

MEETING OF LICENSED INVESTIGATORS
AND
PRIVACY ADVOCATES
ON
PRIVACY ISSUES

JANUARY 4, 2001
(Revised January 15, 2001)

On Wednesday, January 4, 2001, leaders from national professional investigator associations met with top privacy advocates at the Federal Trade Commission (FTC) in Washington, D.C. This meeting was organized by Robert Townsend with the cooperation of Beth Givens, and was facilitated by the FTC. The purpose of the meeting was to provide an open forum for the development of meaningful dialogue on privacy issues between the two groups. Peggy Twohig of the FTC moderated the meeting and twenty-five persons were in attendance.

Attendees:

Robert Townsend	National Association of Legal Investigators (NALI)
Francie Koehler	California Association of Licensed Investigators (CALI)
Eddy McClain	National Association of Investigation and Security Services (NCISS)
Larry Troxel	NALI
Kitty Hailey	NCISS/NALI
William Fason	Texas Association of Licensed Investigators (TALI)
Larry Sabbath	Sellery Associates
Brian McGuiness	NCISS/NALI
Deborah Aylward	State Associations Advisory Board to NCISS
Beth Givens	Privacy Rights Clearinghouse (PRCH)
Ed Mierzwinski	USPIRG
Bob Gellman	Privacy Consultant
Jim Dempsey	CDT
Chris Hoofnagle	EPIC
Paula Bruening	CDT
Jean Ann Fox	Consumer Federation of America
Robert Ellis Smith	Privacy Journal
Andrew Shen	EPIC
Evan Hendricks	Privacy Times
Joanna Crane	FTC Identity Theft Program
Helen Foster	
Peggy Twohig	FTC Division of Financial Practices
Joel Winston	
William Haynes	
Clarke Brinckerhoff	

The meeting between professional investigators and privacy advocates commenced at 10:00 a.m. with an opening statement made by Robert Townsend. (See attached statement). In his statement, Townsend stressed that professional, licensed investigators protect the best interests and privacy of the 'law abiding, innocent citizen.' Townsend conveyed the message that in general, licensed investigators are heavily regulated, educated and well trained professionals who are insured, subject to licensing laws and professional standards of ethical conduct.

Beth Givens made an opening statement on behalf of privacy groups. Givens stated that although she was in favor of facilitating open dialogue with private investigators, she has heard 'horror stories' from consumers call-

ing her groups' consumer hotline -- but did not elaborate by providing any further details or how the 'horror stories' related to private investigators.

Givens went on to describe an email she received from a woman who was fearful because no matter where she moved, a past acquaintance was always able to discover her location. The female, according to Givens, claimed to have been sexually abused by the individual 12 years ago. However the incident was never reported to the police due to the woman's 'embarrassment.' The female claimed she was fearful -- because the individual had communicated with her by mail claiming to have knowledge of her 'history' over the course of 12 years and graphically reminded her of the decade old incident. This woman was interested in knowing if her Social Security Number (SSN) had anything to do with the individual's ability to track her address history.

Givens recounted that she told the worried female that it was possible the individual used a private investigator who revealed her whereabouts to the individual by utilizing her SSN and that, currently, there was no framework to prevent this type of activity.

The floor was then turned over to Francie Koehler who addressed item #5 on the meeting agenda: "Licensed Investigator Interests" to include the role, duties and responsibilities of the modern investigator and how professional investigators are regulated by the state licensing laws.

Kitty Hailey explained to the group how there are many myths and misnomers associated with the profession and that what professional investigators do is generally misunderstood. Hailey continued by stating that the public image of investigators is still molded by television and movie PIs -- and that Hollywood's depiction of our profession couldn't be more erroneous.

Deborah Aylward quoted the definition of "Private Investigator" from the Code of Virginia pointing out that licensed investigators were charged with much responsibility under the definition.

There was some general discussion about the 'rogue private investigator' and about the notorious Colorado P.I., Rapp. There were suggestions that unsavory types of private investigators have gravitated to the unregulated state of Colorado to set up shop. Jean Anne Fox asked how many states were currently unregulated. Koehler responded that approximately seven (7) states were currently unregulated.

