, Education, and Welfare
 Department of Housing and Urban Development
 Department of the Interior
 Department of Justice

Department of Labor
 Department of State
 Department of Transportation
 Department of the Treasury
 Environmental Protection Agency
 Equal Employment Opportunity Commission
 Export-Import Bank of the United States
 Farm Credit Administration
 Federal Communications Commission
 Federal Deposit Insurance Corporation
 Federal Home Loan Bank Board
 Federal Maritime Commission
 Federal Mediation and Conciliation Service
 Federal Power Commission
 Federal Reserve Board
 Federal Trade Commission
 General Services Administration
 Indian Claims Commission
 Interstate Commerce Commission
 National Aeronautics and Space Administration
 National Credit Union Administration
 National Labor Relations Board
 National Mediation Board
 National Science Foundation
 Office of Economic Opportunity
 Office of Emergency Preparedness
 Office of Management and Budget
 Railroad Retirement Board
 Securities and Exchange Commission
 Selective Service System
 Small Business Administration
 Special Action Office for Drug Abuse Prevention
 Subversive Activities Control Board
 Tennessee Valley Authority
 U.S. Atomic Energy Commission
 U.S. Commission on Civil Rights
 U.S. Information Agency
 U.S. Postal Service
 U.S. Tariff Commission
 Veterans Administration
 White House

Each of the above agencies received a letter from the subcommittee, which varied slightly from agency to agency, but which asked the following general questions:

Introductory Questions

A particular area of current controversy is the extent to which federal agencies may appropriately maintain law enforcement-oriented or intelligence-type files (1) for surveillance of demonstrators and others involved in political activities either for or against various governmental policies; (2) on persons who are either no longer dealing with the

agency; or (3) on persons who have not yet dealt with it. The Subcommittee would appreciate a statement from you on:

- (A) The extent of such a data-collection, processing and storage program, if any, conducted by your agency;
- (B) Any agency plans for automating, filming, or computerizing such files, or creating a data bank in any form; and
- (C) Whether or not any part, or all, of another agency's file system or data bank has been incorporated in those of your agency.

Questionnaire

(1) For each data bank maintained under your auspices, describe briefly the major categories of data on individuals and the approximate number of subject individuals covered in each category.

(2) Under what statutory and administrative authority was each data bank established and for what purpose? Please supply copies of pertinent federal statutes, regulations and memoranda on which this authority is based and by which it is implemented.

(3) Do other federal agencies or any state, local, or private agencies utilize such programs or data banks? If so, are agency controls, guidelines, or advice required by or offered to (a) federal, (b) state officials, and (c) private individuals who either administer or who utilize this data-gathering or data-storage program? Please supply copies of pertinent rules or advisory documents as issued by federal and state agencies.

(4) For each category and each conglomerate of data, indicate its present state of computerization or other mechanization for access and retrieval as well as for evaluation and analysis.

(5) Describe plans for further computerization or mechanization in each program.

(6) In what instances would each system ordinarily be utilized? By what officials and by what agencies?

(7) For each new data storage and processing program, please describe: (a) the advantages; and (b) the extent to which it permits correlating, common storage and multifaceted analysis of data on a scale not hitherto available.

(8) What specific data elements concerning an individual (including but not limited to his background, personal life, personality and habits) are in each program?

(9) Has your agency and its component agencies developed comprehensive guidelines governing maintenance of any or all the various data systems, access to them, review and disclosure of material in them, and distribution of data to other agencies? If so, please supply copies.

(10) (A) Is the subject individual or his representative notified of the fact that he is in the data bank?

(B) Is he allowed to review the data on record about him; to supplement his file; or to explain or rebut inaccurate material? If he is restricted, please describe the precise limitations.

(11) What aspects of the recorded data are available to private persons? Who, specifically? For what purposes? By what authority?

(12) Is a record maintained of each inspection or use of the individual's record?

(13) For each data bank, please indicate how the information is collected, whether it is solicited from the individual, from third persons, or from existing records.

(14) What officials in your agency are responsible for determining the accuracy of information in the data bank? What provisions are made, procedurally, for deleting information found to be inaccurate or inappropriate, either on the initiative of the agency or on motion of the individual?

(15) What other agencies, federal or otherwise, have access to information or use of information in each data bank on a regular or one-time basis? Under what authority?

(16) What states and federal agencies may utilize, transfer or access the data in your computerized or mechanized files by coding, interfacing, or other arrangements with their own systems?

(17) What security devices and procedures are utilized to prevent: (a) improper use of the information and (b) unauthorized access to the data file?

(18) What formal or informal arrangement does your agency have with congressional committees for the authorizing and reviewing of new data banks and the clearance of new electronic or mechanized record-management techniques?

(19) (A) Have any data programs or the development of other comprehensive records systems been discussed before other congressional committees by representatives from your agency?

(B) Have any been specifically approved by Congress or congressional committees?

(C) If so, would you please supply any available testimony, or citations to such hearings?

Would you also kindly supply copies of any pertinent statutes and regulations cited in your questionnaire responses together with sample print-outs from each data bank.

By the spring of 1974 all 54 agencies had responded. These responses are reprinted at length in the thousands of pages which constitute the bulk of this report. The next section of this introduction contains a brief "Summary of Findings" derived from those responses.

SUMMARY OF FINDINGS

The 858 data banks analyzed in this survey constitute a representative sample of the countless files and dossiers on individuals kept by the various agencies of the executive branch of the Federal Government. These 858 data banks are by no means all of the Government files on individuals. Rather, they are the systems which the 54 agencies polled by the subcommittee were willing to admit they maintain. There are without a doubt a great many more Federal data banks which the subcommittee, despite more than four years of patient effort, was unable to uncover.

There are a number of indications that the agencies' responses consistently understate the scope of their personal data banks. To begin with, a surprising number of the agencies displayed a remarkable lack of understanding of what a "data bank containing personal information about individuals" is. The responses from the Departments of Commerce, Defense, and Justice, as well as the Office of Management and Budget, stated that data banks containing such information as an individual's social security number, salary, race, sex, history of drug addiction and the like do not contain "personal" information. The number of data banks not reported on this basis is impossible to calculate.

Some of the agencies, including the Federal Communications Commission, the Office of Economic Opportunity and the Department of Commerce, responded only with regard to their computerized data banks and omitted the manual files altogether. A few agencies inexplicably omitted some of their more routine data banks. For example, the Department of Agriculture reported a number of data banks containing information about the general public, but omitted altogether the personnel and payroll records the Department is required to keep.

Moreover, a number of the more sensitive "intelligence" systems such as the Internal Revenue Service's Special Service Staff files and the FBI's Investigative files were not included in the initial agency responses at all. Having learned of such systems from other sources, the subcommittee was able to extract sufficient information to include them in the survey. There are almost certainly a number of other unreported systems of which the subcommittee is unaware.

In some cases, agencies such as the Department of the Interior and the Federal Home Loan Bank Board simply refused to report anything about their data banks containing personal information about individuals. The Department of the Interior is a particularly bad example. On at least two occasions the subcommittee chairman requested that the Department of the Interior respond to the survey questionnaire. Each time the Department of the Interior refused to disclose any of the requested information about the data banks containing personal information about individuals which the Department doubtlessly maintains. A bare reference to the payroll and personnel records, which the Department is required to keep, is the maximum

information the subcommittee was able to extract from the Department of the Interior. The need to proceed with publishing the survey results precluded the subcommittee from waiting any longer for a satisfactory response.

Another even more disturbing example is the General Services Administration. First asked to respond to the survey in late 1970, the General Services Administration submitted a partial response in 1971. When, by the fall of 1972, the rest of the response had not been submitted, the chairman wrote again and requested a complete response to the survey questionnaire which asked for a description of both present and proposed systems.⁷⁹ The General Services Administration's grudging reply reported "two GSA programs which may be of interest to you." Unknown and undisclosed to the Constitutional Rights Subcommittee or any other Congressional body, the General Services Administration was at that time (mid-1972) preparing to set up a massive computerized data bank known as FEDNET (also known as "New Equipment Program" and by a variety of other pseudonyms). This giant FEDNET system is designed to centralize the data processing and telecommunications operations of an unlimited number of Federal agencies, beginning with the Agriculture Department. FEDNET is, in short, a reincarnation of the National Data Center which, as discussed above, the executive branch was forced to abandon in the late 1960's because of strenuous public and Congressional opposition on privacy grounds. Although, for much the same reasons, FEDNET, per se, may well be similarly abandoned, the concept of a national data bank appears to live on.

What is most instructive for the purposes of this study of Federal Data Banks and Constitutional Rights, is the General Services Administration's carefully guarded attempts to set up this system. Neither in response to the subcommittee survey nor in response to questions posed at Congressional oversight and appropriations hearings did the General Services Administration even mention its plans for the massive FEDNET national data bank.

The General Services Administration's proposed creation of FEDNET points up the unfortunate fact that all too many Federal agencies tend to understate, if not outright hide, their data banks. The voluntary nature of this survey necessarily reflects this understatement and tendency to obfuscate. Nevertheless the varying degrees of thoroughness and candor displayed by the 54 agencies surveyed do serve a useful purpose in dramatizing the need for legislation to overcome this apparent reluctance on the part of Federal agencies to disclose to the Congress and the American people the nature and scope of their data banks containing personal information about individuals.

