

Absolute Privacy

A bill proposed by California State Senator Steve Peaces, SB 129 titled "Personal Information and Privacy Act of 1999," essentially states all information about a person or entity is absolutely private.

This means in any circumstance, for any reason, by any person or entity, without signed authority and permission of the person or entities, and with foreknowledge of the person or entity, all information about that person or entity is absolutely private. This proposed law applies across the board with two exceptions, interestingly, government and law enforcement. Americans are currently being carefully, diligently, purposely, persuaded that legislated absolute privacy is in their interest. This right should be codified, according to the most hysterical and ill informed. Equally wrong-headed thinking by politicians seeking to curry favor of voters to assist in their future reelection to office enthusiastically jump on this inappropriately sensationalized hot button issue, playing on the paranoia of the voter and hastily introduce legislation, which is equally flawed. Most politicians introducing such legislation are well meaning and intentioned. Regrettably, they are either very misguided about the meaning and the real societal hard dollar cost of absolute privacy, or are they simply a fragmented part of a greater orchestration to provide governance even more informational power and circumvent guaranteed constitutional rights? These legislators have forgotten the lessons of secrecy in government learned by our forefathers. James Madison aptly described why the public must have reliable information about Congress and access to public records and freedom of information in government and commerce when he stated in 1822: "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."

Although the states and federal government already have all power in terms of military and policing force, it appears anything remaining in control of citizens or their designated personal legal representatives and support staff creates a deep sense of disempowerment for authorities. The public believes they are not only entitled by birthright to absolute privacy, but the inviolate right to privacy is in their interest because of publicized tragic incidents such as Rebecca Shaffer, Polly Klaas, Theresa Saldana and inflammatory, life threatening abuses by rogue information brokers on the internet and elsewhere.

These incidents should not have happened. They need not happen in the future, but they will, regardless of efforts to avoid them. These incidents, when one considers the population as a whole, fortunately are extreme and rare aberrations no matter how tragic. Certainly these are abhorrent and the facilitators in the entire chain of purveying the information leading to these and similar incidence should receive the strongest, most unmerciful sanctions available. They are, however, no more real and tragic than the thousands of lives lost at D-Day, all of whom died in part to protect an open, free and reasonably accessible society. Neither did they make the ultimate in sacrifice for a government to function secretly or to create a glass house access to the private lives of the public. The warriors of D-Day understood there is something in every person's life, hidden deeply in a virtual closet, that is and should remain no damn business of anyone else. However most information should be available for discovery given clearly defined circumstance(s) and all government records, with the exception of those matters adverse to National Security, should be easily obtainable upon the mere request of any citizen for any reason, at anytime and without bureaucratic delay or redundant cost already paid by taxation.

Once governance or special interest(s) have the authority, the bureaucrats can distribute or allow information about the public to be available only to the well connected, privileged few who will obtain and always have had avenues of access to information. This privileged access was clearly exposed in a recent article by Tracy Weber, a Los Angeles Times Staff writer in her article about the Disney Company, Sunday January 31, 1999. A reading of the article and a little clear thinking about this most privileged of the privileged will lead to the unmistakable conclusion that without the assistance of public records, Weber would never have been able to persuade those in

authority to allow her to print such an extraordinarily critical article about the civil trial tactics of the Disney Company, a very deep pocket advertiser for the Times. The Disney Company affiliates include enormous radio, television and print tentacles which by extension provides political influence and control. The Disney Company will continue to have access to governmental heretofore public records which the public falling over themselves to encourage legislators to take away this right. Without access to public records by representatives of the free press, Disney would have been successful in forever obfuscating the unvarnished truth through continued delays, overly burdensome discovery on the plaintiff designed to do nothing more than drain the financial resources of the plaintiff for the sole purpose of sending a signal to all others that Disney will assertively defend any litigation that it, Disney deems frivolous or defensible. Rightly so. However, If the public continues to support the closure of public records, such corporations and deep pocket defendants will always prevail regardless of the rightness of the claims being made against corporate America. This does not make Corporate America evil incarnate, it does however, give Corporate America an unrestricted invitation to be the fox in the henhouse of access to public records.

Those that specialize (personal bankers, off shore bankers, promoters thereof and others to numerous to mention) in making money playing on paranoia provide excellent examples of how insidious it is to fundamental freedom and rights of Americans to legislate the desired absolute privacy. The privacy legislation when presented certainly sounds and feels good, warm and cuddly but those feelings provide a false sense of security.

