

Rights to Privacy

It is clear there is an orchestrated effort to close access to heretofore public records, to avoid public scrutiny of the government at the State and Federal level. There is a movement at the state and federal level that can dramatically impact consumers ability to obtain independent verification of personal information provided in litigation in the discovery process. The inability to verify information provided in the litigation places the consumer at a distinct disadvantage. It also limits the oppositions ability to verify the authenticity of what is being sworn to "under the penalty of perjury" and serve the rule of law and a search for the truth ethically, legally and morally correct without fear of prohibitive sanctions being imposed. In effect, the proposed new legislation invites extraordinary abuse of the consumer in the litigation process. The new legislation as proposed also works against the best interest of corporate defendants/plaintiffs as well as others and their representatives.

In the 105th congress a bill, H.R. 4321 was introduced entitled, "The Financial Information Privacy Act of 1998." On Aug. 5, 1998, it was approved in the Committee on Banking and Financial Services, and moved for a vote before the House. This bill died a natural death since action by the house was pre-occupied by the impeachment proceedings of President William Jefferson Clinton. It has been reintroduced in the 106th on January 6, 1999 by Republican Representative Jim Leach, in congress as HR 30. This bill, if it becomes a law, will make it illegal to perform any type of bank account location, stock and bond searches, and a variety of other financial searches to collect judgments, determine the viability of a potential defendant and locate transferred cash, real estate transactions to straw personage off shore, uncover nefarious, fraudulent land trusts, to mention only a few scenarios. It also provides for substantial sanctions against those who, not only perform the search but also fines those requesting a search - up to \$1 million, plus imprisonment up to 30 years or both, on each entity in the request, obtaining, providing or receiving information. A very chilling prohibition.

There are bills being prepared to allegedly protect drivers' license information by edict to bring the member states into compliance with new federal guidelines on public access to these records. Senator Gary Peters has sponsored Senate Bill 22 which would begin notification of individuals when "certain confidential" (the argument is, who decides what is and what is not confidential and under what conditions) information is sought about them through FOIA requests. Senator Chris Dingell has yet to reintroduce the Tracking Device Bill, into the 106th Congress but it is anticipated to be only a matter of time before he does so.

In California State Senator John Burton introduced SB 262, which initially would have created a new tort called "constructive invasion of privacy." This was so broadly defined it would prohibit attorneys or insurers authorizing licensed investigators and adjusters from taking almost any video or sound record of someone engaged in what might be construed as a "personal or familial activity." Individuals and employers who commit the tort would be subject to three times general and special damages plus punitive. If the tort was committed for commercial purposes (fees) there would be a "disgorgement of the proceeds" to the damaged party. The attorney, company or individual that requested the activity would be jointly and severally liable, or so the legal professional information gathering community was informed, no matter the fraud being perpetrated which is caught on video or film, if such fraud could be argued to have been committed in a "personal or familial activity."

This bill did pass in part, with certain exceptions for continuing access for the legal information gathering professional, after opposition by the licensed legal investigative and independent adjusting community, thanks to extensive, exhaustive, individually financially draining lobbying by the fragmented licensed legal investigators and adjusters of the state of California.

Then there is California State Senator Steve Peaces proposed bill SB 129 titled "Personal Information and Privacy Act of 1999," which essentially states all information about a person or entity is absolutely private in any circumstance without the signed authority and permission of the person or entities' and with foreknowledge of

the person or entity. I am sure this authority will be easily obtained before the subject of the inquiry sequesters and transfers exposed assets because of the wrong which the subject has committed and is likely to be held legally liable.

The bureaucrats attempting to close off public records are well intentioned, but misguided and naive although there is much to agree with in the bills presented and pending. The legal community representing the public and other entities will be forced to accept what is revealed in discovery, and end up settling or going to trial without knowing, through discrete independent verification, whether the defendant can be held financially responsible for an excess judgment and if so, determine the location and the amount of those assets before they can be secreted away off shore or transferred into the name of a controlled straw man, thereafter allowing the wrongdoer to escape any financial responsibility by filing bankruptcy. Although he has yet to file bankruptcy, O.J. Simpson is a text book example.

This draconian activity is being shrewdly framed as protecting the "right to privacy," under the guise of "consumer protection." It is popular to believe that nefarious activity is required to obtain personal or corporate in-depth profiles. The truth is 99% of what an advocate needs in the civil and criminal sector, currently remains available through open original sources at what is currently considered a reasonable cost. If bureaucrats and deep pocket professional information brokers succeed, (who by coincidence also own a licensed legal investigative and adjusting subsidiary,) historically open records and governance Americans have benefited from for the past 200 plus years will be slammed shut. The last time a government operated in secrecy, the world experienced world war II and the holocaust.

The federal legislation, (which will be or is being mirrored by individual State legislation) in essence, makes it illegal to use discrete misrepresentations or deceptions in obtaining information. Legitimate licensed legal investigators and adjusters strongly believe that a judgment creditor or anyone exposed to the need to satisfy a potential or actual judgment over insurance limits or purportedly self insureds has a responsibility to satisfy the award and make the damaged/wronged/injured party whole. The legal investigator/adjusters activity on behalf of the damaged/wronged/injured parties' attorney should be able to locate all assets, not just those acknowledged. Attorneys and their investigators/adjusters perform a legitimate service and if these bills pass and become the law of the land, the government will make criminals out of the innocent or their representatives and protect those that owe or have the potential to owe large judgments, including welfare cheats as well as deadbeat dads!