Number of Records

It is impossible to state precisely the number of individuals represented in the 858 reported data banks. As the figures in Table 1 demonstrate, information on the number of subjects in roughly 11 percent of the data banks is not available from the survey responses nor from any other readily accessible source. The 765 data banks for

⁷⁹ A number of agencies such as the Veterans Administration submitted helpful information regarding proposed systems, as well as existing data banks

which information about the number of records is available contain at least 1,245,699,494 records on individuals. The Federal data banks reported in the survey vary in size from a manual security clearance file containing ten records, maintained by the Air Force Special Weapons Center to the Department of Commerce's computerized Decennial Census data bank containing 204,000,000 records.

Computerization

As the figures in Table 1 indicate, over 86 percent of the reported data banks are computerized. It is interesting to note that many of the more sensitive dossiers which pose the most serious dangers to individuals are kept in manual files, perhaps because the information is thought to be too sensitive to be entrusted to computers. Nevertheless, the trend appears to be toward more and more computerization of all types of government files in the future.

Categories of Data Banks

Table 2 summarizes the subcommittee staff's categorization of the 858 data banks into three major types: Administrative, Evaluative and Statistical. These three categories reflect the most common general purposes for which data banks are created:

Administrative.—These data banks were established to assist Federal agencies in discharging their responsibilities to administer programs efficiently as well as to run the agencies themselves. The Small Business Administration's Loan Accounting System is typical of administrative data banks which serve a program-administration function; the personnel and payroll files of the various agencies are typical of administrative data banks which serve an agency-administration function.

Evaluative.—These data banks were established to collect information which will be used to make decisions regarding the status of file subjects. Security clearance and intelligence files, such as those maintained by the Departments of Defense and Justice, are typical of this category.

Statistical.—These data banks were established to collect information about groups of subjects for management and planning purposes. The Decennial Census data bank maintained by the Department of Commerce is typical of this category.

These categories are, of course, not necessarily mutually exclusive. In many cases it was necessary to make subjective judgments regarding the predominate type and purpose of various data banks. The figures in Table 2 show that most, roughly 69 percent, of the data banks are predominately Administrative. The Evaluative and Statistical categories each account for only about 15 percent and 16 percent, respectively of the 858 data banks reported in the survey.

Blacklists

At least 29 of the reported data banks appear to have been established to collect derogatory information about various sorts of "bad actors," individuals singled out for special treatment by Federal agencies. Over three-quarters of these files are computerized. They include: The Army's Worldwide Automated Military Police Operations and Information System; the Department of Housing and Urban Development's Debarred Bidders List; the Federal Communications

Commission's Checklist; the Securities and Exchange Commission's Name and Relationship System; the State Department's Passport Lookout File; and the Department of Transportation's Deterrence of Air Piracy System, as well as the National Driver Register. The Department of Justice accounts for seven of these computerized "blacklists," including the Internal Security Division's files on "Civil Disobedience"; the Organized Crime Intelligence System; the Federal Bureau of Investigation's National Crime Information Center Wanted Persons file; as well as the FBI Known Professional Check Passer files and the three Law Enforcement Assistance Administration funded state-run files on Wanted Persons, Organized Crime and Civil Disorders. The Treasury Department maintains eight such computerized files: the Customs Bureau's TECS/CADPIN system, the four Internal Revenue Service Intelligence files, as well as the Secret Service files.

Less than a quarter of these blacklists are kept in manual dossiers. They include: The Office of the Inspector General file in the Department of Agriculture; the Air Force's Unfavorable Information files; the Army's Counter-Intelligence Analysis Division files; the Internal Revenue Service's Special Service Staff files; the Federal Deposit Insurance Corporation's Section 8 and 19 files; the General Services Administration's Debarred Bidders Lists and the Small Business Administration's Investigative Records of so-called "character checks" on dubious applicants. No doubt there are many others.

In addition to the files of individuals who are to be watched carefully in expectation of wrong-doing, there are numerous other files containing derogatory information which could be used to discriminate against the file subjects. Various files of drug addicts, such as the Department of Justice Drug Enforcement Administration's computerized Addict Files and the Special Action Office for Drug Abuse Prevention's computerized CODAP System, are examples of this type of file. They are not intended to be used against individual subjects, but nevertheless contain data which could be used to the detriment of file subjects.

One other file of this general type also deserves special mention. It is the Defense Supply Agency's Security Files and Records, the index to which was in the process of being computerized at the time of the survey response (1970). This data bank was apparently set up to collect the records of allegations of wrong-doing which were later determined to be unfounded. Such a file of unsubstantiated charges of misconduct clearly could be used to the detriment of the exonerated subject individuals.

Moreover, this analysis does not include the Army surveillance files which the Department of Defense destroyed in response to a lengthy Constitutional Rights Subcommittee investigation of military surveillance of civilian political activities.⁸⁰ The subcommittee's investigation discovered that in 1970 several hundreds of thousands of these political surveillance files were maintained by the Army. A large proportion of them were computerized. In addition, untold numbers of local surveillance files were maintained at lower levels of command.

⁸⁰ For a complete description of the Army surveillance files see *Hearings on Federal Data Banks, Computers and the Bill of Rights Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 92d Cong., 1st Sess., Part II (1971)*; Staff of the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 92d Cong., 2d Sess., *Army Surveillance of Civilians: A Documentary Analysis* (Comm. Print 1972); and Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 93d Cong., 1st Sess., *Military Surveillance of Civilian Politics* (Comm. Print 1973).

Statutory Authority

Among the most important aspects of the subcommittee's survey of Federal data banks is its inquiry into the extent to which governmental information systems are authorized by explicit Congressional enactment. The subcommittee's inquiry into the statutory authority for various files on individuals maintained by Federal agencies is important in providing information regarding not only the legality of the systems, but also the availability of Congressional oversight and control. Moreover, the more explicit the legislation authorizing a given data system, the more clearly defined are the standards for evaluating the system. It is highly troubling, therefore, to find that 84 percent of the 544 data bank responses analyzed⁸¹ are unable to cite explicit statutory authority. Fully 18 percent cite no statutory authority whatsoever.

Table 3 summarizes the survey's overall findings regarding statutory authority. The four categories used in the table reflect variations in explicitness of legislative authorization. The *express* statutory authority category comprises the 87 data bank responses (16 percent of the total) which are able to cite a specific Federal statute explicitly authorizing a data bank to implement a specific program assigned by statute to the agency. The National Driver Register maintained by the Department of Transportation is a good example of a data bank which is specifically mandated by legislation. Another noteworthy example in this category is the Internal Revenue Service's Statistics of Income data bank which a Federal statute not only authorizes but requires. A number of legislative proposals would make such express statutory authority mandatory for all Federal data banks.

In the category of *derivative* statutory authority are all those data banks which are considered essential to or necessarily required by specific programs which themselves derive from an express statutory mandate. Approximately 21 percent of the 544 responses analyzed fall into this category. Examples are the Department of Commerce's National Defense Executive Reserve data bank and the various files kept by the Railroad Retirement Board.

Implied statutory authority provides considerably weaker justification for the establishment of data banks. In this category fall those data banks which, although not absolutely necessary, are thought to be useful in carrying out a program set up by specific legislation. By far the largest number of data banks, fully 45 percent of the responses analyzed, cite implied statutory authority. Examples of this type of impliedly authorized data banks are ten of the thirteen data banks established by the Office of Economic Opportunity. The responses for these ten OEO data banks cite the agency's broad legislative mandate to "evaluate poverty" as statutory authority for data banks focusing on health, day care, education and the New Jersey negative income tax experiment. The Special Action Office for Drug Abuse Prevention cites somewhat stronger implied statutory authority for the CODAP system.

The category which causes by far the greatest concern is that which comprises the 96 data banks (18 percent of those responding) for which the agencies cite no statutory authority whatsoever. Some of

⁸¹ Because of the volume and repetitiousness of the 382 responses relating to the Army's Administrative and Statistical data banks, only 68 representative data banks out of the 382 have been included in this subcommittee analysis.

the agencies failed to answer the question relating to statutory authority. In regard to three of its Central Files, the White House replied that the question regarding statutory authority was "not applicable." There is considerable variety in the files which lack statutory authorization. But one type recurs in a number of agencies—the Minority Group Statistics files for which the agencies cite various Executive Orders, Civil Service Commission regulations and Equal Employment Opportunity Commission guidelines, but no Federal statute.

Subject Notification and Review

Among the most worrisome of the Federal Government's record-keeping practices is the maintenance of secret data banks and dossiers on unsuspecting individuals. The results of the survey demonstrate the widespread failure of Government agencies to notify subject individuals that personal information about them is being kept in Federal data banks. Over 42 percent of the 469 responses providing information state that subject individuals are not notified of their inclusion.