During his State of the Union address, President Clinton proposed a new, "digital mug shot" database program, a computerized link between all the states' digital driver's license photographs. It is widely known that this database was the major motivation for going to digital photos. The Department of Transportation spells out the intent in its booklet "The Highway Safety Deskbook," published for law enforcement "With a central image database of every driver in a state, the public safety community has a ready-made storehouse of photos to be used in criminal investigations." Read this entire site:

<http://www.nhtsa.dot.gov/people/injury/enforce/deskbk.html#PART9>

This demonstrates the need to always question government in-depth and why access to records, many of which have been or are being closed, needs to be reopened under clearly defined circumstances, overseen by a non partisan entity besides government. Such governmental entities make unilateral decisions closing off access to public records, such as accomplished recently by Sally Reed in California at the California Department of Motor Vehicles. It is her opinion that legal investigators, adjusters, process servers and related other professions are not entitled to residential information on California drivers, only a new or used car sales dealer(s) and financial institution(s), insurance companies and of course, interestingly, government and law enforcement are so entitled. Note that each and every entity that is allowed free and easy access is related in some fashion to big business and unfathomable financial resources. Surprisingly, attorneys are bared from similar information unless the matter involves a motor vehicle related matter. Interestingly, after closure of motor vehicle records to certain professions, Reed resigned and moved onto another job in California.

Unfortunately, no one was told that photos would one day be placed in a federal "mug shot" database. It is too late to protest. You can't get the photos, signatures and fingerprints out of the system once they're in there. And it is obvious the information may have been shared with other systems. It is reported in 1998 that Florida contracted to sell driver's license photos, names and addresses to a check authorizing company. One wonders to whom the company will in turn sell these photos or if a subsidiary of a larger special interest, (although it says it will not) will allow access. Robert Parke, CLI a licensed Legal Investigator from Monticello, Florida points out that until last year, Florida Statute 322.142 (4) restricted access to drivers' license photographs "only for departmental purposes," for the issuance of duplicate licenses, or in response to law enforcement agency requests and are exempt from the provisions of s. 119.07 (1)." The latter is Florida's public records act. Last year, after the collection and storage of this digital photo data, Florida passed yet another law, this one permitted DHSMV

to sell drivers licenses images for a penny apiece to Image Data LLC of Nashua, NH. They sell their service to retailers who accept DL's as ID, and it brings up Image Data's purchased picture from Florida and displays it on a screen for a clerk to compare to the DL being presented. South Carolina also sold their DL pictures to Image Data, Colorado is considering it, but reportedly, both Louisiana and New Hampshire (where Image Data is based) refused the plan. Not three weeks ago, Mr. Parke's reports, his lawyer client wanted a drivers' license photo of a defendant, (the defendant is now out of state) because the defendant was claiming, when he was served with his summons, that it "wasn't me." Mr. Parkes client wanted the picture to show to the end client for her to make a positive identification of the served defendant to compare to the recall of the process server that effectuated service of process. DHSMV refused advising citing the statute named above. At the very same time, they were selling this guy's, and mine and yours (you Florida folks) to Image Data for A PENNY APIECE. Mr. Parke quickly points out, lest you think that is an insignificant sum, 14,000,000 images have been sold. Their argument is DHSMV sells "to retailers eager to prevent fraud." Mr, Parke's client was trying to prevent fraud as well. These are the same legislators who claim a profound concern for "privacy intrusions" by the private, the legal investigator and adjuster upon the public. (Full details can be found at

http://www.sptimes.com/News/12399/State/Florida_has_sold_lice.html/www.washingtonpost.com/wp-srv/WPlate/1999-01/28/2041-012899-idx.html

Ominously the U.S. State Department is implementing a new passport security feature called "Photo-dig" to reduce the 27,000 passports lost and stolen annually. Replacing the "cut and paste" method, photo-dig allows photographs to be digitally scanned before printing. Such technology is used in Australia and Europe, and works on the premise of instant driver's licenses. When the passport is created, the photograph must be stored in the computer to print a copy. The scary part is that the photograph could easily be stored in a database and made available to various governmental agencies and only governmental agencies regardless of a certifiable clearly defined, legally necessary need by the public sector. Perhaps the United States Government, will, like Florida, Colorado and South Carolina sales those images "to prevent fraud" for a penny apiece. Perhaps those 250 million pennies will enhance the federal surplus. The photo could be used in "virtual police line-ups" or as "electronic mug shots" for a myriad of reasons without the individual's knowledge, only governmental knowledge. Tests in the United Kingdom have shown the "efficiency" of these systems. A newly developed profiling software can analyze a person's face, even from closed circuit television, and match them with photographs in a database. Could this lead to an international tracking network? Is the government and its deep pocket benefactors the only ones that will have access?

