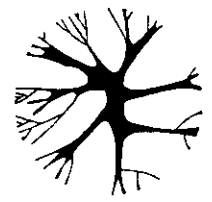


# COMMUNICATION RESEARCH TRENDS



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## Secrecy, Privacy and the Right to Information

George Orwell's *1984* is the vision of the ultimate totalitarian state. The citizens ruled by Big Brother surrender all control over their lives, their personal privacy is abolished, and government surveillance is ubiquitous and inescapable. Meanwhile, impenetrable secrecy protects and enhances the power of the rulers and their agents.

Many people find disturbing echoes of Orwell's nightmare in present-day democratic societies. They point to growing control of all aspects of everyday life by governments and large corporations, to the storage of more and more sensitive personal information in ever larger data banks, and to continuing 'Watergate type' revelations of abuse of power and corruption in high places. There is growing public pressure for measures to protect privacy and to give the people a legal right to know what is being done in their name.

But how justified are such fears? Are computer data banks the real threats to privacy? Is more open government necessary or desirable? Can secrecy be limited by passing freedom of information legislation? Will the right to information conflict with the right of privacy? This issue looks at these and other key questions posed by researchers in this complex and important debate.

REVIEW ARTICLE

## Preserving Privacy in an Organized World

James Rule, Douglas McAdam, Linda Stearns, David Uglow. *The Politics of Privacy: Planning for Personal Data Systems as Powerful Technologies*. (New York & Oxford: Elsevier, 1980).

*The Politics of Privacy* shows how a key factor in making privacy an issue of public concern was the growth in the importance of large-scale personal record-keeping by public and private bureaucracies. We now live in an *organized* world: a world in which we have to provide ever more personal information to various organizations at all stages of our lives and for many different purposes. These personal records define our social identities: they certify our births, marriages, divorces, deaths, and nationalities; they permit us to travel (passports) or drive cars (drivers' licences), or to obtain money (credit cards); they determine our liability for tax, or entitlement to social benefits or medical care. In short, such records determine our treatment at the hands of organizations central to our lives.

### The Threat to Privacy

Two books published in 1964 highlighted some of the problems for personal privacy caused by this immense system of personal files. Vance Packard's *The Naked Society*, and Myron Brenton's *The Privacy Invaders* described the widespread and unregulated collection and use of sensitive information about the opinions and life-styles, sexual preferences and financial affairs of people at all levels of society. This information (often inaccurate or misleading, or true and damaging) was being used by a range of organizations from government agencies, the FBI, CIA and the police, to credit bureaux, insurance companies and business forms. Among other

things the books alerted the public to the ways in which this information could be used to give or withhold employment, welfare benefits or credit; or to pressurize individuals with criminal records or non-conformist political or sexual attitudes or activities. The individual citizen seemed at the mercy of government and private organizations.

### Reforming Personal Record Systems

From 1965 onwards the U.S. Congress began to look into the matter, and in 1967 Alan Westin's magisterial *Privacy and Freedom*<sup>1</sup> set the definitive shape of the emerging debate.

Westin's key contribution was to define the basic question raised by the privacy issue. He argued that new electronic technologies (the computer, sophisticated listening devices, lie-detectors etc) combined with modern data management practices had upset the delicate social balance between the liberty of the individual citizen and the power of large organizations. The problem was how to restore this balance and build in safeguards and procedures into large-scale data systems to protect the privacy of personal information.

For Rule et al the Fair Credit Reporting Act of 1970 is a symbol of the limitations of the Westin approach. This act gave individuals the right to check and dispute the contents of files held on them

1 Alan F. Westin, *Privacy and Freedom*, (New York: Atheneum, 1967).

by credit-reporting agencies. It also entitled them to know to whom this information was being passed (police, banks, insurance companies, business firms, government agencies as well as credit companies). It undoubtedly make credit reporting more accurate, efficient and open.

The Act had its limitations from a reforming perspective. Arthur Miller in the influential *Assault on Privacy*<sup>2</sup> criticized it among other things for its failure to limit the purposes for which credit files could be examined and for its weak protection for the accuracy of data. But Miller endorsed the key assumption behind the act, i.e., 'that efficient transmission of the fullest and most accurate data for use in credit decision-making is inherently desirable'.

### A 'Looser', More Private World

Rule et al's disagreement with this approach is fundamental. They point out that the Fair Credit Reporting Act and other such measures (e.g. the 1974 Privacy Act) legitimize and endorse extensions of bureaucratic surveillance of private information. They argue that privacy protection measures should aim to restrict significantly the amount and kinds of personal information collected by organizations. Private and public bureaucracies should not be expected to be so precise in their treatment of individuals. Insofar as large centralized organizations minimize differences in how people are treated in the light of their records, so far will they lose the need to create such detailed personal files. For example, limiting the range of circumstances relevant to the assessment of tax liability

would reduce the amount of information required from each person.