Table 4 summarizes the survey's findings regarding the notification of subjects that records about them are being kept in a data bank. Responses for roughly 14 percent of the 544 data banks analyzed⁸² provide no information about subject notification. Of the 469 data bank responses which do provide information about subject notification, 199 (over 42 percent) report that subjects were given no notice of any kind that information about them is being kept in a data bank. Virtually all of the intelligence files, such as the Department of Justice Internal Security Division files, do not notify subjects of their inclusion. Responses from other data banks such as the Commerce Department's Executive Reserve, half of the Securities and Exchange Commission data banks, and the White House Talent Bank also report that the agencies fail to notify subjects in any way.

In a number of cases, the agencies surveyed state that, although they do not expressly notify subjects of their inclusion in a data bank, subjects should infer their inclusion in a data bank from their dealings with the agency. Of the 469 data bank responses providing information, over a quarter (27 percent) fall into this category. Examples are the Veterans Administration systems which send computerized benefit checks to beneficiaries. A number of other agencies, such as the Selective Service System, state that because individual subjects provide most of the information, they can be expected to infer that the data collected will be placed in a data bank.

Some agencies do expressly notify subjects of their inclusion in a data bank. Out of the 469 data bank responses which provide information about notification, under a third (30 percent) state that they expressly notify subjects that information about them will be placed in a data bank. Various means of notification are used, from the Internal Revenue Service's inclusion of a note about the computerized master file on Income Tax forms to the unique procedure of notification by press release employed by the Securities and Exchange Commission.

Table 5 summarizes the survey responses regarding the opportunities for subjects to review their own files. Responses for roughly 16 percent of the 544 analyzed data banks fail to provide information about

⁸² See footnote p. 35.

subject review. Of the 456 data bank responses which do provide information, over half (53 percent) state that a subject is allowed to review his or her entire file. The most extensive and thorough review is afforded by procedures, such as those employed by the Marines, and a number of other military organizations, which provide subjects with a printout at least once a year. The Air National Guard even *requires* personnel to review their files once a year.

Because a few of the data banks which do allow subjects to review their files in full fail to notify subjects of their inclusion in the data banks, the subjects' right of review in these cases is, at best, ephemeral. The Dun & Bradstreet List maintained by the Appalachian Regional Commission is an example of such a file.

An additional 14 percent of the 456 data bank responses which provide information about subject review allow subjects to review selected data in their files. This appears to be the standard procedure with regard to the personnel files maintained by most of the agencies.

Roughly one-third of the data bank responses state that subjects are not allowed to review their own files. The various intelligence data banks, such as the Department of Justice's Organized Crime Information System and the Drug Enforcement Administration Addict Files, follow such a practice. A variety of additional files, such as the National Defense Executive Reserve maintained by the Department of Commerce, also do not allow subjects to review their files.

In general, the number of data banks which do provide subjects with some form of notice (58 percent) and some opportunity for review (67 percent) is greater than was expected. There are some indications that changes are being made toward affording more subjects of more data banks realistic opportunities to find out what information about them is maintained in Federal data banks. For example after the subcommittee's survey which brought the matter to the attention of the White House, the White House has recently decided to notify subjects of the Presidential Appointees and Talent Bank data banks and to give them the opportunity to review their files.

Access by Other Agencies

Once information about an individual is collected by a Federal agency, it is likely that information will be fairly readily passed on to other Federal, State and local agencies. Table 6 summarizes the survey results regarding access by other agencies to Federal data banks. Approximately 8 percent of the 544 data bank responses analyzed⁸³ do not provide any information on access by other agencies. Of the 498 data bank responses which do provide information about access by other agencies, just over 60 percent report that other agencies have some degree of access to information about individuals stored in the data bank. In some cases, such as the Defense Supply Agency's Central Index File regarding security clearances, the agency maintains the data bank at least in part for the benefit of "User Agencies." For the Defense Supply Agency file, "User Agencies" include the General Services Administration, the Small Business Administration, the National Science Foundation and the Departments of Agriculture, Commerce, Interior, State, Transportation, the Treasury, and Health, Education, and Welfare, as well as various subdivisions of the Department of Defense.

⁸³ See footnote p. 35.

Over a quarter of the 498 data banks responses which provide information on access by other agencies report direct access either by routine distribution of data or by computer interface. The personnel files on Federal employees are typical of files routinely distributed to other agencies. A Federal Trade Commission Interpretation of the Fair Credit Reporting Act, which concludes that Civil Service Commission files on Federal employment are not subject to the Act, flatly states:

In the course of its operations the U.S. Civil Service Commission collects and files data concerning current and potential employees of the Federal Government. This data may include commentary on such matters as the subject's character, general reputation, personal characteristics, or mode of living, and the information is routinely transmitted to various branches of the Government.—16 C.F.R. § 600.6(a).

The Securities and Exchange Commission's Name and Relationship System also routinely distributes information, mostly derogatory, to other agencies.

Only ten data banks (2 percent of the 498 providing information) allow direct automated access by computer interface. These ten include: Four Army administrative data banks, two Department of Justice and three Treasury data banks, and one Office of Emergency Preparedness data bank. For the most part these are law enforcement oriented systems that link up with the Federal Bureau of Investigation's large NCIC system. The Office of Emergency Preparedness is unique in that it is used exclusively by another agency, namely the White House.⁸⁴ The Office of Emergency Preparedness itself does not have access.

An additional 19 percent of the data bank responses state that these data banks provide information about individuals to other agencies on request. Of the data banks in this category the Department of Agriculture's Commodity Exchange Authority data bank is unique in operating under an express legislative mandate to make its findings available to other agencies on request.

Various other data banks (12 percent of the 498 reporting) allow other agencies access to information about individuals in accordance with agency procedures. A few agencies, such as the Appalachian Regional Commission, cite the Freedom of Information Act, 5 U.S.C. 522, despite the Act's express concern with the dissemination of information to the public. These agencies apparently treat another agency as if it were a member of the general public. Others, such as the National Driver Register maintained by the Department of Transportation, are required by Federal statute only to disseminate information to driver licensing agencies in connection with an individual's application for a driver's license.

Much more troublesome are those agencies such as the Internal Revenue Service and the Selective Service System which pledge confidentiality to subjects who are required by law to furnish information, but nevertheless allow dissemination to other agencies under established procedures. The Selective Service admits disseminating draft registrants' data to such other agencies as the State Depart-

⁸⁴ This Presidential Appointees data bank was, subsequent to the Office of Emergency Preparedness response, transferred to the General Services Administration.

ment, the Immigration and Naturalization Service, the Veterans Administration, the Civil Service Commission and Naval Intelligence. Dissemination is apparently at the discretion of the Director of the Selective Service.

A few agencies (3 percent) replied that certain data banks are public information. For example, responses for eight of the Federal Communications Commission's data banks make this reply.

Public Access

For the most part members of the general public (persons and entities other than subjects and Government agencies) are not allowed access to most of the 544 data banks analyzed in this survey.⁸⁵ As Table 7 indicates, over half (52 percent) of the 468 data bank responses which provide information about public access report that persons other than subjects and Government agencies are not allowed access to these files.

Relatively few, only about 11 percent of the 468 data bank responses providing information, report that the information was "public information." Civil Service Commission's Voting Rights—List of Eligibles is required by the Voting Rights Act of 1965 to be made public. Similarly the Commerce Department makes publicly available statistical reports from the Decennial Census and Seafaring Personnel data banks.

In addition, information from a very few data banks (3 percent of the 468 responses providing information) is made available to the public upon request. The Administrative Office of the U.S. Courts appears to provide statistical data to researchers on this basis. The U.S. Coast Guard permits public access to the Boating Registration and Motorboat Accident systems, and allows relatives of subjects to see parts of the Merchant Seaman Locator file. The Office of Economic Opportunity allows public access to two of its systems.

Of the 226 data bank responses which report that information is made available to persons other than subjects and Government agencies, most (70 percent) stated that the public is granted access in accordance with agency procedures or the Freedom of Information Act (5 U.S.C. 522). Relevant portions of the Freedom of Information Act are set forth in the margin.⁸⁶

⁸⁵ See footnote 81 above.

⁸⁶ 5 U.S.C. § 552. Public information; agency rules, opinions, orders, records, and proceedings.

(a) Each agency shall make available to the public information as follows:

* * * * *

(3) each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person.

* * * * *

(b) This section does not apply to matters that are—
(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; . . .

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

As has been noted previously, the Freedom of Information Act (also cited as the Public Information Act and the Administrative Procedure Act) is frequently cited by Federal agencies both for allowing public access to Government information and for withholding information. In addition, many agencies have internal procedures and regulations governing the disclosure of information to the public. For example, the Veterans Administration has extensive regulations governing disclosure of data about individuals. But elaborate regulations do not necessarily safeguard private information. The Veterans Administration releases a great deal of personal data on individuals upon a simple finding of a "useful purpose." Similarly, the Department of Labor releases personal information from the Employment Security Automated Reporting System and the Unemployment Insurance Program data banks for "beneficial purposes." The Selective Service System says that it "honor[s] registrants' written authority" to disclose Selective Service files, for example, to prospective employers.