There is great concern about the rogue infobroker hacker, who with his expertize and existing data may be able to access those sold digital DMV photo databases, add them to other purloined personal data to create the ultimate identity theft or a more indepth profile of an individual. Yet, the legal investigator(s), adjuster(s), process server(s) with a legitimate need/right to know are denied access to information freely sold to others in the private sector, by the government, like judas, for the proverbial twenty pieces of silver.

Just imagine if government surveillance cameras were linked with passport picture databases to "root out the criminals." Imagine, arriving from abroad, will you be asked, "Your thumb print, please?" "Your retina, please?" They won't even have to see your face since instant verification of your identity, and everything about you is completed the moment you arrive at the port on entry or debarkation. You'll be able to convince yourself easily it isn't that bad. After all, you can conveniently refrain from noticing surveillance cameras and recalling the massive databases behind them. Even if you do and you object, you will still be scanned and tracked, unless continued freedom of information and access to public records is provided within clearly defined. Unfortunately, the goals of being able to faster reissue lost passports and reduce theft seem legitimate, benign, and in the true interest of the public as does the Personal Information and Privacy Act of 1999.

So we have to witness again that our freedom of access and travel is, in actuality, slowly, continuously being

diminished under the guise of a "minor" good. Yet, the public is literally begging governance to implement legislation that will provide laws to bring about, legally, the Orwellian view of government authority. The public's continued enthusiasm to casually give away freedoms is based on misinformation, and muddled thinking. Additionally, this power to control information empowers the privileged to create and maintain apart from government, proprietary information available again, by definition, to a single arbiter who can manipulate the available information in their own interest.

Two examples come to mind, the insurance industry's infamous "claims made index" and the "Medical Information Bureau," another industry-related proprietary data source. The question needs to be asked, if the insurance industry truly wanted to mitigate so-called fraudulent or inflated claims, why won't it grant open, immediate electronic access to the index under clearly defined circumstances? In the same breath, one needs to inquire why the industry refuses to allow access to the Medical Information Bureau? Anytime you apply for life and perhaps major health coverage, it ends up there, the exclusive domain of insurers. It simply does not seem logical, to, on the one hand complain about frivolous and unwarranted lawsuits, while at the same time, refusing counsel when consulted by a prospective client to have access to determine if the claimant has an extensive claims history. Do the databases contain "Trade Secrets?" Hardly, they simply contain information unchallenged, perhaps slanderous commentary, rumor and innuendo immersed in a factual event, implying legitimacy, available to only the industry when and if they decide it is in their venal self interest to make available to representative(s) of the public. If nothing else, California's proposition 103, the insurance premium referendum, clearly educated any thinking person about the arrogant attitude of self interest in corporate America, which is closely attached to the world politics. Perhaps, the index contains, along with factual verifiable information, salacious, unverified commentary, rumor, innuendo and neighborly hate gossip. It is also possible the bureau and claims made index contains information supportive of the current matter. One can only speculate as to the rapidness with which favorable information will be disclosed.

I know of no attorney willing to represent anyone that has made repeated, perhaps questionable or overlapping claims. The current attitude by insurers does not make sense, unless of course it is an effort to ambush unwary counsel who happens to undertake representation at face value. The presumed game plan is to allow the uninformed counsel to represent this claimant, having same spend limited resources, then after delaying as much as possible, ambush same with privately held information which may or may not be all that accurate. The legal industry refers to this as a "Perry Mason moment," which is experienced all too often and adversely by legal representatives of the plaintiff.

The insurance and self-insured industry represents a large pool of resources and with deregulation, insurers are acquiring investment firms, brokerage houses, credit bureaus, claims and investigative firms, information brokers, finance and banking firms. In the process they acquire additional data about consumers. It is not difficult to conclude what consumers think is private is known, but only to those in favor or power. It is easy to imagine cross-compiling of information for a profile available to only representatives of special interests. It is not hard to speculate that what is not accurately volunteered in the proposed unverifiable by an impartial third party environment will be well known only to the special interest not subject to discovery.

The knee-jerk reaction is to exclaim yes, but this is America and misinformation can be challenged. Everyone knows how easy it is to have your credit report corrected!

Right, and legislated absolute privacy is in the best interest of and protects the public from horrific violation! I don't think so.