Such a basic shift in attitudes and practice would require a decisive movement in the direction of more devolution and decentralization of social power. Society should be prepared to give up certain benefits of centralization and efficiency in the interests of giving people more control over their own lives. Even the most benevolent and efficient of bureaucracies must reduce personal privacy and autonomy.

### Controlling Large Data Systems

The factual basis of some of the arguments of Rule et al has been questioned by other researchers. Kenneth C. Laudon, for example, maintains that bureaucracies do not engage in the kind of 'fine grained' decision-making described by Rule<sup>3</sup>. Bureaucratic surveillance in his view is most onerous and intrusive on the local level, in small communities where bankers, businessmen, local politicians or police are personally acquainted with the people they make decisions about.

Laudon agrees with Rule, however, that today's large-scale personal data systems are largely out of effective control. He points out that in the Social Security system, for example, there are errors in a minimum of 20% of case files. How, asks Laudon, are we to devise effective mechanisms to supervise and regulate such complex and poorly understood public data systems?

## Protecting Privacy from the Computer

Lance J Hoffman, ed., *Computers and Privacy in the Next Decade* (New York & London: Academic Press, 1980).

The central place of the computer in modern large-scale record systems has generated a great deal of research on the effects of computerization on privacy. According to Alan Westin the privacy debate will increasingly become an argument about the creation, management and control of computerized data bases and networks. If this debate is to be fruitful in finding ways to protect privacy interests, it is vital that the *real* impact of computing be understood and assessed.

### Understanding the Computer's Impact

In Westin's view this real impact can best be understood by using the methods of 'functional analysis' research. Functional analysis, as used for example, in the 1972 study *Databanks in a Free Society*<sup>4</sup>, specifies organizational informational policies and practices in pre-computer times and then traces how the introduction of computing altered these operations.

The value of this approach is that it can pinpoint the areas of organizational record-keeping practice that most need reform or more effective control. The 1972 study, for instance, concluded that computerizing police files had not yet led the police to collect more sensitive or intrusive personal information than hitherto, not yet resulted in police files being more widely exchanged with other institutions, and on the credit side had in some ways improved the accuracy and security of personal data. However, it did create new problems of accuracy and security requiring more attention to control.

*Databanks in a Free Society* also underlined the fact that computerizing manual files often supplies the occasion for

concentrated attention by the media, interest groups, and government. This attention is, however, directed to broad social questions which arise even without the use of computers. Questions, for example, about the propriety of allowing the police to record information about political opinions or activities. These are basically questions about the appropriate way of balancing the public's interest in controlling terrorism or subversion with the individual's rights to freedom of opinion and personal privacy.

### Privacy as Data Protection

Concentration upon the problems raised by computer-held personal records tends to equate protection of privacy with protection of personal data. This tendency is seen most strongly in European countries such as Germany or Sweden where data protection is the privacy issue. The English-speaking countries still prefer to speak of privacy, while the French conceive the problem as the relationship of data processing and individual liberties.

These different understandings of the privacy issue are, according to Hans P. Gassmann, at the root of the distinctive national legislative approaches to the problem. Thus, U.S. privacy laws are partial in scope, covering either the public or the private sectors; European legislation generally covers both sectors at once. Secondly, the U.S. Privacy Act (1974) applies to both manual and computer files; with the exception of West Germany, European data protection laws apply only to computer records. Thirdly, U.S. privacy laws do not recognize 'legal persons', e.g. business firms, as entitled to privacy protection.

Most importantly, perhaps enforcement of U.S. privacy laws is left to the judiciary. In Europe, on the other hand, specialized data protection agencies or commissions have been established to supervise and monitor the application of privacy legislation.

4 Alan F. Westin and Michael A. Baker, *Data Banks in a Free Society*, (New York: Quadrangle/New York Times, 1972).

2 Arthur R. Miller, *The Assault on Privacy*, (Ann Arbor: University of Michigan Press, 1971).

3 Kenneth C. Laudon, 'Comment on Preserving Individual Autonomy in an Information-Oriented Society,' in Hoffman, ed., *Computers and Privacy in the Next Decade*, pp. 89-96.