For the most part, however, personal information in Federal data banks is much less readily available to the general public than was anticipated when the survey was initiated.

Security Precautions

The security of Federal data banks is a matter of considerable concern both to subject individuals and to the agencies which maintain the data systems. As is summarized in Table 8, of the 544 data bank responses analyzed ⁸⁷ 471 (or 87 percent) provided information about security precautions. Almost 95 percent of these 471 data bank responses stated that the agencies take some kind of precautions to secure their data systems against unauthorized access.

Over 5 percent of the data bank responses providing information about security precautions replied that the respective agencies employ no security arrangements for these data banks. Among these data banks are a fairly large number of the Army Statistical and Administrative systems. Of the responses from the 68 representative Army Statistical and Administrative data banks, 13 state flatly that there are no security precautions for these data banks. When the two responses which failed or refused ⁸⁸ to answer the question are added to this number, fully 22 percent of the Army Statistical and Administrative data banks are unable to point to any security arrangements. Other data banks lacking security precautions are the Department of Commerce's Seafaring Personnel and Uniform ADP Personnel systems, as well as the Appalachian Regional Commission's mailing lists.

As was expected, the most common security arrangement is physical security, usually coupled with restrictions on access to authorized personnel. Over half (53 percent) of the data bank responses providing information cited some form of physical security, including the response for one Army system which states that the system's data is secured in an "unlock file." The degrees of physical security and restricted access vary a great deal. At one extreme of very tight security are the White House Central Files which are electronically coded and kept in locked, restricted access vaults under constant Secret Service surveillance.⁸⁹ The Pentagon Parking System is also

⁸⁷ See footnote 81 above.

⁸⁸ The response for one highly sensitive Army system, the Narcotic Offender File, states that the subcommittee's question regarding security precautions was "not applicable."

⁸⁹ These files have been classified in Table 8 under "security devices built into system" to reflect the highest degree of sophisticated security arrangements.

kept under very tight security—the data is both classified and locked up. It is surprising to find that the Federal Deposit Insurance Corporation's Section 8 and 19 files, containing much derogatory information about individuals, are kept only in ordinary locked file cabinets. At the least secure extreme of the range of physical security arrangements is the Air Force Aeronautical Chart and Information Center Upward Mobility File which is "kept secure in the career development counselor's desk."

A little over a quarter (26 percent) of the data bank responses providing information about security precautions cite various agency procedures and restrictions on access to authorized personnel. Typical of these are the Environmental Protection Agency's four data banks for which "no devices per se exist." These files are protected from unauthorized access by the fact that only a limited number of Environmental Protection Agency personnel "have the knowledge required to operate the systems." Similarly, the responses for five of the ACTION data banks vaguely state that "file security is controlled by Data Services through normal procedures."

The most sophisticated security devices are those electronically built into computerized systems. Over 15 percent of the data bank responses providing information state that the agencies employ such electronic devices for their data banks. Among these is the Department of Agriculture's proposed Agricultural Stabilization and Conservation Service data bank which is designed to employ "provisions in the data management software for screening requests." The huge (33,840,884 records) Veterans Administration Beneficiary Identification and Records Locator Subsystem (BIRLS) also employs sophisticated electronic security devices and codes built into the system's software. Over two-thirds of the Department of Health, Education, and Welfare data banks employ electronic security devices of varying degrees of sophistication built into such systems as the Migrant Student Transfer System.

In some cases the actual security of the data banks is difficult to judge. The sophisticated Treasury Enforcement Communications System, for example, is accessed by approximately 500 remote terminals around the country. Unauthorized access to any of these 500 terminals would jeopardize the security of the entire system. The security of the Veterans Administration's BIRLS system is subject to similar reservations. The General Service Administration's proposed national data bank, FEDNET, would pose enormous security problems, since the number of remote terminals would number in the thousands.

One intriguing solution to the data bank security problem is suggested by the Department of Defense Installation and Logistics Branch's Housing Referral Office data bank—data is destroyed after the house-hunting purpose for which it was collected is ended. In other words, if less personal data about individuals were stored in fewer data banks, the need for cumbersome and expensive security precautions would be substantially reduced.

Sources of Information

Table 9 summarizes the survey responses regarding the sources of information stored in Federal data banks. Only 469 (or 86 percent) of the 544 data bank responses analyzed⁹⁰ provide information on sources. Of these 469 data banks for which information about sources is available, by far the largest number (71 percent) rely on existing records for data. In other words, many of these data banks themselves derive their contents from other data banks. This is especially true in the case of computerized files, most of which ultimately rely on manual dossiers for data. Some of these "existing records" are rather mysterious. For example, the Naval Investigative Service provides the rather unhelpful response that much of its information comes from "investigative reports," without elucidating the ultimate sources of the reports themselves.

Almost as frequently, the responses cite the subjects themselves as a source of information. Of the 469 data bank responses providing source information, 64 percent state that subjects provide at least some of the data. Some agencies, such as the Internal Revenue Service, the Decennial Census and Selective Service, compel individuals on pain of criminal penalties to provide information. In others, such as the Special Action Office for Drug Abuse Prevention's CODAP system, the price of federally funded drug abuse treatment is the patient's disclosure of a great deal of highly personal, and in some cases potentially damaging, information.

Relatively fewer (41 percent) of the data bank responses providing source information state that these systems collect data from third parties. Security clearance and background check files are typical of such systems. Other data banks, such as the National Science Foundation's National Register of Scientific and Technical Personnel collect information exclusively from third parties, in that case, from various professional societies.

It is perhaps not surprising that one-quarter of the data bank responses providing information state that they collect data from all available sources: subjects, existing records and third parties.

Conclusion

The subcommittee's study of 858 data banks on individuals maintained by 54 Federal agencies developed a massive amount of information about Federal data banks which can only be summarized here. The detailed responses submitted by the agencies themselves contain by far the most important results of the subcommittee's survey. These responses reveal the agencies' own understanding or lack of understanding both of their own data systems as well as of the rights of individuals whose records are contained in these systems. Far more than the facts and numbers presented in this summary, these more subtle factors determine the real nature and extent of the impact these Federal data banks have on the constitutional rights of individual citizens.

⁹⁰ See footnote 81 above.

TABULAR SUMMARIES

TABLE 1.—NUMBER OF DATA BANKS, COMPUTERIZATION AND NUMBER OF RECORDS

| Agency | Number of data banks | Number of computerized data banks | Number of data banks not reporting number of records | Number of records |
|---|----------------------|-----------------------------------|--|----------------------|
| ACTION..... | 6 | 5 | 0 | 351,700 |
| Administrative Conference of the United States..... | 0 | 0 | 0 | 0 |
| Administrative Office of the U.S. Courts..... | 9 | 9 | 4 | 757,000 |
| Appalachian Regional Commission..... | 3 | 2 | 3 | 0 |
| Civil Aeronautics Board..... | 1 | 1 | 0 | 0 |
| Civil Service Commission..... | 13 | 8 | 4 | 18,972,800 |
| Department of Agriculture..... | 6 | 5 | 0 | 5,539,200 |
| Department of Commerce..... | 8 | 8 | 3 | 204,165,500 |
| Department of Defense..... | 73 | 36 | 13 | 18,001,109 |
| Department of the Air Force..... | 385 | 382 | 12 | 34,467,849 |
| Department of the Army..... | 20 | 12 | 6 | 6,154,368 |
| Department of the Navy..... | 19 | 13 | 3 | 2,626,090 |
| Miscellaneous Department of Defense offices and agencies..... | 61 | 60 | 0 | 402,428,158 |
| Department of Health, Education, and Welfare..... | 27 | 25 | 6 | 9,862,305 |
| Department of Housing and Urban Development..... | 1 | 0 | 0 | 79,800 |
| Department of the Interior..... | 19 | 12 | 4 | 139,031,722 |
| Department of Justice..... | 4 | 3 | 1 | 24,000,000 |
| Department of Labor..... | 2 | 1 | 1 | 243,135 |
| Department of State..... | 18 | 17 | 2 | 6,194,430 |
| Department of Transportation..... | 46 | 38 | 7 | 155,571,458 |
| Department of the Treasury..... | 4 | 4 | 0 | 41,200 |
| Environmental Protection Agency..... | 5 | 5 | 0 | 131,000 |
| Equal Employment Opportunity Commission..... | 0 | 0 | 0 | 0 |
| Export-Import Bank of the United States..... | 0 | 0 | 0 | 0 |
| Farm Credit Administration..... | 3 | 1 | 0 | 2,900 |
| Federal Communications Commission..... | 12 | 12 | 5 | 2,253,481 |
| Federal Deposit Insurance Corporation..... | 2 | 0 | 0 | 30,000 |
| Federal Home Loan Bank Board..... | 0 | 0 | 0 | 0 |
| Federal Maritime Commission..... | 0 | 0 | 0 | 0 |
| Federal Mediation and Conciliation Service..... | 1 | 0 | 0 | 1,000 |
| Federal Power Commission..... | 1 | 0 | 0 | 1,100 |
| Federal Reserve Board..... | 1 | 0 | 0 | 1,369 |
| Federal Trade Commission..... | 1 | 1 | 1 | 0 |
| General Services Administration..... | 2 | 0 | 0 | 119,000,160 |
| Indian Claims Commission..... | 0 | 0 | 0 | 0 |
| Interstate Commerce Commission..... | 1 | 0 | 0 | 1,750 |
| National Aeronautics and Space Administration..... | 1 | 0 | 1 | 26,931 |
| National Credit Union Administration..... | 1 | 0 | 1 | 512 |
| National Labor Relations Board..... | 0 | 0 | 0 | 0 |
| National Mediation Board..... | 0 | 0 | 0 | 0 |
| National Science Foundation..... | 4 | 4 | 1 | 375,505 |
| Office of Economic Opportunity..... | 13 | 13 | 3 | 108,360 |
| Office of Emergency Preparedness..... | 3 | 2 | 0 | 1,905,000 |
| Office of Management and Budget..... | 2 | 2 | 0 | 2,083 |
| Railroad Retirement Board..... | 9 | 4 | 5 | 15,468,000 |
| Securities and Exchange Commission..... | 6 | 6 | 0 | 679,500 |
| Selective Service System..... | 1 | 1 | 0 | 14,860,811 |
| Small Business Administration..... | 4 | 2 | 0 | 23,000 |
| Special Action Office for Drug Abuse Prevention..... | 1 | 0 | 0 | 0 |
| Subversive Activities Control Board..... | 0 | 0 | 0 | 0 |
| Tennessee Valley Authority..... | 8 | 7 | 3 | 146,150 |
| U.S. Atomic Energy Commission..... | 6 | 6 | 0 | 1,088,600 |
| U.S. Commission on Civil Rights..... | 3 | 1 | 1 | 379 |
| U.S. Information Agency..... | 2 | 2 | 0 | 17,696 |
| U.S. Postal Service..... | 2 | 2 | 0 | 23,000 |
| U.S. Tariff Commission..... | 2 | 2 | 2 | 0 |
| Veterans Administration..... | 29 | 21 | 1 | 72,604,326 |
| White House..... | 7 | 4 | 0 | 151,940 |
| Total..... | 858 | 741 | 93 | 1,245,699,494 |