Jim Dempsey took the floor and asked the group to steer the discussion from licensing practices and towards the privacy concern of credit headers and SSNs. Dempsey stated that the more information is made available to investigators -- the more PIs benefit financially from that information, and that in his opinion, PIs should be restricted from access to credit header information altogether. He went on to say that "PIs have become accustomed to the free flow of consumer information and that this 'trend' puts victims at an unfair advantage."

Pursuant to Dempsey's stated opinion, there was general discussion about identity theft and publicly and legally accessible records. The general consensus among participants was that identity theft "was not a driving force" behind the privacy advocates position on restricted credit header access for PIs

Dempsey introduced the concept of Fair Information Practice Principles, stating that the current trend on information policy was 'away' from easier access and towards restricted or more limited access. Larry Troxel agreed with Dempsey that such a trend may be beginning to occur, but did not agree with the concept. Dempsey mentioned that the number of informational databases and sources have grown quite a bit since the 1980s and commented that the privacy rights advocates are wanting to "pull back" some of the availability of the databases and sources to investigators. Troxel agreed that such growth has occurred, but noted that the specific and specialized needs in the community and in industry for diverse information has also grown exponentially (ie, environmental investigations, computer fraud, etc.).

Koehler offered her personal definition of an information broker as someone who collects raw data and resells the data to end-users. Hailey interjected that what separates PIs from Info Brokers is that PIs are bound by 'confidentiality' restrictions, either by law, regulations and/or ethics.

Robert Ellis Smith stated that, in his opinion, if PIs are clients of Info Brokers, that somewhere along the line there is the potential for privacy breakdown.

Ed Mierzwinski asked if it was an ethical violation for PIs to breach of confidentiality? Troxel read Section 4 of NALI's Code of Ethics and noted that all NALI members, those that are joining as well as those who are renewing, assert that they will abide the Code's precepts. Mierzwinski asked what occurs when there are violations of the Code of Ethics and Troxel noted that such matters are subject to a disciplinary investigation and potential action could occur against the individual's membership. Privacy advocates queried the group about such ethical guidelines being applied to professional investigators nationwide.

Bob Gellman took the floor and asked if there were laws (or privacy principals) that protect consumer's privacy, and if so, were the privacy principals being applied industry wide? Eddy McClain explained that the Fair Credit Reporting Act was currently in place and that Fienstien's bill was an example of proposed legislation that would effect how PIs conduct their business in terms of privacy. McClain further explained how the unintended consequences of FCRA have adversely effected PIs and their clients. Larry Sabbath of Sellery Associates and lobbyist for NCISS, interjected that he believed no one wanted to see a repeat of the 1996 FCRA Amendment problem and that undoing bad privacy (or other types of) legislation must be avoided at all cost. An advocate that produces a well known privacy publication conceded that it was widely recognized that there were indeed unintended consequences to the FCRA, butr also stated that he wants to see FCRA type protection applied to credit header and SSNs.

Larry Sabbath interjected that he believed no one wanted to see a repeat of the 1996 FCRA Amendment problem and that undoing bad privacy (or other types of) legislation must be avoided at all cost.

Bill Fason provided an investigative anecdote relative to Fair Information Principal Practices and use of credit header information and asked, "Did I invade privacy in this situation?" Several advocates responded in the affirmative, citing that the privacy principals of notice/choice/consent were disregarded in Fason's example. Debate about the impracticality of notifying a wrongdoer that he was being investigated, giving the wrongdoer a choice about being investigated and having to obtain the wrongdoers consent prior to investigation ensued.

Brian McGuiness stated that credit header information is the best investigative tool available to PIs. His statement prompted discussion about 'other' methods of gaining the same information and how having to obtain the same information "the old fashioned way", would dramatically increase the cost to consumers and adversely effect the judicial system.

Gellman stated that, from what he could ascertain from the discussion, there were "no clear standards" about invasion of privacy industry wide and that there was nothing in place in the industry to prevent abusive investigative techniques. Gellman went on to describe abusive investigative practices by unsavory PIs from the 1970's that he was aware of. Aylward interjected that yes, 20 years ago, the types of investigative practices he described were the 'norm' -- but that the 'rules have changed' due to increased regulation and laws. Gellman stated that he is unconvinced that it is not the 'norm' today.

Aylward responded by describing a typical client phone call coming into her agency and what her own company's privacy policies regarding requests for information were. Aylward stated that a potential client must identi-

fy their relationship to the person being investigated and that their relationship must be verifiable, they must show documentary proof of a court action or criminal complaint before acceptance of a case is considered. She stated that requests for 'non public information' --that cannot be obtained in a lawful manner -- were denied.