### Controlling Data Protection Agencies

With the continuing rapid development of computer technology there will always be new threats to existing data security and protection systems. Precisely for this reason, argues Herbert Burkert, data protection agencies were given considerable latitude to formulate new policies and procedures to protect privacy interests<sup>5</sup>. As these agencies grow in expertise, prestige and influence, it is likely that they will conflict over policy with other branches of government. An important question for the future is: how will privacy policy be further developed and who will shape it? Will data protection agencies manage to maintain their

independence of government and the data industries? How will the public be able to regulate effectively the data protection regulators?

### Transborder Data Flows

National differences in privacy policy may also hamper international attempts to agree on the rules which should govern the flow of personal (or other) data from one country to another. These transborder data flow (TBDF) issues will become more important as more countries, especially in the Third World, develop the required level of computer systems.

## The Legal Recognition of Personal Privacy

David M O'Brien. *Privacy, Law and Public Policy*. (New York: Praeger, 1979).

At the same time as public concern has been focused on the problems raised by the collection and storage of personal information, interest has also been strong in establishing in law a general right of privacy. In the United States in particular, ever since 1890 when Warren and Brandeis first championed the 'right to be let alone' (sic), legal scholars have struggled to find a comprehensive legal formula that would allow the right of privacy to be recognised as a constitutional right.

### Is There a Right of Privacy?

Finally in 1965 the Supreme Court did recognize such a right, but severely limited its application to matters concerning an individual's sexual activities. In making such a decision the Court was refusing to extend the right of privacy to the one area most people were most concerned about: the privacy of personal information. David M O'Brien blames the prevailing conceptual confusion about the purpose of privacy on the failure of the Supreme Court to articulate a comprehensive right of privacy.

### Defining Privacy

O'Brien attempts to clear up this conceptual muddle by distinguishing clearly between the right of privacy and privacy as a condition of limited access to an individual's experiences and engagements. This condition can be intruded upon in different ways, e.g. by unwanted noise, by prying neighbours, by investigative journalists, or agencies that require disclosure of personal information. The right of privacy is an individual's right to claim protection from particular kinds of intrusion.

Understood in this way, the right of privacy need not always be protected by explicit privacy legislation. Indeed social customs such as respect for another's 'right to be let alone' can be more effective than laws. But when a new invasion of privacy arises such as that caused by disclosure of sensitive personal information, its relationship to the general right of privacy cannot be easily established. The absence of this clarifying framework in existing law was one reason why Congress had to create the Privacy Act of 1974 to protect personal information held by the Federal government.

### Right to Know vs Right of Privacy?

However, passing new laws or recognizing a general right of privacy will not ensure that conflicts will not arise between implementation of the right of privacy and other rights. In

particular, much attention has been given to the problem of reconciling the right of privacy with the public's right to information, the so-called right to know.

There are various ways of resolving problems which may arise, but all depend upon how the problem is defined in the first place. Eduardo Novoa Monreal, for example, looks at the issue in terms of personal privacy and the right of the press to intrude upon personal privacy while investigating matters of public interest<sup>6</sup>. Drawing on natural law tradition, he argues that privacy has to take second place to the more general, social right to know when there is a conflict. The right to know affects the well-being of society as a whole for it enables the public to monitor the decisions of their government. The right of privacy essentially affects only the well-being of particular people or groups in society.

### Privacy and FOI

Other commentators argue that the right to know is fundamentally incompatible with the right of privacy. In the United States this clash is symbolized by the difficulties of reconciling the workings of the Privacy Act with the Freedom of Information (FOI) Act of 1966.

Under the Privacy Act personal information is subject to strict safeguards to prevent its unauthorized disclosure. On the other hand the FOI Act was enacted to open up government records to public scrutiny in order to ensure greater accountability. Because the same records are covered by both Acts, administrators often have to decide which Act they are to give preference to.

### Reconciling Privacy and Access

In O'Brien's view the essential problem raised by the working of the Privacy and FOI Acts is how to guide administrative discretion about releasing or withholding information. The need is to balance particular claims to exercise the right to privacy or right to know. This can only be done if administrators have a much clearer understanding of the general criteria underlying each right. In the end, however, the aim is to improve the process of exercising discretion not to downgrade one right in favour of the other.

Properly understood, the right of privacy and the right to know are complementary. The one involves the freedom of individuals to control everyday information important to their self-government; the other, the freedom of citizens to determine collectively the direction of their government's activities.

5 Herbert Burkert, 'Institutions of Data Protection: An Attempt at a Functional Explanation of European National Data Protection Laws'. *Computer Law Journal*, Vol. 3, No.2 (Winter) 1982, pp. 167-188.

6 Eduardo Novoa Monreal, *Derecho a la Vida Privada y Libertad de Informacion: un Conflicto de Derechos*, (Mexico, D.F.: Siglo Veintiuno Editores, 1979).