TABLE 2.—CATEGORIES OF DATA BANKS

| Agency | Administrative | Evaluative | Statistical | Total |
|--|----------------|------------|-------------|-------|
| ACTION | 4 | 2 | | 0 |
| Administrative Conference of the United States | | | | 1 |
| Administrative Office of the U.S. Courts | 3 | | 6 | 9 |
| Appalachian Regional Commission | 3 | | | 3 |
| Civil Aeronautics Board | 1 | | | 1 |
| Civil Service Commission | 7 | 3 | 3 | 13 |
| Department of Agriculture | 4 | 1 | 1 | 6 |
| Department of Commerce | 7 | | 1 | 8 |
| Department of Defense: | | | | |
| Department of the Air Force | 64 | 7 | 2 | 73 |
| Department of the Army | 244 | 74 | 67 | 385 |
| Department of the Navy | 11 | 6 | 3 | 20 |
| Miscellaneous Department of Defense offices and agencies | | | | |
| Department of Health, Education, and Welfare | 13 | 4 | 2 | 19 |
| Department of Housing and Urban Development | 46 | | 15 | 61 |
| Department of the Interior | 20 | 1 | 6 | 27 |
| Department of Justice | 1 | | 1 | 2 |
| Department of Labor | 4 | 14 | 1 | 19 |
| Department of State | 3 | | 1 | 4 |
| Department of Transportation | 2 | | | 2 |
| Department of the Treasury | 11 | 1 | 6 | 18 |
| Environmental Protection Agency | 36 | 8 | 2 | 46 |
| Equal Employment Opportunity Commission | 4 | | | 4 |
| Export-Import Bank of the United States | 5 | | | 5 |
| Farm Credit Administration | 3 | | | 3 |
| Federal Communications Commission | 11 | 1 | | 12 |
| Federal Deposit Insurance Corporation | 2 | | | 2 |
| Federal Home Loan Bank Board | | | | 0 |
| Federal Maritime Commission | | | | 0 |
| Federal Mediation and Conciliation Service | 1 | | | 1 |
| Federal Power Commission | 1 | | | 1 |
| Federal Reserve Board | 1 | | | 1 |
| Federal Trade Commission | 1 | | | 1 |
| General Services Administration | 2 | | | 2 |
| Indian Claims Commission | | | | 0 |
| Interstate Commerce Commission | 1 | | | 1 |
| National Aeronautics and Space Administration | 1 | | | 1 |
| National Credit Union Administration | 1 | | | 1 |
| National Labor Relations Board | | | | 0 |
| National Mediation Board | | | | 0 |
| National Science Foundation | | | 4 | 4 |
| Office of Economic Opportunity | 5 | | 8 | 13 |
| Office of Emergency Preparedness | 2 | | | 2 |
| Office of Management and Budget | 3 | | | 3 |
| Railroad Retirement Board | 9 | | | 9 |
| Securities and Exchange Commission | 3 | 3 | | 6 |
| Selective Service System | 1 | | | 1 |
| Small Business Administration | 2 | 2 | | 4 |
| Special Action Office for Drug Abuse Prevention | | | 1 | 1 |
| Subversive Activities Control Board | | | | 0 |
| Tennessee Valley Authority | 5 | | 3 | 8 |
| U.S. Atomic Energy Commission | 3 | 2 | 1 | 6 |
| U.S. Commission on Civil Rights | 2 | 1 | 1 | 4 |
| U.S. Information Agency | 2 | | | 2 |
| U.S. Postal Service | | 2 | | 2 |
| U.S. Tariff Commission | 2 | | | 2 |
| Veterans Administration | 28 | | 1 | 29 |
| White House | 7 | | | 7 |
| Total | 592 | 132 | 134 | 858 |

TABLE 3.—STATUTORY AUTHORITY

| Agency | Express | Derivative | Implied | No statutory authority cited | Total |
|--|---------|------------|---------|------------------------------|-------|
| ACTION | | 5 | | 1 | 6 |
| Administrative Conference of the United States | | | | | 0 |
| Administrative Office of the U.S. Courts | 9 | | | | 9 |
| Appalachian Regional Commission | | | 3 | | 3 |
| Civil Aeronautics Board | | | | 1 | 1 |
| Civil Service Commission | 5 | 2 | 4 | 2 | 13 |
| Department of Agriculture | 1 | 3 | 1 | 1 | 6 |
| Department of Commerce | 1 | 3 | 1 | 3 | 8 |
| Department of Defense: | | | | | |
| Department of the Air Force | 4 | 22 | 42 | 5 | 73 |
| Department of the Army | 1 | | 61 | 9 | 71 |
| Department of the Navy | | | 14 | 6 | 20 |
| Miscellaneous Department of Defense offices and agencies | | | | | |
| Department of Health, Education, and Welfare | 26 | 23 | 3 | 12 | 64 |
| Department of Housing and Urban Development | 4 | 15 | 7 | 1 | 27 |
| Department of the Interior | | | | 1 | 1 |
| Department of Justice | 9 | 1 | 1 | 8 | 19 |
| Department of Labor | 1 | 2 | | 1 | 4 |
| Department of State | | | 2 | | 2 |
| Department of Transportation | 9 | 9 | | | 18 |
| Department of the Treasury | 9 | 9 | 16 | 12 | 46 |
| Environmental Protection Agency | | | 4 | | 4 |
| Equal Employment Opportunity Commission | | | 5 | | 5 |
| Export-Import Bank of the United States | | | | 3 | 3 |
| Farm Credit Administration | | | 9 | | 9 |
| Federal Communications Commission | | 3 | | | 3 |
| Federal Deposit Insurance Corporation | 1 | 1 | | | 2 |
| Federal Home Loan Bank Board | | | | | 0 |
| Federal Maritime Commission | | | | | 0 |
| Federal Mediation and Conciliation Service | | 1 | | | 1 |
| Federal Power Commission | 1 | | | | 1 |
| Federal Reserve Board | | | | 1 | 1 |
| Federal Trade Commission | | | | 1 | 1 |
| General Services Administration | 1 | 1 | | | 2 |
| Indian Claims Commission | | | | | 0 |
| Interstate Commerce Commission | | | | 1 | 1 |
| National Aeronautics and Space Administration | | | | 1 | 1 |
| National Credit Union Administration | | | | 1 | 1 |
| National Labor Relations Board | | | | | 0 |
| National Mediation Board | | | | | 0 |
| National Science Foundation | 1 | | 3 | | 4 |
| Office of Economic Opportunity | 1 | 2 | 10 | | 13 |
| Office of Emergency Preparedness | | 1 | | 1 | 2 |
| Office of Management and Budget | | | | 3 | 3 |
| Railroad Retirement Board | | 9 | | | 9 |
| Securities and Exchange Commission | | | 5 | 1 | 6 |
| Selective Service System | 1 | | | | 1 |
| Small Business Administration | | | 4 | | 4 |
| Special Action Office for Drug Abuse Prevention | | | 1 | | 1 |
| Subversive Activities Control Board | | | | | 0 |
| Tennessee Valley Authority | | | 8 | | 8 |
| U.S. Atomic Energy Commission | 2 | | 1 | 3 | 6 |
| U.S. Commission on Civil Rights | | | 3 | | 3 |
| U.S. Information Agency | | | | 2 | 2 |
| U.S. Postal Service | | | 2 | | 2 |
| U.S. Tariff Commission | | | | 2 | 2 |
| Veterans Administration | | | 29 | | 29 |
| White House | | | 3 | 4 | 7 |
| Total | 87 | 115 | 247 | 96 | 544 |