Gellman stated that it was 'always' an invasion of privacy when there was a "commercial use of personal information" and that there must be an attempt to control the use of personal information.

Smith stated that identity theft began in epidemic proportions at precisely the same time credit header information became available to private investigators. Townsend asked Smith to substantiate his statement and asked at what point in time was this supposed to have occurred? Smith stated that according to statistics provided by the Government Accounting Office (GAO) identity theft began in the mid summer of 1993. Townsend and Koehler asked for further substantiation of Smith's statement -- none was forthcoming.

Mierzwinski asked "What is the P.I. industry's 'bottom line' on personal identifiers, credit headers and SSN information? To which Aylward asked, "What is a PIs alternative to credit header access?"

Townsend also asked if the advocates (or the FTC) could provide an 'alternative' to credit header access?

Smith asked "What is the 'purpose' for which credit header information is to be used?"

Gellman responded that there are problems defining purpose citing 30 'consensual' uses of personal health data under the new medical/health record privacy act.

Gellman reminded the group that new forms of identification were being considered as an alternative to SSNs, such as biometrics, and that there was a trend towards 'decentralization of identity' being considered -- and that if this movement comes to pass, new rules will apply.

An Unidentified participant asked if PIs were looking for exceptions to records access, such as those afforded by the Driver Protection and Privacy Act (DPPA)? And that he held the belief that notice should be given to the subject of said records that a search was conducted.

Koehler reiterated that the health of the justice system depended on PIs having credit header/SSN information access and it was 'the only thing we have.'" There was group discussion on how PIs assist in judicial judgment collection, with several advocates maintaining that they believed debt collection was not a permissible purpose for gaining access to header information.

McClain brought up the point that there were many problems with 2328 and the definition of Individual Reference Service Provider (IRSP) and that a new definition would be required, otherwise, PIs would fall under this category and subject's would be able to obtain the entire raw investigative file.

Mierzwinski asked if licensed investigators are also in the business of debt collection? The response was yes; some investigators are in the debt collection business but that it is usually separate and distinct from private investigations. The question of "What is to prevent a P.I. from using a credit report lawfully obtained as a result of debt collection in other investigative matters?" was asked. McClain replied that "The FCRA prevents PIs from using credit reports unlawfully." Fason stated that client files are kept confidential and are subject to audit by credit bureaus, regulatory bodies as well as database or other propriety information providers. Fason further pointed out that end users of database provider information or Department of Motor Vehicle Departments are bound by strict user agreements and must certify that each inquiry is for 'permissible use.'

Hailey stated that the investigator industry must ask itself the question " What are we doing to identify privacy issues?" To which Fox asked if PIs were in other lines of business that might conflict with or facilitate the mis-

use of information? She went on to ask, "How do you separate out other types of investigations [that may not come in line with permissible purpose]?"

Fason responded saying the bottom line on credit header/SSN information is 'Judicial Purpose.'

Mierzwinski interjected that he felt it was "unfair" for debt collection to be a subcategory of permissible purpose and that there were for profit and non profit child support debt collectors asking for access to Federal Parent Locator System (FPLS) access along with exemption from the Fair Debt Collections Act. He asked what would be a good faith solution to the privacy problem and how can PIs carve out a niche separating themselves from info brokers and others?

McGuinness suggested that consumers should expect to forfeit an element of privacy for the common good of the justice system.

Twohig, in response, stated that there is a legitimate need to protect privacy and to address fears that private information is resold.

McGuinness reminded the group that PIs had a social responsibility to protect privacy and were subject to liability for misuse.

As the meeting came to its conclusion, Koehler made a commitment to the advocates, on behalf of licensed investigators, for the industry to adopt privacy principals. Givens agreed that it was possible for PIs to carve out an exception, specifically exceptions pertaining to a permissible purpose of 'litigation' and went on to say that there must be increased accountability, such as loss of license for misuse.

Aylward offered that investigators must learn to "Just Say No" to requests for information outside permissible or judicial purpose.

It was suggested that an email listserve group be formed among participants for continuing dialogue and those not wanting to participate may 'opt out.'

The meeting concluded at approximately 3:07p.m.

Respectfully Submitted,

Deborah Aylward