# The Hidden Exercise of Power: Secrecy

Stanton K Tefft, ed., *Secrecy: A Cross Cultural Perspective* (New York & London: Human Sciences Press, 1980)

The proponents of the public's right to information can draw upon numerous studies of the workings of government secrecy to bolster their case. The case studies in *Government Secrecy in Democracies*<sup>7</sup>, for example, show how much secrecy has become a routine part of government. It also shows how unnecessary and inconsistent most routine secrecy is.

The essays in *Secrecy: A Cross Cultural Perspective* go one step further. They show how pervasive secrecy is in all societies and cultures. At all levels of social interaction (in families, between social groups, and among organizations) secrecy is used to conceal information important to the interests of individuals, groups or governments.

## The Secrecy Process

In two key essays Stanton K Tefft analyses what he calls the 'secrecy process' and studies its social function. Drawing upon 'conflict theory' he argues that secrecy is a vital weapon in the inevitable

<sup>7</sup> Itzhak Galnoor, ed., *Government Secrecy in Democracies*, (New York: Harper Colophon Books, 1977).

social struggles for power, wealth and status. Individuals use secrecy to conceal socially embarrassing or criminal behaviour, business firms use it to protect commercial information from rivals, executives use it to manipulate their subordinates, and governments use it to prevent criticism by the public or political opponents.

## The Consequences of Secrecy

On the whole, Tefft concludes, secrecy is an inevitable and pervasive part of social life. Unfortunately, secrecy, for the most part, furthers social antagonisms and tensions. Secrecy is often a barrier to social adaption and change. Trying to protect embarrassing secrets can lead governments, for example, to undertake a self-defeating policy of surveillance and harassment of political opponents (recall Watergate!). Moreover secrecy within organisations and groups can stifle new ways of thinking or acting because relevant information is concealed or suppressed. Above all, secrecy easily destroys social trust; and if public and private powers are increasingly seen as both secretive and deceitful, then the possibilities of achieving social consensus will become even more difficult.

# The Battle for Open Government: the FOI Debate

Tom Riley, Harold Relyea, eds., *Freedom of Information Trends in the Information Age* (London: Frank Cass, 1983)

Those who advocate the establishment of a constitutional right to information or who lobby for freedom of information (FOI) laws generally stress the need for new measures to make governments more truly accountable to their electorates. They argue that older methods of democratic control such as regular and free elections, and parliamentary scrutiny are inadequate checks on growing government power. They stress above all the need to make government more 'open', to clear away the secrecy that conceals so many government decisions and actions.

Opponents of 'open government' claim that traditional mechanisms of accountability are still adequate or merely in need of an overhaul. Others argue that secrecy or 'confidentiality' is necessary to ensure that civil servants and government administrators are able to speak and write candidly about potentially controversial or difficult administrative decisions. Yet other voices are raised in defence of national security and the duty of the government to conduct espionage and secret surveillance to combat crime or political terrorism.

## Britain: The Consumer and FOI

Martin Smith analyses the state of the FOI and open government debate in Britain. He argues that, as in other countries, the concept of 'national security' is often used as a cynical device to conceal information of great public interest. For consumers, 'security' requires less concealment, not more. They need information held by government and its agencies to have the security in knowing that the cars they travel in are safe, that their homes are not to be demolished to make way for projected and undisclosed new roads, and that the educational and employment prospects of their children are not blighted by erroneous, misleading or flippant school records to which parental access is denied.

According to Smith FOI has not been presented to the British public in terms that would alert ordinary citizens to the numerous ways their real, not theoretical, interests are at stake. The British are still too complacent about the workings of government power. For the idea of open government to seize the imagination of the public a real shift in basic cultural and social attitudes will have to take place.

## The U.S.: Defending the FOI Act

It is in the United States that attitudes to government seem to have changed most decisively in the recent past. According to Harold Relyea, the 1966 US FOI Act came about because of a growing frustration in Congress, the press and the public with the ever-increasing secrecy of the executive branch of government. Undoubtedly the distrust of government that arose in the Nixon Presidency was a significant factor in the passage of both the Privacy Act in 1974 and further amendments to the 1966 FOI Act.

The 1974 modifications to the FOI Act were made necessary because the executive branch was essentially hostile to the idea of freedom of information. In Relyea's view, no President has been fully in favour of open government. At present there are attempts being made by the government to modify key provisions of the FOI Act to enhance bureaucratic secrecy, e.g. by exempting agencies like the FBI and CIA from obligations to reveal certain classes of sensitive information.