TABLE 4.—SUBJECT NOTIFICATION

| Agency | Express | Through dealings | No notice | No information provided | Total |
|--|---------|------------------|-----------|-------------------------|-------|
| ACTION | | 6 | | | 6 |
| Administrative Conference of the United States | | | | | 0 |
| Administrative Office of the U.S. Courts | | | 9 | | 9 |
| Appalachian Regional Commission | | 2 | 1 | | 3 |
| Civil Aeronautics Board | | | | 1 | 1 |
| Civil Service Commission | 3 | | 6 | 4 | 13 |
| Department of Agriculture | | 3 | 1 | 2 | 6 |
| Department of Commerce | 1 | 2 | 2 | 3 | 8 |
| Department of Defense: | | | | | |
| Department of the Air Force | 33 | 29 | 7 | 4 | 73 |
| Department of the Army | 37 | 3 | 31 | | 71 |
| Department of the Navy | 7 | 8 | 2 | 3 | 20 |
| Miscellaneous Department of Defense offices and agencies | | | | | |
| Department of Health, Education, and Welfare | 11 | 4 | 2 | 2 | 19 |
| Department of Housing and Urban Development | 12 | 6 | 38 | 5 | 61 |
| Department of the Interior | 3 | | 8 | 16 | 27 |
| Department of Justice | | | 14 | 4 | 19 |
| Department of Labor | | | 4 | | 4 |
| Department of State | | | 1 | 1 | 2 |
| Department of Transportation | 1 | 9 | 8 | | 18 |
| Department of the Treasury | 9 | 18 | 18 | 1 | 46 |
| Environmental Protection Agency | | 2 | | 2 | 4 |
| Equal Employment Opportunity Commission | | | 5 | | 5 |
| Export-Import Bank of the United States | | | | 3 | 3 |
| Farm Credit Administration | | 11 | 1 | | 12 |
| Federal Communications Commission | | | 2 | | 2 |
| Federal Deposit Insurance Corporation | | | | | 0 |
| Federal Home Loan Bank Board | | | | | 0 |
| Federal Maritime Commission | | | | | 0 |
| Federal Mediation and Conciliation Service | 1 | | | | 1 |
| Federal Power Commission | | | 1 | | 1 |
| Federal Reserve Board | | | | 1 | 1 |
| Federal Trade Commission | | | | 1 | 1 |
| General Services Administration | 1 | | 1 | | 2 |
| Indian Claims Commission | | | | | 0 |
| Interstate Commerce Commission | | | | 1 | 1 |
| National Aeronautics and Space Administration | | | | 1 | 1 |
| National Credit Union Administration | | | | 1 | 1 |
| National Labor Relations Board | | | | | 0 |
| National Mediation Board | | | | | 0 |
| National Science Foundation | 1 | 3 | | | 4 |
| Office of Economic Opportunity | 6 | 5 | | 2 | 13 |
| Office of Emergency Preparedness | | | 2 | | 2 |
| Office of Management and Budget | | 2 | | 1 | 3 |
| Railroad Retirement Board | | 4 | | 5 | 9 |
| Securities and Exchange Commission | 3 | | 3 | | 6 |
| Selective Service System | | 1 | | | 1 |
| Small Business Administration | | 3 | 1 | | 4 |
| Special Action Office for Drug Abuse Prevention | | | 1 | | 1 |
| Subversive Activities Control Board | | | | | 0 |
| Tennessee Valley Authority | 4 | | | 4 | 8 |
| U.S. Atomic Energy Commission | 2 | 1 | 3 | | 6 |
| U.S. Commission on Civil Rights | 1 | | | 2 | 3 |
| U.S. Information Agency | | | 2 | | 2 |
| U.S. Postal Service | | | | 2 | 2 |
| U.S. Tariff Commission | | | | 2 | 2 |
| Veterans Administration | 1 | 6 | 22 | | 29 |
| White House | 4 | | 3 | | 7 |
| Total | 142 | 128 | 199 | 76 | 544 |

TABLE 5.—SUBJECT REVIEW

| Agency | Permitted to review entire file | Permitted to review selected data in file | No review | No information provided | Total |
|--|---------------------------------|---|-----------|-------------------------|-------|
| ACTION | | | 6 | | 6 |
| Administrative Conference of the United States | | | | | 0 |
| Administrative Office of the U.S. Courts | | | | 9 | 9 |
| Appalachian Regional Commission | | 3 | | | 3 |
| Civil Aeronautics Board | | | | 1 | 1 |
| Civil Service Commission | 7 | | 6 | | 13 |
| Department of Agriculture | 4 | 1 | 1 | | 6 |
| Department of Commerce | 1 | | 4 | 3 | 8 |
| Department of Defense: | | | | | |
| Department of the Air Force | 42 | 13 | 14 | 4 | 73 |
| Department of the Army | 52 | 4 | 14 | 1 | 71 |
| Department of the Navy | 13 | 2 | 4 | 1 | 20 |
| Miscellaneous Department of Defense offices and agencies | | | | | |
| Department of Health, Education, and Welfare | 11 | 5 | 2 | 1 | 19 |
| Department of Housing and Urban Development | 33 | 2 | 21 | 5 | 61 |
| Department of the Interior | 2 | 1 | 8 | 16 | 27 |
| Department of Justice | | 3 | 11 | 5 | 19 |
| Department of Labor | | | 3 | 1 | 4 |
| Department of State | 1 | | | 1 | 2 |
| Department of Transportation | 4 | 1 | 13 | | 18 |
| Department of the Treasury | 23 | 3 | 13 | 7 | 46 |
| Environmental Protection Agency | 2 | | | 2 | 4 |
| Equal Employment Opportunity Commission | | | 5 | | 5 |
| Export-Import Bank of the United States | | | | 3 | 3 |
| Farm Credit Administration | | | | | 0 |
| Federal Communications Commission | 12 | | | | 12 |
| Federal Deposit Insurance Corporation | | | 2 | | 2 |
| Federal Home Loan Bank Board | | | | | 0 |
| Federal Maritime Commission | | | | | 0 |
| Federal Mediation and Conciliation Service | 1 | | | | 1 |
| Federal Power Commission | | 1 | | | 1 |
| Federal Reserve Board | | | | 1 | 1 |
| Federal Trade Commission | | | | 1 | 1 |
| General Services Administration | 1 | | 1 | | 2 |
| Indian Claims Commission | | | | | 0 |
| Interstate Commerce Commission | | | | 1 | 1 |
| National Aeronautics and Space Administration | | | | 1 | 1 |
| National Credit Union Administration | | | | 1 | 1 |
| National Labor Relations Board | | | | | 0 |
| National Mediation Board | | | | | 0 |
| National Science Foundation | 4 | | | | 4 |
| Office of Economic Opportunity | 8 | | 3 | 2 | 13 |
| Office of Emergency Preparedness | | | 2 | | 2 |
| Office of Management and Budget | 2 | | | 1 | 3 |
| Railroad Retirement Board | | 1 | 3 | 5 | 9 |
| Securities and Exchange Commission | | | 6 | | 6 |
| Selective Service System | 1 | | | | 1 |
| Small Business Administration | | | | 4 | 4 |
| Special Action Office for Drug Abuse Prevention | | | 1 | | 1 |
| Subversive Activities Control Board | | | | | 0 |
| Tennessee Valley Authority | 4 | | | 4 | 8 |
| U.S. Atomic Energy Commission | 1 | 4 | 1 | | 6 |
| U.S. Commission on Civil Rights | 1 | | | 2 | 3 |
| U.S. Information Agency | | | | 2 | 2 |
| U.S. Postal Service | | | 2 | | 2 |
| U.S. Tariff Commission | | | | 2 | 2 |
| Veterans Administration | 4 | 25 | | | 29 |
| White House | 4 | | 3 | | 7 |
| Total | 241 | 66 | 149 | 89 | 544 |