Attorneys and insurers do not authorize, condone nor encourage computer hacking and do not ask or accept offers for illegal information, or have representatives misrepresent themselves as government or law enforcement officials. The attorneys and insurers I know demand their representatives act in a legal manner. Legal investigators/adjusters I know refuse to accept assignments requiring the gathering of information illegally.

This type of legislation will make it virtually impossible to collect on judgments, period. Lawmakers seem to be making laws that benefit criminals and debtors, leaving innocent victims that are swindled, injured, damaged without any ability to be made whole. Ironically, the United States government was vocal in its criticism when Swiss bankers refused to release information about assets confiscated during World War II.

The attorney representing the welfare mom seeking support from an absent father or the legally liable defendant for an injury to an innocent victim as well as subrogation specialist will find little difference in application of the Swiss position to those in HR 4321 and S.2433. (now reintroduced to the 106th congress as HR 30)

Further, while introducing these bills under the guise of "right to privacy" or "consumer protection," the opposite is really true. Laws like these are, in reality anti-public/citizen and anti-open government. The effect will provide fraudsters, swindlers, deadbeats, defendants, plaintiffs and others with protection from independent verification. This will encourage fraudsters, swindlers, deadbeats, defendants, plaintiffs and others to engage in ille-

gal activities or hiding of assets from a judgments, financial recovery for the swindled, the wronged or unpaid child support payments.

Attorneys, on both sides of the aisle, and the public along with the media appear unaware of the exhaustive efforts which have been required of those engaged in licensed legal investigation and adjusting to keep legislators from enacting additional restrictive public records closure legislation this past year.

The public is almost persuaded that any information regarding them should be protected and legislated as absolutely private. If successful in closing public records as has been proposed, a costly and lucrative black market for records will emerge. Violations of privacy along with any illegal civil or criminal behavior will negatively effect both plaintiffs and defendants. There will always be someone willing to obtain the information, if the price is right, regardless of legality.

A recent decision by the Colorado Supreme Court moves a step closer to complete governance secrecy and sets a dangerous precedent to justify further closure of records. If the ruling stands, it is only a matter of time before courts in other states follow suit. The ruling came in a suit by a Colorado Springs councilman who wanted to get a consultant's report on a city agency the councilman was concerned about, according to the Colorado Post. Two years ago, the Colorado legislature passed an addition to the public record act that kept secret documents that were being prepared for a public decision-maker. Included were draft laws that staff was preparing for a legislator. The court decision broadens this extensively.

It appears that not just elected officials can exercise this privilege, but any bureaucrat in a decision-making role can do so. This decision appears to contradict state law because the law specifically states final reports are public. And recently, in California, the Department of Motor Vehicles made a unilateral decision to preclude process servers, investigators and adjusters from obtaining residential information in clearly defined circumstances, effective Nov. 1, 1998. Those circumstances have worked well for attorneys and their representatives the past five years without any adverse consequence. The Rebecca Shaffer incident is an absolute tragedy and should not have happened. Fortunately and largely due to ethical, legal, licensed investigators and adjusters discernment and refusal to provide such sensitive information to those without a legally responsible and legitimate right to know no such similar incident has happened in the past five years of implementation of the clearly defined circumstances outlined above. The voters registry has been closed in California and other States for similar unwarranted reasons. There are demonstrated solutions to these very rare adnomaltys. Attorneys continue to have access to drivers license information, but if they provide this information to an outside representative, they face sanctions. Attorneys are also bared from obtaining voters registry information.

The Freedom of Information Act has also been undermined in the past year. New efforts being put forth are so restrictive that the mere mentioning of anyone in any government record shall not be released unless: A) the person is dead, B) the entity is a big corporation , C) records of small corporations where individual officers could be identified shall not be released and D) the person is a government employee.

The public needs to be educated about the adverse ramifications that will dramatically effect their day to day needs and exactly what it is those in this profession are doing and how they really obtain information as opposed to the erroneous offensive cinematic version as well as the so called "instant availability of reliable personal information" available on the internet. The licensed legal investigator/adjusters/information brokers are engaged in extraordinary activity on behalf of the damaged/wronged/injured/stalked to keep these rapidly reducing sources of information from being legislated off limits and keep public records, just that, public and readily accessible for a recognized legitimate need.

A national forum needs to be established from which the public can truly be educated about what is really being done systematically to erode their freedoms and privacy under the guise of "privacy rights," handing the gover-

nance and law enforcement the only absolute right to access of information along with the well connected and the privileged few.

There is representative raft of real world actual daily events wherein access to public records and pretext financial information gathering has been pivotal to the interest of the innocent, the public, the wronged, the injured, the swindled, the stalked, the abandoned family or child and other entities.

In the final analysis, there is a simple, cost efficient way to protect the individuals right to privacy across the board which it would seem difficult for anyone to oppose while allowing the necessary access to representatives of the innocent, the public, the wronged, the injured, the swindled, the abandoned family or child and other entities without legislating laws at either the States or Federal level of ill considered, poorly written hysterical bills.