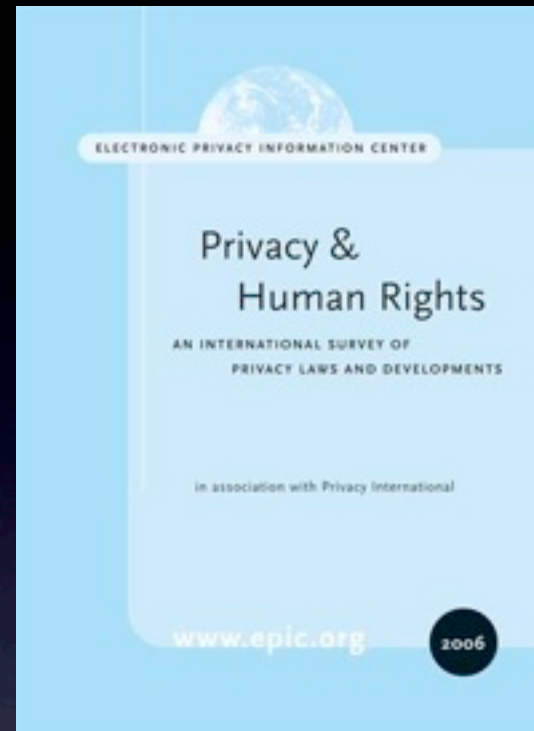
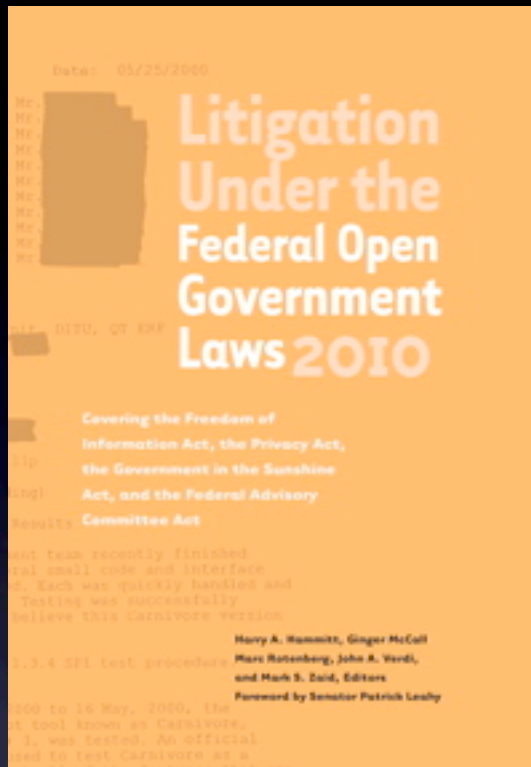


# “Access to Public Information: Recommendations on Protection of Personal Data”

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Committee on Juridical and Political Affairs  
Washington, DC  
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# Public Access AND Privacy Protection

- Two complementary goals
- US Experience - In 1974 enacted Privacy Act, strengthened Freedom of Information Act
- Goals are to (1) promote transparency of government AND (2) protect privacy of individual



EPIC publishes on both FOIA and Privacy

# Multiple Dimensions of Int'l Privacy Law

- Protect human rights
- Enable data flows
- Promote commerce
- Support law enforcement cooperation
- Address concerns about terrorism
- Paradox of privacy: protection = data flows

# Central Concept

- “Fair Information Practices” = allocation of rights and responsibilities in collection and use of personal information
- Allocation is asymmetric.
  - Data Subjects (individuals) - Rights
  - Data Holders (organizations) - Responsibilities
- Reflected in ethical codes, national laws, and international privacy frameworks



# Int'l Privacy Acronyms

- United Nations (UN)
- Council of Europe (COE)
- European Union (EU)
- Organization for Economic Cooperation and Development (OECD)
- Asia Pacific Economic Cooperation (APEC)
- Universal Declaration of Human Rights (UDHR)
- European Convention on Human Rights (ECHR)

# Key Int'l Privacy Instruments

- UN, UDHR, Art. 12 (1948)
- COE, ECHR, Art. 8 (1950)
- OECD Privacy Guidelines (1980)
- COE Convention #108 (1981)
- UN Guidelines (1990)
- EU Data Protection Directive (1995)
- EU Communications Privacy Directive (2002)
- APEC Privacy Framework (2004)
- Lisbon Treaty, Charter of Fund. Rights (2009)

# UDHR Art. 12

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” (1948)



# ECHR Art. 8

*Article 8 – Right to respect for private and family life.*

1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. (1950)

# ECHR Art. 8

## Enforcement

- COE established European Court of Human Rights
- Highest European Court for Human Rights and Fundamental Freedoms
- Individuals may bring complaints directly to the ECHR
- In last several years, many important Art. 8 opinions

# COE Conv. #108

In order to secure for every individual, whatever his/her nationality or residence, respect for his/her rights and fundamental freedoms, and in particular his/her right to privacy, with regard to automatic processing of personal data relating to him/her, the Council of Europe elaborated the "Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data" which was opened for signature on 28 January 1981.