TABLE 6.—ACCESS BY OTHER AGENCIES

| Agency | Indirect | | | | | | | Total |
|--|-------------------------------|------------------------------|--------------|--|--------------------|-----------|-------------------------|-------|
| | Direct | | Upon request | In accordance with agency procedures, including FOIA | Public information | No access | No information provided | |
| | Automated access to data base | Routine distribution of data | | | | | | |
| ACTION | | | 6 | | | | | 6 |
| Administrative Conference of the United States | | | | | | | | 0 |
| Administrative Office of the U.S. Courts | | | 9 | | | | | 9 |
| Appalachian Regional Commission | | | | 3 | | | | 3 |
| Civil Aeronautics Board | | | | | | | 1 | 1 |
| Civil Service Commission | 7 | | | | 3 | 2 | 1 | 13 |
| Department of Agriculture | | | 6 | | | | | 6 |
| Department of Commerce | 1 | | 2 | 1 | | 1 | 3 | 8 |
| Department of Defense: | | | | | | | | |
| Department of the Air Force | | 2 | 11 | 4 | | 54 | 2 | 73 |
| Department of the Army | 4 | | 3 | 11 | | 47 | | 71 |
| Department of the Navy | | 3 | | 11 | | 5 | 1 | 20 |
| Miscellaneous Department of Defense offices and agencies | | 6 | 2 | 1 | | 8 | 2 | 19 |
| Department of Health, Education, and Welfare | | 5 | | 6 | | 45 | 5 | 61 |
| Department of Housing and Urban Development | | 15 | 2 | | | 2 | 8 | 27 |
| Department of the Interior | | | | | | | 1 | 1 |
| Department of Justice | 2 | | 7 | 4 | 2 | 1 | 1 | 19 |
| Department of Labor | | | | 3 | | | 1 | 4 |
| Department of State | | | | 1 | | | 1 | 2 |
| Department of Transportation | | 16 | | 1 | | 1 | | 18 |
| Department of the Treasury | 3 | | 17 | 10 | | 6 | 8 | 46 |
| Environmental Protection Agency | | | | 4 | | | | 4 |
| Equal Employment Opportunity Commission | | 5 | | | | | | 5 |
| Export-Import Bank of the United States | | | | | | | | 0 |
| Farm Credit Administration | | | | | | | 3 | 3 |
| Federal Communications Commission | | 1 | | 2 | | 8 | 1 | 12 |
| Federal Deposit Insurance Corporation | | | | 2 | | | | 2 |
| Federal Home Loan Bank Board | | | | | | | | 0 |
| Federal Maritime Commission | | | | | | | | 0 |
| Federal Mediation and Conciliation Service | | | | | | | 1 | 1 |
| Federal Power Commission | | 1 | | | | | | 1 |
| Federal Reserve Board | | | | | | | 1 | 1 |
| Federal Trade Commission | | 1 | | | | | | 1 |
| General Services Administration | | | | 2 | | | | 2 |
| Indian Claims Commission | | | | | | | | 0 |
| Interstate Commerce Commission | | | | | | | 1 | 1 |
| National Aeronautics and Space Administration | | | | | | | 1 | 1 |
| National Credit Union Administration | | | | | | | 1 | 1 |
| National Labor Relations Board | | | | | | | | 0 |
| National Mediation Board | | | | | | | | 0 |
| National Science Foundation | | 1 | | 2 | | 1 | | 4 |
| Office of Economic Opportunity | | | 7 | | | | 6 | 13 |
| Office of Emergency Preparedness | 1 | | | | | | | 2 |
| Office of Management and Budget | | | | | | | 1 | 3 |
| Railroad Retirement Board | | | 4 | | | | 5 | 9 |
| Securities and Exchange Commission | | 1 | | 1 | | | 4 | 6 |
| Selective Service System | | | 1 | | | | | 1 |
| Small Business Administration | | | 4 | | | | | 4 |

TABLE 6.—ACCESS BY OTHER AGENCIES—Continued

| Agency | Indirect | | | | | | | Total |
|---|-------------------------------|------------------------------|--------------|--|--------------------|-----------|-------------------------|-------|
| | Direct | | Upon request | In accordance with agency procedures, including FOIA | Public information | No access | No information provided | |
| | Automated access to data base | Routine distribution of data | | | | | | |
| Special Action Office for Drug Abuse Prevention | | | | 1 | | | | 1 |
| Subversive Activities Control Board | | | | | | | | 0 |
| Tennessee Valley Authority | | 4 | | 4 | | | | 8 |
| U.S. Atomic Energy Commission | | | 3 | 1 | | | 2 | 6 |
| U.S. Commission on Civil Rights | | | | | 3 | | | 3 |
| U.S. Information Agency | | | | | | | 2 | 2 |
| U.S. Postal Service | | 1 | | 1 | | | | 2 |
| U.S. Tariff Commission | | | | | | | 2 | 2 |
| Veterans Administration | | | | 29 | | | | 29 |
| White House | | | | | | 7 | | 7 |
| Total | 10 | 118 | 97 | 61 | 16 | 197 | 46 | 544 |

TABLE 7.—PUBLIC ACCESS

| Agency | Direct | Upon request | In accordance with agency procedures and/or with FOIA | Public information | No access | No information provided | Total |
|--|--------|--------------|---|--------------------|-----------|-------------------------|-------|
| ACTION | | | 6 | | | | 6 |
| Administrative Conference of the United States | | | | | | | 0 |
| Administrative Office of the U.S. Courts | | 1 | | | | | 9 |
| Appalachian Regional Commission | | | 3 | | | | 3 |
| Civil Aeronautics Board | | | 1 | | | | 1 |
| Civil Service Commission | | | | 4 | 9 | | 13 |
| Department of Agriculture | | 5 | | | | 1 | 6 |
| Department of Commerce | | | | 2 | 6 | | 8 |
| Department of Defense: | | | | | | | |
| Department of the Air Force | | | 20 | 1 | 45 | 7 | 73 |
| Department of the Army | | | 14 | 2 | 53 | 2 | 71 |
| Department of the Navy | | | 16 | | 3 | 1 | 20 |
| Miscellaneous Department of Defense offices and agencies | | | 4 | | 13 | 2 | 19 |
| Department of Health, Education, and Welfare | | | 10 | | 51 | | 61 |
| Department of Housing and Urban Development | | | | 14 | | 13 | 27 |
| Department of the Interior | | | | | | 1 | 1 |
| Department of Justice | | | 3 | | 5 | 11 | 19 |
| Department of Labor | | | 2 | | 1 | 2 | 4 |
| Department of State | | | 1 | | 7 | 4 | 12 |
| Department of Transportation | | 3 | | | | 3 | 18 |
| Department of the Treasury | | | 12 | 4 | 28 | 2 | 46 |
| Environmental Protection Agency | | | | | | 4 | 4 |
| Equal Employment Opportunity Commission | | | | 15 | | | 5 |
| Export-Import Bank of the United States | | | | | | 3 | 3 |
| Farm Credit Administration | | | | | | | 0 |
| Federal Communications Commission | | | 10 | | 2 | | 12 |
| Federal Deposit Insurance Corporation | | | | | 2 | | 2 |
| Federal Home Loan Bank Board | | | | | | | 0 |
| Federal Maritime Commission | | | | | | | 0 |
| Federal Mediation and Conciliation Service | | | | | 1 | | 1 |
| Federal Power Commission | | | | | 1 | | 1 |
| Federal Reserve Board | | | | | | 1 | 1 |
| Federal Trade Commission | | | | 1 | | | 1 |
| General Services Administration | | | 2 | | | | 2 |
| Indian Claims Commission | | | | | | 1 | 0 |
| Interstate Commerce Commission | | | | | | | 1 |
| National Aeronautics and Space Administration | | | | | | 1 | 1 |
| National Credit Union Administration | | | | | | 1 | 1 |
| National Labor Relations Board | | | | | | | 0 |
| National Mediation Board | | | | | | | 0 |
| National Science Foundation | | | | 13 | 1 | | 4 |
| Office of Economic Opportunity | | 2 | | 2 | 5 | 4 | 13 |
| Office of Emergency Preparedness | | | | | 2 | | 2 |
| Office of Management and Budget | | | | | 3 | | 3 |
| Railroad Retirement Board | | | 4 | | | 5 | 9 |
| Securities and Exchange Commission | | | 3 | 2 | 1 | | 6 |
| Selective Service System | | | 1 | | | | 1 |
| Small Business Administration | | | 3 | | 1 | | 4 |
| Special Action Office for Drug Abuse Prevention | | | 1 | | | | 1 |
| Subversive Activities Control Board | | | | | | | 0 |
| Tennessee Valley Authority | | | 4 | 4 | | | 8 |
| U.S. Atomic Energy Commission | | | 3 | | | 3 | 6 |
| U.S. Commission on Civil Rights | | | | 3 | | | 3 |
| U.S. Information Agency | | | | | | 2 | 2 |
| U.S. Postal Service | | | | | | 2 | 2 |
| U.S. Tariff Commission | | | | | | 2 | 2 |
| Veterans Administration | | | 29 | | | | 29 |
| White House | | | | | 7 | | 7 |
| Total | 0 | 14 | 158 | 54 | 243 | 76 | 544 |

† Statistical information only.