Relyea warns against these proposals to limit the impact of FOI legislation and his warnings are strengthened when one realises just how much evidence of government incompetence or dubious practice the FOI Act has been used to reveal. Famous examples are the revelations of the FBI's COINTELLPRO counter-intelligence programme against 'dissident' groups and the CIA's experiments in mind-control. Proposals to weaken the force of the FOI Act by giving administrators more power to decide what is released, to whom, and when, could only make it harder to bring government to account for its actions.

## Sweden: A Tradition of FOI

The importance of creating an administrative atmosphere favourable to a more open style of decision-making is emphasised in Tom Riley's review of FOI around the world.

Sweden, for example, has had, in some form or other, a statutory right of public access to government documents since 1766. In no other country is there such a well-established bias in favour of openness; indeed in other countries the dominant tradition is one of government discretion to decide when and what information to make available. In Sweden, on the contrary, the law is based

on presumption of publicity where the exercise of public authority is in question. Only where the privacy of individuals is at stake does the law tend to favour the withholding of information.

### The Problems of FOI

John D McCamus, ed., *Freedom of Information: Canadian Perspectives* (Toronto: Butterworths, 1981)

Even with good FOI laws and changes in attitude from governments and administrators there are still problems to be faced. Christian Bay argues the case for extending the scope of FOI legislation into the private sphere. The established powers in today's society include large multinational and national business corporations. Companies that engage in oil exploration or other forms of mineral extraction often make decisions that can affect not only the livelihoods of many people but also the state of the

environment itself. Their decision-making processes need to be opened up to the inspection of the public as well.

Another key problem, touched upon in essays by Donald Smiley and Douglas Hartle, is the fact that FOI laws do not necessarily put more power into the hands of the ordinary citizen. The main beneficiaries of FOI laws are often those groups which already have considerable economic, financial and political power. Business corporations, for example, have the money, personnel and expertise to use FOI legislation to obtain information about products, services and other companies which is of commercial interest to them.

On the other hand, ordinary citizens have to be educated into using the law; they have to be informed what are their rights under new laws and they need to see how obtaining information can help protect their interests. To carry out such a process of public consciousness-raising, public interest groups such as the Freedom of Information Clearinghouse have been set up in the United States.

## The Press as Guardian of the Right to Know

David M O'Brien. *The Public's Right to Know: The Supreme Court and the First Amendment*. (New York: Praeger; Eastbourne, Sussex: Holt-Saunders, 1981).

The extension of the benefits of FOI to the whole public, not just to influential segments, is also raised by consideration of the proper role of the press. The press often presents itself as the natural champion of the public's best interests, and has, in the U.S. and elsewhere, been active in pressing for judicial recognition of the public's 'right to know'.

As is so often the case, the most ardent and influential proponents of the special status and responsibilities of the press have been found in the United States. There, as David O'Brien shows, the press has pushed especially for legal recognition of a constitutional right to know derived from the First Amendment guarantees of freedom of the press.

### Identifying Press and Public Interests

Analysing the arguments of the press, especially since 1945, O'Brien sees a danger when the press identifies its *commercial* interest in

obtaining access to newsworthy information with the *public* interest in more open government and the detection of crime, corruption or incompetence. Claiming a special right to know which is basically a right of the press is to blur the crucial distinction between a public which is informed and an 'informed public'. The public as a whole has the right to know.

Against such scholars as Thomas Emerson, O'Brien argues that there is no constitutional right to know. Moreover, should the press claim that it should have a specially privileged position in the constitution as guardian of the right to know, it would have to accept that it be subject to rules of accountability and responsibility. In other words, it would have to accept hitherto unacceptable limitations on its freedom. O'Brien asserts that the public's right to know and open up government can only be ensured by positive legislation like the Freedom of Information Act.

## Right to Information: A Fundamental Human Right?

Pierre Trudel, Jacques Boucher, René Potté and Jean-Maurice Brisson. *Le Droit à l'Information: Emergence, Reconnaissance, Mise en Oeuvre*. (Montreal: Les Presses de l'Université de Montreal, 1981).

In a wide-ranging study of changing attitudes to the idea of a public right to information Trudel et al identify the key philosophical differences which underlie most present-day debates. A crucial division is between those individuals, governments or interest groups that hold to a classical, liberal understanding of freedom of the press and those who regard information as in some sense a kind of public service. Adherents to the newer view tend to want to develop concepts like the 'right to communicate', while defenders of the classical view argue for an extended scope of established rights like the freedom of the press.