41 Countries have ratified COE #108

# COE #108 - Key Elements

Art. 1 – Object and purpose

Art. 2 – Definitions

Art. 3 – Scope

Art. 4 – Duties of the Parties

Art. 5 – Quality of data

Art. 6 – Special categories of data

Art. 7 – Data security

Art. 8 – Additional safeguards for the data subject

Art. 9 – Exceptions and restrictions

Art. 10 – Sanctions and remedies

Art. 11 – Extended protection ...

# COE #108 - Art. 5

Article 5 – Quality of data. Personal data undergoing automatic processing shall be:

1. obtained and processed fairly and lawfully;
2. stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
3. adequate, relevant and not excessive in relation to the purposes for which they are stored;
4. accurate and, where necessary, kept up to date;
5. preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.



# COE #108 - Art. 6

## Article 6 – Special categories of data

Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.

# COE #108 - Art. 7

## Article 7 – Data security

Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.

# COE #108 - Art. 8

## Article 8 – Additional safeguards for the data subject

Any person shall be enabled:

1. to establish the existence of an automated personal data file ...
2. to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored ...
3. to obtain, as the case may be, rectification or erasure of such data ...
4. to have a remedy ...

# OECD

- Established in 1961. Based in Paris.
- Advanced, industrial economies
- 30 full members, outreach to others
- Provides research and model policy frameworks
- No legal authority

# OECD Privacy Guidelines (1980)

## “Basic Principles of National Application”

- Collection Limitation Principle
- Data Quality Principle
- Purpose Specification Principle
- Use Limitation Principle
- Security Safeguards Principle
- Openness Principle
- Individual Participation Principle
- Accountability Principle



# EU Data Directive 95/46

- Integration of European member states EU
- Promote “free flow of goods and services, labour and capital” (paradox?)
- “Directive” not a “regulation”; requires transposition by member states
- Problem of “adequacy”
- Followed by Privacy Directive in 2002

# EU Data Directive - General Provisions

Art. 1 - Objective

Art. 2 - Definitions

Art. 3 - Scope

Art. 4 - National law

Art. 5 - Lawful processing

Art. 6 - Data Quality

Art. 7 - Criteria for legitimate processing

Art. 8 - Sensitive Data

Art. 9 - Freedom of Expression

# EU Data Directive - Rights of Data Subject

Art. 10 - Information obtained from data subject

Art. 11 - Information obtained from other sources

Art. 12 - Right of access

Art. 13 - Exemptions and restrictions

Art. 14 - Right to object

Art. 15 - Automated decisions (the “logic”)

...

# EU Data Directive - Transfer of Personal Data to Third Countries

Art. 25 - Principles (“adequate level of protection”)

Art. 26 - Derogations

# EU Data Directive - Supervisory Authorities

Art. 28 - (National Data Protection Agencies)

Art. 29 - Working Party - composition

Art. 30 - Working Party - authority

Art. 31 - Political committee

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# Lisbon Treaty

- Entered into force December 1, 2009
- Continued integration of EU Member Countries
- Specific Implications for Privacy
  1. Regulation of “Third Pillar” (police functions)
  2. Strengthens European Parliament
  3. Implements Charter of Fundamental Rights (a Constitution for the EU, drafted in 2000)

# Charter of Fundamental Rights

## Article 7

*Art. 7 - Respect for private and family life*

Everyone has the right to respect for his or her private and family life, home and communications.

# Charter of Fundamental Rights

## Article 8

### *Art. 8 - Protection of personal data*

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

# Recent EU-US Privacy Disputes

- Transfer of passenger records to US
- Transfer of financial records to US
- Commissioner Reding is seeking a comprehensive data protection framework

# Comments on Draft OAS Recommendations

- Very good overview
- Accurate assessment of data protection in EU, US, and Latin America
- Articulation of data protection Principles and Recommendations is particularly good
- Consider also Data Minimization and “Privacy Enhancing Techniques”