TABLE 8.—SECURITY PRECAUTIONS

| Agency | Security devices built into system | Physical security and access restricted to authorized personnel | Access restricted to authorized personnel | Agency procedures restrict access | No security arrangements | No information provided | Total |
|--|------------------------------------|---|---|-----------------------------------|--------------------------|-------------------------|-------|
| ACTION | | 1 | | 5 | | | 6 |
| Administrative Conference of the United States | | | | | | | 0 |
| Administrative Office of the U.S. Courts | | 9 | | | | | 9 |
| Appalachian Regional Commission | | 2 | | | 1 | | 3 |
| Civil Aeronautics Board | | | | | | 1 | 1 |
| Civil Service Commission | | 13 | | | | | 13 |
| Department of Agriculture | 1 | 5 | | | | | 6 |
| Department of Commerce | | 2 | 1 | | 2 | 3 | 8 |
| Department of Defense: | | | | | | | |
| Department of the Air Force | | 48 | 16 | 2 | 1 | 6 | 73 |
| Department of the Army | 3 | 23 | 26 | 3 | 13 | 3 | 71 |
| Department of the Navy | | 16 | | 3 | | 1 | 20 |
| Miscellaneous Department of Defense offices and agencies | | 3 | 11 | 3 | | 1 | 19 |
| Department of Health, Education, and Welfare | 41 | 9 | 10 | | 1 | | 61 |
| Department of Housing and Urban Development | | 1 | 1 | 2 | | 23 | 27 |
| Department of the Interior | | | | | | 1 | 1 |
| Department of Justice | 2 | 11 | | 2 | | 4 | 19 |
| Department of Labor | | 1 | | 3 | | | 4 |
| Department of State | | 1 | | | | 1 | 2 |
| Department of Transportation | 3 | 10 | | 1 | 4 | | 18 |
| Department of the Treasury | 6 | 28 | 7 | 1 | 3 | 1 | 46 |
| Environmental Protection Agency | | | 4 | | | | 4 |
| Equal Employment Opportunity Commission | | | | | | 5 | 5 |
| Export-Import Bank of the United States | | | | | | 3 | 3 |
| Farm Credit Administration | | | | 12 | | | 12 |
| Federal Communications Commission | | | | | | 2 | 2 |
| Federal Deposit Insurance Corporation | | | | | | | 0 |
| Federal Home Loan Bank Board | | | | | | | 0 |
| Federal Maritime Commission | | | | | | | 0 |
| Federal Mediation and Conciliation Service | 1 | | | | | | 1 |
| Federal Power Commission | | 1 | | | | | 1 |
| Federal Reserve Board | | | | | | 1 | 1 |
| Federal Trade Commission | | | | | | 1 | 1 |
| General Services Administration | | 2 | | | | | 2 |
| Indian Claims Commission | | | 1 | | | | 0 |
| Interstate Commerce Commission | | | | 1 | | | 1 |
| National Aeronautics and Space Administration | | | | | | 1 | 1 |
| National Credit Union Administration | | | | | | 1 | 1 |
| National Labor Relations Board | | | | | | | 0 |
| National Mediation Board | | | | | | | 0 |
| National Science Foundation | | 1 | | | | 3 | 4 |
| Office of Economic Opportunity | | 12 | | | | 1 | 13 |
| Office of Emergency Preparedness | | 1 | 1 | | | | 2 |
| Office of Management and Budget | | 1 | | | | 2 | 3 |
| Railroad Retirement Board | | | 9 | | | | 9 |
| Securities and Exchange Commission | | 6 | | | | | 6 |
| Selective Service System | | 1 | | | | | 1 |
| Small Business Administration | 2 | 2 | | | | | 4 |
| Special Action Office for Drug Abuse Prevention | | 1 | | | | | 1 |
| Subversive Activities Control Board | | | | | | | 0 |
| Tennessee Valley Authority | | | 8 | | | | 8 |
| U.S. Atomic Energy Commission | 1 | 4 | | | | 1 | 6 |
| U.S. Commission on Civil Rights | | 1 | | | | 2 | 3 |
| U.S. Information Agency | | | | | | 2 | 2 |
| U.S. Postal Service | | | | 2 | | | 2 |
| U.S. Tariff Commission | | | | | | 2 | 2 |
| Veterans Administration | 2 | 26 | | | | 1 | 29 |
| White House | 7 | | | | | | 7 |
| Total | 74 | 249 | 90 | 32 | 26 | 73 | 544 |

TABLE 9.—SOURCES OF INFORMATION

| | Existing records | | | Subjects and existing records | Subjects and third parties | Existing records and third parties | Subjects, existing records and third parties | No information provided | Total | |
|--|------------------|---------------|----------------|-------------------------------|----------------------------|------------------------------------|--|-------------------------|-----------|------------|
| | Subjects | Within agency | Other agencies | | | | | | | |
| ACTION | 4 | | | | | | 2 | | 6 | |
| Administrative Conference of the United States | | | | | | | | | 0 | |
| Administrative Office of the U.S. Courts | | | 9 | | | | | | 9 | |
| Appalachian Regional Commission | 2 | 1 | | | | | | | 3 | |
| Civil Aeronautics Board | | | | | | | | 1 | 1 | |
| Civil Service Commission | | | | | | | | 13 | 13 | |
| Department of Agriculture | 3 | | | 1 | | | 2 | | 6 | |
| Department of Commerce | 3 | 1 | 1 | | | | | 3 | 8 | |
| Department of Defense: | | | | | | | | | | |
| Department of the Air Force | 9 | 12 | | 1 | 15 | 1 | 7 | 21 | 73 | |
| Department of the Army | 3 | 44 | | | 12 | 1 | 2 | 9 | 71 | |
| Department of the Navy | | | | | | 3 | 4 | 12 | 20 | |
| Miscellaneous Department of Defense offices and agencies | 2 | 3 | | 1 | 8 | | | 4 | 19 | |
| Department of Health, Education, and Welfare | 10 | 8 | 4 | 2 | 12 | 8 | 2 | 12 | 61 | |
| Department of Housing and Urban Development | | | | | 5 | 8 | 2 | 1 | 27 | |
| Department of the Interior | | | | | | | | | 1 | |
| Department of Justice | 1 | 1 | 7 | 1 | | | 2 | 4 | 19 | |
| Department of Labor | | | | | | 4 | | | 4 | |
| Department of State | | 1 | 1 | | | | | | 2 | |
| Department of Transportation | 4 | 1 | 2 | 6 | | 2 | | | 18 | |
| Department of the Treasury | 7 | 12 | 11 | | 1 | 7 | 2 | 6 | 46 | |
| Environmental Protection Agency | | | | | | | | | 4 | |
| Equal Employment Opportunity Commission | 5 | | | | | | | | 5 | |
| Export-Import Bank of the United States | | | | | | | | | 0 | |
| Farm Credit Administration | | | | 1 | | | | | 3 | |
| Federal Communications Commission | 9 | 1 | | | 1 | | 1 | 1 | 12 | |
| Federal Deposit Insurance Corporation | | | | | | | | | 2 | |
| Federal Home Loan Bank Board | | | | | | | | | 0 | |
| Federal Maritime Commission | | | | | | | | | 0 | |
| Federal Mediation and Conciliation Service | | | | | | 1 | | | 1 | |
| Federal Power Commission | | 1 | | | | | | | 1 | |
| Federal Reserve Board | | | | | | | | 1 | 1 | |
| Federal Trade Commission | | | 1 | | 1 | | | | 2 | |
| General Services Administration | | | | | | | | | 0 | |
| Indian Claims Commission | | | | | | | | | 1 | |
| Interstate Commerce Commission | 1 | | | | | | | | 1 | |
| National Aeronautics and Space Administration | | | | | | | | 1 | 1 | |
| National Credit Union Administration | | | | | | | | 1 | 1 | |
| National Labor Relations Board | | | | | | | | | 0 | |
| National Mediation Board | | | | | | | | | 0 | |
| National Science Foundation | 3 | | | 1 | 3 | | | | 4 | |
| Office of Economic Opportunity | 10 | | | | | | | | 13 | |
| Office of Emergency Preparedness | | 1 | 1 | | | | | 1 | 2 | |
| Office of Management and Budget | | | | | | 2 | | 7 | 9 | |
| Railroad Retirement Board | 1 | | 1 | 2 | | | | 1 | 6 | |
| Securities and Exchange Commission | 1 | 1 | 1 | | | | | | 1 | |
| Selective Service System | | | | | 1 | | | 2 | 1 | |
| Small Business Administration | | | | | | | | 1 | 4 | |
| Special Action Office for Drug Abuse Prevention | | | | | | | | 1 | 1 | |
| Subversive Activities Control Board | | | | | | | | | 0 | |
| Tennessee Valley Authority | 3 | | | | | | 1 | 4 | 8 | |
| U.S. Atomic Energy Commission | | | | | | 1 | 1 | 4 | 6 | |
| U.S. Commission on Civil Rights | 3 | | | | | | | | 3 | |
| U.S. Information Agency | | | | | | | | 2 | 2 | |
| U.S. Postal Service | | 1 | | | | | | 1 | 2 | |
| U.S. Tariff Commission | | | | | | | | 2 | 2 | |
| Veterans Administration | | | | | | | 22 | 7 | 29 | |
| White House | 1 | 3 | | | 1 | | 2 | | 7 | |
| Total | 84 | 92 | 39 | 15 | 62 | 38 | 24 | 115 | 75 | 544 |

52

53

END