For Trudel et al these different philosophies are directly related to changes in the roles of social and political institutions and in changed perceptions of the threats to individual freedom. The liberal theory of press freedom stems from the later 18th century and it was enunciated as a counter to the perceived evils of arbitrary government and political and religious censorship. In the later part of the 20th century some perceptions of government have changed. Widespread acceptance of the role of government as a guarantor of social benefits (the 'welfare state') and as a regulator of information media in the 'public interest' service broadcasting, e.g. the BBC, has made government power, especially in newer nations, seem less threatening.

### The Right to Communicate

At the same time the rise of media and news conglomerates and

the concentration of media power in fewer hands has made the press seem less benevolent. Guarantees of freedom of the press protect the rights of those who disseminate information (press, publishers, authors, etc.); newer concepts like the 'right to communicate' are aimed more at asserting and protecting the rights of the consumers of information. Thus the right to communicate is meant to include: the right to inform and be informed, the right of privacy, and the right to participate in public communication.

### The Right to Information: A Basic Right

Trudel et al make an attempt to bring together the notions of freedom of the press, the right to communicate and the right to information by arguing that the right to information is a fundamental human right. As a fundamental right, the right of information would not derive, for example, from freedom of the press, but would be the justification and basis of such freedom. In this view, advocates of press freedom might have to accept a certain amount of regulation designed to ensure that the press was really acting in the interests of the public. So, for example, rules to ensure access of the public to the media or to give individuals privacy protection would be justified as extending the prior right of the public to information. Such a right to information would be quite compatible with the right to communicate.

# Current Research on Privacy and the Right to Information

## AUSTRALIA

**The Law Reform Commission** (Chairman: Mr. Justice **M.D. Kirby**, 99 Elizabeth St., Sydney, N.S.W. 2000) will report in early 1983 with recommendations for Federal privacy legislation. The A.L.R.C. is also examining the claims by journalists that they should not have to reveal confidential information or sources in court. The A.L.R.C. publishes *Reform*, a quarterly bulletin that often contains information on communication law topics.

**Dr. R.A. Brown** (Faculty of Law, New South Wales Institute of Technology, P.O. Box 123, Broadway, N.S.W. 20007) is setting up a centre for the study of computers and law to begin work in 1983. He is preparing a book on *Computer Law in Australia* to appear late in 1983.

The **New South Wales Privacy Committee** (Goodsell Building, Chifley Sq., Sydney, N.S.W. 2000) is a semi-government body involved in research, the investigation of privacy invasions and educational work.

## AUSTRIA

**Dr Kurt G Bednar** (Director, Gesellschaft für Datenschutz und Schutz der Privatsphäre, Anton Baumgartnerstr. 44/A8/076, 1232 Wien) continues to research all aspects of data protection and privacy. He is author of *Datenschutz-handbuch* (Data protection handbook) (Wien: Industrieverlag Peter Linde, 1979).

## CANADA

**Prof David H Flaherty** (The Privacy Project, Social Science Centre, 4328, U of Western Ontario, London, Ontario N6A 5C2) is monitoring over a three-year period the passage, revision, and implementation of data protection laws in Sweden, Germany, France, Canada, the United States and Britain. Primary area of study is government handling of personal data relating to welfare, health, social security and law enforcement.

**Prof John D McCamus** (Dean, Osgoode Hall Law School, York University, 4700 Keele St., Downsview, Ontario M3J 2R5) is to begin a study of the federal Canadian Access to Information and Privacy Acts, as well as forthcoming FOI legislation in Ontario.

**Prof Donald C Rowat** (Dept of Political Science, Carleton University, Ottawa K1S 5B6) has just published an article on "The French Law on Freedom of Information". *Transnational Data Report*, Vol 5, No 8 (December) 1982, p339-402 (reprinted from *Canadian Forum*, November 1982).

**Dr Arthur Siegel** (Division of Social Sciences, York University, 4700 Keele St., Downsview, Ontario M3J 1P3) has looked at social and political factors contributing to secrecy and openness in Canadian government. This research is discussed in *Politics and the Media in Canada* (Toronto: McGraw Hill-Ryerson Press, 1983).

**Dr Theodore Sterling** (Dept of Computing Science, Simon Fraser Univ., Burnaby, BC, V5A 1S6) is investigating the influence on democracy from the use of computers by governments and large organisations, particularly to store increasing amounts of detailed personal data.

## FRANCE

**Droit et Informatique** (5 rue du Capitaine Scott, 75015 Paris). President and founder **Jean-Pierre Chamoux** undertakes research in areas of law and data processing, including data protection.

**André Grissonnanche** (Chargé de Mission, Protection des Données, Agence de l'Informatique, Tour Fiat, Cedex 16, 92084 Paris — La Défense) is working on the study "Data Confidentiality and Security in Europe", a report commissioned by the European Commission. The Agence de l'Informatique is collaborating with the GMD (Germany) and the National Computing Centre (UK).

**Prof Herbert Maisl** (Université de Paris X, 2 rue de Rouen, 92001 Nanterre Cedex) is also legal adviser to the Commission Nationale de l'Informatique et des Libertés, (21 rue St-Guillaume, 75007 Paris). He is now studying the French law on data protection five years after its promulgation in 1978.

## GREAT BRITAIN

**International Freedom of Information Institute** (76 Shoe La., London EC4A 3BJ), Executive Secretary **Tom Riley**, acts as an international clearinghouse for information on all aspects of FOI. It publishes a *Freedom of Information Newsletter* which appears regularly in *Transnational Data Report*.

## IRELAND

**Robert Cochran** (National Board for Science and Technology, Shelbourne Rd., Dublin 4) has been advising the Irish government on privacy legislation. In 1981 he completed a master's dissertation on "Privacy and Computers" at University College, Dublin, which made specific recommendations for Irish privacy laws.

## ISRAEL

**Prof Itzhak Galnoor** (Dept of Political Science, Hebrew University of Jerusalem, Jerusalem) is planning to revise and update his book *Government Secrecy in Democracies* (1977). He has just published *Steering the Polity: Political Communication in Israel* (Beverly Hills, CA & London: Sage, 1982) which looks at some aspects of secrecy.

## ITALY

**Prof Gregoria Arena** (Istituto di Diritto Pubblico, Università di Roma, Piazzale Aldo Moro, 00185 Roma) is writing a book on administrative secrecy (Il segreto amministrativo) to be published in 1983. It will look at administrative secrecy in Italy from 1810, and in the US, France and Sweden.

## JAPAN

**Prof T Hiramatsu** (Dept of Human Ecology, National Women's University of Nara, No 630, Kitauoya-Nishimachi, Nara) researches freedom of information.

## NETHERLANDS

**Bärbel Ziegler-Jung** (Onderafdeling der Bestuurskunde, Technische Hogeschool Twente, Postbus 217 7500 AE, Enschede) plans to study privacy and FOI legislation in New Zealand. At present she is looking at privacy aspects of health information processing in Germany and the Netherlands.

## SPAIN

**Prof Gregorio Garzon** (Director, Dept de Derecho Internacional Publico, Facultad de Derecho, Universidad de Granada) is currently studying the methodology for legal protection of personal and nonpersonal data, and legal implications of transborder data flow in relation to the changing international order.

**Eduardo Vilarino** (Facultad de Ciencias Politicas y Sociologia, Universidad Complutense, Madrid) is working on the international juridical aspects of the international flow of computerized data.

## UNITED STATES

**Richard Ehlike** (American Law Division, Congressional Research Service, Library of Congress, Wash., DC) is researching into litigation under the 1974 Privacy Act, FOI Act amendments and congressional access to information and executive privilege.

**Dr Lotte E Feinberg** (Dept of Government and Public Administration, John Jay College of Criminal Justice, City Univ. of New York, 445 West 59th St., NY 10019) is studying how four federal agencies (Defense, Energy, FTC and FDA) exercise administrative discretion in relation to FOI requests.

**Prof Robert S Gerstein** (Dept of Political Science, Univ of California, Los Angeles, CA 90024) is preparing a book developing the theory of right of privacy as the right to a private life.

**Dr Lance J Hoffmann** (President, Information Policy Inc., 3609 Cumberland St., NW, Wash., DC 20008) is examining privacy and security in large data bases, law enforcement information systems, on-line interactive systems and microcomputer systems.

**Dr Jeremy R T Lewis** (Dept of Political Science, Wellesley Coll., Wellesley, MA 02181) is studying the FOI Act in the context of information policy as a whole, including the classification system, Privacy Act, and other related Acts.

**Dr Donald A Marchand** (Director, Inst of Information Management Technology and Policy, Univ. of South Carolina, SC 29208) has directed the Institute's research over three years into *Alternatives for a National Computerized Criminal History System* for the Office of Technology Assessment. He has recently authored (with David M O'Brien) *The Politics of Technology Assessment* (Lexington, MA: Lexington Books, 1982). The Institute is currently assessing data centres of the S Carolina State Govt., in relation to data confidentiality, security and auditing.

**Dr David M O'Brien** (Judicial Fellow, (1982-83) Administrative Asst. to the Chief Justice, US Supreme Court, Wash., DC 20543; Dept of Government and Public Affairs Univ. of Virginia) will do a comparative (US, England, France and Germany) study of law and policy balancing privacy and FOI interests. The aim is to build an analytical framework illuminating trade-offs in government regulation of information.

**James T O'Reilly** (2849 East St., Charles Place, Cincinnati, OH 45208) continues to supplement (semi-annually) his book *Federal Information Disclosure: Procedures, Forms and the Law* (New York: McGraw Hill: Shepards, 1977) and is researching US agencies' policy on disclosure of consumer complaint information and statutory provisions on consumer-related disclosures.

**Dr Harold C Relyea** (Congressional Research Service, Library of Congress, Wash., DC 20540) is writing a book giving an analytical overview of the evolution of US government information policies and practices.

**Dr Dan Simonoski** (Dept of Political Science, Texas Tech University, PO Box 4290, Lubbock, TX 79409) is co-directing (with **Prof J Norman Baldwin**, Center for Public Service, Texas Tech Univ) a project surveying experiences and attitudes of FOIA implementors to their work and the law. He is also studying (using the FOIA) the surveillance by the FBI of the "gay rights" movement between 1950 and 1982, to be published in two books for Alyson Publications, Boston.

**Robert Ellis Smith** continues to publish *Privacy Journal* (PO Box 8844, Wash. DC 20003) a monthly newsletter which focuses on privacy and computer issues, esp. in the US. Future research includes a history of privacy in the US and the impact of interactive media (cable, videotex) on individual privacy.

The **Freedom of Information Center** (Box 858, University of Missouri, Columbia, MO 65205) carries on research, publication and documentation on censorship, press freedom and FOI.

#### VENEZUELA

**Prof Eduardo Novoa Monreal**, (Ave. Los Apamates, Edificio Santa Isabel apto.13, La Florida, Caracas 1050).

#### WEST GERMANY

**Institute for Data Processing and Law** of the Gesellschaft für Mathematik und Datenverarbeitung (Postfach 1240, Schloss Birlinghoven, D-5205, St. Augustin 1) is particularly concerned with questions of data protection. **Dr Herbert Burkert** was responsible for the second volume of the European report on data confidentiality: *Organization and Method of the Operation of the Data Protection Authorities*.

## Perspectives on Communication Research

### New Research Approaches to Privacy and Right to Information

Even a cursory review of research on privacy and the right to information reveals much confusion about the nature, scope and significance of the issues in question. This confusion manifests itself 1) in the conflicting definitions of key concepts: privacy, secrecy, right to information; and 2) in the overlapping and often contradictory uses of important terms. How is one to distinguish between near synonyms like the right to know, the right to information and freedom of information?

### The Control of Information

This confusion is a measure of how little researchers have yet agreed upon a theoretical framework that would interrelate the issues of privacy, secrecy, surveillance, and the right to information. A possible basis for such a framework might be found in an analysis of the social roles and functions of information flow and control.

Control over information includes its concealment (secrecy), its disclosure (the right to information) and the methods used to collect it and monitor its flow (surveillance). In terms of information control the right of privacy is an acknowledgement that certain categories of personal information are legitimately concealed, that some kinds of surveillance are not socially acceptable, and that disclosure should be under the control of the source of information.

### The Social Bases of Information Control

Clarification of concepts and terminology, even the elaboration of a widely agreed intellectual framework, is insufficient without a deeper analysis of the social conditions under which information control is exercised. More precisely, researchers might look more closely at the ways in which control over information is used as

a means to exercise, protect, enhance, obtain, undermine, or disperse social, cultural, political and personal power.

Such deeper social analysis will not of itself produce easy answers to basic questions of public policy. If information control is looked at in terms of conflict theory, for example, researchers could conclude that measures to protect privacy or establish a right to information fail to recognize that structural inequalities in power and wealth remain basically unchanged. Researchers who look at the same problems in terms of the better management of information systems may be more sanguine about the possibilities of effecting social change through privacy or freedom of information laws.

### Widening the Academic Debate

In the end, the greatest contribution of research could be to pinpoint and expose to view the underlying social and political judgements and values that shape the privacy/right to information debate. Researchers should ask questions and conduct analyses that reveal how social and political power is presently exercised and how, for example, changing social conditions or the coming of new information technologies are likely to affect its distribution in the future. As long as scholars are still disputing mainly about the definition of basic concepts and arguing about the details of privacy protection or open government, their debate will be largely confined to academic, political and business circles. Debate and research which brings out the importance of the political and social choices which have to be made in this field, is a prerequisite if the general public is to be better informed and better prepared to influence the policies implemented by its governors.

JAMES MCDONNELL  
Issue Editor

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